TEXAS REGISTER

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Thomas Huizar

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.

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THE GOVERNOR

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

Appointments

Appointments for October 12, 2012

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Michael K. Griffiths of Austin (replacing Cheryln Townsend of Austin who resigned).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, June B. Scogin of Cedar Park (replacing Benjamin De Leon of Austin who resigned).

Appointed to the Gulf Coast Waste Disposal Authority Board of Directors for a term to expire August 31, 2014, Stanley Cromartie of League City (replacing Randy Jarrell of League City whose term expired).

Appointed to the Gulf Coast Waste Disposal Authority Board of Directors for a term to expire August 31, 2014, Lamont Meaux of Stowell (Mr. Meaux is being reappointed).

Appointed to the Texas Academy of Mathematics and Science Advisory Board for a term to expire May 2, 2018, Cilla Faye Bruun of Fulton (replacing Janelle Collier of Austin whose term expired).

Appointments for November 2, 2012

Appointed to the Housing and Health Services Coordination Council for a term to expire September 1, 2015, James K. Hill of Fort Worth (replacing Jimmy Carmichael of La Grange who resigned).

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2014, Keith Kidd of Reno (replacing Malachi Boyuls of Dallas who resigned).

Appointments for November 9, 2012

Appointed to the Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2017, Howard R. Marcus of Austin (Pursuant to Health and Safety Code Chapter 93, Section 93.002).

Appointed to the Texas Physician Assistant Board for a term to expire February 1, 2013, Michael Reis of Woodway (replacing Michael Mitchell of Henrietta who resigned).

Rick Perry, Governor

TRD-201205908

♦ ♦ ♦

Proclamation 41-3309

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

WHEREAS, this state of disaster includes the counties of Andrews, Aransas, Archer, Armstrong, Bailey, Bandera, Baylor, Bee, Borden, Bosque, Bowie, Briscoe, Brooks, Burnet, Callahan, Cameron, Carson, Castro, Childress, Clay, Cochran, Collingsworth, Cooke, Cottle, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Dimmit, Donley, Duval, Edwards, El Paso, Erath, Fannin, Fisher, Floyd, Foard, Gaines, Garza, Gillespie, Gray, Grayson, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hidalgo, Hill, Hockley, Hood, Hudspeth, Hutchinson, Jeff Davis, Jim Hogg, Jim Wells, Johnson, Jones, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kleberg, Knox, La Salle, Lamar, Lamb, Lipscomb, Live Oak, Lubbock, Lynn, McMullen, Medina, Mitchell, Montague, Moore, Motley, Nolan, Nueces, Ochiltree, Oldham, Parmer, Potter, Presidio, Randall, Real, Red River, Refugio, Roberts, San Patricio, Schleicher, Scurry, Shackelford, Sherman, Somervell, Starr, Stephens, Stonewall, Sutton, Swisher, Taylor, Terry, Throckmorton, Val Verde, Webb, Wheeler, Wichita, Wilbarger, Willacy, Wise, Yoakum and Zapata.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 2nd day of November, 2012.

Rick Perry, Governor

TRD-201205909

♦ ♦ ♦

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.)

Opinions

Opinion No. GA-0974

The Honorable John Whitmire

Chair, Committee on Criminal Justice

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether there is a conflict between two provisions of the Transportation Code that permit judges and peace officers to omit their residence address from their drivers' licenses, and a provision of the Tax Code that requires the submission of proof of the residence address of an applicant for a homestead exemption (RQ-1060-GA)

S U M M A R Y

If a federal or state judge, the spouse of a federal or state judge, or a peace officer is otherwise entitled to claim a homestead exemption under section 11.13 of the Tax Code, he or she may comply with the requirements of section 11.43(n) of the Tax Code by producing a personal identification certificate issued by the Department of Public Safety and showing his or her residence address. The Legislature has prohibited chief appraisers from accepting alternative forms of identification from homestead exemption applicants.

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

TRD-201205898
Katherine Cary
General Counsel
Office of the Attorney General
Filed: November 13, 2012

♦ ♦ ♦

TEXAS ETHICS COMMISSION

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

Advisory Opinion Requests

AOR-574. The Texas Ethics Commission has been asked to consider whether a former employee of a state regulatory agency who worked on a particular highway construction design-build contract may receive compensation from a private employer for services related to the contract or the oversight of the contract.

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

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

TRD-201205751
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Filed: November 7, 2012

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Advisory Opinion Requests

AOR-575. The Texas Ethics Commission has been asked to consider whether a parent for-profit corporation may make political expenditures to solicit political contributions from employees of its wholly owned and operated subsidiary for-profit corporations to a general-purpose committee assisted by the parent corporation.

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

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

TRD-201205846
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Filed: November 9, 2012

♦ ♦ ♦

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

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

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 203. MANAGEMENT OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

The Texas Department of Information Resources (department) proposes amendments to 1 TAC Chapter 203, §§203.20, 203.25, 203.40, and 203.45, concerning Management of Electronic Transactions and Signed Records, to revise a reference to the Texas Business and Commerce Code and to revise text to reflect current American Institute of Certified Public Accountants (AICPA) standards for reporting on controls at a service organization.

The proposed amendments apply to all state agencies and institutions of higher education. The proposed amendments were provided to the Information Technology Council for Higher Education (ITCHE) for review and input before bringing the rules to the Board for consideration.

The department proposes to revise the current text of Subchapter B, §203.20, to provide a correct reference to a current Business and Commerce Code section related to the Uniform Electronic Transactions Act. The department also proposes to revise the current text of §203.25(a) - (h) to accurately reflect current service organization standards for reporting on controls as set forth by the AICPA.

The department proposes to revise the current text of Subchapter C of Chapter 203 to reflect similar changes for institutions of higher education. The department proposes to revise §203.40 to correct reference to a current Business and Commerce Code section related to the Uniform Electronic Transactions Act. The department also proposes to revise the current text of §203.45(a) - (h) to accurately reflect current service organization standards for reporting on controls as set forth by the AICPA.

The change in reference to AICPA reporting standards results from the AICPA's replacement of the Statement on Auditing Standards No. 70 (SAS 70) with the Statement on Standards for Attestation Engagements No. 16 (SSAE 16) as the authoritative guidance for service organization standards for reporting on controls, effective June 15, 2011.

Angel Cruz, Chief Information Security Officer, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal impact on state agencies and institutions of higher education. The update of rules to accurately reference statute and current AICPA service organization reporting standards will guide the conduct of business for the department, state agencies, and institutions of higher education. There is no impact on local government as a result of enforcing or administering the rules as proposed.

Comments on the proposed rule amendments may be submitted to Megan A. Smith, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701 or megan.smith@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register.*

SUBCHAPTER B. STATE AGENCY USE OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

1 TAC §203.20, §203.25

The amendments are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

No other statutes are affected by these amendments.

§203.20. Guidelines.

The Guidelines for the Management of Electronic Transactions and Signed Records, which are available at the department's website, were adopted by the department based on the work and recommendations of the Uniform Electronic Transactions Act Task Force. The Uniform Electronic Transactions Act Task Force was jointly created by the department and the Texas State Library and Archives Commission to advise the agencies on the rules each might adopt pursuant to Texas Business and Commerce Code, §322.017 [~~§43.017~~].

§203.25. Acceptable PKI Service Providers.

(a) The department shall maintain an "Approved List of PKI Service Providers" authorized to issue certificates for digitally signed communications sent to state agencies or otherwise provide services in connection with the issuance of certificates. The list may include, but shall not necessarily be limited to, Certification Authorities, Certificate Manufacturers, Registrars, and/or other PKI Service Providers accepted and approved for use in connection with electronic messages transmitted to other state or federal governmental entities. A copy of such list may be obtained directly from the department, or may be obtained electronically via the department's website.

(b) State agencies shall only accept certificates from PKI Service Providers that appear on the "Approved List of PKI Service Providers."

(c) The department shall determine whether to place a PKI Service Provider on the "Approved List of PKI Service Providers" after the PKI Service Provider provides the department with a copy of its current certification practice statement, if any, and a copy of an examination

report [unqualified performance audit] performed in accordance with standards set in the American Institute of Certified Public Accountants (AICPA) Statement on Standards for Attestation Engagement No. 16 (SSAE 16) (or a successor AICPA standard) [Auditing Standards No. 70 (S.A.S. 70)] to ensure that the PKI Service Provider's practices and policies are consistent with the requirements of the PKI Service Provider's certification practice statement, if any, and the requirements of this section.

(d) In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for one year or less shall undertake a SSAE 16 Service Organization Control (SOC) 2 Type 1 examination (or a successor AICPA standard) and the results of the examination must be deemed satisfactory by the department. [undergo a SAS 70 Type One audit--A Report of Policies and Procedures Placed in Operation, receiving an unqualified opinion.]

(e) In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for longer than one year shall undertake a SSAE 16 Service Organization Control (SOC) 2 Type 2 examination (or a successor AICPA standard) and the results of the examination must be deemed satisfactory by the department. [undergo a SAS 70 Type Two audit--A Report of Policies and Procedures Placed in Operation and Test of Operating Effectiveness, receiving an unqualified opinion.]

(f) In lieu of the examination [audit] requirements of subsections (d) and (e) of this section, a PKI Service Provider may be placed on the "Approved List of PKI Service Providers" upon providing the department with documentation issued by a person independent of the PKI Service Provider that is indicative of the security policies and procedures actually employed by the PKI Service Provider and that is acceptable to the department in its sole discretion. The department may request additional documentation relating to policies and practices employed by the PKI Service Provider indicating the trustworthiness of the technology employed and compliance with applicable department guidelines [published by the department].

(g) To remain on the "Approved List of PKI Service Providers" a Certification Authority must provide proof of compliance with the examination [audit] requirements or other acceptable documentation to the department every two years after initially being placed on the list. In addition, a Certification Authority must provide a copy of any changes to its certification practice statement to the department promptly following the adoption by the Certification Authority of such changes.

(h) If the department is informed that a PKI Service Provider is no longer in full compliance [has received a qualified or otherwise unacceptable opinion] following a required examination and the noncompliance is deemed to be material by the department, [audit] or if the department obtains credible information that the technology employed by the PKI Service Provider can no longer reasonably be relied upon, [or if the PKI Service Provider's certification practice statement is substantially amended in a manner that causes the PKI Service Provider to be non-compliant with the audit requirements of this section,] the PKI Service Provider may be removed from the "Approved List of PKI Service Providers" by the department. The effect of the removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall be to prohibit state agencies from thereafter accepting digital signatures for which the PKI Service Provider issued a certificate or provided services in connection with such issuance for so long as the PKI Service Provider is removed from the list. The removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall not, in and of itself, invalidate a digital signature for which a PKI Service Provider issued the certificate prior to its removal from the list.

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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Martin H. Zelinsky
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Department of Information Resources
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SUBCHAPTER C. INSTITUTIONS OF HIGHER EDUCATION USE OF ELECTRONIC TRANSACTIONS AND SIGNED RECORDS

1 TAC §203.40, §203.45

The amendments are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

No other statutes are affected by these amendments.

§203.40. Guidelines.

The Guidelines for the Management of Electronic Transactions and Signed Records, which are available at the department's website, were adopted by the department based on the work and recommendations of the Uniform Electronic Transactions Act Task Force. The Uniform Electronic Transactions Act Task Force was jointly created by the department and the Texas State Library and Archives Commission to advise the agencies on the rules each might adopt pursuant to Texas Business and Commerce Code, §322.017 [§43.017].

§203.45. Acceptable PKI Service Providers.

(a) The department shall maintain an "Approved List of PKI Service Providers" authorized to issue certificates for digitally signed communications sent to institutions of higher education or otherwise provide services in connection with the issuance of certificates. The list may include, but shall not necessarily be limited to, Certification Authorities, Certificate Manufacturers, Registrars, and/or other PKI Service Providers accepted and approved for use in connection with electronic messages transmitted to other state or federal governmental entities. A copy of such list may be obtained directly from the department, or may be obtained electronically via the department's website.

(b) Institutions of higher education shall only accept certificates from PKI Service Providers that appear on the "Approved List of PKI Service Providers."

(c) The department shall determine whether to place a PKI Service Provider on the "Approved List of PKI Service Providers" after the PKI Service Provider provides the department with a copy of its current certification practice statement, if any, and a copy of an examination report [unqualified performance audit] performed in accordance with standards set in the American Institute of Certified Public Accountants (AICPA) Statement on Standards for Attestation Engagement No. 16 (SSAE 16) (or a successor AICPA standard) [Auditing Standards No. 70 (S.A.S. 70)] to ensure that the PKI Service Provider's practices and policies are consistent with the requirements of the PKI Service Provider's certification practice statement, if any, and the requirements of this section.

(d) In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for one year or less shall undertake a SSAE 16 Service Organization Control (SOC) 2 Type 1 examination (or a successor AICPA standard) and the results of the examination must be deemed satisfactory by the department. [~~undergo a SAS 70 Type One audit--A Report of Policies and Procedures Placed in Operation, receiving an unqualified opinion.~~]

(e) In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for longer than one year shall undertake a SSAE 16 Service Organization Control (SOC) 2 Type 2 examination (or a successor AICPA standard) and the results of the examination must be deemed satisfactory by the department. [~~undergo a SAS 70 Type Two audit--A Report of Policies and Procedures Placed in Operation and Test of Operating Effectiveness, receiving an unqualified opinion.~~]

(f) In lieu of the examination [~~audit~~] requirements of subsections (d) and (e) of this section, a PKI Service Provider may be placed on the "Approved List of PKI Service Providers" upon providing the department with documentation issued by a person independent of the PKI Service Provider that is indicative of the security policies and procedures actually employed by the PKI Service Provider and that is acceptable to the department in its sole discretion. The department may request additional documentation relating to policies and practices employed by the PKI Service Provider indicating the trustworthiness of the technology employed and compliance with applicable department guidelines.

(g) To remain on the "Approved List of PKI Service Providers" a Certification Authority must provide proof of compliance with the examination [~~audit~~] requirements or other acceptable documentation to the department every two years after initially being placed on the list. In addition, a Certification Authority must provide a copy of any changes to its certification practice statement to the department promptly following the adoption by the Certification Authority of such changes.

(h) If the department is informed that a PKI Service Provider is no longer in full compliance [~~has received a qualified or otherwise unacceptable opinion~~] following a required examination and the noncompliance is deemed to be material by the department, [~~audit~~] or if the department obtains credible information that the technology employed by the PKI Service Provider can no longer reasonably be relied upon, [~~or if the PKI Service Provider's certification practice statement is substantially amended in a manner that causes the PKI Service Provider to become no longer in compliance with the audit requirements of this section,~~] the PKI Service Provider may be removed from the "Approved List of PKI Service Providers" by the department. The effect of the removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall be to prohibit institutions of higher education from thereafter accepting digital signatures for which the PKI Service Provider issued a certificate or provided services in connection with such issuance for so long as the PKI Service Provider is removed from the list. The removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall not, in and of itself, invalidate a digital signature for which a PKI Service Provider issued the certificate prior to its removal from the list.

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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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 28. HISTORIC SHIPWRECKS

13 TAC §28.6, §28.9

The Texas Historical Commission (hereinafter referred to as the commission) proposes amendments to 13 TAC §28.6 and §28.9, concerning Historic Shipwrecks. These amendments are being proposed in an effort to update and modify the rules associated with historically significant shipwrecks that are either submerged under the waterways or contained on, in, or under the public lands of the State of Texas. These amendments should improve the quality of underwater archeological investigations by streamlining and clarifying the responsibilities of principal investigators.

Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There will also be no effect on small businesses or micro-businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Mr. Wolfe has also determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of these rule amendments will be an increased efficiency and effectiveness in the implementation of the Antiquities Code of Texas.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

The amendments are proposed under Title 4, Chapter 442, §442.005(q) of the Texas Government Code, and Title 9, Chapter 191, §191.052 of the Texas Natural Resources Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of these chapters.

No other statutes, articles or codes are affected by these amendments.

§28.6. Conduct of Activities.

(a) All persons shall conduct their activities in Texas' submerged lands in a manner designed to avoid damage to shipwrecks in Texas' submerged lands, and to protect and preserve the cultural resources of Texas. If, during the conduct of activities in submerged state land tracts, a person discovers the existence of a shipwreck, the person shall promptly notify the commission of the existence of the historic property and shall conduct the activities in a manner that will avoid damage to the shipwreck.

(b) When a person submits an application for a permit from the U.S. Army Corps of Engineers, the person shall describe the proposed

activity in sufficient detail to enable the commission to review the U.S. Army Corps of Engineers, public notice publication, and determine if the proposed activity may impact a shipwreck.

(c) If the proposed activity is in an area where a shipwreck is known to exist, or where there is a likelihood that a shipwreck exists, the commission may require an archeological survey, the purpose of which is to locate shipwrecks.

(d) Conduct of such a survey may be recommended by the commission to the U.S. Army Corps of Engineers, and may be required as a condition of issuance of the permit from the U.S. Army Corps of Engineers. Such survey must be done under a Texas Antiquities Permit issued by the commission. The Texas Antiquities Permit is issued only to a qualified archeologist and allows the commission to monitor the quality and results of the survey.

(e) The commission has set the following minimum standards for conducting a survey.

(1) Horizontal positioning.

(A) Texas' submerged lands within bays and rivers and within the 3 nautical mile line in the Gulf of Mexico.

(i) The avoidance margin in this area is fifty (50) meters.

(ii) The maximum survey line spacing in this area is twenty (20) meters.

(B) Texas' submerged lands offshore beyond the 3 nautical mile line in the Gulf of Mexico.

(i) The avoidance margin in this area is one-hundred and fifty (150) meters.

(ii) The maximum survey line spacing in this area is thirty (30) meters.

(C) The geographical extent of an archeological survey must [~~take~~] include the construction impacts (e.g. anchor patterns of construction barges) at the margin of the primary activity and the size of the avoidance margin. Survey for a linear project (e.g. pipelines, dredged channels, and utility lines) must include the centerline of the project route and at least one offset line each side of the centerline. A survey for marine seismic activity that employs drilling and detonation of buried explosive charges must, at a minimum, collect data along at least one line of survey crossing each source point and extending at least 20 meters to either side of each source point. The survey area must be adequate to allow movement of the proposed activity such that it is outside of the avoidance margin of any significant magnetic anomaly or sonar target yet fully within the area surveyed.

(D) If avoidance of an anomaly or target determined to be significant by the archeologist holding the survey permit is not feasible, further investigation of the anomaly or target will be required as stated in subsections (g), (i) and (j) of this section. Such further investigation must also be conducted under a permit issued by the commission.

(2) Instrumentation and Survey Procedures. Instrumentation is classified as remote sensing equipment that detects the presence of an object by its inherent physical properties or by signals reflected from the object. The preferred suite of remote sensing equipment includes a marine magnetometer, a high-resolution side-scan sonar, and a recording fathometer.

(A) The magnetometer should be set to detect and record the magnetic environment at 1-second intervals or less and the data should be recorded on computer disc or other appropriate computer media.

(B) The side-scan sonar should use a transceiver designated as a 300 kHz transceiver minimum and should be operated in that frequency or a higher frequency if available and the data should be recorded on computer disc or other appropriate computer media.

(C) The fathometer must be capable of recording bathymetric data through digital output to a computer.

(D) The magnetometer, side-scan sonar, and fathometer, to the extent possible, should be interfaced, either directly or through computer files, with the global positioning system receiver to coordinate positions with the remote sensing equipment data.

(E) A differentially corrected global positioning system (GPS) receiver or system of equal or greater accuracy will be used for navigation and positioning.

(F) The positioning system must collect accurate position data at the same time interval as the magnetometer to preclude the necessity of interpolating positions between more widely spaced position fixes.

(3) Variance from the parameters specified in this section may be requested from the commission. Such variance must be based on quantifiable factors, e.g. the water is too shallow for effective use of side-scan sonar. Likewise, the commission may modify the parameters for a given survey area based on information held by the commission, e.g. survey line spacing may be decreased in the immediate vicinity of a known state archeological landmark beyond the 3 nautical mile line in the Gulf of Mexico.

[~~(f) The commission has determined that a person who conducts a survey to determine the possible presence of hazards which would be dangerous to the safety of human life and equipment in the area where the proposed activity will be performed has also conducted a survey to determine the possible existence of shipwrecks in Texas' submerged lands, provided that the data from the survey is reviewed by a qualified archeologist under a permit issued by the commission and that such survey meets the minimum standards specified in this section.~~]

(f) [~~(g)~~] If a person detects a significant anomaly or sonar target as a result of conducting the survey described in this section, the person shall record a specific UTM, Latitude/Longitude, or state plane coordinate position, along with the geodetic datum in which the coordinates were recorded, and either:

(1) Conduct a thorough and good faith effort to search out the object causing the anomaly or sonar target and identify whether the object might possibly be a state archeological landmark or eligible property in Texas' submerged lands. Excavation in order to make an identification at this stage of investigation is prohibited without a permit issued by the commission. Or, the person may:

(2) Relocate the activity to an area outside of the appropriate avoidance margin in order to avoid disturbance of the object causing the anomaly or sonar target and thereby avoid damage to a shipwreck.

(g) [~~(h)~~] If the person determines, through actions conducted under subsection (e) of this section, that the object causing the significant anomaly or sonar target is definitely not a shipwreck, and if the commission concurs with that determination, the person may perform the activity in a normal, routine manner.

(h) [~~(i)~~] If the person determines, through actions conducted under subsection (e) of this section, that the object causing the signif-

icant anomaly or sonar target is a shipwreck or might be a shipwreck, the person shall either:

(1) Notify the commission of the existence of a shipwreck or possible shipwreck, report the coordinate position to the commission and relocate the activity to an area outside of the appropriate avoidance margin in order to avoid disturbance of the object causing the significant anomaly or sonar target and thereby avoid damage to a shipwreck; or

(2) Notify the commission of the existence of a shipwreck or possible shipwreck and report the coordinate position to the commission; whereupon the commission can perform its activities described in Subchapter C, Powers and Duties, and Subchapter E, Prohibitions, of the Antiquities Code of Texas. The commission may require additional archeological investigations of the shipwreck or possible shipwreck, or, if the commission concurs that no damage will occur to the shipwreck from the proposed activity, the commission may authorize the person to proceed with the proposed activity in a normal, routine manner.

(i) [~~(j)~~] Investigation by archeological divers to identify the source of an anomaly or sonar target is appropriate under a survey permit. Such investigations may involve removal of overburden to expose small section of a buried object but shall not involve extensive excavation or artifact recovery. Survey level diving investigations must be approved as part of the survey permit issued to the archeologist or as a separate survey permit.

§28.9. Analysis and Presentation of Data.

Analysis and presentation of magnetometer and side-scan sonar data upon completion of a survey to locate submerged cultural resources are subject to the following, in addition to requirements under §26.24 of this title (relating to Reports Relating to Archeological Permits).

(1) If the survey is of sufficient duration, the magnetometer data will be corrected for diurnal variation using either separate data collected concurrently specifically for the purpose of diurnal corrections or through the use of an appropriate algorithm or mathematical formula.

(2) Magnetometer data will be presented on maps, aerial, or satellite imagery in a contour format. Magnetic anomalies recommended for avoidance or investigation shall be illustrated at a scale and showing isolines at appropriate levels to illustrate the complexity and intensity of individual anomalies. Illustrating anomalies at this scale may require separate illustrations from the overall survey map.

(3) Maps illustrating magnetic anomalies will show the actual survey lines followed by the survey vessel and thus the position of each anomaly in relation to the survey lines.

(4) Positive and negative nodes of magnetic anomalies shall be indicated either by different colors of isolines (e.g. red for positive node, blue for negative node) or by variation in line type (e.g. hatched or dashed) for the negative isolines.

(5) Sonar data will be presented as a mosaic on maps, aerial, or satellite imagery. Sonar targets recommended for avoidance shall be presented at a scale suitable to show diagnostic attributes and may require separate illustrations from the overall survey map.

(6) [~~(5)~~] A map of the survey area must be included in the survey report showing both the proposed survey lines and the actual survey lines.

(7) [~~(6)~~] A table of anomalies and sonar targets recommended for avoidance or investigation, including the positions of those anomalies or targets, shall be included in the report.

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

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Mark Wolfe
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Texas Historical Commission
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CHAPTER 29. MANAGEMENT AND CARE OF ARTIFACTS AND COLLECTIONS

13 TAC §§29.5, 29.7, 29.9

The Texas Historical Commission (hereafter referred to as the commission) proposes amendments to 13 TAC §§29.5, 29.7, and 29.9, concerning Management and Care of Artifacts and Collections.

The commission has a legal responsibility to oversee the custody, care, and condition of historic collections owned by the State of Texas and under the authority of the commission which includes permitted collections, THC generated collections, donated collections, and court-action collections. This responsibility includes ensuring that collections are placed in appropriate curatorial facilities and that such facilities provide appropriate care for these items. These amendments are being proposed to provide clarifications of the procedures curatorial facilities must follow to obtain or maintain certified status.

Mark Wolfe, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Wolfe has also determined that for each year of the first five-year period these amendments are in effect the public benefit anticipated as a result of the implementation of these rules will be better care of artifacts collected with public funds. There will be minimal effects on small businesses or micro-businesses.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment of these rules is proposed under both Title 4, Chapter 442, §442.005(q) of the Texas Government Code, and Title 9, Chapter 191, §191.052 of the Texas Natural Resources Code, which provide the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of those chapters.

No other statutes, articles or codes are affected by these amendments.

§29.5. Disposition of Archeological Collections.

(a) Ownership. All specimens, artifacts, materials, and samples plus original field notes, maps, drawings, photographs, and standard state site survey forms, resulting from the investigations remain the property of the State of Texas. Certain exceptions left to the discre-

tion of the Commission are contained in the Texas Natural Resources Code, §191.052(b). The Commission will determine the final disposition of all artifacts, specimens, materials, and data recovered by investigations on State Archeological Landmarks or potential landmarks, which remain the property of the State. Antiquities from State Archeological Landmarks are of inestimable historical and scientific value and should be preserved and utilized in such a way as to benefit all the citizens of Texas. It is the rule of the Commission that such antiquities shall never be used for commercial exploitation. (see also 13 TAC[,] §26.27 (relating to Principal Investigator's Responsibilities for Disposition of Archeological Artifacts and Data))

(b) Housing, conserving, and exhibiting antiquities from State Archeological Landmarks. (see also 13 TAC[,] §26.27)

(1) After investigation of a State Archeological Landmark has culminated in the reporting of results, the antiquities will be permanently preserved in research collections at a curatorial facility certified by the Commission. Prior to the expiration of a permit, proof that archeological collections and related field notes are housed in a curatorial facility is required. Failure to demonstrate proof before the permit expiration date may result in the principal investigator and co-principal investigator falling into default status. (see also 13 TAC[,] §26.27)

(2) Institutions housing antiquities from State Archeological Landmarks will also be responsible for adequate security of the collections, continued conservation, periodic inventory, and for making the collections available to qualified institutions, individuals, or corporations for research purposes. (see also 13 TAC[,] §26.27)

(3) Exhibits of materials recovered from State Archeological Landmarks will be made in such a way as to provide the maximum amount of historical, scientific, archeological, and educational information to all the citizens of Texas. First preference will be given to traveling exhibits following guidelines provided by the Commission and originating at an adequate facility nearest to the point of recovery. Permanent exhibits of antiquities may be prepared by institutions maintaining such collections following guidelines provided by the Commission. A variety of special, short-term exhibits may also be authorized by the Commission. (see also 13 TAC[,] §26.27)

(c) Access to antiquities for research purposes--antiquities retained under direct supervision of the Commission will be available under the following conditions:

(1) Request for access to collections must be made in writing to the curatorial facility holding the collections indicating to which collection and what part of the collection access is desired; nature of research and special requirements during access; who will have access, when, and for how long; type of report which will result; and expected date of report.

(2) Access will be granted during regular working hours to qualified institutions or individuals for research culminating in nonpermit reporting. A copy of the report will be provided to the Commission.

(3) Data such as descriptions or photos when available will be provided to institutions or individuals on a limited basis for research culminating in nonprofit reporting. A copy of the report will be provided to the Commission.

(4) Access will be granted to corporations or individuals preparing articles or books to be published on a profit-making basis only if there will be no interference with conservation activities or regular research projects; photos are made and data collected in the facility housing the collection; arrangements for access are made in writing at least one month in advance; cost of photos and data and a reasonable charge of or supervision by responsible personnel are paid by the corporation or individual desiring access; planned article or publication does not encourage or condone treasure hunting activity on public lands, State Archeological Landmarks, or National Register sites, or other activities which damage, alter, or destroy cultural resources; proper credit for photos and data are indicated in the report; a copy of the report will be provided to the Commission.

(5) The Commission may maintain a file of standard photographs and captions available for purchase by the public.

(6) A written agreement containing the appropriate stipulations will be prepared and executed prior to the access.

(7) Curatorial facilities certified by the Commission shall promulgate reasonable procedures governing access to those collections under their stewardship.

(d) Deaccession. The Commission's rules for deaccession recognize the special responsibility associated with the receipt and maintenance of objects of cultural, historical, and scientific significance in the public trust. Although curatorial facilities become stewards of held-in-trust collections, title is retained by the Commission for the State. Thus, the decision to deaccession held-in-trust objects or collections is the responsibility of the Commission. The Commission recognizes the need for periodic reevaluations and thoughtful selection necessary for the growth and proper care of collections. The practice of deaccessioning under well-defined guidelines provides this opportunity.

(1) Deaccessioning may be through voluntary or involuntary means. The transfer, exchange, or deterioration beyond repair or stabilization or other voluntary removal from a collection in a curatorial facility is subject to the limitations of this rule.

(2) Involuntary removal from collections occurs when objects, samples, or records are lost through theft, disappearance, or natural disaster. If the whereabouts of the object, sample, or record is unknown, it may be removed from the responsibility of the curatorial facility, but the Commission will not relinquish title in case the object, sample, or record subsequently is returned.

(e) Certified curatorial facilities. Authority to deal with deaccessioning of limited categories of objects and samples from held-in-trust collections is delegated to a curatorial facility certified by the Commission to hold state held-in-trust collections through a contractual agreement between the curatorial facility and the Commission. Annual reports will be submitted to the Commission on these deaccessioning actions.

(1) If the Commission determines that a curatorial facility has acted in violation of the contractual agreement and this rule, the contractual agreement will be terminated. From that date forward, the Commission will review and decide on all deaccession actions of that curatorial facility concerning held-in-trust objects and samples. A new contractual agreement may be executed at such time as the Commission determines that the curatorial facility has come into compliance with this rule.

(2) Curatorial facilities not yet certified by the Commission to hold state held-in-trust collections shall submit written deaccession requests of objects and samples from held-in-trust collections to the Commission.

(3) Requests to deaccession a held-in-trust collection in its entirety must be submitted to the Commission.

(4) The reasons for deaccessioning all or part of held-in-trust collections include, but are not limited to, the following:

(A) Objects lacking provenience that are not significant or useful for research, exhibit, or educational purposes in and of themselves;

(B) Objects or collections that do not relate to the stated mission of the curatorial facility. Objects or collections that are relevant to the stated mission of the curatorial facility may not be deaccessioned on the grounds that they are not relevant to the research interests of current staff or faculty;

(C) Objects that have decayed or decomposed beyond reasonable use or repair or that by their condition constitute a hazard in the collections;

(D) Objects that have been noted as missing from a collection beyond the time of the next collections-wide inventory are determined irretrievable and subject to be deaccessioned as lost;

(E) Objects suspected as stolen from the collections must be reported to the Commission in writing immediately for notification to similar curatorial facilities, appropriate organizations, and law enforcement agencies. Objects suspected as stolen and not recovered after a period of three years or until the time of the next collections-wide inventory are determined irretrievable and subject to being deaccessioned as stolen;

(F) Objects that have been stolen and for which an insurance claim has been paid to the curatorial facility;

(G) Objects that may be subject to deaccessioning as required by federal laws; and

(H) Deaccession for reasons not listed above must be approved on a case-by-case basis by the Commission.

(f) Title to Objects or Collections Deaccessioned. If deaccessioning is for the purpose of transfer or exchange, Commission retains title for the State to the object or collection. A new held-in-trust agreement must be executed between the receiving curatorial facility and the THC.

(1) If deaccessioning is due to theft or loss, the Commission will retain title for the State to the object or collection in case it is ever recovered, but the curatorial facility will no longer be responsible for the object or collection.

(2) If deaccessioning is due to deterioration or damage beyond repair or stabilization, the Commission relinquishes title for the State to the object or collection and the object or collection must be discarded in a suitable manner.

(g) Destructive Analysis. The Commission's rules for destructive analysis apply only to samples and objects from held-in-trust collections accessioned into the holdings of a curatorial facility. Destructive analysis of samples or objects prior to placement in a curatorial facility is covered by the research design approved for the Antiquities Permit. Authority to deal with destructive analysis requests of approved categories of objects and samples from state-associated held-in-trust collections is delegated to a curatorial facility certified by the Commission to hold state held-in-trust collections through a contractual agreement between the curatorial facility and the Commission. Annual reports will be submitted to the Commission on these destructive analysis actions.

(1) A written research proposal must be submitted to the curatorial facility stating research goals, specific samples or objects from a held-in-trust collection to be destroyed, and research credentials in order for the curatorial facility to establish whether the destructive analysis is warranted.

(2) If the Commission determines that a curatorial facility has acted in violation of the contractual agreement and this rule, the contractual agreement will be terminated. From that date forward, the Commission will review and decide on all destructive analysis actions of that curatorial facility concerning held-in-trust objects and samples. A new contractual agreement may be executed at such time as the Commission determines that the curatorial facility has come into compliance with these rules.

(3) Curatorial facilities not yet certified by the Commission to hold state held-in-trust collections shall submit destructive analysis requests of objects and samples from held-in-trust collections to the Commission.

(4) Conditions for approval of destructive analysis may include qualifications of the researcher, uniqueness of the project, scientific value of the knowledge sought to be gained, and the importance, size, and condition of the object or sample.

(5) Objects and samples from held-in-trust collections approved for destructive analysis purposes are loaned to the institution where the researcher is affiliated. Objects and samples will not be loaned to individuals for destructive analysis.

(6) If the curatorial facility denies a request for destructive analysis of a sample or object from a held-in-trust collection, appeal of the decision is through the Commission.

(7) Information gained from the analysis must be provided to the curatorial facility as a condition of all loans for destructive analysis purposes. After completion of destructive analysis, the researcher must return the information (usually in the form of a research report) in order for the loan to be closed. Two copies of any publications resulting from the analysis must be sent to the curatorial facility. If the object or sample is not completely destroyed by the destructive analysis, the remainder must be returned to the curatorial facility.

(8) It is the responsibility of the curatorial facility to monitor materials on loan for destructive analysis, to assure their correct use, and to note the returned data in the records.

(9) The Commission does not relinquish title for the State to an object or sample that has undergone destructive analysis and the object or sample is not deaccessioned.

§29.7. State Associated Collections.

(a) The Commission has authority over state-associated collections in six [~~five~~] categories based on the way they were generated. They are as follows:

(1) Permitted-collections that are the result of work governed by the Antiquities Code on land or under waters belonging to the State of Texas or a political subdivision of the State necessitating the issuance of a permit by the Commission. This work can be conducted by an outside researcher, other state agency, cultural resources management firm or by Commission personnel. Permitted collections form the bulk of the Commission's state-associated collections.

(2) Commission non-permitted collections are the result of work governed by the Antiquities Code on land or under waters belonging to the State of Texas or a political subdivision of the State conducted by Commission personnel without the issuance of a permit.

(3) Purchased-collections are the result of acquisition of significant historical items by the Commission through the Texas Historical Artifacts Acquisition Program or use of other state funds.

(4) Donated-collections are the result of a material gift transaction by a private landowner, individual, corporation, organization, or through a bequest to the Commission. A major component

of this category of collections is the consequence of work conducted by or under the direction of Commission personnel on private lands in Texas whereby the landowner transfers ownership of the generated collection through a deed-of-gift or donation form to the State of Texas and its agent, the Texas Historical Commission.

(5) Court action-collections are the result of rulings by a court concerning confiscated, illegally-held archeological or historical materials from public lands to be given to the Commission for care and protection.

(6) Legislative action collections means collections that are awarded to the commission through legislative action such as House Bill 12, 80th Leg., Reg. Ses., 2007, which transferred 18 historic sites and all of their collections from the Texas Parks and Wildlife Department (TPWD) to the THC.

(b) Any or all of these state-associated collections may be entrusted to and housed in a designated curatorial facility in the State of Texas. They are accessioned, documented, and cataloged objects, documents, and samples of cultural, scientific, or historical significance that are representative of the diversity within the state. These collections should be given a high level of care.

§29.9. Expectations for Drafting a Collections Management Policy for Managing State-Associated Collections.

(a) Acquisition of Collections.

(1) Acquisition of state associated collections is the process of acquiring a collection or historical item owned by the State of Texas through designation of a curatorial facility by the Commission. Collections or historical items usually are acquired through field work or research, donation, bequest, or purchase. Although exchange with or transfer from another curatorial facility normally is not practiced, it is not excluded. Acquisition does not imply accessioning, but is a necessary prerequisite for accessions. Acquired collections or historical items placed at a designated curatorial facility are recommended for accessioning through the process governed by the written Collections Management Policy of the curatorial facility.

(2) Responsibility for the physical safety of the collection or historical item begins with acquisition. While the Commission has oversight, physical safety responsibility is delegated to the permittee during recovery and analysis of permitted collections, and the designated curatorial facility upon receiving a state-associated collection.

(b) Accessions.

(1) Accessioning by the curatorial facility is the procedure that registers state-associated collections as held-in-trust for the State of Texas at the designated curatorial facility.

(A) Title will remain with the State and under the custody of the Commission.

(B) The curatorial facility will execute a held-in-trust agreement for each state-associated collection and forward it to the Commission. Stewardship and held-in-trust status are conferred when the Commission receives the signed held-in-trust agreement.

(C) State-associated collections placed at designated curatorial facilities are not incorporated into the holdings of a designated curatorial facility until they are accessioned by that institution.

(D) Upon accessioning of state-associated collections placed at the curatorial facility, the facility assumes the obligation of proper daily management and protection of those collections. The Commission retains oversight of the placed state-associated collections.

(E) Accessioning provides an inventory of collections and historical items owned by the State of Texas under the authority of the Commission. Accession numbers document curatorial facility stewardship and are an inventory control device.

(2) For collections or historical items placed at a designated curatorial facility, the following requirements apply:

(A) All collections or historical items will be accessioned and accessioned in a timely manner by the designated curatorial facility. Stewardship but not ownership is transferred to the designated curatorial facility.

(B) The curatorial facility will use a consistent accession system that readily identifies or distinguishes an accession of that curatorial facility from accessions of other curatorial facilities holding state-associated collections.

(C) A signed held-in-trust agreement must be executed for each accession with copies retained by the Commission and designated curatorial facility. Each held-in-trust agreement is accompanied by an accessions inventory.

(D) Accession records must be maintained by the designated curatorial facility, including the copy of the signed held-in-trust agreement, accessions inventory, and as appropriate, the housing agreement between the curatorial facility and cultural resource management firm or researcher for permitted collections.

(E) Copies of correspondence and transactions involving state-associated collections donated to or purchased by the Commission will be provided to the designated curatorial facility as part of their accession records.

(c) Deaccession.

(1) The decision to deaccession state-associated held-in-trust objects or collections is ultimately the responsibility of the Commission. Deaccessioning may affect a range of objects from a single object to an entire collection. The curatorial facility will deaccession state-associated collections only in accordance with Commission requirements.

(2) If deaccessioning is for the purpose of transfer or exchange, the State retains title to the object or collection. A new held-in-trust agreement will be executed between the curatorial facility and the Commission. If deaccessioning is due to theft or loss, the State will retain title to the object or collection in case it is ever recovered, but the curatorial facility will no longer be responsible for the object or collection. If deaccessioning is due to deterioration or damage beyond repair or stabilization, the State relinquishes title to the object or collection and the object or collection must be divested in a suitable manner.

(3) Authority to deal with deaccessioning of approved categories of objects and samples from state-associated held-in-trust collections is delegated to a curatorial facility certified by the Commission through an agreement between the Commission and the curatorial facility.

(A) Annual reports will be submitted to the Commission on these deaccessioning actions.

(B) If the Commission determines that the curatorial facility is not in compliance with the agreement and this chapter, the agreement may be terminated. If the agreement is terminated, the Commission will review and decide on all deaccession actions of that curatorial facility concerning state-associated held-in-trust objects and samples. A new agreement may be executed at such time as the Commission determines that the curatorial facility has come into compliance

with this chapter. During the period the agreement is terminated, the curatorial facility may not accept new state-associated collections.

(4) Curatorial facilities not certified by the Commission shall submit written deaccession requests of objects and samples from held-in-trust collections to the Commission.

(5) Requests to deaccession a state-associated collection in its entirety must be submitted to the Commission.

(6) Under no circumstances will state-associated collections be deaccessioned through sale.

(d) Inventory.

(1) Purpose of inventories.

(A) An inventory is an important practice for the curatorial facility.

(B) Inventories will be conducted to provide a measure of accountability.

(C) An inventory updates collection records and documentation; gives the opportunity to check the condition of the collections; and aids in maintaining the security of the collections.

(D) Inventories allow the curatorial facilities to examine, evaluate, and provide appropriate conditions for the state-associated collections.

(E) The curatorial facility fulfills, in part, its [~~their~~] legal and ethical responsibilities by conducting inventories that account for the objects, samples, documentation, or historical items within state-associated collections.

(2) Inventories by a Curatorial Facility. For collections or historical items placed at a designated curatorial facility, the following requirements apply. Inventories for state-associated collections include the following:

(A) An accessions inventory is conducted at the time of accessioning when a collection or historical item is placed at the designated curatorial facility. This baseline inventory is comprised of the categories represented in the collection, quantities, and linear feet of documentation as appropriate.

(B) A spot-check inventory is conducted to monitor collection activity, check the accuracy of records, and assess the condition of the most valuable or significant material in a collection. This type of inventory should be conducted on a periodic basis according to the collections management policy of the designated curatorial facility.

(C) A relocation inventory is conducted at any time an object, collection, or historical item experiences movement. This movement may occur in the form of incoming or outgoing loans, in-house research, exhibit installation, conservation, or deaccessions.

(3) The Director of the curatorial facility is responsible for maintaining the inventory of the state-associated held-in-trust collections and for seeing that appropriate and timely inventories are conducted. The types and frequency of inventories must be outlined in the curatorial facility's collections management policy. Accessions inventories must be conducted and included as part of the held-in-trust agreement. A relocation inventory must be conducted and included as part of the loan agreement of state-associated held-in-trust collections. Spot check inventory must be conducted as a part of collection management activities. Other types of inventories should be conducted to provide tracking and security information as necessary.

(4) An accurate listing of all state associated held-in-trust collections and the sites they represent, must be conducted and updated and a copy sent to the Commission.

(5) Authority to deal with missing and stolen objects, samples, documentation, and historical items of approved categories from state-associated collections is delegated to a curatorial facility certified by the Commission through an agreement between the Commission and the curatorial facility.

(A) Annual reports will be submitted to the Commission on these inventory and security actions. Suspected stolen material must be reported to appropriate law enforcement agencies with notification to other curatorial facilities and appropriate organizations.

(B) If the Commission determines that the curatorial facility is not in compliance with the agreement and this chapter, the agreement may be terminated. A new agreement may be executed at such time as the Commission determines that the curatorial facility has come into compliance with this chapter. During the period the agreement is terminated, the curatorial facility may not accept new state-associated collections.

(6) Curatorial facilities not certified by the Commission shall submit a written plan for conducting an inventory of state-associated held-in-trust collections.

(7) Missing or stolen objects, samples, documentation, and historical items from state-associated held-in-trust collections must be reported to the Commission in writing immediately upon discovery with a determination of whether misplaced or stolen. Suspected stolen material must be reported to appropriate law enforcement agencies with notification to curatorial facilities and appropriate organizations.

(e) Loans.

(1) For collections or historical items placed at a certified curatorial facility, the following requirements apply:

(A) Decisions regarding the loan of state-associated collections are the legal responsibility of the Commission but the responsibility for the loan is delegated to the curatorial facility.

(B) The Director of the curatorial facility is responsible for all loan transactions of state-associated collections and for assuring that appropriate and timely administration of loans is conducted. Relocation inventories must be conducted and included as part of the written loan agreement. Other loan conditions must be addressed in the Collections Management Policy of the curatorial facility.

(C) Authority to deal with loans of state-associated collections is delegated to a curatorial facility certified by the Commission through an agreement between the Commission and the curatorial facility.

(i) Annual reports will be submitted to the Commission on these loan actions.

(ii) If the Commission determines that the curatorial facility is not in compliance with the agreement and this chapter, the agreement may be terminated. Following termination, the Commission will review and decide on all loan actions of that curatorial facility concerning state-associated held-in-trust objects and samples. A new agreement may be executed at such time as the Commission determines that the curatorial facility has come into compliance with this chapter. During the period the agreement is terminated, the curatorial facility may not accept new state-associated collections.

(D) Collections that are not accessioned and cataloged shall not be loaned. Commercial use of loaned collections is prohibited.

(2) Curatorial facilities not certified by the Commission shall submit written loan requests of objects, samples, documentation, or historical items from state-associated collections to the Commission.

(f) Destructive Loans.

(1) For collections or historical items placed at a designated curatorial facility, the following requirements apply:

(A) A written research proposal must be submitted to the curatorial facility stating research goals, specific samples or objects from a state-associated held-in-trust collection to be destroyed, and research credentials in order for the curatorial facility to determine whether the destructive analysis is warranted.

(B) Authority to deal with destructive analysis requests of approved categories of objects and samples from state-associated held-in-trust collections is delegated to a curatorial facility certified by the Commission to hold state-associated collections through a contractural [~~an~~] agreement between the curatorial facility and the Commission [~~and the curatorial facility~~].

(2) Annual reports will be submitted to the Commission on these destructive analysis actions.

(3) If the Commission determines that the curatorial facility is not in compliance with the agreement and this chapter, the agreement may be terminated. Following termination, the Commission will review and decide on all destructive analysis actions of that curatorial facility concerning state-associated held-in-trust objects and samples. A new agreement may be executed at such time as the Commission determines that the curatorial facility has come into compliance with this chapter. During the period the agreement is terminated, the curatorial facility may not accept new state-associated collections.

(4) Curatorial facilities not certified by the Commission shall submit destructive analysis requests of objects and samples from state-associated collections to the Commission.

(g) Collections Care.

(1) The well-being and safety of the state-associated collections is a management responsibility involving a continuum of obligations and actions. The central purpose is to preserve well-documented and well-maintained state-associated collections for the benefit of the people of Texas and future generations.

(2) Basic collections care involves the following:

(A) archival-quality storage equipment and conditions;

(B) routine preventive maintenance;

(C) preventive conservation; and

(D) appropriate handling and moving of the objects, samples, documentation, and historical items.

(3) The goal of collections care is to limit further deterioration of the state-associated collections due to environmental, human, and inherent factors.

(4) The curatorial facility will address the needs of the variety of materials and sizes within the collections within the available resources of the curatorial facility.

(5) Archival-quality packaging, padding, and housing units within a sound, environmentally-controlled storage area form the foundation for collections stability and long term care and will be used to the extent possible. Appropriate environmental conditions are maintained and monitored in storage areas. Light levels are monitored and kept low. Integrated pest management is employed to prevent the intrusion of insects and vermin into the collection space and eliminate the need for chemicals harmful to the state-associated collections and people.

(6) Careful and appropriate handling and moving of objects, samples, documentation, and historical items minimizes the risk to the collections and ensures their longevity in the designated curatorial facilities and continued benefit for the people and State of Texas.

(7) The curatorial facility's ability to serve its various constituencies in regards to state-associated collections is dependent on the quality and accuracy of available information. An integrated record-keeping system is critical to documentary control of state-associated collections. Records must be maintained on all transactions and collections-related activities involving state-associated collections. Records document the legal status of state-associated collections within the curatorial facility or while on loan and document the movement and care of the objects, samples, documentation, or historical items under the control of the curatorial facility. All state-associated collections will be cataloged.

(8) Records should be made in a timely fashion;[,] housed in secure locations;[,] provide for easy retrieval of information on and location of an object, sample, documentation, or historical item;[,] and be preserved by proper handling and storage. A duplicate copy of appropriate records should be made and stored at a location other than the curatorial facility, as a security precaution.

(9) Insurance is integral to the protection of state-associated collections but is supplemental to sound collection management and risk management practices. Governmental entities that are self insured, may request a waiver from the insurance [~~insure~~] requirements under this chapter. An insurance waiver does not waive a governmental entity's liability.

(10) All-risk insurance is required on all out-going loans of state-associated collections and normally is provided by the borrowing institution. The curatorial facility must provide the Commission with evidence of a policy of insurance in force for the duration of the loan from an insurance company licensed to do business in Texas and/or the location where the collection will be held during the period of the loan, for all risks and in an amount appropriate to the value of the collection.

(11) The curatorial facility will cooperate fully with the Commission in its efforts to monitor the state-associated collections.

(h) Conservation.

(1) Decisions regarding the conservation of state-associated collections are the legal responsibility of the Commission.

(2) Even under the best-managed conditions, deterioration or damage may occur to state-associated collection objects, documentation, and historical items. Conservation is a continuing responsibility and is focused on the object, documentation, or historical item. Conservation is an intervention measure designed to return a deteriorated or damaged object, documentation, or historical item to stability through reversible and minimally intrusive methods.

(3) The curatorial facility must adopt [~~endorses~~] the conservation philosophy of minimal chemical and physical trauma to the object, documentation, or historical item, use of sympathetic materials, the principle of reversibility, and the keeping of complete and accurate records of the conservation process. Conservation survey and monitoring of object, documentation, or historical item condition shall be [~~are~~] part of the curatorial facility's management plan for state-associated collections.

(4) Conservation work is to be undertaken within national ethics, principles, and practices by reputable, trained conservators. No work shall commence without Commission approval of the written

treatment plan. Objects, documentation, or historical items are not to be treated as experimental pieces in conservation work without written Commission approval. Conservation work with an outside conservator must be conducted under a well-defined, comprehensive agreement with the Commission as a party to the agreement.

(5) Conservation by a designated curatorial facility. For collections or historical items placed at a designated curatorial facility, the following requirements apply:

(A) Authority to deal with the conservation of approved categories of objects, documentation, and historical items from state-associated held-in-trust collections is delegated to a [~~the~~] curatorial facility certified by the Commission to hold state-associated collections through a contractual [~~an~~] agreement between the curatorial facility and the Commission [~~and the curatorial facility~~].

(i) Annual reports will be submitted to the Commission on these conservation actions.

(ii) If the Commission determines that the curatorial facility is not in compliance with the agreement and this chapter, the agreement may be terminated. Following termination, the Commission will review and decide on all conservation actions of that curatorial facility concerning state-associated held-in-trust objects, documentation, and historical items. A new agreement may be executed at such time as the Commission determines that the curatorial facility has come into compliance with this chapter. During the period the agreement is terminated, the curatorial facility may not accept new state-associated collections.

(B) Curatorial facilities not certified by the Commission shall submit written conservation requests for objects, documentation, and historical items from state-associated collections to the Commission.

(C) It is the responsibility of the curatorial facility to monitor the conservation process whether conducted in-house or on loan to an outside conservator, to assure the correct use and safety of the object, documentation, or historical item, and to note the returned stabilized materials in the records.

(i) Collections Access.

(1) The security and safety of state-associated collections is of utmost importance. Controlled access to state-associated collections by employees, researchers, and the public limits the opportunities for theft and destruction to objects, samples, documentation, and historical items. Strict collections access aids in the control of human traffic in storage areas. Storage areas should be in locked, secured locations with restricted access and controlled entry. State-associated collections are not open to the general public on a walk-in basis. The information on the location and nature of archaeological sites on land or under waters belonging to the State of Texas or any political subdivision of the State is not available to the general public.

(2) Research on state-associated collections is for the benefit of the people of Texas and the discipline to which the research is related. Requests for access to state-associated collections should go to the curatorial facility. Research access should be controlled, with research conducted under an approved research design. Access may be denied based on endangerment to the state-associated collection or objects, samples, documentation, or historical items or their unavailability due to not being accessioned or cataloged, out on loan, or inadequate research design. Access may be denied or limited on state-associated collections for a period of time after placement in a curatorial facility.

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 November 9, 2012.

TRD-201205849
Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 463-8927

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 15. ALTERNATIVE FUELS RESEARCH AND EDUCATION DIVISION SUBCHAPTER B. ALTERNATIVE FUELS CONSUMER REBATE PROGRAM

16 TAC §§15.101, 15.105, 15.110, 15.125, 15.140, 15.145, 15.150, 15.155, 15.160, 15.165

The Railroad Commission of Texas (Commission) withdraws the proposed amendments in Subchapter B published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7637) and re-proposes those amendments together with additional amendments, in Subchapter B, to §§15.101, 15.105, 15.110, 15.125, 15.140, 15.145, 15.150, 15.155, 15.160, and 15.165, relating to Purpose; Definitions; Establishment; Duration; Application; Rebate Amount; Minimum Efficiency Factor or Performance Standard; Verification; Safety; Disallowance; Refund; Assignment of Rebate; Compliance; Complaints; and Penalties.

The Commission proposes to update references to the former Alternative Fuels Research and Education Division (AFRED) and the License and Permit Section of the Gas Services Division, to clarify that these administrative units are now part of the Commission's Alternative Energy Division (AED). The Commission also proposes to extend eligibility for rebates and incentives to natural gas vehicles and equipment as funds are available for that purpose.

Dan Kelly, Director, AFRED, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. The organizational amendments as proposed represent nonsubstantive administrative changes or clarifications. There will be no fiscal impact to state or local governments from extending eligibility for rebates and incentives to natural gas vehicles and equipment, because all funds disbursed under Subchapter B will have been appropriated by the Legislature from current revenue sources authorized by Texas Natural Resources Code, §113.243(b).

Mr. Kelly has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit

anticipated as a result of enforcing or administering the sections as amended will be clarification of Commission organization and broadening of the rebate program to consumers of eligible natural gas vehicles and equipment. There is no anticipated economic cost to persons to comply with the amendments as proposed.

Mr. Kelly has also determined that for each year of the first five years the proposed amendments 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 amendments will not have an adverse economic effect on small businesses or micro-businesses because participation in the rebate program is voluntary and therefore the analysis described in Texas Government Code, §2006.002, 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. Since the comment period includes the holiday season, comments will be accepted until 12:00 p.m. (noon) on Friday, January 4, 2013, to allow the public additional time to comment. The Commission finds that this comment period is reasonable because the administrative amendments are nonsubstantive and the proposed broadening of the rules to include eligible natural gas vehicles and equipment would not affect the Commission's existing consumer rebate program for consumers of eligible LP-gas appliances and equipment. In addition, 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.

The Commission proposes the amendments under the Texas Natural Resources Code, §113.243, 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; §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state and to adopt rules as necessary under that section; §113.248, relating to a civil penalty for violations of a Commission rule for administering or enforcing this subchapter; §113.249, authorizing the attorney general at the request of the Commission to sue to collect a penalty due under this subchapter; and §113.250, relating to a criminal penalty for making and delivering to the Commission a report required under this subchapter that contains false information.

Statutory authority: Texas Natural Resources Code, §§113.243, 113.2435, 113.248, 113.249 and 113.250.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on November 6, 2012.

§15.101. Purpose.

The purpose of this subchapter [~~§§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 of this title (relating to the Alternative Fuels Research and Education Division)~~] is to establish for purchasers of eligible [~~LPG~~] appliances and equipment a consumer rebate program that achieves energy conservation and efficiency or improves the quality of air in this state. This subchapter outlines [~~These sections outline~~] the eligibility requirements for equipment and consumer applicants; application requirements; administrative procedures; and other program terms.

§15.105. Definitions.

The following words and terms, when used in this subchapter [~~chapter (relating to the Alternative Fuels Research and Education Division)~~] shall have the following meanings, unless the context clearly indicates otherwise.

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

(2) [~~(1)~~] Applicant--A consumer who has submitted a complete and timely application.

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

(4) [~~(3)~~] Available funds--Money available in the Alternative Fuels Research and Education Fund Account No. 101--General Revenue Dedicated, or its successor, in the state treasury, consisting of fees charged under Texas Natural Resources Code, Chapter 113, Subchapter I; the penalties for the late payment of the fee charged under Texas Natural Resources Code, Chapter 113, Subchapter I; interest earned on amounts in the fund account; and funds available from gifts and grants related to rebate and incentive programs for eligible equipment.

[~~(4) Commission--The Railroad Commission of Texas.~~]

(5) (No change.)

[~~(6) Delivery date--The date of postmark of a mailed application or the date that a hand-delivered application is stamped in at the Austin offices of the division.~~]

[~~(7) Division--The Alternative Fuels Research and Education Division of the Railroad Commission of Texas.~~]

(6) [~~(8)~~] Eligible equipment--An appliance, vehicle, or equipment that operates on an alternative fuel, [~~Propane-fueled appliances or equipment that~~] is approved by AFRED, [~~the Commission~~]

and that achieves energy conservation and efficiency or improves air quality in this state [~~the State~~].

(7) [~~(9)~~] 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 subchapter [~~rule~~] and no later than the date of termination of the program established under this subchapter [~~rule~~].

(8) [~~(10)~~] Installation date--The date on which alternative fuel [~~propane~~] service for eligible equipment is established.

[~~(11) Person--An individual, sole proprietorship, partnership, corporation or other legal entity.~~]

[~~(12) Propane--Liquefied petroleum gas (LPG), as that term is defined in Texas Natural Resources Code, Chapter 113.~~]

(9) [~~(13)~~] Dealer [~~Propane 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 [~~Gas Services Division, License and Permit Section of the commission,~~] or is an active company representative or operations supervisor on file with the LP-Gas Operations section [~~the Section~~]; and

(B) operates or manages a retail business, including any branch outlet or outlets, delivering an alternative fuel [~~odorized propane~~] to consumers; and

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

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

(10) [~~(14)~~] Equipment [~~Propane 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 [~~Gas Services Division, License and Permit Section of the commission,~~] or is an active company representative or operations supervisor on file with the LP-Gas Operations section [~~the Section~~]; and

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

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

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

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

§15.110. Establishment; Duration.

The rebate program is hereby established on the effective date of this subchapter [~~(relating to the Alternative Fuels Research and Education Division)~~]. The commission may terminate this rebate program at any time.

§15.125. Application.

(a) Forms. Application for a rebate shall be made by a consumer on forms prescribed for that purpose by the commission. The application for a rebate consists of a one- or two-page form, depending on the type of rebate, verifying the equipment for which the rebate 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 [~~propane marketer's~~] or [~~propane~~] equipment supplier's name, address, telephone number, and Railroad Commission [~~LP-Gas~~] license number. The form requires the signature of the applicant and the Company Representative and, for certain rebate 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 is being sought is installed and operating in the State of Texas in compliance with Railroad Commission requirements.

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

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

(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 on domestic equipment, such as an appliance, must be received by AFRED [~~at the Commission~~] no later than 30 days following the date of the eligible installation to be eligible for a rebate. An application for a rebate on a motor vehicle, industrial lift truck, or other industrial equipment must be received by AFRED [~~at the Commission~~] no later than 60 days following the date of the eligible installation to be eligible for a rebate. Applications may be mailed [~~or hand-delivered~~] to the Railroad Commission of Texas, Alternative Energy [~~Fuels Research and Education~~] Division, [~~1701 North Congress Avenue, Room 11-170O,~~] 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) (No change.)

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

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

§15.140. Rebate Amount; Minimum Efficiency Factor or Performance Standard.

(a) (No change.)

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

(1) (No change.)

(2) the effectiveness of the program in increasing alternative fuel [~~propane~~] use;

(3) - (6) (No change.)

§15.145. Verification; Safety; Disallowance; 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 program and/or commission [~~LP-gas~~] safety rules. The commission may perform such inspection prior to approving payment of a rebate.

(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 [~~propane~~] dealer, the consumer or both.

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

§15.150. Assignment of Rebate.

AFRED [~~The commission~~] may authorize payment of a rebate to a [~~propane~~] dealer or [~~propane~~] equipment supplier only by assignment from a consumer. Rebate amounts assigned shall be those in effect on the installation date of eligible equipment. A consumer may apply to assign a rebate to a [~~propane~~] dealer or [~~propane~~] equipment supplier by completing and submitting the form prescribed for that purpose [~~by the commission~~]. A [~~propane~~] dealer, [~~propane~~] equipment supplier, or applicant who submits false information pertaining to the assignment of a rebate is subject to criminal and civil penalties under §15.165 of this title (relating to Penalties).

§15.155. Compliance.

(a) An applicant, [~~propane~~] dealer or [~~propane~~] equipment supplier may be suspended from or declared ineligible to participate in the rebate program if, in the judgment of the AFRED [~~division~~] director, the applicant, dealer or equipment supplier has submitted false information or otherwise violated this subchapter [~~rebate program rules~~].

(b) Within 30 days after the AFRED [~~division~~] director mails a notice of suspension or ineligibility to an applicant, [~~propane~~] dealer or equipment supplier, the applicant, [~~propane~~] 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.

§15.160. Complaints.

(a) Any person may file a complaint about an applicant, a [~~propane~~] dealer or another person regarding alleged violations of this subchapter [~~the rebate program rules~~]. Complaints should be sent in writing to the [~~division~~] director at the address set forth in §15.125(e) [~~§15.125(d)~~] 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 [~~assistant~~] director of LP-Gas Operations [~~the Gas Services Division, License and Permit Section of the commission~~] at the same address.

§15.165. Penalties.

Violations of this subchapter [~~propane consumer rebate program rules~~] are subject to civil and criminal prosecution and penalties prescribed under Texas Natural Resources Code, §§113.248, 113.249, and 113.250.

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 November 6, 2012.

TRD-201205723
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 475-1295

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 83. COSMETOLOGISTS

16 TAC §§83.10, 83.72, 83.120

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 83, §§83.10, 83.72 and 83.120, regarding the cosmetology program. The proposed amendments are necessary to implement changes recommended by the Cosmetology Advisory Board at its meeting on October 15, 2012, and by Department staff. The changes update and clarify existing rules and definitions in order to improve the regulation of the industry. These amendments are proposed under the authority of Texas Occupations Code, Chapter 51, which mandates that the Texas Commission of Licensing and Regulation (Commission) adopt rules as necessary to implement each law establishing a program regulated by the Department.

Section 83.10 is amended by adding new paragraph (8) to define "distance education" so that beauty culture schools have the option of expanding their teaching methods to include distance learning instruction through a variety of communication technologies.

The amendment to §83.72 establishes responsibilities for beauty culture schools that elect to provide distance education and provides that distance education content be limited to instruction in theory.

The amendment to Figure: 16 TAC §83.120(a) outlines the technical requirements for the operator curriculum and clarifies the maximum number of hours that may be earned through distance education.

William H. Kuntz, Jr., Executive Director, has determined that, for the first five-year period the proposed rules are in effect there will be no foreseeable implications relating to cost or revenues of state or local government as a result of enforcing or administering the proposed rules.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be the enhanced flexibility schools and students will gain by utilizing distance education to earn theory curriculum hours.

There will be no economic effect on small or micro-businesses or to persons who are required to comply with the rules as proposed under Texas Government Code, Chapter 2006, because the amendments are optional, and beauty culture schools may or may not choose to implement distance education as an additional teaching method. The agency has also determined that the proposed rules will have no adverse economic effect on small businesses, and therefore preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Shanna Dawson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The rule amendments are proposed under Texas Occupations Code, Chapters 51 and 1602, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1602. No other statutes, articles, or codes are affected by the proposal.

§83.10. Definitions.

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

(1) - (7) (No change.)

(8) Distance education--A formal education process in which the student and instructor are separated by physical distance and a variety of communication technologies are used to deliver instruction to the student.

(9) [~~(8)~~] Dual Shop--A dual barber and beauty shop licensed under Texas Occupations Code, §1603.205.

(10) [~~(9)~~] Eyelash Extension Application--The process of applying and removing a semi-permanent, thread-like, natural or synthetic single fiber to an eyelash, including cleansing of the eye area and lashes prior to applying and after removing extensions.

(11) [~~(10)~~] Eyelash Extension Specialist--A person who holds a specialty license and who is authorized to practice the service defined in Texas Occupations Code, §1602.002(a)(12).

(12) [~~(11)~~] Esthetician--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code, §1602.002(a)(6) - (9) and (12). The term esthetician in this chapter includes the term facialist.

(13) [~~(12)~~] Esthetician/Manicurist--An esthetician/manicurist may perform only those services defined in Texas Occupations Code, §1602.002(a)(6) - (12).

(14) [~~(13)~~] Hair braider--A person authorized by the department to braid hair. Such practice shall not include shampooing, conditioning, drying, styling, or applying any chemicals, including color chemicals, relaxers, perm solutions, or other preparations to alter the color or to straighten, curl or alter the structure of hair. A hair braider may trim hair extensions only as applicable to the braiding process. Commercial hair may be attached only by braiding and without the use of chemicals or adhesives.

(15) [~~(14)~~] Hair weaver--Person authorized by the department to perform the services of a hair braider as defined in this section and, additionally, may attach hair by any weaving method. Such practice may include shampooing, conditioning, and drying performed in connection with a hair weaving service. Such practice may not include styling, cutting, or trimming hair except to the extent such activity is incidental to a hair weaving service. Such practice shall not include the application of color chemicals, relaxers, perm solutions, or other preparations to alter the color or to straighten, curl, or alter the structure of hair.

(16) [~~(15)~~] Instructor--An individual authorized by the department to perform or offer instruction in any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(17) [~~(16)~~] Law and Rules Book--Texas Occupations Code, Chapters 1602 and 1603, and 16 Texas Administrative Code, Chapter 83.

(18) [~~(17)~~] License--A department-issued permit, certificate, approval, registration, or other similar permission required by law.

(19) [~~(18)~~] License by reciprocity--A process that permits a cosmetology license holder from another jurisdiction or foreign country to obtain a Texas cosmetology license without repeating cosmetology education or examination license requirements.

(20) [~~(19)~~] Manicurist--A manicurist may perform only those services defined in Texas Occupations Code, §1602.002(a)(10) and (11).

(21) [~~(20)~~] Mobile Shop--A beauty salon, specialty salon, or dual shop that is operated in a self-contained, self-supporting, enclosed mobile unit.

(22) [~~(21)~~] Operator--An individual authorized by the department to perform any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(23) [~~(22)~~] Preparation--A substance used to beautify a person's face, neck or arms or to temporarily remove superfluous hair from a person's body including but not limited to antiseptics, tonics, lotions, powders, oils, clays, creams, sugars, waxes and/or chemicals.

(24) [~~(23)~~] Provisional license--A license that allows a person to practice cosmetology in Texas pending the department's approval or denial of that person's application for licensure by reciprocity.

(25) [~~(24)~~] Self-Contained--Containing within itself all that is necessary to be able to operate without connecting to outside utilities such as water and electricity.

(26) [~~(25)~~] Shampoo Apprentice--A person authorized to perform the practice of cosmetology as defined in Texas Occupations Code, §1602.002(a)(3), relating to shampooing and conditioning a person's hair.

(27) [~~(26)~~] Specialty Instructor--An individual authorized by the department to perform or offer instruction in an act or practice of cosmetology limited to Texas Occupations Code, §1602.002(a)(7), (9), (10) and/or (12).

(28) [~~(27)~~] Specialty Salon--A cosmetology establishment in which only the practice of cosmetology as defined in Texas Occupations Code, §1602.002(a)(2), (4), (7), (9), (10) or (12) is performed. Specialty salons may only perform the act or practice of cosmetology in which the salon is licensed.

(29) [~~(28)~~] Tweezing Technique--Any type of temporary hair removal procedure involving the extraction of hair from the hair follicle by use of, but not limited to, an instrument, appliance or implement made of metal, plastic, thread or other material.

(30) [~~(29)~~] Weaving--The process of attaching, by any method, commercial hair (hair pieces, hair extensions) to a client's hair and/or scalp. Weaving is also known as hair integration or hair intensification.

(31) [~~(30)~~] Wet disinfectant soaking container--A container with a cover to prevent contamination of the disinfectant solution and of a sufficient size such that the objects to be disinfected may be completely immersed in the disinfectant solution.

§83.72. Responsibilities of Beauty Culture Schools.

(a) - (f) (No change.)

(g) Schools offering distance education must:

(1) obtain department approval before offering a course;

(2) provide students with educational materials necessary to fulfill course requirements; and

(3) limit distance education content to instruction in theory.

(h) [~~(g)~~] Schools must maintain one album to display each student permit, including affixed picture, of each enrolled student. The permits shall be displayed in alphabetical order by last name, then alphabetical order by first name, and, if more than one student has the same name, by student permit number.

(i) [~~(h)~~] Schools may use a time clock to track student hours and maintain a daily record of attendance or schools may use credit hours.

(j) [~~(i)~~] Schools using time clocks shall post a sign at the time clock that states the following department requirements:

(1) Each student must personally clock in/out for himself/herself.

(2) No credit shall be given for any times written in, except in a documented case of time clock failure or other situations approved by the department.

(3) If a student is in or out of the facility for lunch, he/she must clock out.

(4) Students leaving the facility for any reason, including smoking breaks, must clock out, except when an instructional area on a campus is located outside the approved facility, that area is approved by the department and students are under the supervision of a licensed instructor.

(k) [~~(j)~~] Students are prohibited from preparing hour reports or supporting documents. Student-instructors may prepare hour reports and supporting documents; however only school owners and school designees, including licensed instructors, may electronically submit information to the department in accordance with this chapter. No student permit holder, including student-instructors, may electronically submit information to the department under this chapter.

(l) [~~(k)~~] A school must properly account for the credit hours granted to each student. A school shall not engage in any act directly or indirectly that grants or approves student credit that is not accrued in accordance with this chapter. A school must maintain and have available for a department and/or student inspection the following documents for a period of the student's enrollment through 48 months after the student completes the curriculum, withdraws, or is terminated:

(1) daily record of attendance;

(2) the following documents if a time clock is used:

(A) time clock record(s);

(B) time clock failure and repair record(s); and

(C) field trip records in accordance with §83.120(d)(5);

(3) all other relevant documents that account for a student's credit under this chapter.

(m) [~~(l)~~] Schools using time clocks shall, at least one time per month submit to the department an electronic record of each student's accrued clock hours in a manner and format prescribed by the department. A school's initial submission of clock hours shall include all hours accrued at the school. Delayed data submission(s) are permitted only upon department approval, and the department shall prescribe the period of time for which a school may delay the electronic submission of data, to be determined on a case by case basis. Upon department approval, a school may submit data required under this subsection in an alternate manner and format as determined by the department, if the school demonstrates that the requirements of this subsection would cause a substantial hardship to the school.

(n) [~~(m)~~] Schools using credit hours shall, at the end of the course or module or if the student drops or withdraws, submit to the department an electronic record of each student's accrued credit hours in a manner and format prescribed by the department.

(o) [~~(n)~~] Schools changing from clock hours to credit hours shall submit to the department their curriculum for approval before making the change.

(p) [~~(o)~~] Except for a documented leave of absence, schools shall electronically submit a student's withdrawal or termination to the department within 10 calendar days after the withdrawal or termination. Except for a documented leave of absence, a school shall terminate a student who does not attend a cosmetology curriculum for 30 days.

(q) [~~(p)~~] Public schools shall electronically submit a student's accrual of 500 hours in math, lab science, and English.

(r) [~~(q)~~] All areas of a school or campus are acceptable as instructional areas for a public cosmetology school, provided that the instructor is teaching cosmetology curricula required under §83.120.

(s) [~~(r)~~] A private cosmetology school or post-secondary school may provide cosmetology instruction to public high school students by contracting with the school district and complying with Texas Education Agency law and rules. A public high school student receiving instruction under such contract is considered to be a public high school student enrolled in a public school cosmetology program for purposes of the Act and department rules.

(t) [~~(s)~~] Schools may establish school rules of operation and conduct, including rules relating to absences and clothing, that do not conflict with this chapter.

(u) [~~(t)~~] Beauty culture schools must have a classroom separated from the laboratory area by walls extending to the ceiling and equipped with the following equipment to properly instruct a minimum of ten students enrolled at the school:

(1) if using a time clock to track student hours, one day/date formatted computer time clock;

(2) desks and chairs or table space for each student in attendance;

(3) medical dictionary;

(4) audio/visual equipment;

(5) a dispensary containing a sink with hot and cold running water and space for storage and dispensing of supplies and equipment;

(6) a suitable receptacle for used towels/linens;

(7) 2 covered trash cans in lab area; and

(8) one large wet disinfectant soaking container.

(9) If offering the operator curriculum the following equipment must be available in adequate number for student use:

(A) shampoo bowl and shampoo chair;

(B) heat processor or hand-held hair dryer and heat cap or therapeutic light;

(C) cold wave rods;

(D) thermal iron (electric or non-electric);

(E) styling station covered with a non-porous material that can be cleaned and disinfected, with mirror and styling chair (swivel or hydraulic);

(F) mannequin with sufficient hair, with table or attached to styling station;

(G) professional hand clippers;

(H) professional hand held dryer;

(I) manicure table and stool;

(J) facial chair or bed;

(K) lighted magnifying glass;

(L) dry sanitizer; and

(M) wet sanitizer.

(10) If offering the esthetician curriculum the following equipment must be available in adequate number for student use:

(A) facial chair;

(B) lighted magnifying glass;

(C) woods lamp;

(D) dry sanitizer;

(E) steamer machine;

(F) brush machine for cleaning;

(G) vacuum machine;

(H) high frequency machine for disinfection, product penetration, stimulation;

(I) galvanic machine for eliminating encrustations, product penetration;

(J) paraffin bath and paraffin wax;

(K) facial bed;

(L) mannequin head; and

(M) wet sanitizer.

(11) If offering the manicure curriculum the following equipment must be available in adequate number for student use:

(A) an autoclave, dry-heat sterilizer or ultra-violet sanitizer;

(B) complete manicure table with light;

(C) client chair;

(D) student stool or chair;

(E) whirlpool foot spa or foot basin;

(F) electric nail file;

(G) UV light curing system;

(H) paraffin bath and paraffin wax; and

(I) air brush system.

(12) If offering the esthetician/manicure curriculum, the equipment required for the esthetician curriculum as listed in paragraph (10); and the equipment required for the manicure curriculum as listed in paragraph (11); including a wax warmer and paraffin warmer for each service, in adequate number for student use.

(13) If offering the eyelash extension curriculum; the following equipment must be available in adequate number for student use:

(A) facial bed or massage table that allows the consumer to lie completely flat;

(B) stool or chair;

(C) lamp;

(D) mannequin head;

(E) wet sanitizer; and

(F) dry sanitizer.

(v) [~~(u)~~] Cosmetology establishments shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

§83.120. Technical Requirements--Curriculum.

(a) Operator Curricula.
Figure: 16 TAC §83.120(a)

(b) - (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 November 9, 2012.

TRD-201205823
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 475-4879

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.305

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.305, concerning "Lotto Texas" On-Line Game Rule. The purpose of the proposed amendments is to add a new add-on game feature called "Extra" that allows players to

purchase a chance to increase the amount of any non-jackpot prizes won in a Lotto Texas drawing and to win a prize for matching two of the six numbers drawn, to increase the length of the annuitized prize payment period from twenty-five (25) years to thirty (30) years, and to make certain clarifications to the rule language. The Commission currently anticipates an effective date for the proposed amendments of April 14, 2013.

Kathy Pyka, Controller, has determined that the amendments will result in an estimated $21.5 million for the first five-year period. The fiscal impact for each year of the first five years the amendments will be in effect is as follows: FY 2013, $2.1M; FY 2014, $5.2M; FY 2015, $5.0M; FY 2016, $4.7M; FY 2017, $4.5M. 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 amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis are not required because the amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(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 public benefit anticipated will be that players will have the opportunity to participate in a new add-on game feature offering additional prize tiers and greater prizes for winning combinations. The add-on feature is anticipated to result in incremental sales and revenue for the benefit of the Foundation School Fund.

A secondary benefit will be that the game changes will produce a prize payout percentage more in line with the preferred 50% payout rate.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Bob Biard, 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. The Commission will hold a public hearing on this proposal at 11:00 a.m. on December 5, 2012, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed 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 proposal is intended to implement Texas Government Code, Chapter 466.

§401.305. "Lotto Texas" On-Line Game Rule.

(a) Lotto Texas. The executive director is authorized to conduct a game known as "Lotto Texas." The executive director may issue further directives for the conduct of Lotto Texas 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) 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 six different numbers from 1 through 54 for one opportunity to win in Lotto Texas and the purchase of a ticket evidencing that selection.

(2) Playboard--A field of 54 numbers on a playslip for use in selecting numbers for a Lotto Texas play.

(3) Playslip--An optically readable card issued by the commission for use in selecting numbers for one or more Lotto Texas plays.

(4) Roll cycle--A series of drawings that ends when there is a drawing for which one or more tickets are sold that match the six numbers drawn in the drawing. A new roll cycle begins with the next drawing after a drawing for which one or more jackpot tickets are sold that match the six numbers drawn in the drawing.

(c) 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 a play is $1.

(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 10 consecutive drawings, to begin with the next drawing after the purchase.

(5) A player [~~person~~] may select numbers for a play either:

(A) by using a self-service terminal;

(B) by using a playslip to select numbers;

(C) by requesting a retailer to use Quick Pick to select numbers; or

(D) 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 [~~quick pick~~] selections only if the request is made in person.

(8) [~~The Commission has just entered into a new lottery operations and services contract, an element of which will be the replacement of retailer and self-service terminals. After the new terminals replace the old terminals, the default payment option, where an option is not chosen by the player, will be the cash value option. During the transition period when there are both old terminals and new terminals in use, the payment options will be as shown in the chart below.~~] At the time of making a play, a player [~~person~~] may select the option for payment of the cash value or annuitized payments of a share of the jackpot if the play is a winning play. If no selection is made, payment option will be as described in the chart below:

Figure: 16 TAC §401.305(c)(8)

[~~Figure: 16 TAC §401.305(c)(8)~~]

(9) 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) for which the plays were purchased, the cost of the ticket, the jackpot payment option, and the security and transaction serial numbers. Tickets must be printed on official Texas Lottery paper stock.

(10) A playslip has no monetary value and is not evidence of a play.

(11) The purchaser is responsible for verifying the accuracy of the numbers and other selections shown on a ticket.

(12) An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

(d) Drawings

(1) Lotto Texas drawings shall be held each week on Wednesday and Saturday at 10:12 p.m., central time. The executive director may change the drawing schedule, if necessary.

(2) Six different numbers from 1 through 54 shall be drawn at each Lotto Texas 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) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by a commission drawings representative and the independent certified public accountant immediately before each drawing and immediately after each drawing.

(e) Advertised jackpots. For each drawing, the commission shall approve a jackpot amount to be advertised in a manner prescribed by written procedure. The advertised amount shall be an amount payable in 30 [~~25~~] annual installments. To the extent that advertised amount is based on projected sales, the projections shall be fair and reasonable. The commission may approve an increase in the amount of the jackpot originally advertised for a drawing if the increase is supported by reasonable sales projections and is prescribed by written procedure.

(f) Prizes

(1) Jackpot prize (first prize).

(A) A person who holds a valid ticket for a play matching (in any order) the six numbers drawn in a drawing is entitled to a share of the jackpot prize (first prize) for the drawing.

(B) The jackpot prize for a drawing is the greater of

(i) 40.47 percent of the proceeds from Lotto Texas ticket sales for all drawings in the roll cycle and any earnings on an investment of all or part of the proceeds from ticket sales, paid in 30 [~~25~~] annual installments; or

(ii) The amount advertised in accordance with subsection (e) of this section as the estimated jackpot for the drawing, paid in 30 [~~25~~] annual installments.

(C) Except as provided by subparagraph (F) of this paragraph, a person who is entitled to a share of a jackpot prize and who opted for annualized installment payments, shall receive payment in 30 [~~25~~] annual installments.

(D) The first installment payment shall be made upon completion of commission validation procedures. The subsequent 29 [~~24~~] installment payments shall be made annually on the 15th day of the month in which the applicable drawing occurred.

(E) The second through 29th [~~24th~~]installment payments shall be in equal amounts. The first installment payment may be equal to or higher than the subsequent installment payments.

(F) If a person would otherwise receive total installment payments of $2 million or less, the commission shall pay the person, upon completion of all validation procedures, a single payment in the amount of the cash value of those total installment payments. The cash value is the cost on the first business day after the applicable drawing of funding those installment payments.

(G) A person who is entitled to a share of the jackpot and who selected the cash value option, or for whom the cash value option was automatically selected shall receive the greater of the following two amounts:

(i) a share of 40.47 percent of the proceeds from Lotto Texas ticket sales; [~~total sales for the roll cycle;~~] or

(ii) the cost on the day after the drawing of funding a share of installment payments under subparagraph (B)(ii) of this paragraph.

(H) A payment under subparagraph (G) of this paragraph shall be made upon completion of commission validation procedures.

(I) Any investment necessary to fund a jackpot prize shall be made on the first business day after a drawing for which one or more tickets were sold that match the six numbers drawn in the drawing.

(J) A claim for a jackpot prize must be presented at the Austin claim center.

(K) If 40.47 percent of the [~~sales~~] proceeds from Lotto Texas ticket sales is [~~and the Lotto Texas prize reserve fund are~~] not sufficient to pay a jackpot prize, the commission shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, §466.355.

(2) Second prize.

(A) A person who holds a valid ticket for a play matching (in any order) five of the six numbers drawn in a drawing is entitled to a share of the second prize for that drawing.

(B) The second prize consists of 2.23 percent of the proceeds from Lotto Texas ticket sales for the drawing and any amounts carried forward under subparagraph (D) of this paragraph.

(C) A payment made to a person for a share of the second prize for a drawing shall be rounded to the closest whole dollar amount. An amount of exactly fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the second prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the second prize for the next drawing.

(3) Third prize.

(A) A person who holds a valid ticket for a play matching (in any order) four of the six numbers drawn in a drawing is entitled to a share of the third prize for that drawing.

(B) The third prize consists of 3.28 percent of the proceeds from Lotto Texas ticket sales for the drawing and any amounts carried forward under subparagraphs (C) and (D) of this paragraph.

(C) A payment made to a person for a share of the third prize for a drawing shall be rounded to the closest whole dollar amount. An amount of exactly fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the third prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the third prize for the next drawing.

(4) Fourth prize.

(A) A person who holds a valid ticket for a play matching (in any order) three of the six numbers drawn in a drawing is entitled to a guaranteed prize of $3.

(B) If 4.02 percent of the proceeds from Lotto Texas ticket sales is [and the Lotto Texas prize reserve fund are] not sufficient to pay all fourth prizes for a draw, the commission shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, §466.355.

(C) To the extent that the total amount of fourth prizes for a drawing is less than 4.02 percent of the proceeds from ticket sales [of] for the drawing, the difference shall be carried forward to fund future fourth prize payments.

(5) 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.

(6) A share of a prize is determined by dividing the prize by the number of winning plays for that prize.

(7) Jackpot payment amounts are calculated on the first business day after the applicable drawing. A claimant is not entitled to interest or other earnings on those amounts, regardless of when the claim is actually presented and regardless of the dates on which payments are made.

[(8) There will be no allocations from Lotto Texas ticket sales to the Lotto Texas prize reserve fund.]

(g) Lotto Texas with Extra

(1) A Lotto Texas player may purchase the Extra feature by paying an additional $1 per play at the time of his/her Lotto Texas ticket purchase.

(2) Extra offers players a chance to increase the amount of any of the non-jackpot prizes won in a Lotto Texas drawing, and to win a prize for matching two of the six numbers drawn. The Extra feature does not apply to a Lotto Texas jackpot prize (match six-of-six).

(3) A Lotto Texas play that wins one of the non-jackpot prizes or matches two of the six numbers drawn, and for which the player paid an additional $1 for Extra, shall be paid as follows: Figure: 16 TAC §401.305(g)(3)

(h) [(g)] Jackpot information on Commission website

(1) After the commission has approved an advertised estimated annuitized jackpot under subsection (e) of this section, the commission shall post the following information on the agency website:

(A) the amount of ticket sales, if any, for previous drawings in the roll cycle;

(B) the amount of projected ticket sales for the upcoming drawing;

(C) investment information used to determine the advertised estimated jackpot; and

(D) other information used to determine the advertised estimated jackpot.

(2) After the commission determines that one or more tickets have been sold that match the six numbers drawn in a drawing, the commission shall post on the agency website information used to calculate the jackpot prize.

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 November 9, 2012.

TRD-201205844
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 344-5275

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CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §402.450

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.450, concerning Request for Waiver. The purpose of the proposed amendments is to clarify the information required in a licensed authorized organization's credible business plan and to specify the period of an organization's operations and compliance history that the Commission may consider in the approval of waiver applications regarding the net proceeds requirement as two years. Specifically, the amendments: (1) add "Application for Waiver" and delete "written request for a waiver" to subsection (b)(1); (2) delete existing subsection (b)(3)(D) - (K); (3) add new subsection (b)(3)(D) and (E); (4) change the time period from "one or more years" to "two years" in subsection (e)(2); (5) add "two year" to subsection (e)(3); and (6) delete subsections (g) and (h).

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

Bruce A. Miner, Acting Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated is to clarify the information required in the credible business plan when applying for a waiver of the net proceeds requirement.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Sandra Joseph, Special 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. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, December 5, 2012, at 611 E. 6th Street, Austin,

Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed amendments implement Texas Occupations Code, Chapter 2001.

§402.450. Request for Waiver.

(a) (No change.)

(b) Detrimental Charitable Purpose Waiver.

(1) A licensed authorized organization may submit to the Commission an Application for Waiver [~~a written request for a waiver~~] to be exempt from the requirements that:

(A) bingo operations must result in net proceeds over the organization's license period; or

(B) a licensed authorized organization must disburse the required amount of net proceeds for charitable purposes for a specific calendar quarter.

(2) An application for a waiver must include the following:

(A) the reason for the request;

(B) an explanation of how compliance with the requirement is detrimental to the organization's existing or planned charitable purposes;

(C) the intended purpose of future charitable distributions;

(D) the specific calendar quarter or license year for which the waiver is being requested, as applicable; and

(E) either of the following:

(i) a credible business plan; or

(ii) if the request is due to force majeure as defined in §402.453 of this subchapter, documentation from outside sources supporting force majeure. Examples of acceptable documentation include newspaper articles, copies of local ordinance changes, police or fire department reports, notification of road construction, or photographs.

(3) A Credible Business Plan may include the following:

(A) the stated project goal of the organization as it applies to the application for waiver;

(B) a detailed description of the charitable activities of the organization for the four quarters immediately preceding the application;

(C) a detailed description of the charitable activities of the proposed charitable activities for the time period of the request;

(D) a detailed explanation of the reason for the waiver request; and

(E) a detailed strategy of how the organization plans to correct its financial difficulties to ensure the bingo operations result in positive net proceeds.

[~~(D) a current balance sheet and income statement for the four quarter period immediately preceding the application;~~]

[~~(E) projected cash flow from the conduct of bingo and from sources other than bingo that may be used to supplement the bingo proceeds towards the accomplishment of the project for the time period of the request;~~]

[~~(F) a cash flow analysis for the organization's or unit's bingo account for the four quarter period immediately preceding the application;~~]

[~~(G) a market analysis for the local economy, in general, and the local bingo industry, specifically, conducted within six months of the date of the application;~~]

[~~(H) a cost analysis for the project goal;~~]

[~~(I) the total amount of additional retained operating capital or reduced charitable distribution amount;~~]

[~~(J) the period of time required to accomplish the project goal; and~~]

[~~(K) documentation from outside sources supporting the reason for the application, the total project cost, and any additional resources that will be used towards the accomplishment of the project.~~]

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

(e) Criteria for Approval of Waiver Applications. The Commission may consider the following in the approval of waiver applications:

(1) the credible business plan or force majeure that necessitates the organization's not meeting the requirements of §2001.451 or §2001.457 of the Act;

(2) the amount of net proceeds from licensed authorized organization's or unit's bingo operations during the past two years [~~one or more years~~]; and

(3) the length of time the organization has conducted bingo and two year compliance history.

(f) (No change.)

[~~(g) An organization or unit may not act as if a waiver is approved until it is notified by the Commission of approval.~~]

[~~(h) An organization or unit whose circumstances or credible business plan changes may submit a new application for a waiver.~~]

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-201205812
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 344-5012

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16 TAC §402.453

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.453, concerning Request for Operating Capital Increase. The purpose of the proposed amendments is to clarify the information required in a licensed authorized organization's credible business plan when an organization applies for

an increase in operating capital. Specifically, the amendments: (1) delete existing subsection (b)(4)(D) - (K); (2) add new subsection (b)(4)(D) and (E); and (3) delete the phrase "with supporting documentation" from subsection (c).

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

Bruce A. Miner, Acting Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated is to clarify the information required in a licensed authorized organization's credible business plan when an organization applies for an increase in operating capital.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Sandra Joseph, Special 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. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, December 5, 2012, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed amendments implement Texas Occupations Code, Chapter 2001.

§402.453. Request for Operating Capital Increase.

(a) (No change.)

(b) Applying for a Request to Exceed Operating Capital Limit.

(1) A licensed authorized organization or unit requesting to increase its operating capital limit must submit a written request prior to the end of the quarter for which the increase in its retained operating capital limit is being requested.

(2) The retained operating capital limit may not be increased for the purpose of decreasing a licensed authorized organization's or unit's disbursement of net proceeds for charitable purposes.

(3) A request to exceed the operating capital limit must include the following:

(A) the total amount of retained operating capital requested;

(B) the reason for the request;

(C) the period for the increase; and

(D) either of the following:

(i) a credible business plan; or

(ii) if the request is due to force majeure, documentation from outside sources supporting force majeure or evidence of circumstances beyond the control of the organization. Examples of acceptable documents include newspaper articles, copies of local ordinance changes, police or fire department reports, notification of road construction, or photographs.

(4) A credible business plan for the organization's bingo operation may include the following:

(A) the stated project goal of the organization as it applies to the request;

(B) a detailed description of the charitable activities of the organization for the four quarters immediately preceding the request;

(C) a detailed description of the proposed charitable activities for the time period of the request;

(D) a cost for the project goal; and

(E) the period of time required to accomplish the project goal.

~~[(D) a current balance sheet and income statement for the four quarter period immediately preceding the request;]~~

~~[(E) projected cash flow from the conduct of bingo and from sources other than bingo that may be used to supplement the bingo proceeds towards the accomplishment of the project for the time period of the request;]~~

~~[(F) a cash flow analysis for the organization's or unit's bingo account for the four quarter period immediately preceding the request;]~~

~~[(G) a market analysis for the local economy, in general, and the local bingo industry, specifically, conducted within six months of the date of the request;]~~

~~[(H) a cost analysis for project goal;]~~

~~[(I) the total amount of additional retained operating capital or reduced charitable distribution amount;]~~

~~[(J) the period of time required to accomplish the project goal; and]~~

~~[(K) documentation from outside sources supporting the reason for the request, the total project cost, and any additional resources that will be used towards the accomplishment of the project.]~~

(c) An organization that has been licensed to conduct bingo for less than one year may provide a detailed explanation of why the increase in the operating capital limit is necessary [~~with supporting documentation~~] in lieu of a credible business plan.

(d) - (i) (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.

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TRD-201205813

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

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SUBCHAPTER E. BOOKS AND RECORDS

16 TAC §402.503

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.503, concerning Bingo Gift Certificates. The purpose of the proposed amendments is to make this rule consistent with other administrative rules and the Bingo Enabling Act. Specifically, the amendments: (1) delete "and funds other than bingo proceeds are used to obtain the gift certificate" from subsection (d); and (2) add "second business day after the bingo occasion" and delete "next business day" from subsection (g)(3).

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

Bruce A. Miner, Acting Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated is that the rule will conform to current law.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Sandra Joseph, Special 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. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, December 5, 2012, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed amendments implement Texas Occupations Code, Chapter 2001.

§402.503. Bingo Gift Certificates.

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

(d) A bingo gift certificate may not be awarded as a door prize unless the value of the certificate is paid for before it is awarded as a door prize [~~and funds other than bingo proceeds are used to obtain the gift certificate~~].

(e) - (f) (No change.)

(g) Reporting Requirements:

(1) Funds from the sale of the gift certificate shall be maintained separately from the bingo funds. Such funds are not considered bingo funds until the gift certificate is redeemed for a bingo card, pull-tab bingo, or a card-minding device.

(2) Funds remaining from an expired or unredeemed gift certificate shall be disbursed equally among the participating licensed authorized organizations and deposited into each of their respective general fund accounts.

(3) When a gift certificate is redeemed, the sale of bingo paper, card-minding device, or pull-tab bingo shall be reported for that occasion. The gift certificate, when redeemed, shall be exchanged for cash from the gift certificate funds and deposited into the bingo account by the end of the second business day after the bingo occasion [~~next business day~~] as required by Occupations Code, §2001.451.

(4) At the end of each month, the licensed authorized organizations collectively shall reconcile the gift certificates purchased, sold, expired, redeemed, or remaining during the month to the cash on hand.

(h) - (i) (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.

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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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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §1.63

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

The Texas Board of Architectural Examiners proposes the repeal of §1.63, concerning Replacement of Certificate. The board has determined that the rule is redundant of another rule allowing for the issuance of duplicate certificates and is therefore unnecessary.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the repeal is in effect, the repeal will have no significant fiscal im-

pact upon state government and no fiscal impact on local government.

Ms. Hendricks also has determined that for the first five-year period the repeal is in effect the public benefits expected as a result will be to reduce the volume of the board's rules by eliminating unnecessary provisions. There will be no adverse economic impact from the repeal to persons, small businesses and micro-businesses under the jurisdiction of the board. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

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

The repeal is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

The repeal does not affect any other statutes, articles or codes.

§1.63. Replacement of Certificate.

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

Filed with the Office of the Secretary of State on November 12, 2012.

TRD-201205851
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-9040

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22 TAC §1.67

The Texas Board of Architectural Examiners proposes amendments to §1.67, concerning Emeritus Status. The amendment pertains to the registration of certain architects as emeritus architects. The amendment makes the terms "emeritus architect" and "practice of architecture" uppercase to signify that those terms are defined in the board's rules. The amendments also revise a sentence relating to applications to return to active status from emeritus status to change it from the passive to the more easily understood active tense.

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

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule will be to provide greater clarity regarding the qualifications and procedures to apply for, and maintain, emeritus architect status. The amendments will also provide a reference to defined terms which will also ensure greater understanding of the rule. There will be no adverse economic impact from the rule as amended to persons, small businesses and micro-businesses under the jurisdiction of the board. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

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

The amendment is proposed pursuant to §1051.357, Texas Occupations Code, which directs the board to establish procedures by rule for architects to place their registrations on emeritus status and return them to active status, subject to specified qualifications. The amendment is also proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

The proposed amendment does not affect any other statutes, articles or codes.

§1.67. Emeritus Status.

(a) An Architect whose registration is in Good Standing may apply for emeritus registration status on a form prescribed by the Board. In order for an Architect to obtain emeritus status, the Architect must demonstrate that:

(1) he/she has been registered as an architect for at least 20 years; and

(2) he/she is at least 65 years of age.

(b) An Emeritus Architect [~~emeritus architect~~] may engage in the Practice of Architecture as defined by §1051.001(7)(D) - (H) of the Texas Occupations Code and may prepare architectural plans and specifications for:

(1) the alteration of a building that does not involve a substantial structural or exitway change to the building; or

(2) the construction, enlargement, or alteration of a privately owned building that is:

(A) a building used primarily for farm, ranch, or agricultural purposes or for the storage of raw agricultural commodities;

(B) a single-family or dual-family dwelling or a building or appurtenance associated with the dwelling;

(C) a multifamily dwelling not exceeding a height of two stories and not exceeding 16 units per building;

(D) a commercial building that does not exceed a height of two stories or a square footage of 20,000 square feet; or

(E) a warehouse that has limited public access.

(c) An Emeritus Architect [~~emeritus architect~~] may use the title "Emeritus Architect" or "Architect Emeritus."

(d) An Emeritus Architect [~~emeritus architect~~] may renew his/her registration prior to its specified expiration date by:

(1) remitting the correct fee to the Board; and

(2) providing the information or documentation requested by the registration renewal notice and signing the renewal form to verify the accuracy of all information and documentation provided.

(e) If an Emeritus Architect [~~emeritus architect~~] fails to remit a completed registration renewal form and the prescribed fee on or before the specified expiration date of the Emeritus Architect's [~~emeritus architect's~~] registration, the Board shall impose a late payment penalty that must be paid before the Emeritus Architect's [~~emeritus architect's~~] registration may be renewed.

(f) In order to change his/her registration to active status, an Emeritus Architect [~~emeritus architect~~] must:

(1) apply on a form prescribed by the Board;

(2) either submit proof that he/she has completed all continuing education requirements for each year the registration has been emeritus or, in lieu of completing the outstanding continuing education requirements, successfully complete all sections of the current Architect Registration Examination during the five years immediately preceding the return to active status; and

(3) pay a fee as prescribed by the Board.

(g) Applications to return to active status may be rejected for any of the reasons for which an initial application for registration may be rejected or for which a registration may be revoked.

(h) The Board may require an Applicant to include [~~that an application to return to active status include~~] verification of compliance [~~that the Applicant has complied~~] with the laws governing the Practice of Architecture with her or his application to return to active status [~~practice of architecture~~].

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 November 12, 2012.

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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-9040

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §1.142

The Texas Board of Architectural Examiners proposes amendments to §1.142, concerning Competence. The amendment pertains to gross incompetency by an architect engaged in the practice of architecture. The board received public comment during the board's review of its rule to determine if the purpose for which they were adopted continues to exist. The commenter requested an amendment to the rule to specify that the objective standard to determine gross incompetency include consideration of the circumstances and conditions involved in the conduct in question. The commenter's stated intent was to ensure a uniform consistent application of the rule to all architects in the same or similar circumstances, regardless of the local custom or practice of architects and building officials. The board agreed that the objective standard of gross incompetency should take into consideration the particular circumstances and conditions in question. The amendment also inserts a parenthetical description of a rule which is cross-referenced in §1.142.

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

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule will be to provide greater clarity to the standard for determining whether an architect has engaged in gross incompetence in the practice of architecture. There will be no adverse economic impact from the rule as amended to persons, small businesses and micro-businesses under the jurisdiction of the board. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

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

The amendment is proposed pursuant to §1051.208, Texas Occupations Code, which requires the board to adopt standards of conduct for persons regulated by the board. The amendment is also proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

The proposed amendment does not affect any other statutes, articles or codes.

§1.142. Competence.

(a) An Architect shall undertake to perform a professional service only when the Architect, together with those whom the Architect shall engage as consultants, is qualified by education and/or experience in the specific technical areas involved. During the delivery of a professional service, an Architect shall act with reasonable care and competence and shall apply the technical knowledge and skill which is ordinarily applied by reasonably prudent architects practicing under similar circumstances and conditions.

(b) An Architect shall not affix his/her signature or seal to any architectural plan or document dealing with subject matter in which he/she is not qualified by education and/or experience to form a reasonable judgment.

(c) "Gross Incompetency" shall be grounds for disciplinary action by the Board. An Architect may be found guilty of "Gross Incompetency" under any of the following circumstances:

(1) the Architect has engaged in conduct that provided evidence of an inability or lack of skill or knowledge necessary to discharge the duty and responsibility required of an Architect;

(2) the Architect engaged in conduct which provided evidence of an extreme lack of knowledge of, or an inability or unwillingness to apply, the principles or skills generally expected of a reasonably prudent architect under the same or similar circumstances and conditions;

(3) the Architect has been adjudicated mentally incompetent by a court; or

(4) pursuant to [~~section~~] §1.150(b) of this title (relating to Substance Abuse).

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 November 12, 2012.

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

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22 TAC §1.144

The Texas Board of Architectural Examiners proposes amendments to §1.144, concerning Dishonest Practice. The amendment pertains to dishonest practice by an architect. The amendment deletes a requirement that architects publish their registration numbers in advertising appearing in directories, web sites, and newspapers. The amendment was requested through public comment received during the review of the board's rules. The commenter noted many architects do not follow the rule, architects often have little control over listings in telephone directories, and it is not clear what the rule was intended to accomplish. The board agreed with the comment and proposes the amendment in response to public comment.

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

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result will be the elimination of an unnecessary requirement upon architects' advertising. There will be no adverse economic impact from the rule as amended to persons, small businesses, and micro-businesses under the jurisdiction of the board. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

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

The amendment is proposed pursuant to §1051.203, Texas Occupations Code, which restricts the board's authority to adopt rules restricting advertising by board registrants. The amendment is also proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

The proposed amendment does not affect any other statutes.

§1.144. Dishonest Practice.

(a) An Architect may not directly or indirectly perform an act, omit an act or allow an omission, make an assertion, or otherwise engage in a practice with the intent to:

(1) defraud;[~~,~~]

(2) deceive;[~~,~~] or

(3) create a misleading impression.

(b) An Architect may not advertise in a manner which is false, misleading, or deceptive. [~~Each advertisement that offers the service of an Architect in Texas and is found in a telephone directory, e-mail directory, web site, or newspaper must clearly display that Architect's Texas architectural registration number. If an advertisement is for a business that employs more than one Architect, only the Texas architectural registration number for one Architect employed by the firm or associated with the firm pursuant to section 1.122 is required to be displayed.~~]

(c) An Architect may not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific publicly funded architectural work. An Architect may not give architectural plans, design services, pre-bond referendum services, or any other goods or services to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select an Architect to render publicly funded architectural work.

(d) An Architect serving as an expert witness is subject to discipline for committing a dishonest practice upon a finding by a court of law that the Architect:

(1) rendered testimony the Architect has actual knowledge is false; or

(2) agreed to receive payment contingent upon giving testimony that expresses a particular opinion.

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 November 12, 2012.

TRD-201205854
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-9040

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22 TAC §1.152

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

The Texas Board of Architectural Examiners proposes the repeal of §1.152, concerning Malicious Injury to Professional Reputation. The rule prohibits architects from maliciously injuring the professional reputation of others under certain circumstances. During the course of the review of rules, the board received public comment recommending the repeal of the rule primarily due to free speech concerns. The board agreed with public comment and also determined the rule is largely unenforceable due to necessary exceptions to the rule and the chilling effect upon an architect's assessment of the work of another. The board also noted that the rule could be construed very broadly to restrict damage to the professional reputation of anyone for any conduct unrelated to the practice of architecture, raising the issue of whether the rule exceeds the board's statutory authority.

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

Ms. Hendricks also has determined that for the first five-year period the repeal is in effect the public benefits expected as a result will be to eliminate a restriction upon speech. If a person's reputation is maliciously damaged by a person regulated by the board, that person may seek damages through the civil process for libel or slander but the person would not seek recourse from the board. There will be no adverse economic impact from the repeal to persons, small businesses and micro-businesses un-

der the jurisdiction of the board. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

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

The repeal is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

The proposed repeal does not affect any other statutes, articles or codes.

§1.152. Malicious Injury to Professional Reputation.

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 November 12, 2012.

TRD-201205855
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-9040

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SUBCHAPTER I. DISCIPLINARY ACTION

22 TAC §1.177

The Texas Board of Architectural Examiners proposes amendments to §1.177, concerning Administrative Penalty Schedule. The amendment pertains to the administrative penalty schedule for violations of laws relating to the practice of architecture. The amendment makes a technical correction to a provision which requires a registrant or an applicant or candidate for registration to respond to an inquiry from the board within 30 days. The amendment inserts the word "not" so the provision designates the failure to reply a moderate violation instead of a minor violation if a response to the inquiry is "not" made within 30 days. The amendment corrects an error in the rule and gives effect to the board's original intent.

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

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result will be that the rule will state it is a violation to fail to timely respond to an inquiry of the board as was originally intended. There will be no adverse economic impact from the rule as amended to persons, small businesses, and micro-businesses under the jurisdiction of the board. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

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

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

The proposed amendment does not affect any other statutes, articles or codes.

§1.177. Administrative Penalty Schedule.

If the Board determines that an administrative penalty is the appropriate sanction for a violation of any of the statutory provisions or rules enforced by the Board, the following guidelines shall be applied to guide the Board's assessment of an appropriate administrative penalty:

(1) (No change.)

(2) After determining whether the violation is minor, moderate, or major, the Board shall impose an administrative penalty as follows:

(A) - (F) (No change.)

(G) An Architect, Candidate, or Applicant who fails, without good cause, to provide information to the Board under provision of §1.171 of this subchapter (relating to Responding to Request for Information) is presumed to be interfering with and preventing the Board from fulfilling its responsibilities. For these reasons a violation of §1.171 of this subchapter shall be considered a moderate violation if a complete response is <u>not</u> received within 30 days after receipt of the Board's written inquiry. Any further delay constitutes a major violation. Each 15 day delay thereafter shall be considered a separate violation of these rules.

(3) - (4) (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 November 12, 2012.

TRD-201205856
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-9040

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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §3.63

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

The Texas Board of Architectural Examiners proposes the repeal of §3.63, concerning Replacement of Certificate. The board has determined that the rule is redundant of another rule allowing for the issuance of duplicate certificates and is therefore unnecessary.

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

Ms. Hendricks also has determined that for the first five-year period the repeal is in effect the public benefits expected as a result will be to reduce the volume of the board's rules by eliminating unnecessary provisions. There will be no adverse economic impact from the repeal to persons, small businesses and micro-businesses under the jurisdiction of the board. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

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

The repeal is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

The proposed repeal does not affect any other statutes.

§3.63. Replacement of Certificate.

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

Filed with the Office of the Secretary of State on November 12, 2012.

TRD-201205857

Cathy L. Hendricks, RID, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: December 23, 2012

For further information, please call: (512) 305-9040

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §3.142

The Texas Board of Architectural Examiners proposes amendments to §3.142, concerning Competence. The amendment pertains to gross incompetency by a landscape architect engaged in the practice of landscape architecture. The amendment revises the standard for determining gross incompetency in the practice of landscape architecture to include consideration of the particular circumstances and conditions of the particular situation in which the landscape architect was practicing. The amendment is identical to a similar amendment the board is proposing in response to public comment on the corresponding rule regarding the practice of architecture. The amendment also inserts a parenthetical description of a rule which is cross-referenced in §3.142.

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

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule will be to provide greater clarity to the standard for determining whether a landscape architect has engaged in gross incompetence in the practice of landscape architecture. There will be no adverse economic impact from the rule as amended to persons, small businesses and micro-businesses under the jurisdiction of the board. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

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

The amendment is proposed pursuant to §1051.208, Texas Occupations Code, which requires the board to adopt standards of conduct for persons regulated by the board. The amendment is also proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

The proposed amendment does not affect any other statutes, articles or codes.

§3.142. Competence.

(a) A Landscape Architect shall undertake to perform a professional service only when the Landscape Architect, together with those whom the Landscape Architect shall engage as consultants, is qualified by education and/or experience in the specific technical areas involved. During the delivery of a professional service, a Landscape Architect shall act with reasonable care and competence and shall apply the technical knowledge and skill which is ordinarily applied by reasonably prudent landscape architects practicing under similar circumstances and conditions.

(b) A Landscape Architect shall not affix his/her signature or seal to any landscape architectural plan or document dealing with subject matter in which he/she is not qualified by education and/or experience to form a reasonable judgment.

(c) "Gross Incompetency" shall be grounds for disciplinary action by the Board. A Landscape Architect may be found guilty of "Gross Incompetency" under any of the following circumstances:

(1) the Landscape Architect has engaged in conduct that provided evidence of an inability or lack of skill or knowledge necessary to discharge the duty and responsibility required of a Landscape Architect;

(2) the Landscape Architect engaged in conduct which provided evidence of an extreme lack of knowledge of, or an inability or unwillingness to apply, the principles or skills generally expected of a reasonably prudent landscape architect under the same or similar circumstances and conditions;

(3) the Landscape Architect has been adjudicated mentally incompetent by a court; or

(4) pursuant to [~~section~~] §3.150(b) of this title (relating to Substance Abuse).

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 November 12, 2012.

TRD-201205858

Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-9040

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22 TAC §3.144

The Texas Board of Architectural Examiners proposes amendments to §3.144, concerning Dishonest Practice. The amendment pertains to dishonest practice by a landscape architect. The amendment deletes a requirement that landscape architects publish their registration numbers in advertising appearing in directories, web sites, and newspapers. The amendment was requested through public comment received during the review of the board's rules relating to architecture. The commenter noted many architects do not follow the rule, architects often have little control over listings in telephone directories, and it is not clear what the rule was intended to accomplish. The board agreed with the comment and likewise proposes the amendment regarding landscape architecture.

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

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result will be the elimination of an unnecessary requirement upon landscape architects' advertising. There will be no adverse economic impact from the rule as amended to persons, small businesses, and micro-businesses under the jurisdiction of the board. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

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

The amendment is proposed pursuant to §1051.203, Texas Occupations Code, which restricts the board's authority to adopt rules restricting advertising by board registrants. The amendment is also proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

The proposed amendment does not affect any other statutes, articles or codes.

§3.144. Dishonest Practice.

(a) A Landscape Architect may not directly or indirectly perform an act, omit an act or allow an omission, make an assertion, or otherwise engage in a practice with the intent to:

(1) defraud;[~~,~~]

(2) deceive;[~~,~~] or

(3) create a misleading impression.

(b) A Landscape Architect may not advertise in a manner which is false, misleading, or deceptive. [~~Each advertisement that offers the service of a Landscape Architect in Texas and is found in a telephone directory, e-mail directory, web site, or newspaper must clearly display that Landscape Architect's Texas landscape architectural registration number. If an advertisement is for a business that employs more than one Landscape Architect, only the Texas landscape architectural registration number for one Landscape Architect employed by the firm or associated with the firm pursuant to §3.122 is required to be displayed.~~]

(c) A Landscape Architect may not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific publicly funded landscape architectural work. A Landscape Architect may not give landscape architectural plans, design services, pre-bond referendum services, or any other goods or services to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select a Landscape Architect to render publicly funded landscape architectural work.

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 November 12, 2012.

TRD-201205859
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-9040

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22 TAC §3.152

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

The Texas Board of Architectural Examiners proposes the repeal of §3.152, concerning Malicious Injury to Professional Reputation. The rule prohibits landscape architects from maliciously injuring the professional reputation of others under certain circumstances. During the course of the review of rules, the board received public comment recommending the repeal of an identical rule applicable to architects primarily due to free speech concerns. The board agreed with public comment and also determined the rule is largely unenforceable due to necessary exceptions to the rule and the chilling effect upon an architect's assessment of the work of another. The board also noted that the rule could be construed very broadly to restrict damage to the professional reputation of anyone for any conduct unrelated to the practice of architecture, raising the issue of whether the rule exceeds the board's statutory authority. The board proposes the repeal of the rule for the same reasons it seeks the repeal of the rule relating to architects.

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

Ms. Hendricks also has determined that for the first five-year period the repeal is in effect the public benefits expected as a result will be to eliminate a restriction upon speech. If a person's reputation is maliciously damaged by a person regulated by the

board, that person may seek damages through the civil process for libel or slander but the person would not seek recourse from the board. There will be no adverse economic impact from the repeal to persons, small businesses and micro-businesses under the jurisdiction of the board. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

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

The repeal is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

The proposed repeal does not affect any other statutes, articles or codes.

§3.152. Malicious Injury to Professional Reputation.

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 November 12, 2012.

TRD-201205860
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-9040

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SUBCHAPTER I. DISCIPLINARY ACTION

22 TAC §3.177

The Texas Board of Architectural Examiners proposes amendments to §3.177, concerning Administrative Penalty Schedule. The amendment pertains to the administrative penalty schedule for violations of laws relating to the practice of landscape architecture. The amendment makes a technical correction to a provision which requires a registrant or an applicant or candidate for registration to respond to an inquiry from the board within 30 days. The amendment inserts the word "not" so the provision designates the failure to reply a moderate violation instead of a minor violation if a response to the inquiry is "not" made within 30 days. The amendment corrects an error in the rule and gives effect to the board's original intent.

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

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result will be that the rule will state it is a violation to fail to timely respond to an inquiry of the board as was originally intended. There will be no adverse economic impact from the rule as amended to persons, small businesses, and micro-businesses under the jurisdiction of the board. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

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

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

The proposed amendment does not affect any other statutes, articles or codes.

§3.177. Administrative Penalty Schedule.

If the Board determines that an administrative penalty is the appropriate sanction for a violation of any of the statutory provisions or rules enforced by the Board, the following guidelines shall be applied to guide the Board's assessment of an appropriate administrative penalty:

(1) (No change.)

(2) After determining whether the violation is minor, moderate, or major, the Board shall impose an administrative penalty as follows:

(A) - (F) (No change.)

(G) A Landscape Architect, Candidate, or Applicant who fails, without good cause, to provide information to the Board under the provision of §3.171 of this subchapter (relating to Responding to Request for Information) is presumed to be interfering with and preventing the Board from fulfilling its responsibilities. For these reasons a violation of §3.171 of this subchapter shall be considered a moderate violation if a complete response is not received within 30 days after receipt of the Board's written inquiry. Any further delay constitutes a major violation. Each 15 day delay thereafter shall be considered a separate violation of these rules.

(3) - (4) (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 November 12, 2012.

TRD-201205861
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-9040

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §5.73

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

The Texas Board of Architectural Examiners proposes the repeal of §5.73, concerning Replacement of Certificate. The board has determined that the rule is redundant of another rule allowing for the issuance of duplicate certificates and is therefore unnecessary.

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

Ms. Hendricks also has determined that for the first five-year period the repeal is in effect the public benefits expected as a result will be to reduce the volume of the board's rules by eliminating unnecessary provisions. There will be no adverse economic impact from the repeal to persons, small businesses and micro-businesses under the jurisdiction of the board. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

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

The repeal is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

The proposed repeal does not affect any other statutes, articles or codes.

§5.73. Replacement of Certificate.

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

Filed with the Office of the Secretary of State on November 12, 2012.

TRD-201205862
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-9040

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §5.152

The Texas Board of Architectural Examiners proposes amendments to §5.152, concerning Competence. The amendment pertains to gross incompetency by a registered interior designer engaged in the practice of interior design. The amendment revises the standard for determining gross incompetency in the practice of interior design to include consideration of the particular circumstances and conditions of the particular situation in question. The amendment is identical to a similar amendment the board is proposing in response to public comment on the corresponding rule regarding the practice of architecture.

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

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule will be greater clarity in the standard for determining whether a registered interior designer has engaged in gross incompetence in practicing interior design. There will be no adverse economic impact from the rule as amended to persons, small businesses, and micro-businesses under the jurisdiction of the board. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

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

The amendment is proposed pursuant to §1051.208, Texas Occupations Code, which requires the board to adopt standards of conduct for persons regulated by the board. The amendment is also proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

The proposed amendment does not affect any other statutes, articles or codes.

§5.152. Competence.

(a) A Registered Interior Designer shall undertake to perform a professional service only when the Registered Interior Designer, together with those whom the Registered Interior Designer shall engage as consultants, is qualified by education and/or experience in the specific technical areas involved. During the delivery of a professional service, a Registered Interior Designer shall act with reasonable care and competence and shall apply the technical knowledge and skill which is ordinarily applied by reasonably prudent Registered Interior Designers practicing under similar circumstances and conditions.

(b) A Registered Interior Designer shall not affix his/her signature or seal to any Interior Design plan or document dealing with subject matter in which he/she is not qualified by education and/or experience to form a reasonable judgment.

(c) "Gross Incompetency" shall be grounds for disciplinary action by the Board. A Registered Interior Designer may be found to be grossly incompetent under any of the following circumstances:

(1) the Registered Interior Designer has engaged in conduct that provided evidence of an inability or lack of skill or knowledge necessary to discharge the duty and responsibility required of a Registered Interior Designer;

(2) the Registered Interior Designer engaged in conduct which provided evidence of an extreme lack of knowledge of, or an inability or unwillingness to apply, the principles or skills generally expected of a reasonably prudent Registered Interior Designer <u>under the same or similar circumstances</u>;

(3) the Registered Interior Designer has been adjudicated mentally incompetent by a court; or

(4) pursuant to §5.159(b) of this title (relating to Substance Abuse).

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 November 12, 2012.

TRD-201205863
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-9040

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22 TAC §5.154

The Texas Board of Architectural Examiners proposes amendments to §5.154, concerning Dishonest Practice. The amendment pertains to dishonest practice by a registered interior designer. The amendment deletes a requirement that registered interior designers publish their registration numbers in advertising appearing in directories, web sites, and newspapers. The amendment was requested through public comment received during the review of the board's rules relating to architecture. The commenter noted many architects do not follow the rule, architects often have little control over listings in telephone directories, and it is not clear what the rule was intended to accomplish. The board agreed with the comment and likewise proposes the amendment regarding registered interior designers.

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

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result will be the elimination of an unnecessary requirement upon registered interior designers' advertising. There will be no adverse economic impact from the rule as amended to persons, small businesses, and micro-businesses under the jurisdiction of the board. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

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

The amendment is proposed pursuant to §1051.203, Texas Occupations Code, which restricts the board's authority to adopt rules restricting advertising by board registrants. The amendment is also proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

The proposed amendment does not affect any other statutes, articles or codes.

§5.154. Dishonest Practice.

(a) A Registered Interior Designer may not directly or indirectly perform an act, omit an act or allow an omission, make an assertion, or otherwise engage in a practice with the intent to:

(1) defraud;[~~,~~]

(2) deceive;[~~,~~] or

(3) create a misleading impression.

(b) A Registered Interior Designer may not advertise in a manner which is false, misleading, or deceptive. [~~Each advertisement that offers the services of a Registered Interior Designer in Texas and is found in a telephone directory, e-mail directory, web site, or newspaper must clearly display that Registered Interior Designer's Texas Interior Design registration number. If an advertisement is for a business that employs more than one Registered Interior Designer, only the Texas Interior Design registration number for one Registered Interior Designer employed by the firm or associated with the firm pursuant to §5.132 of this title (relating to Association is required to be displayed.~~]

(c) A Registered Interior Designer may not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific publicly funded Interior Design work. A Registered Interior Designer may not give Interior Design plans, design services, pre-bond referendum services, or any other goods or services to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select a Registered Interior Designer to render publicly funded Interior Design work.

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 November 12, 2012.

TRD-201205864
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-9040

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22 TAC §5.161

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

The Texas Board of Architectural Examiners proposes the repeal of §5.161, concerning Malicious Injury to Professional Reputation. During the course of the review of rules, the board received public comment recommending the repeal of an identical rule applicable to architects primarily due to free speech concerns. The board agreed with public comment and also determined the rule is largely unenforceable due to necessary exceptions to the rule and the chilling effect upon an architect's assessment of the work of another. The board also noted that the rule could be construed very broadly to restrict damage to the professional reputation of anyone for any conduct unrelated to the practice of architecture, raising the issue of whether the rule exceeds the board's statutory authority. The board proposes the repeal of the rule for the same reasons it seeks the repeal of the rule relating to architects.

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

Ms. Hendricks also has determined that for the first five-year period the repeal is in effect the public benefits expected as a

result will be to eliminate a restriction upon speech. If a person's reputation is maliciously damaged by a person regulated by the board, that person may seek damages through the civil process for libel or slander but the person would not seek recourse from the board. There will be no adverse economic impact from the repeal to persons, small businesses and micro-businesses under the jurisdiction of the board. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

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

The repeal is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

The proposed repeal does not affect any other statutes, articles or codes.

§5.161. Malicious Injury to Professional Reputation.

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 November 12, 2012.

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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-9040

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SUBCHAPTER I. DISCIPLINARY ACTION

22 TAC §5.187

The Texas Board of Architectural Examiners proposes amendments to §5.187, concerning Administrative Penalty Schedule. The amendment pertains to the administrative penalty schedule for violations of laws relating to the professional practice of registered interior designers. The amendment makes a technical correction to a provision which requires a registrant or an applicant or candidate for registration to respond to an inquiry from the board within 30 days. The amendment inserts the word "not" so the provision designates the failure to reply a moderate violation instead of a minor violation if a response to the inquiry is "not" made within 30 days. The amendment corrects an error in the rule and gives effect to the board's original intent.

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

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result will be that the rule will state it is a violation to fail to timely respond to an inquiry of the board as was originally intended. There will be no adverse economic impact from the rule as amended to persons, small businesses, and micro-businesses under the jurisdiction of the board. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

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

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

The proposed amendment does not affect any other statutes, articles or codes.

§5.187. Administrative Penalty Schedule.

If the Board determines that an administrative penalty is the appropriate sanction for a violation of any of the statutory provisions or rules enforced by the Board, the following guidelines shall be applied to guide the Board's assessment of an appropriate administrative penalty:

(1) (No change.)

(2) After determining whether the violation is minor, moderate, or major, the Board shall impose an administrative penalty as follows:

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

(F) A Registered Interior Designer, a Candidate, or an Applicant who fails, without good cause, to provide information to the Board under §5.181 of this subchapter (relating to Responding to Request for Information) is presumed to be interfering with and preventing the Board from fulfilling its responsibilities. For these reasons a violation of §5.181 of this subchapter shall be considered a moderate violation if a complete response is not received within 30 days after the violation. Any further delay constitutes a major violation. Each 15 day delay thereafter shall be considered a separate violation of these rules.

(3) - (4) (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.

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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-9040

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CHAPTER 7. ADMINISTRATION

22 TAC §7.10

The Texas Board of Architectural Examiners proposes amendments to §7.10, concerning General Fees. The amendments delete an obsolete fee for administering the Landscape Architectural Registration Examination. The examination is administered by third-party contractors and is no longer administered by the board. Because the board does not administer the examination, it does not collect the fee. The amendments also correct a typographical error in the rule so that the word "routing" is corrected.

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

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result will be that the rule is easier to understand and obsolete fees will no longer appear in the board's fee schedule. There will be no adverse economic impact from the rule as amended to persons, small businesses, and micro-businesses under the jurisdiction of the board. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

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

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with general authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

The proposed amendment does not affect any other statutes.

§7.10. General Fees.

(a) (No change.)

(b) The following fees shall apply to services provided by the Board in addition to any fee established elsewhere by the rules and regulations of the Board or by Texas law:
Figure: 22 TAC §7.10(b)

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

(e) If a check is submitted to the Board to pay a fee and the bank upon which the check is drawn refuses to pay the check due to insufficient funds, errors in routing [~~touring~~], or bank account number, the fee shall be considered unpaid and any applicable late fees or other penalties accrue. The Board shall impose a processing fee for any check that is returned unpaid by the bank upon which the check is drawn.

(f) (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 November 12, 2012.

TRD-201205867
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-9040

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 279. INTERPRETATIONS

22 TAC §§279.2, 279.4, 279.16

The Texas Optometry Board proposes amendments to §279.2 and §279.4, to permit the use of electronic signatures for paper ophthalmic prescriptions. Proposed amendments to these rules originally published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7658) have been withdrawn.

The Texas Optometry Board also proposes new §279.16, to establish requirements for providing telehealth services. The new rule incorporates the requirements imposed by Chapter 111 of the Texas Occupations Code and Chapter 531 of the Texas Government Code. The requirements of the new rule will ensure that patients using telehealth services receive appropriate, quality care, that adequate treatment consent is obtained, and that adequate security of information is maintained. The new rule establishes requirements to prevent fraud and abuse in providing telehealth services.

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the amendments and new section are in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the amendments and new section.

Mr. Kloeris also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated is that therapeutic optometrists will have an alternative method to sign prescriptions which may be more convenient for patients and more efficient for the therapeutic optometrist. The public benefit anticipated for new §279.16 is that persons receiving telehealth services will receive quality services after adequate consent with appropriate safeguards in place to prevent fraud and protect sensitive information.

It is anticipated that there will be no economic costs as a result of the amendments to §279.2 and §279.4 for optometrists, who are not required to, but may take advantage of, the rule amendments and use programs that allow secure generation of electronic signatures.

For new §279.16, any economic costs will only be incurred by those licensees wishing to participate in telehealth services. Costs for the additional consent and notice requirements should be minimal. Because telehealth utilizes emerging technology, it is difficult to forecast whether the requirements of the new rule regarding the security of information and requirements for staffing of the remote site impose costs to licensees, and if costs are imposed, the difference between those costs and the costs associated with face to face treatment of patients, including those security requirements and personnel costs. The agency welcomes comments regarding the amount of economic costs.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The agency licenses approximately 4,000 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. The agency does not license these practices. There are no anticipated costs because of the amendments for those persons required to comply with the rules. Any economic impact on licensees would be the same regardless of the size of the licensee's practice.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the

proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and therefore do not constitute a taking under Texas Government Code §2007.043.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is 30 days after publication in the *Texas Register.*

The amendments and new section are proposed under the Texas Optometry Act, Texas Occupations Code §351.151 and §351.359. The amendments and new section comply with Texas Occupations Code §111.002 and §111.003 and Texas Government Code, Chapter 531.

The Texas Optometry Board interprets Texas Optometry Act, Texas Occupations Code §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets Texas Optometry Act, Texas Occupations Code §351.359 as setting the requirements for an ophthalmic prescription. The agency interprets Texas Occupations Code §111.002 and §111.003 to require telehealth providers to maintain confidentiality and obtain informed consent, and Chapter 531 of the Texas Government Code as setting guidelines for telehealth services reimbursed under government-funded health programs.

No other sections are affected by the amendments and new section.

§279.2. Contact Lens Prescriptions.

(a) A prescription for contact lenses is defined as a written order manually signed by the examining optometrist, therapeutic optometrist or physician, or a written order manually signed by an optometrist, therapeutic optometrist or physician authorized by the examining doctor to issue the prescription.

(1) If the prescription is signed by the examining optometrist or therapeutic optometrist, the prescription may be signed electronically, provided that:

(A) the prescription is electronically signed by the practitioner using a system which electronically replicates the practitioner's manual signature on the written prescription; and

(B) the security features of the system require the practitioner to authorize each use.

(2) If the prescription is signed by a doctor other than the examining optometrist, therapeutic optometrist or physician, the prescription must contain:

(A) [~~(1)~~] the name of the examining doctor;[~~,~~] and

(B) [~~(2)~~] the license number of both the examining doctor and the doctor signing the prescription.

(b) - (p) (No change.)

§279.4. Spectacle and Ophthalmic Devices Prescriptions.

(a) A prescription for spectacles or ophthalmic devices is defined as a written order manually signed by the examining optometrist, therapeutic optometrist or physician, or a written order manually signed by an optometrist, therapeutic optometrist or physician authorized by the examining doctor to issue the prescription. If the prescription is signed by the examining optometrist or therapeutic optometrist, the prescription may be signed electronically, provided that:

(1) the prescription is electronically signed by the practitioner using a system which electronically replicates the practitioner's manual signature on the written prescription; and

(2) the security features of the system require the practitioner to authorize each use.

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

§279.16. Telehealth Services.

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

(1) Established treatment site--A location where a patient will present to seek optometric care where there is an optometrist, therapeutic optometrist or physician present and sufficient technology and equipment to allow for an adequate physical evaluation as appropriate for the patient's presenting complaint. It requires an optometrist-patient relationship. A patient's private home is not considered an established medical site.

(2) Face-to-face visit--An evaluation performed on a patient where the provider and patient are both at the same physical location or where the patient is at an established medical site.

(3) In-person evaluation--A patient evaluation conducted by a provider who is at the same physical location as the location of the patient.

(4) Provider--An optometrist or therapeutic optometrist holding an active Texas license.

(5) Distant sight provider--The provider providing the telehealth service from a site other than the patient's current location.

(6) Telehealth service--A health service, other than a telemedicine service, that is delivered by a licensed optometrist or therapeutic optometrist acting within the scope of his or her license, and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or optometric specialty expertise.

(b) Fraud and Abuse Prevention.

(1) All optometrist or therapeutic optometrists that use telehealth services in their practices shall adopt protocols to prevent fraud and abuse through the use of telehealth services. These standards shall be consistent with those established by the Texas Health and Human Services Commission pursuant to §531.02161 of the Government Code.

(2) In order to establish that an optometrist or therapeutic optometrist has made a good faith effort in the licensee's practice to prevent fraud and abuse through the use of telehealth services, the optometrist or therapeutic optometrist must implement written protocols that address the following:

(A) authentication and authorization of users;

(B) authentication of the origin of information;

(C) the prevention of unauthorized access to the system or information;

(D) system security, including the integrity of information that is collected, program integrity, and system integrity;

(E) maintenance of documentation about system and information usage;

(F) information storage, maintenance, and transmission; and

(G) synchronization and verification of patient profile data.

(c) Notice.

(1) Privacy Practices.

(A) Providers that communicate with patients by electronic communications other than telephone or facsimile must provide patients with written notification of the providers' privacy practices prior to evaluation or treatment. In addition, a good faith effort must be made to obtain the patient's written acknowledgement, including by e-mail, of the notice.

(B) The notice of privacy practices shall include language that is consistent with federal standards under 45 CFR Parts 160 and 164 relating to privacy of individually identifiable health information.

(2) Limitations of Telehealth. Providers who use telehealth services must, prior to providing services, give their patients notice regarding telehealth services, including the risks and benefits of being treated via telehealth, how to receive follow-up care or assistance in the event of an adverse reaction to the treatment or in the event of an inability to communicate as a result of a technological or equipment failure. A signed and dated notice, including an electronic acknowledgement, by the patient establishes a presumption of notice.

(3) Necessity of In-Person Evaluation. When, for whatever reason, the telehealth modality in use for a particular patient encounter is unable to provide all pertinent clinical information that a health care provider exercising ordinary skill and care would deem reasonably necessary for the practice of optometry or therapeutic optometry at an acceptable level of safety and quality in the context of that particular encounter, then the distant site provider must make this known to the patient and advise and counsel the patient regarding the need for the patient to obtain an additional in-person evaluation reasonably able to meet the patient's needs.

(4) Complaints to the Board. Optometrists or therapeutic optometrists that use telehealth services must provide notice of how patients may file a complaint with the Board on the optometrist's or therapeutic optometrist 's website or with informed consent materials provided to patients prior to rendering telehealth services.

(d) Services Provided at an Established Medical Site. Telehealth services provided at an established medical site may be used for all patient visits, including initial evaluations to establish a proper doctor-patient relationship between a distant site provider and a patient.

(1) a provider or licensed physician must be reasonably available onsite at the established medical site to assist with the provision of care.

(2) A distant site provider may authorize an assistant at the established medical site to perform the procedures authorized by §279.1 and §279.3 of this title (relating to Contact Lens Examination and Spectacle Examination), subject to the same requirements as provided in those sections.

(e) Evaluation and Treatment of the Patient.

(1) Distant site providers who utilize telehealth services must ensure that a proper provider-patient relationship is established which at a minimum includes:

(A) establishing that the person requesting the treatment is in fact whom he/she claims to be;

(B) establishing a diagnosis through the use of acceptable medical practices, including patient history, mental status examination, physical examination (unless not warranted by the patient's mental condition), and appropriate diagnostic and laboratory testing to establish diagnoses, as well as identify underlying conditions or contra-indications, or both, to treatment recommended or provided;

(C) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and

(D) ensuring the availability of the distant site provider or coverage of the patient for appropriate follow-up care.

(2) Treatment. Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional in-person clinical settings.

(f) Technology and Security Requirements.

(1) At a minimum, advanced communication technology must be used for all patient evaluation and treatment conducted via telehealth.

(2) Adequate security measures must be implemented to ensure that all patient communications, recordings and records remain confidential.

(3) Electronic Communications.

(A) Written policies and procedures must be maintained when using electronic mail for provider-patient communications. Policies must be evaluated periodically to make sure they are up to date. Such policies and procedures must address:

(i) privacy to assure confidentiality and integrity of patient-identifiable information;

(ii) health care personnel, in addition to the provider, who will process messages;

(iii) hours of operation and availability;

(iv) types of transactions that will be permitted electronically;

(v) required patient information to be included in the communication, such as patient name, identification number and type of transaction;

(vi) archival and retrieval; and

(vii) quality oversight mechanisms.

(B) All relevant provider-patient e-mail, as well as other patient-related electronic communications, must be stored and filed in the patient record.

(C) Patients must be informed of alternative forms of communication for urgent matters.

(g) Patient Records for Telehealth Services.

(1) Patient records must be maintained for all telehealth services. Both the distant site provider and the provider or physician at the established medical site must maintain the records created at each site unless the distant site provider maintains the records in an electronic health record format.

(2) Distant site providers must obtain an adequate and complete medical history for the patient prior to providing treatment and must document this in the patient record.

(3) Patient records must include copies of all relevant patient-related electronic communications, including relevant provider-patient e-mail, prescriptions, laboratory and test results, evaluations and consultations, records of past care and instructions. If possible, telehealth encounters that are recorded electronically should also be included in the patient record.

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 November 7, 2012.

TRD-201205753
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-8502

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.35

The Texas State Board of Examiners of Psychologists proposes an amendment to §461.35, concerning Use of Historically Underutilized Businesses (HUBS). The proposed amendment would ensure compliance with Texas Government Code Annotated §2161.003 and correct the outdated reference to the General Service Commission rules.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Spinks 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 to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700 or email brenda@tsbep.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§461.35. Use of Historically Underutilized Businesses (HUBS).

In accordance with Texas Government Code §2161.003, the Board adopts by reference the rules of the Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter B (relating to Historically Underutilized Business Program). [~~The Board shall award a portion of its annual purchasing expenditures to vendors which are HUBS in accordance with General Service Commission rules (1 TAC §§111.11 - 111.28), which are based on the results of the State of Texas Disparity Study. It is the goal of the Board to make a good faith effort to increase its awards to HUB vendors.~~]

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 November 9, 2012.

TRD-201205824
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7706

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.5

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.5, concerning Application File Requirements. The proposed amendment would specify a reasonable time frame for reference letters submitted as part of the application process.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Spinks 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 to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700 or email brenda@tsbep.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.5. Application File Requirements.

To be complete, an application file must contain whatever information or examination results the Board requires. Unless specifically stated

otherwise by Board rule, all applications for licensure by the Board must contain:

(1) An application and required fee(s);

(2) Official transcripts indicating the date the degree required for licensure was awarded or conferred. Transcripts must be sent directly to the Board's office from all colleges/universities where post-baccalaureate course work was completed;

(3) Documentation that applicant has complied with Board Rule §463.14 of this title (relating to Written Examinations);

(4) Three acceptable reference letters from three different psychologists, two of whom are licensed or were licensed at the time of applicant's training and none of whom are related to the applicant within the second degree of affinity or within the second degree of consanguinity. The reference letters must be dated no earlier than six months prior to the date the application is received by the Board;

(5) A criminal history record check of the applicant from the Texas Department of Public Safety and the Federal Bureau of Investigation;

(6) Supportive documentation and other materials the Board may deem necessary, including current employment arrangements and the name of all jurisdictions where the applicant currently holds a certificate or license to practice psychology; and

(7) A written explanation and/or meeting with the Board or a committee of the Board, prior to final approval, if the application file contains any negative reference letters.

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 November 9, 2012.

TRD-201205825
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7706

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22 TAC §463.15

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.15, concerning Oral Examination. The proposed amendment is necessary because membership in the National Register does not ensure sufficient training or competency at the same level or degree as the other listed waivers.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Spinks 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 to help the Board protect the public. There will be no effect on small businesses. The estimated increase in annual revenue to the Board as a result of the proposed amendment is $12,160, based upon an average of 38 people claiming HSP exemption from the Oral Examination requirement in 2010, 2011 and 2012 (January - November). The estimated economic cost to an individual who, prior to enactment of this rule, would have been able to claim exemption from the Board's Oral Examination based upon HSP certification is $320.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700 or email brenda@tsbep.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.15. Oral Examination.

(a) Application Requirements. An application for the Oral Examination includes an application form, current passport picture of the applicant and required fee.

(b) Eligibility. To be eligible for licensure as a psychologist, all provisionally licensed psychologists shall be required to take and pass the Oral Examination administered by the Board. Only provisionally licensed psychologists may apply to take the Oral Examination.

(c) Waivers from the Oral Examination. The Board shall waive the Oral Examination for the following:

(1) Persons who have been actively licensed for the independent practice of psychology at the doctoral level in another state for at least the five years immediately preceding application for licensure as a psychologist and who have no disciplinary action from any health licensing board provided that documentation of this status is provided directly to the Board from the other health licensing board(s);

(2) Persons who were required to take an Oral Examination in order to provide independent practice of psychology at the doctoral level and to obtain licensure as a licensed psychologist in another state provided that confirmation of passage of that exam is provided to the Board from the other state;

(3) Specialists of the American Board of Professional Psychology; and

[~~(4) Health Service Providers listed in the National Register of Health Service Providers in Psychology; and~~]

(4) [~~(5)~~] Persons who qualify for licensure under reciprocity.

(d) A candidate for the Oral Examination must demonstrate sufficient entry-level knowledge of the practice of psychology to pass the examination based on the following standards:

(1) A candidate must have a total score of 64 or above from each of the two examiners to pass the examination.

(2) Scores are based on the demonstrated abilities of the candidate in nine content areas with a possible score in each content score of 9 points for a well articulated verbal answer, 8 points for a good or passing answer, 3 points for a weak, vague or incomplete answer, and minus 10 points for an answer that is substantially incomplete or incorrect.

(3) The nine content areas are as follows:

(A) Identifies the problems (e.g. initial hypotheses, differential diagnoses, etc.);

(B) Identifies a specific and plausible strategy for gathering further data to refine the problem definition (e.g. psychometrics, observation data collection, etc.);

(C) Develops a realistic intervention or action plan on the basis of the initial formulation;

(D) Recognizes and can formulate an effective response to crises;

(E) Attends to cultural and diversity issues;

(F) Demonstrates awareness of professional limitations;

(G) Can recognize and apply laws which are relevant to the case;

(H) Can recognize and apply professional standards that are relevant; and

(I) Can recognize and apply ethical standards or ethical reasoning pertinent to the case.

(4) Each candidate is presented with a vignette, which is representative of a situation commonly encountered in the area of testing. Candidates are required to articulate a case formulation according to a standard or model that is generally recognized in their area of testing. Candidates are required to respond to questions associated with each vignette.

(5) Areas of psychology in which a candidate may choose to be tested are: clinical, counseling, school, neuropsychological, and industrial and organizational.

(e) Each candidate receives an informational brochure prior to the Oral Examination.

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 November 9, 2012.

TRD-201205826
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7706

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CHAPTER 473. FEES

22 TAC §473.2

The Texas State Board of Examiners of Psychologists proposes an amendment to §473.2, concerning Examination Fees (Not Refundable). The proposed amendment is necessary to ensure the Board's rule comports with Association of State and Provincial Psychology Boards' (ASPPB) increased examination fee for the Examination for Professional Practice in Psychology (EPPP) set to take effect on March 1, 2013.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Spinks 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 to help the Board protect the public. There will be no effect on small businesses. The estimated economic cost to an individual required to comply with this rule is an additional $150 to take the EPPP Examination. The Board would note that the examination fee for the EPPP is set by ASPPB, not the Board. Thus, the additional cost incurred by individuals is not a result of the proposed amendment.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700 or email brenda@tsbep.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§473.2. Examination Fees (Not Refundable).

(a) Examination for the Professional Practice of Psychology--$600 [~~$450~~]

(b) Jurisprudence--$210

(c) Oral Examination--$320

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 November 9, 2012.

TRD-201205827
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7706

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 519. PRACTICE AND PROCEDURE
SUBCHAPTER C. PROCEEDINGS AT SOAH

22 TAC §519.42

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.42, concerning Administrative Hearings.

The amendment to §519.42 revises the procedure for the Board obtaining default judgments in cases before SOAH.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a reduction in costs to the Board and thus the public in enforcing the provisions of the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§519.42. Administrative Hearings.

(a) When a contested case has been docketed with SOAH, the board will provide the respondent and relevant parties with a Notice of Hearing and Complaint in accordance with §2001.052 of the Texas Government Code and applicable SOAH rules.

(b) The respondent and/or their relevant parties shall enter an appearance, with a copy to the board, within 20 days of the date on which the notice of hearing and complaint was served on the respondent and/or their relevant parties.

(c) For purposes of this section, entering an appearance means the filing of a written answer or other responsive pleading with SOAH.

(d) The failure by the respondent to timely enter an appearance as provided in this section shall entitle the petitioner to motion the administrative court to dismiss [~~abate~~] the proceeding and permit the board to informally dispose of the case by default.

(e) The notice of hearing and complaint shall include the following language in capital letters in at least 12-point boldface type: "YOU MUST ENTER AN APPEARANCE BY FILING A WRITTEN ANSWER OR RESPONSE TO THE ALLEGATIONS CONTAINED IN THIS NOTICE WITHIN 20 DAYS OF THE DATE THIS NOTICE WAS MAILED. YOUR FAILURE TO DO SO SHALL ENTITLE THE BOARD TO REQUEST THE DISMISSAL [~~ABATEMENT~~] OF THE CASE AND TO INFORMALLY DISPOSE OF THIS CASE BY DEFAULT. THE ALLEGATIONS AGAINST YOU WILL BE DEEMED ADMITTED AND AN ORDER ENFORCING THE ACTION WILL BE ENTERED BY THE BOARD."

(f) A motion to vacate a default judgment rendered by the ALJ must be filed within 10 days of the service of notice of the default judgment.

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 November 8, 2012.

TRD-201205798
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7842

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CHAPTER 520. PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENTS SCHOLARSHIP PROGRAM

22 TAC §520.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §520.4, concerning Eligible Students.

The amendment to §520.4 would place the grant recipients on notice that if they don't take the exam, they could be required to repay the amount of the scholarship. The rule permits the Executive Director to waive the requirement upon a showing of good cause.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a program that administers the intent of the Act and promotes the licensing of individuals providing accounting services to the public.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§520.4. Eligible Students.

(a) To receive funds, a student must:

(1) be enrolled on at least a half-time basis at an approved institution in Texas;

(2) maintain satisfactory academic progress in the [~~his or her~~] program of study as defined by the institution;

(3) have completed at least 120 credit hours of college work, including at least 15 hours of accounting;

(4) sign a written statement confirming the [~~his or her~~] intent to take the [~~written~~] examination conducted by or pursuant to the authority of the board for the purpose of granting a certificate of "certified public accountant" in Texas;

(5) agree to pay on demand all scholarship funds received if he does not sit for at least one part of the exam within three years of submitting the application of intent, unless the executive director grants an extension of the three-year requirement upon a showing of good cause;

(6) [~~(5)~~] confirm he or she has not yet taken the CPA examination in Texas or another jurisdiction;

(7) [~~(6)~~] maintain a cumulative grade point average, as determined by the institution, that is equal to or greater than the grade point average required by the institution for graduation;

(8) [~~(7)~~] be a resident of Texas; and

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

(b) In selecting recipients the Program Officer shall consider at a minimum the following factors relating to each applicant:

(1) the applicant's financial need, which may be based on but not limited to the cost of the applicant attending school less family contribution and any gift aid (an award may not exceed the applicant's need nor be less than the amount calculated in accordance with the formula provided institutions in the application instructions);

(2) scholastic ability and performance as measured by the student's cumulative college grade point average as determined by the institution in which the student is enrolled; and

(3) ethnic or racial minority status.

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 November 8, 2012.

TRD-201205799
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7842

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER A. CONTINUING PROFESSIONAL EDUCATION PURPOSE AND DEFINITIONS

22 TAC §523.102

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.102, concerning CPE Purpose and Definitions.

The amendment to §523.102 will clarify and update what is meant by self-study programs, define what constitutes sponsors of continuing education programs and will relocate the definition of technical and non-technical courses to the definitions section of the rules.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a better understanding of the continuing professional education program standards by the persons affected by the requirements.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.102. CPE Purpose and Definitions.

(a) Continuing Professional Education will be referred to herein as CPE.

(b) The purpose of CPE is to help ensure that licensees continue to be [~~are~~] able to serve the public in a competent manner.

(c) Licensees may participate in a variety of sponsored learning activities, such as "live [~~classroom~~] programs" or "self-study programs".

(1) "Live programs" are those educational processes that are designed to permit a participant to learn a given subject through interaction with an instructor/facilitator [~~instructor~~] and other participants either in a classroom or conference setting or by using the internet, which includes the following:

(A) Workshops, seminars, and conferences with substantial interaction by a qualified instructor/facilitator. A sponsor will issue certificates of completion at the end of the class for licensees and attendees who participated in [~~participants who attended~~] the entire program.

[~~(B) "Blended programs or interactive computer programs" include:~~]

(B) [~~(i)~~] "Group self-study" programs that are based on self-study materials presented in a group format with substantial interaction from a qualified instructor/facilitator [~~instructor~~] who is responsible for answering participants' [~~participant's~~] questions or who leads the discussion of individual topics presented in the materials.

(C) [~~(ii)~~] "Webinar" is a live online educational presentation during which participating viewers can submit questions and comments. [~~is a program that is a web cast and the participants are led by a discussion leader/facilitator that interacts with the web cast instructors. Sponsors will issue certificates of completion at the end of the class.~~]

(2) "Self-study programs" are those educational processes that are designed to permit a participant to learn a given subject by oneself using books and/or electronic media (internet and DVDs/CDs, for example) without substantial interaction with an instructor/facilitator. This type of program clearly defines learning objectives and manages the participant through the learning processes by requiring frequent response to questions that test for understanding of the material presented, providing evaluative feedback to incorrectly answered questions and correctly answered questions, and requiring the participant to pass a final exam that tests the participant's comprehension of the course materials. Refer to §523.140(e) of this chapter (relating to Program Standards). [~~provide ongoing feedback for the participant regarding the learning process without substantial interaction of an instructor/facilitator.~~]

[~~(A) This type of program clearly defines learning objectives and manages the participant through the learning process by:~~]

[~~*(i)* requiring frequent response to questions that test for understanding of the material presented: providing evaluative feedback to incorrectly answered questions; and~~]

[~~*(ii)* providing evaluative feedback to correctly answered questions.~~]

[(B) Sponsor will provide a certificate of completion upon successfully passing the final exam.]

[(C) Self-study programs include the following:]

[(i) programs that are taken on the internet individually and involve the participant answering questions that test for understanding after each section of the course and passing a final exam to earn credit for the course. A certificate of completion is immediately received once the participant successfully passes the final exam.]

[(ii) courses in which course materials are sent to a participant and after completing the course and the final exam, the participant sends the final exam to the sponsor either electronically or by mail for grading. The sponsor may send the grade either electronically or by mail to the participant.]

(d) "Contact hour" means 50 minutes of continuous participation in a program. After the first contact hour has been earned in a given learning activity, one-half CPE credit increments (equal to 25 minutes) are permitted.

(e) "Credit hour" means the actual program length, with one 50-minute period equal to one contact hour. Credit hours for:

(1) continuous conferences and conventions, when individuals segments are less than 50 minutes, should be combined and counted as one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as three contact hours; and

(2) courses at an institution of higher education using semester hour credits equals 15 CPE hours and those institutions using quarter hour credits equals 10 CPE hours, toward the requirement.

(f) "Sponsor" means an individual or organization offering programs to participants. The sponsor may or may not have developed the program materials. However, the sponsor is responsible for presenting the learning objectives, through the program materials and maintaining the documentation required by these program standards.

(g) "Technical Courses" are those courses pertaining to the profession of accounting. These courses include but are not limited to accounting, attest, tax, management advisory services, and other technical areas of benefit to a licensee and/or a licensee's employer.

(h) "Non-Technical Courses" are those courses not meeting the definition of "technical courses" that increase the licensee's ability to serve the public in a competent manner, such as but not limited to communications, ethics, behavioral science, practice management and advanced courses in foreign languages, all of which must relate and must benefit a licensee and/or a licensee's employer. Refer to §523.118 of this chapter (relating to Limitation for Non-Technical Courses).

(i) Staff meetings and other settings cannot be claimed for CPE credit if the programs do not meet program standards.

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 November 8, 2012.

TRD-201205773
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7842

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22 TAC §523.103

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

The Texas State Board of Public Accountancy (Board) proposes the repeal of §523.103, concerning Standards for CPE Program Development.

The repeal of §523.103 will transfer the definition of technical and non-technical courses to the definitions section of the rules.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the repeal will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be none.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be to facilitate the public's ability to locate the definitions.

The probable economic cost to persons required to comply with the repeal will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed repeal will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses; if the proposed repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the repeal on small businesses, offer alternative methods of achieving the purpose of the repeal; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed repeal is to be adopted, finally describe how

the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§523.103. Standards for CPE Program Development.

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 November 8, 2012.

TRD-201205774
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7842

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SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.110

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.110, concerning Establishment of Mandatory CPE Program.

The amendment to §523.110 will add additional chapters of the Board's rules, amend a rule title, and delete unnecessary rules.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.110. Establishment of Required [~~Mandatory~~] CPE Program Standards.

A licensee shall be responsible for ensuring that CPE credit hours claimed conform to the board's standards as outlined in:

(1) §523.111 regarding Required CPE Reporting;

(2) §523.112 regarding Required CPE Participation;

(3) [~~(1)~~] §523.115 regarding Credits for Instructors and Discussion Leaders;

(4) [~~(2)~~] §523.116 regarding Authors of [~~Credits for~~] Published Articles and Books;

[~~(3) §523.117 regarding Minimum Hours Required Per CPE Reporting Period as a Participant;~~]

(5) [~~(4)~~] §523.118 regarding Limitation for Non-Technical Courses;

(6) [~~(5)~~] §523.119 regarding Alternative Sources of CPE; and

(7) [~~(6)~~] §523.130 regarding Ethics Course Requirements. [~~for Licensees;~~]

[~~(7) §523.140 regarding Program Standards;~~]

[~~(8) §523.141 regarding Evaluation;~~]

[~~(9) §523.142 regarding Program Time Credit Measurement;~~]

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 November 8, 2012.

TRD-201205775
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7842

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22 TAC §523.111

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.111, concerning Mandatory CPE Reporting.

The amendment to §523.111 will add a rule reference and correct a rule citation.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.111. Required [~~Mandatory~~] CPE Reporting.

(a) To receive or retain a license, a licensee shall earn and is responsible for the accurate reporting of the required [~~report at least the minimum mandatory~~] CPE credit hours [~~required~~] for the reporting period under §523.112 of this chapter (relating to Required CPE Participation) and §523.130 of this chapter [~~title~~] (relating to [~~Mandatory CPE Attendance and~~] Ethics Course Requirements [~~for Licensees~~]).

(b) Licensees reporting CPE must document their participation and retain evidence of that documentation for the five most recent reporting periods, including: [~~A licensee must report CPE credit hours completed during the accrual period for the license to be issued.~~]

(1) sponsor name and identification number;

(2) title or description of content, or both;

(3) date(s) of completion;

(4) location; and

(5) number of credit hours.

(c) Evidence of completion is the certificate supplied by the sponsor. The board may verify CPE reported by licensees and licensees shall submit the supporting evidence to the board within a reasonable amount of time, if such data is requested.

(d) Credit hours earned from sources other than registered sponsors should be submitted on the appropriate form, "Claiming Continuing Professional Education Credits from a Non-Registered Sponsor," justifying the reason the CPE credit hours are being claimed and the benefit to the licensee or the licensee's employer.

(e) [~~(c)~~] A licensee who fails to report the minimum required [~~mandatory~~] CPE credit hours completed during the accrual period will be subject to disciplinary action under §523.114 of this chapter [~~title~~] (relating to Disciplinary Actions Relating to CPE).

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 November 8, 2012.

TRD-201205776

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7842

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22 TAC §523.112

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.112, concerning Mandatory CPE Attendance.

The amendment to §523.112 will relocate the requirement for 40 CPE hours prior to re-entry into the workforce in two locations and provide for it in one location in the rule.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to streamline the rule and make it easier to read and understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.112. Required [~~Mandatory~~] CPE Participation [~~Attendance~~].

(a) A licensee shall complete at least 120 hours of CPE in each three-year period, and a minimum of 20 hours in each one-year period. [~~CPE, except as provided by board rule shall be offered by board contracted CPE sponsors. The exception to this requirement is an initial licensee, one who has been certified or registered for less than 12 months.~~]

[~~(1) The exception to the requirement of 120 hours of CPE is an initial licensee, one who is paying the license fee for the first time.~~]

(b) CPE, except as provided by board rule, shall be offered by board-contracted CPE sponsors.

(c) CPE requirements for the issuance or renewal of a license are as follows:

(1) [~~(A)~~] Licensees who have been certified or registered for less than 12 months do [~~To be issued a license that is less than twelve months from the date of certification or registration, the licensee does~~] not have a CPE hour requirement. The first license period begins on the date of certification and ends with the last day of the licensee's birth month.

(2) [~~(B)~~] To be issued a license for the first full 12-month [~~twelve-month~~] license period, the licensee does not have a CPE accrual requirement and can report zero hours. CPE earned prior to the first twelve-month license period will not be applied toward the three-year requirement.

(3) [~~(C)~~] To be issued a license for the second full 12-month [~~twelve-month~~] period, the licensee shall [~~must~~] report a minimum of 20 CPE hours. The hours shall [~~must~~] be accrued in the 12 months preceding the second year of licensing [~~license period~~].

(4) [~~(D)~~] To be issued a license for the third full 12-month [~~twelve-month~~] license period, the licensee shall [~~must~~] report a total of at least 60 CPE hours that were accrued in the 24 months preceding the license period. At least 20 hours of the requirement shall [~~must~~] be accrued in the 12 months preceding the third year of licensing [~~license period~~].

(5) [~~(E)~~] To be issued a license for the fourth full 12-month [~~twelve-month~~] period, the licensee shall [~~must~~] report a total of at least 100 CPE hours that were accrued in the 36 months preceding the license period. At least 20 hours of the requirement shall [~~must~~] be accrued in the 12 months preceding the fourth year of licensing [~~license period~~].

(6) [~~(F)~~] To be issued a license for the fifth and subsequent license periods, the licensee shall [~~must~~] report a total of at least 120 CPE hours that were accrued in the 36 months preceding [~~proceeding~~] the license period, and at least 20 hours of the requirement shall [~~must~~] be accrued in the 12 months preceding the fifth year of licensing [~~license period~~].

(d) [~~(2)~~] A former licensee whose certificate or registration has been revoked for failure to pay the license fee and who makes applica-

tion for reinstatement shall [must] pay the required fees and penalties and must accrue the minimum CPE credit hours missed.

[(3) The board may consider granting an exemption from the CPE requirement on a case-by-case basis if:]

[(A) a licensee completes and forwards to the board a sworn affidavit indicating that the licensee will not be employed during the period for which the exemption is requested. A licensee who has been granted this exemption and who re-enters the work force shall be required to report prior to re-entering the workforce a minimum of 40 CPE hours. Such CPE hours shall be accrued from the technical area as described in §523.103 and §523.130 of this title (relating to Standards for CPE Program Development and Ethics Course Requirements for Licensees);]

[(B) a licensee completes and forwards to the board a sworn affidavit indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the licensee's immediate supervisor;]

[(i) For purposes of this section, the term "association with accounting work" shall include the following:]

[(I) working or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; accounting information systems; treasury, finance, or audit; or]

[(II) representing to the public, including an employer, that the licensee is a CPA or public accountant in connection with the sale of any services or products involving professional accounting services or professional accounting work, including such designation on a business card, letterhead, promotional brochure, advertisement, or office; or]

[(III) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management services; or]

[(IV) for purposes of making a determination as to whether the licensee fits one of the categories listed in this subclause and subclauses (I) - (III) of this clause, the questions shall be resolved in favor of including the work as an "association with accounting work."]

[(ii) A licensee who has been granted this exemption and who loses the exemption shall accrue 40 CPE hours prior to re-entering the workforce. Such CPE hours shall be earned in the technical area as described in §523.103 of this chapter (relating Standards for CPE Program Development and §523.130 of this title (relating to Standards for CPE Program Development and Ethics Course Requirements for Licensees).]

[(C) a licensee not residing in Texas, who submits a sworn statement to the board that the licensee does not serve Texas clients from out of state;]

[(D) a licensee shows reasons of health, certified by a medical doctor, that prevent compliance with the CPE requirement. A licensee must petition the board for the exemption and provide documentation that clearly establishes the period of disability and the resulting physical limitations;]

[(E) a licensee is on extended active military duty during the period for which the exemption is requested, and files a copy of orders to active military duty with the board; or]

[(F) a licensee shows reason which prevents compliance that is acceptable to the board.]

[(4) A licensee who has been granted the retired or disabled status under §515.8 of this title (relating to Retirement Status or Permanent Disability) is not required to report any CPE hours.]

[(5) A licensee who has been granted exemptions under paragraph (3)(A), (B), (C), (D), (E) and (F) of this rule and no longer qualifies for the exemption or has been granted retired or disabled status under §515.8 of this title and no longer qualifies for retired or disabled status shall be required to report a minimum of 40 CPE hours prior to re-entry into the workforce. Such CPE hours shall be earned in the technical area as described in §523.103 and §523.130 of this title (relating to Standards for CPE Program Development and Ethics Course Requirements for Licensees).]

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 November 8, 2012.

TRD-201205777
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7842

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22 TAC §523.113

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.113, concerning Denial of a License.

The amendment to §523.113 will clarify the circumstances in which the board may consider granting an exemption from the CPE requirement.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer understanding of the circumstances where an exemption from CPE would apply.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.113. Exemptions from CPE [~~Denial of a License~~].

The board shall not issue or renew a license to an individual who has not earned the required CPE credit hours unless an exemption has been granted by the board.

(1) The board may consider granting an exemption from the CPE requirement on a case-by-case basis if:

(A) a licensee completes and forwards to the board a sworn affidavit indicating that the licensee will not be employed during the period for which the exemption is requested;

(B) a licensee completes and forwards to the board a sworn affidavit indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the licensee's immediate supervisor, if applicable;

(i) For purposes of this section, the term "association with accounting work" shall include the following:

(I) working or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; accounting information systems; treasury, finance, or audit; or

(II) representing to the public, including an employer, that the licensee is a CPA or public accountant in connection with the sale of any services or products involving professional accounting services, including such designation on a business card, letterhead, promotional brochure, advertisement, or office; or

(III) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management services; or

(IV) for purposes of making a determination as to whether the licensee fits one of the categories listed in this subclause and subclauses (I) - (III) of this clause, the questions shall be resolved in favor of including the work as professional accounting services.

(ii) Prior to providing professional accounting services, a licensee who has been granted exemptions under paragraph (1)(A), (B), (C), (D), (E) and (F) of this section and the exemption is no longer applicable or has been granted retired or disabled status under §515.8 of this title (relating to Retirement Status or Permanent Disability) and no longer qualifies for retired or disabled status shall be required to report CPE hours earned in the technical area as described in §523.102 of this chapter (relating to CPE Purpose and Definitions) and §523.130 of this chapter (relating to Ethics Course Requirements). Based on the CPE hours previously reported, the licensee must report the minimum number of required CPE hours as described in this section.

(C) a licensee not residing in Texas, who submits a sworn statement to the board that the licensee does not serve Texas clients from out of state;

(D) a licensee shows reasons of health, certified by a medical doctor, that prevent compliance with the CPE requirement. A licensee must petition the board for the exemption and provide documentation that clearly establishes the period of disability and the resulting physical limitations;

(E) a licensee is on active military duty during the period for which the exemption is requested, and files a copy of orders to active military duty with the board; or

(F) a licensee shows reason which prevents compliance that is acceptable to the board.

(2) A licensee who has been granted the retired or disabled status under §515.8 of this title is not required to report any CPE hours.

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 November 8, 2012.

TRD-201205778
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7842

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22 TAC §523.114

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.114, concerning Disciplinary Actions Relating to CPE.

The amendment to §523.114 will lengthen the number of years that a licensee is required to retain evidence of continuing professional education from three to five and correct citations.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment is to assure compliance with continuing professional education requirements.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.114. Disciplinary Actions Relating to CPE.

(a) A licensee who fails to comply with the provisions of §523.130 of this chapter [~~title~~] (relating to Ethics Course Requirements [~~for Licensees~~]), §523.111 of this chapter [~~title~~] (relating to Required [~~Mandatory~~] CPE Reporting) or [~~and~~] §523.112 of this chapter [~~title~~] (relating to Required [~~Mandatory~~] CPE Participation [~~Attendance~~]) may be subject to disciplinary action under the Act, for a violation of the Rules of Professional Conduct, §501.94 of this title (relating to Mandatory Continuing Professional Education [~~CPE~~]), which requires compliance with §523.130 of this chapter [~~title (relating to Ethics Course Requirements for Licensees)~~], §523.111 of this chapter [~~title (relating to Mandatory CPE Reporting)~~], and §523.112 of this chapter [~~title (relating to Mandatory CPE Attendance)~~].

~~[(b) A licensee shall retain documents or other evidence supporting CPE credit hours claimed for the three most recent full reporting periods to the date the credit hours are reported to the board, and shall submit the supporting evidence to the board if such data is specifically requested.]~~

~~[(c) The board may, as deemed appropriate, audit CPE supplied by a licensee and request that all documentation be provided to the board within a reasonable period of time.]~~

(b) [~~(d)~~] The board may initiate [~~Evidence of falsification, fraud, or deceit in the CPE documentation may necessitate~~] disciplinary action as authorized in the Act if it finds evidence of falsification, fraud, or deceit in CPE documentation.

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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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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22 TAC §523.115

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.115, concerning Credits for Instructors and Discussion Leaders.

The amendment to §523.115 will clarify that the reporting period is a one-year reporting period.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarification of the rule reporting period.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.115. Credits for Instructors and Discussion Leaders.

(a) When an instructor or discussion leader serves at a program for which participants receive credit and at a level that increases [~~contributes to~~] the instructor's or discussion leader's professional competence, credit may be given for preparation and presentation time measured in terms of credit hours.

(b) For the first time a program is presented, an instructor [~~instructors~~] may receive up to three times the number of credit hours approved for the program.

(c) For repetitious presentations, the instructor [~~instructors~~] may receive credit only if it can be demonstrated that the subject matter involved was changed sufficiently to require significant additional study or research.

(d) The maximum credit for preparation and presentation in any one-year reporting period cannot exceed 20 hours [~~in the reporting period~~].

(e) An instructor [~~Instructors~~] cannot claim credit for teaching courses which are determined introductory level by the college or university.

(f) If claiming CPE credit under this section, 50 percent of the credit hours reported must be as a participant in a qualified CPE program in any three-year reporting period.

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

Filed with the Office of the Secretary of State on November 8, 2012.

TRD-201205780
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §523.116

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.116, concerning Authors of Published Articles and Books.

The amendment to §523.116 will reduce the number of hours from twenty to ten for which a licensee may receive continuing professional education credit for publishing his own articles and books.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to protect the public by assuring that licensees receive continuing professional education from other sources than their own self-study.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24,

2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.116. Authors of Published Articles and Books.

(a) Authors of published articles and books may claim CPE credit hours provided they increase [~~contribute to~~] the professional competence of the author. [~~licensee. Credit hours for preparation of such publications may be claimed up to 10 hours in any CPE reporting period. In exceptional circumstances, a licensee may submit a request to the board for additional credit, not to exceed a total of 20 credit hours in the reporting period. The request should be accompanied by a copy of the article(s) or book(s) and an explanation justifying the request for additional CPE hours.~~]

(b) Up to 10 credit hours in any one-year reporting period may be claimed for preparation of such publications.

(c) If claiming CPE credit under this section, 50 percent of the credit hours reported must be as a participant in a qualified CPE program in any three-year reporting period.

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

Filed with the Office of the Secretary of State on November 8, 2012.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §523.117

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

The Texas State Board of Public Accountancy (Board) proposes the repeal of §523.117, concerning Minimum Hours Required Per CPE Reporting Period as a Participant.

The repeal of §523.117 will relocate rule language to more relevant sections of Chapter 523.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the repeal will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be none.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will provide the public with an easier read and understanding of the regulations.

The probable economic cost to persons required to comply with the repeal will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed repeal will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§523.117. Minimum Hours Required Per CPE Reporting Period as a Participant.

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 November 8, 2012.

TRD-201205782
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7842

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22 TAC §523.118

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.118, concerning Limitation for Non-Technical Courses.

The amendment to §523.118 will replace the word "fifty" with "50" and add punctuation.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.118. Limitation for Non-Technical Courses.

A licensee may not claim more than 50 [~~fifty~~] percent of the total CPE credit hours required from the non-technical area in a three-year [~~three year~~] reporting period.

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

Filed with the Office of the Secretary of State on November 8, 2012.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7842

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22 TAC §523.119

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.119, concerning Alternative Sources of CPE.

The amendment to §523.119 will clarify that the maximum continuing professional education hours from alternative sources may not exceed 50 percent of the hours claimed in any three-year reporting period.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to clarify the continuing professional education standards to licensees.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.119. Alternative Sources of CPE.

[~~(a) Credit hours may be claimed from other organizations not recognized as formal CPE sponsors. Credit from membership in the committees listed can be claimed using 50 minutes per contact hour at meetings to equal one credit hour:~~]

[~~(1) Financial Accounting Standards Board (FASB);~~]

[~~(2) Governmental Accounting Standards Board (GASB);~~]

[~~(3) FASB's Emerging Issues Task Force (EITF);~~]

[~~(4) AICPA's Auditing Standards Board and Accounting Standards Executive Committee;~~]

[~~(5) Financial Executives Institute's Committee on Corporate Reporting (FEI/CCR);~~]

[~~(6) AICPA's Accounting and Review Services Committee (ARSC); and~~]

[~~(7) The AICPA's Private Companies Section on Technical Issues Committee.~~]

(a) [~~(b)~~] Credit hours earned from sources other than registered sponsors[~~, or membership on designated committees~~] should be claimed at the time the license renewal is submitted on the appropriate form, "Claiming Continuing Professional Education [~~CPE~~] Credit from a Non-Registered Sponsor," justifying the reason the CPE credit hours are being claimed.

(b) [~~(c)~~] Licensees may not claim more than 50 [~~fifty~~] percent of the total CPE [~~their~~] hours from non-registered sponsors in any three-year reporting period.

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

Filed with the Office of the Secretary of State on November 8, 2012.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §523.120

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

The Texas State Board of Public Accountancy (Board) proposes the repeal of §523.120, concerning Standards for CPE Reporting.

The repeal of §523.120 will relocate rule language to more relevant sections of Chapter 523.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the repeal will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be none.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be better assurance of an adequately educated licensee.

The probable economic cost to persons required to comply with the repeal will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed repeal will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§523.120. Standards for CPE Reporting.

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 November 8, 2012.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7842

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22 TAC §523.121

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.121, concerning CPE for Non-CPA Owners.

The amendment to §523.121 will be a clarification of the requirements of continuing professional education for non-licensee owners of CPA firms.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater protection to the public by a non-CPA owner having a better understanding of professional standards.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.121. CPE for Non-CPA Owners.

(a) This section applies only to non-CPA owners who are residents of this state.

(b) [~~(a)~~] Each non-CPA owner of a licensed CPA firm shall complete [~~an average of~~] 120 hours of CPE in each three-year period with [~~and have~~] a minimum of 20 hours in each one-year period [~~per year~~]. These hours shall be reported on the required board forms. The failure of any non-CPA owner of a licensed CPA firm to complete and report such CPE shall be grounds for revoking the firm's license on the grounds that the owner is not qualified.

(c) [~~(b)~~] The board will accept [~~any~~] CPE that is offered or accepted by organizations or regulatory bodies issuing [~~any~~] professional designation used by the non-CPA owner. All other CPE must be provided by board-accepted CPE sponsors or be otherwise approved by the board, provided however, that the board reserves the right to reject any claimed CPE.

(d) [~~(c)~~] Each non-CPA owner, prior to, or within 60 days of, acquiring any ownership interest in a licensed CPA firm, shall complete an exam on the board's Rules of Professional Conduct [~~a board-approved rules~~] and complete a board-approved ethics course in accordance with §523.130 of this chapter [~~title~~] (relating to Ethics Course Requirements [~~for Licensees~~]).

(e) [~~(d)~~] Each non-CPA owner must take a four hour ethics course that has been approved by the board pursuant to §523.131 of this chapter [~~title~~] (relating to Board Approval of Ethics Course Content) every two years. The non-CPA owner [~~Non-CPA owners~~] shall report completion of the course on the required board forms [~~annual firm renewal notice~~] at least every second year.

(f) [~~(e)~~] The board has the right to verify [~~audit~~] any CPE hours reported [~~claimed~~]. A firm shall provide the board all information required for this verification [~~audit~~] in accordance with §501.93 of this title (relating to Responses), and the firm shall be responsible for its non-CPA owner's cooperation with the verification [~~audit~~].

~~[(f) Subsections (a) through (e) of this section apply only to non-CPA owners who are residents of this state.]~~

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 November 8, 2012.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7842

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SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §523.130

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.130, concerning Ethics Course Requirements for Licensees.

The amendment to §523.130 will correctly revise the citations in this rule, revising "title" to "chapter", and specify that compliance with this rule permits licensees to claim an exemption from the continuing professional education requirements.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be better understanding of the rule for licensees.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.130. Ethics Course Requirements [~~for Licensees~~].

(a) An applicant [~~A candidate applying~~] for certification or registration must complete a board-approved four hour ethics course designed to thoroughly familiarize the applicant with the board's Rules of Professional Conduct no more than two years [~~six months~~] prior to submission of the application. Proof of completion of this course must be submitted with the application.

(b) A licensee must take a four hour ethics course that has been approved by the board pursuant to §523.131 of this chapter [~~title~~] (relating to Board Approval of Ethics Course Content) every two years. The licensee [~~Licensees~~] shall report completion of the course on the annual license renewal notice at least every second year.

(c) A licensee granted retired, permanent disability, or other exempt status is not required to complete the ethics course during the licensee's exempt status. If [~~When~~] the exempt status is no longer applicable, the licensee must complete an ethics course approved by the board and report it on the annual license renewal notice if due.

(d) A licensee must take the ethics course in a [~~live classroom program or in a self-study interactive~~] program as defined in §523.102 of this chapter [~~title~~] (relating to CPE Purpose and Definitions).

(e) A person who does not reside in the state of Texas, who has no clients within this state, and who is current with the ethics course requirements of his state of residence is not required to take the ethics course mandated [~~by this section~~]. A person meeting these requirements may claim an exemption pursuant to §523.113 of this chapter (relating to Exemptions from CPE).

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 November 8, 2012.

TRD-201205787
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7842

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22 TAC §523.131

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.131, concerning Board Approval of Ethics Course Content.

The amendment to §523.131 will clarify that the ethics courses are required to provide a minimum amount of time for each subject matter, be comprised of one 4-hour single session including ten-minute breaks each hour, and require updated course materials and course evaluations be provided to the Board when requested.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will clarify the rule's intent of required course content and course presentation.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.131. Board Approval of Ethics Course Content.

(a) The content of an ethics course designed to satisfy the four hour ethics CPE requirements of §523.130 of this chapter [~~title~~] (relating to Ethics Course Requirements [~~for Licensees~~]) must be submitted to [~~and be approved by~~] the CPE committee of the board for initial approval and upon request thereafter. The primary objectives of the ethics course [~~Ethics Course~~] shall be to:

(1) encourage the licensee to become educated in the ethics of the profession;

(2) convey the intent of the board's Rules of Professional Conduct in the licensee's performance of professional accounting ser-

vices [~~or professional accounting work~~], and not mere technical compliance;

(3) apply ethical judgment in interpreting the rules and provide for a clear understanding of [~~determining~~] the public interest. The public interest shall [~~should~~] be placed ahead of self-interest, even if it means a loss of job or client;

(4) emphasize the ethical standards of the profession, as described in this section; and

(5) review and discuss the board's Rules of Professional Conduct and their implications for persons in a variety of practices, including at least one example from subparagraph (A) of this paragraph and at least one example from either subparagraph (B) or (C) of this paragraph:

(A) a licensee engaged in the client practice of public accountancy who performs attest and non-attest services, as defined in §501.52 of this title (relating to Definitions); and

(B) a licensee employed in industry who provides internal accounting and auditing services; or

(C) a licensee employed in education or in government accounting or auditing.

(b) To meet the objectives of subsection (a) of this section, a course must be four hours in length and its [~~include~~] components should be approximately [~~that cover~~]:

(1) 25% on ethical principles and values;

(2) 25% on ethical reasoning and dilemmas;

(3) 15% on the board's Rules of Professional Conduct with special focus on recent changes in those rules; and

(4) 35% on [~~sufficient~~] case studies that require application of ethical principles, values, and ethical reasoning within the context of the board's Rules of Professional Conduct.

(c) Course content shall be approved only after demonstrating, either in a live instructor format, [~~or~~] a blended program format, or interactive (computer based) format, as defined in §523.102(c)(1) of this chapter [~~title~~] (relating to CPE Purpose and Definitions), that the course contains the underlying intent established in the following criteria:

(1) the course shall be designed to teach CPAs to achieve and maintain the highest standards of ethical conduct through ethical reasoning and the core values of the profession: integrity, objectivity, and independence, as ethical principles in addition to rules of conduct;

(2) the course shall address ethical considerations and the application of the board's Rules of Professional Conduct to all aspects of the professional accounting work whether performed by CPAs in client practice or CPAs who are not in client practice; and

(3) the course shall convey the spirit and intent of the board's Rules of Professional Conduct in the licensee's performance of accounting services [~~or professional accounting work~~], and not mere technical compliance.

(d) Ethics courses must be taught in one single four-hour [~~a single~~] session, including one 10-minute break each hour or its equivalent.

(e) Ethics courses [~~Courses~~] may be reevaluated every three years or as required by the CPE committee [~~board~~]. Updated versions of the course and any other course materials, such as course evaluations, shall be provided when requested by the committee for the course to be continued as an approved course.

(f) At the conclusion of each course, the sponsor shall administer a test to determine whether the program participants have obtained a basic understanding of the course content, including the need for a high level of ethical standards in the accounting profession.

(g) A sponsor of an ethics course approved by the board pursuant to this section shall comply with the board's rules concerning sponsors of CPE and shall provide its advertising materials to the board's CPE committee for approval. Such advertisements shall:

(1) avoid commercial exploitation;

(2) identify the primary focus of the course; and

(3) be professionally presented and consistent with the intent of §501.82 of this title (relating to Advertising).

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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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §523.132

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.132, concerning Board Contracted Ethics Instructors.

The amendment to §523.132 will revise the rule to use pre-defined acronyms and allow the Board to approve course education from sources other than a university, college or community college as credit for the ethics requirement.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to provide greater flexibility to the Board in recognizing acceptable ethics courses.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses be-

cause the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.132. Board Contracted Ethics Instructors.

(a) The board may contract with any instructor wishing to offer an ethics course approved by the board pursuant to §523.131 of this chapter [~~title~~] (relating to Board Approval of Ethics Course Content) who can demonstrate that:

(1) the instructor is a CPA [~~certified public accountant~~] licensed in Texas or that the instructor is team teaching with a CPA [~~certified public accountant~~] licensed in Texas and has completed the board's ethics training program as required by the board;

(2) the instructor has never been disciplined for a violation of the board's Rules of Professional Conduct unless waived by the board; and

(3) the instructor is qualified to teach ethical reasoning because he has:

(A) experience in the study and teaching of ethical reasoning; and

(B) formal training in organizational or ethical behavior instruction.

(b) An instructor demonstrates that he is qualified to teach ethical reasoning upon evidence [~~proof~~] that he has:

(1) at the time of his application obtained sufficient education in ethics substantially equivalent to a minimum of 6 hours of credit from a university, college or community college [~~an accredited University, College or Community College~~], of which at least three hours must be in organizational ethics or other education as approved by the board;

(2) teaching experience that is substantially equivalent to two or more full time semesters teaching experience at a university, college or community college, or other experience as approved by the board [~~an accredited University, College or Community College~~];

(3) spent at least 10 [~~ten~~] years performing accountancy related activities as a licensed CPA;

(4) no record of discipline for violation of the rules of professional conduct of the AICPA [~~American Institute of Certified Public Accountants~~], the TSCPA [~~Texas Society of Certified Public Accountants~~] or other national or state accountancy organization recognized by the board; and

(5) goals and interests consistent with the board's purpose of protecting the public interest pursuant to the provisions of the Act.

(c) An instructor must renew the contract with the board every three years.

(d) The board may refuse to contract, refuse to renew a contract or cancel the contract of any instructor who has engaged in conduct rendering that instructor unsuitable for teaching ethics.

(e) An instructor must submit a current resume with the contract.

(f) Interpretive comments: To have goals and interests consistent with the board's purpose of protecting the public interest pursuant to the provisions of the [~~Public Accountancy~~] Act, an instructor must refrain from using the instruction of an ethics course as a marketing tool for other products and services offered by the instructor. An instructor must be free from conflicts of interest with the board in both fact and appearance. Representation of a respondent or a complainant in a disciplinary proceeding pending before the board creates the appearance of a conflict of interest.

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 November 8, 2012.

TRD-201205789
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §523.140

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.140, concerning Program Standards.

The amendment to §523.140 will require that continuing professional education courses provide course content objectives for participants in advance of the course, require documentation in the final program to support the credit hours, require self-study courses to include questions at the conclusion of each section and will remove the requirement for the course sponsor to have the course materials reviewed by a third party.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to benefit the participant by having more advance information prior to deciding to take a course, provide the public protection by assuring compliance with the self-study provisions for continuing professional education and eliminate unnecessary review of the course materials by the provider of the course.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.140. Program Standards.

(a) Participants should be informed in advance of course content objectives, prerequisites, and recommended credit hours so potential participants can determine whether they are qualified to participate in and benefit from the program. If no prerequisite is necessary, a statement to this effect must be made.

(b) The program developer must organize the program around the stated learning objectives and must retain a copy of the final program in accordance with §523.143(b) of this chapter [~~title~~] (relating to Sponsor's Record). The final program must contain sufficient documentation to support the number of CPE credit hours granted. The stated learning objectives should clearly communicate the specific concepts and/or outcomes [~~and skills~~] of the program. The course materials must be periodically reviewed to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter. The program developer should provide the instructor with separate materials that emphasize sections of the course that need reinforcement, if appropriate.

(c) Instructors must be qualified both with respect to program content and teaching methods used. Sponsors shall [~~should~~] evaluate the performance of instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors.

[~~(d) Course material should be reviewed by a qualified party other than the preparer(s) to ensure compliance with the provisions of these sections and with high standards of content and instructional design. In case of short or once only programs, more reliance may be placed on the competence of the presenter.~~]

(d) [~~(e)~~] All programs must provide for some means to evaluate both the competence of the instructor and the course material. Refer to §523.141 of this chapter [~~title~~] (relating to Evaluation).

(e) [~~(f)~~] Self-study programs must conform to the requirements outlined in §523.102(c)(2) of this chapter [~~title~~] (relating to CPE Purpose and Definitions) and shall include at least five questions after each learning objective (section/chapter). The final exam shall have at least five questions per hour of CPE credit granted. No more than 25% of final exam questions may be "true/false" in nature.

(f) [~~(g)~~] Sponsors are responsible for ensuring the participants register their attendance during the program. Sponsors are [~~The sponsor is~~] responsible for assigning the appropriate number of credit hours for participants, including reduced hours for those participants who arrive late or leave early. Refer to §523.142 of this chapter [~~title~~] (relating to Program Time Credit Measurement for Sponsors).

(g) [~~(h)~~] Sponsors must comply with all CPE rules including §523.143 of this chapter [~~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 November 8, 2012.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §523.141

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.141, concerning Evaluation.

The amendment to §523.141 will replace the word "should" with the word "shall" and the phrase "some means" with the word "process."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that is easier to read and understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.141. Evaluation.

(a) All programs shall [~~should~~] include a process [~~some means~~] for evaluating quality by both participants and instructors to determine whether:

(1) objectives have been met;

(2) prerequisites were necessary or desirable;

(3) facilities were satisfactory;

(4) the instructor(s) [~~instructor~~] was effective; and

(5) the program content was timely and effective.

(b) Evaluations shall [~~should~~] consist of evaluation forms or questionnaires upon completion of the program.

(c) Instructors shall [~~should~~] be informed of their performance, and sponsors should systematically review the evaluation process to ensure its effectiveness.

(d) Sponsors are responsible for collecting evaluation forms from CPA participants.

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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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §523.142

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.142, concerning Program Time Credit Measurement.

The amendment to §523.142 will establish standards for self-study programs.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to assure the competency and integrity of self-study programs.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.142. Program Time Credit Measurement for Sponsors.

(a) All programs shall [~~should~~] be measured in terms of 50-minute contact hours. A contact hour is 50 minutes of continuous participation in a program. One-half CPE credit increments (equal to 25 minutes) are permitted after the first contact hour has been earned in a given learning activity.

(b) For continuous conferences and conventions, when individual segments are less than 50 minutes, the sum of the segments shall [~~should~~] be considered one total program. For example, five 30-minute presentations would equal 150 minutes and shall [~~should~~] be counted as three contact hours.

(c) For university or college courses, each semester hour credit shall [~~should~~] equal 15 CPE hours toward the requirement. A quarter hour credit shall [~~should~~] equal 10 CPE hours.

(d) Sponsors are responsible for assigning the appropriate number of CPE credits earned. [~~Self-study programs should be pre-tested to determine average completion time.~~]

(e) Self-study programs shall be pre-tested to determine average completion time. A minimum of three pre-testers must be used to determine the CPE credit hours for the course.

(f) The total CPE credit hours for a continuous program cannot exceed the actual time spent in the program.

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

Filed with the Office of the Secretary of State on November 8, 2012.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §523.143

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.143, concerning Sponsor's Record.

The amendment to §523.143 will require continuing professional education program sponsors to retain records of their pre-test data for self-study courses and retain all final exams completed by participants for self-study courses. The amendment also requires that the documentation be retained for at least five years.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to allow the Board to verify the retention requirements of the Board for these records.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill,

General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.143. Sponsor's Record.

(a) In order to support the reports required of participants, the sponsor of group or self-study programs shall [~~must~~] retain the following records:

(1) record of participation, e.g., sign-in sheet reflecting the credit hours earned by each participant including those who arrive late or leave early;

(2) course program including recommended credit hours as required by §523.140(b) of this chapter [~~title~~] (relating to Program Standards);

(3) documentation as required by §523.140 [~~§523.140(a)~~] of this chapter and: [~~title including all promotional materials;~~]

(A) all promotional materials;

(B) date(s); and

(C) location.

[~~(4) date(s);~~]

[~~(5) location;~~]

(4) [~~(6)~~] instructor(s), including resume or biography; [~~and~~]

(5) [~~(7)~~] evaluation of program as directed in §523.141(b) of this chapter [~~title~~] (relating to Evaluation);[~~.~~]

(6) pre-test data for self-study courses; and

(7) all final exams completed by participants for self-study courses.

(b) Documentation shall [~~must~~] be retained for five [~~three~~] years from the date the program is completed.

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 November 8, 2012.

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J. Randel (Jerry) Hill
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22 TAC §523.144

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.144, concerning Board Registered CPE Sponsors.

The amendment to §523.144 will replace the term "title" with "chapter", revise a rule title and correct terms that should be lowercase.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board

may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.144. Board Registered CPE Sponsors.

(a) The board may enter into an agreement with any sponsor of CPE programs to become a board registered CPE sponsor where the sponsor, in the opinion of the board, demonstrates that it will comply with its obligations to the board and that its programs will conform to the board's standards as outlined in:

(1) §523.115 of this chapter [~~title~~] (relating to Credits for Instructors and Discussion Leaders);

(2) §523.130 of this chapter [~~title~~] (relating to Ethics Course Requirements [~~for Licensees~~]), (if applicable);

(3) §523.140 of this chapter [~~title~~] (relating to Program Standards);

(4) §523.141 of this chapter [~~title~~] (relating to Evaluation); and

(5) §523.142 of this chapter [~~title~~] (relating to Program Time Credit Measurement for Sponsors).

(b) The board will also require that each organization applying to become a board registered CPE sponsor agree that in the conduct of its business it will:

(1) Not commit fraud, deceit or engage in fiscal dishonesty of any kind;

(2) Not misrepresent facts or make false or misleading statements;

(3) Not make false statements to the board or to the board's agents; and

(4) Comply with the laws of the United States and the State of Texas.

(c) Each organization applying to become a board registered CPE sponsor must submit an application on registration forms provided by the board. The application must be complete in all respects and must be accompanied with payment of a non-refundable registration fee unless the sponsor is exempt from paying the fee in accordance with this rule. Sponsors that offer regularly scheduled course titles that are at least one hour and up to four hours in length may accumulate these course titles into an eight-hour course block when determining fees. A maximum of 24 hours may be accumulated into three eight-hour course blocks. Refer to interpretative comment in subsection (j) of this section for explanation. The registration fee is based on the number of course titles offered and is identified in the following chart:
Figure: 22 TAC §523.144(c) (No change.)

(d) To qualify for an exemption from the annual registration fee a sponsor must be:

(1) a state, federal or other governmental agency that provides CPE for its employees and others at no charge;

(2) a sponsor registered and in good standing with NASBA's National Registry of CPE Sponsors;

(3) an institution of higher education whose courses are accepted for transfer credit by the reporting institution in the State of Texas. Other than courses acceptable for transfer credit, continuing education does not qualify for the exemption whether offered through an institute of higher education or through an educational foundation operating within such an institution; or

(4) subject to the board's [~~Board's sole~~] discretion, sponsors' [~~a Sponsor's~~] courses that are subject to review by another entity may apply for an exemption from fees.

(e) Sponsors that are exempt from paying the registration fee shall [~~must~~] annually register with the board.

(f) The board will not prorate the registration payment for an organization for less than one year. Upon renewal in the second and succeeding years, the registration amount may be increased to cover the costs of review of sponsors and individual courses.

(g) Board staff will review each application and notify the sponsor of its acceptance or rejection. Accepted sponsors will be assigned a sponsor number and can represent that they are a board registered CPE sponsor. An acceptance in any given year shall not bind the board to accept a sponsor in any future year.

(h) After the registration has been accepted, the board, in its sole and exclusive discretion, may determine that a registered sponsor is not in compliance with the registration requirements, CPE standards or applicable board rules. The board will provide the registered sponsor reasonable notice of [~~it may make~~] such a determination and shall provide the registered sponsor a reasonable opportunity to become compliant [~~respond to the board~~]. If the board determines the sponsor is not in compliance, [~~then~~] the board may request that the sponsor make changes [~~to come into compliance~~] or the board may terminate the sponsor's registration. A sponsor that has had its registration terminated or has voluntarily surrendered its registration may apply for reinstatement after the first anniversary of the date of termination. The registration fee shall not be prorated or refunded if the registration is terminated.

(i) A sponsor that requests reinstatement may do so by submitting a completed application and paying the fee provided for in subsection (c) of this section. The application for reinstatement must be accompanied with a list of the course(s) proposed to be offered. From that list the board will select one or more courses that must successfully pass the review pursuant to §523.147 of this chapter [~~title~~] (relating to Sponsor Review Program), before any course can be offered.

(j) A CPE sponsor registration is [~~registrations are~~] renewable annually by submitting a renewal application and paying the registration fee unless stated [~~exempt from the fee~~] in subsection [~~paragraph~~] (d) [~~above~~] of this section.

(k) Interpretive Comment: In applying the fee structure to courses, it is deemed that small practice groups and sponsors that provide lectures and seminars on a regular basis are [~~would be~~] allowed to accumulate course titles that are at least one hour and up to four hours in length into one eight-hour course block. The maximum number of groupings of courses is [~~would be~~] limited to three eight-hour course blocks of 24 hours of qualified courses.

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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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §523.145

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.145, concerning Obligations of the Sponsor.

The amendment to §523.145 will replace the term "title" with "chapter" and put sponsors on notice that they cannot harass or annoy persons in their marketing efforts.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to correct the citations contained in the rule and eliminate harassing marketing of courses.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.145. Obligations of the Sponsor.

(a) Sponsors shall [~~must~~] comply with the program standards as stated in §523.140 of this chapter [~~title~~] (relating to Program Standards).

(b) In consideration for registering as a CPE sponsor each organization shall certify in writing, to the following:

(1) "We understand that after acceptance of the application or reapplication for a registration by the board we may advise prospective attendees of the program sponsor registration, our sponsor number, and the number of credit hours recommended. We further agree that if we notify licensees of this registration we shall do so by use of the following language, 'We are registered with the Texas State Board of Public Accountancy as a CPE sponsor. This registration does not constitute an endorsement by the board as to the quality of our CPE program.'"

(2) "We understand that our advertising shall not be false or misleading, nor will our conduct in an effort to promote our services be coercive, overreaching, vexatious or harassing. We understand it is a violation of these rules for us to persist in contacting a licensee when the licensee has made known to us, or we should have known, the licensee's desire not to be contacted by us or our representative."

(3) "We agree that parties designated by the board may inspect our facilities, examine our records, attend our courses or seminars at no charge, and review our program to determine compliance with the sponsor registration requirements, CPE standards and applicable board rules."

(4) "We understand and agree that if we fail to comply with the registration requirements or fail to meet acceptable standards in our programs, the sponsor registration may be terminated at any time by the board, the sponsor registration or renewal application may be denied, and notice of such termination or denial may be provided to licensees by the board."

(c) Every board registered CPE sponsor shall cooperate fully with the board's sponsor review program. At least every three years a sponsor shall [~~will~~] undergo a sponsor review. This cooperation shall include, but not be limited to providing information, records and access to programs and instructors as requested. Failure to cooperate with the program shall be grounds for terminating the registration.

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 November 8, 2012.

TRD-201205795
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7842

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22 TAC §523.146

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.146, concerning Registry of NASBA CPE Sponsors.

The amendment to §523.146 will replace the word "must" with the word "shall."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that is easier to read and understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.146. Registry of NASBA CPE Sponsors.

(a) The board shall accept courses offered by sponsors shown as being in good standing on the NASBA's National Registry of CPE Sponsors; however, organizations that wish to offer CPE courses to Texas CPAs are not required to register with NASBA.

(b) Sponsors registered with NASBA's National Registry of CPE Sponsors ("NASBA CPE sponsors") shall [~~must~~] annually register with the board. NASBA CPE Sponsors are exempt from the board's registration fee but may be subject to a review by the board.

(c) NASBA CPE sponsors registered with the board shall:

(1) comply with all board standards for CPE sponsors; and

(2) cooperate with the board's sponsor review program.

(d) The board may revoke the registration of any NASBA CPE sponsor registered under this section for failure to comply with the registration requirements, CPE standards or applicable board rules.

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 November 8, 2012.

TRD-201205796
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7842

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22 TAC §523.147

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.147, concerning Sponsor Review Program.

The amendment to §523.147 will correct terms that should be lowercase, replace the term "title" with "chapter" and delete an unnecessary rule reference.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 24, 2012. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.147. Sponsor Review Program.

(a) A sponsor review program is [~~hereby~~] established for the purpose of monitoring the compliance by board registered CPE sponsors and the courses they offer with the registration requirements, CPE standards and/or [~~or~~] applicable board rules. The program shall emphasize high quality education and compliance with professional standards. In the event a sponsor does not comply with the registration requirements, CPE standards, or applicable board rules, the board shall take appropriate action.

(b) The presiding officer shall [~~Presiding Officer may~~] appoint three members who shall [~~may~~] be either board members or advisory members to the Sponsor Review Program Committee (SRPC). The SRPC's duties are to:

(1) monitor the sponsor review program to provide assurance to the CPE committee [~~Committee~~] that the CPE sponsors are being reviewed and that the reviews are conducted and reported in accordance with established CPE program standards;

(2) serve as mediators between the reviewers and sponsors whose courses are being reviewed; and

(3) report to the CPE committee [~~Committee~~] as requested and make recommendations as appropriate.

(c) The board shall contract with qualified persons selected by the CPE committee [~~Committee~~] to review the courses of sponsors ("reviewers"). The board will compensate reviewers from revenue received from sponsors' registration fees.

(1) If the reviewer is a CPA, the reviewer must be in good standing with the licensing board.

(2) A reviewer must recuse himself from service if the reviewer has an interest in the sponsoring organization under review or if the reviewer believes he cannot be impartial or objective.

(3) A reviewer may not concurrently serve as a member of the board or one of its committees.

(d) The reviewers shall:

(1) assess board-registered sponsors of CPE to provide reasonable assurance that quality CPE is being offered in accordance with registration requirement, CPE standards, or applicable board rules;

(2) review the policies and procedures of board registered CPE sponsors as to their conformity with the rules;

(3) when necessary, prescribe actions designed to assure correction of the deficiencies in the program [~~curriculum~~] or CPE;

(4) report to the SRPC as required: [~~;~~]

(A) problems experienced with sponsor compliance; and

(B) problems experienced in the implementation of the review program.

[~~(5) communicate to the SRPC on a recurring basis.~~]

[~~(A) problems experienced with sponsor compliance; and~~]

[~~(B) problems experienced in the implementation of the review program.~~]

(e) The procedures used by the reviewers [~~Reviewers~~] in monitoring of sponsors of CPE may include, but not be limited to:

(1) random visits of sponsors as deemed appropriate, and review of course materials;

(2) meetings with the sponsor;

(3) reviewing educational materials and record keeping documents;

(4) reviewing the sponsor's educational philosophy;

(5) reviewing, on the basis of a random selection, the course evaluations from licensees to determine whether the materials have received adverse comments;

(6) expanding the review of records if significant deficiencies, problems, or inconsistencies are encountered during the review of the materials; and

(7) determining that courses offered by board-registered CPE sponsors comply with all applicable board [~~Board~~] rules including §523.102 of this chapter [~~title~~] (relating to CPE Purpose and Definitions)[~~, §523.103 of this title (relating to Standards for CPE Program Development),~~] and this subchapter and provide that:

(A) educational content meets the course objectives;

(B) course material is up-to-date and relevant; and

(C) adequate documentation [~~record keeping~~] procedures are in place;

(8) other procedures as deemed necessary by the board so that the CPE sponsor is in compliance with the registration requirements, CPE standards and applicable board rules.

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 November 8, 2012.

TRD-201205797
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 305-7842

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 533. PRACTICE AND PROCEDURE

22 TAC §533.3

The Texas Real Estate Commission (TREC) proposes an amendment to §533.3, concerning Filing and Notice. The amendment changes the address to TREC's current address and removes the limitation on the number of pages that may be sent to the commission via facsimile.

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

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the agency's mailing address.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register.*

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

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

§533.3. Filing and Notice.

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

(d) The original of all pleadings and other documents requesting action or relief in a contested case, shall be filed with SOAH once it acquires jurisdiction. Pleadings, other documents, and service to SOAH shall be directed to: Docketing Division, State Office of Administrative Hearings, 300 West 15th Street, Room 504, P.O. Box 13025, Austin, Texas 78711-3025. The time and date of filing shall be determined by the file stamp affixed by SOAH. Unless otherwise ordered by the judge, only the original and no additional copies of any pleading or document shall be filed. Unless otherwise provided by law, after a proposal for decision has been issued, originals of documents requesting relief, such as exceptions to the proposal for decision or requests to reopen the hearing, shall be filed with the commission's administrator and/or commission as well as the commission's Standards and Enforcement Services Division, P.O. Box 12188, Austin, Texas 78711; [~~1101 Camino La Costa, Austin, Texas;~~] or by facsimile at (512) 936-3809 [~~(512) 465-3962 if the documents contain 20 or fewer pages including exhibits~~]. Filings may be made until 5:00 p.m. on business days. Copies shall be filed with SOAH.

(e) - (f) (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 November 9, 2012.

TRD-201205809
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 936-3092

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CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER A. DEFINITIONS

22 TAC §535.1

The Texas Real Estate Commission (TREC) proposes an amendment to §535.1, concerning Definitions. The amendment changes the definition of the acronym "SAE" from "Salesperson Annual Education" to "Salesperson Apprentice Education".

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the proposed amendment is in effect there

will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated significant impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendment.

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be consistency between sections of Chapter 535.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register.*

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

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

§535.1. Definitions.

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

(1) - (12) (No change.)

(13) SAE--Salesperson Apprentice [~~Annual~~] Education required under the Act.

(14) - (16) (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 November 9, 2012.

TRD-201205810
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 936-3092

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SUBCHAPTER F. PRE-LICENSE EDUCATION AND EXAMINATION

22 TAC §535.64

The Texas Real Estate Commission (TREC) proposes an amendment to §535.64, concerning Obtaining Approval to Offer a Course. The amendment extends the effective date for expiration of existing courses approved prior to the effective date of the previous revision to December 31, 2014 because the curriculum for such courses has not yet been reviewed by the Education Standards Advisory Committee.

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

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be a more thorough review of existing courses before they expire.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register.*

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

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

§535.64. Obtaining Approval to Offer a Course.

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

(f) A course approval expires four years from the date of approval. A course that has been approved by the commission may be offered by the original applicant until the expiration date, except that courses approved prior to January 1, 2011 [~~the effective date of this section~~] expire December 31, 2014 [~~two years after the effective date~~]. If any school other than the original applicant obtains approval from the commission to offer the same course, the expiration date remains unchanged.

(g) (No change.)

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

Filed with the Office of the Secretary of State on November 9, 2012.

TRD-201205811
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 936-3092

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.223

The Texas Real Estate Commission (TREC) proposes amendments to §535.223, concerning Standard Inspection Report Form. The amendments are proposed to track revisions to the

inspector standards of practice as proposed under a separate submission. The amendments also clarify how the form is to be used by an inspector and in what ways an inspector is authorized to modify the form. The amendments provide an additional exemption for inspectors conducting inspections on single component systems, which are defined by the rule. The amendments adopt by reference a new Property Inspection Form (REI 7-3) and removes the requirements for the two current forms, REI 7A-1 and REI 7-2.

The proposed amendments have been recommended by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC, to correspond to proposed revisions to the inspector standards of practice that are proposed elsewhere in this issue of the *Texas Register.*

Kerri T. Galvin, Deputy General Counsel, has determined that for the first five-year period the amendments are in effect there will be no significant fiscal implications for the state or for units of local government as a result of enforcing or administering the amended section. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the amended section. There may be a small cost to some licensees who may have to purchase upgrades to inspection report software, but this minimal cost is outweighed by the benefit to the public.

Ms. Galvin also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended section will be increased clarity for inspectors and consumers alike regarding the use of the standard inspection report form.

Comments on the proposal may be submitted to Kerri T. Galvin, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes TREC to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.223. Standard Inspection Report Form.

The Texas Real Estate Commission adopts by reference Property Inspection Report Form REI 7-3 [~~REI 7A-1~~], approved by the Commission [~~in 2008, and Property Inspection Report Form REI 7-2, approved by the Commission in 2009,~~] for use in reporting inspection results. This document is [~~These documents are~~] published by and available from the Texas Real Estate Commission website: www.trec.texas.gov, or by writing to the Commission at Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) Except as provided by this section, inspections performed for a prospective buyer or prospective seller of substantially complete one-to-four family residential property shall be reported on Form REI 7-3 [~~Form REI 7A-1 or Form REI 7-2~~] adopted by the Commission ("the standard form").

(2) (No change.)

(3) An inspector may make the following changes to the standard form:

(A) [~~the inspector may~~] delete the line for name and[~~,~~] license number, [~~and signature~~] of the sponsoring inspector, if the inspection was performed solely by a professional inspector;

(B) [~~the inspector may~~] change the typeface;[~~,~~] provided that they [~~fonts~~] are no smaller than a 10 point font [~~those used in the printed version of the standard form~~];

(C) change the color of the typeface and checkboxes;

(D) [~~(C)~~] [~~the inspector may~~] use legal sized (8-1/2" by 14") paper;

(E) [~~(D)~~] [~~the inspector may~~] add a cover page to the report form;

(F) [~~(E)~~] [~~the inspector may~~] add footers to each page of the report except the first page and may add headers to each page of the report;

(G) [~~(F)~~] [~~the inspector may~~] place the property identification and page number at either the top or bottom of the page;

(H) [~~(G)~~] [~~the inspector may~~] add subheadings under items, provided that the numbering of the standard items remains consistent with the standard form;

(I) [~~(H)~~] [~~the inspector may~~] list other items in the corresponding [~~appropriate~~] section of the report form and additional captions, letters, and check boxes for those items;

(J) [~~(I)~~] [~~the inspector may~~] delete inapplicable subsections of Section VI., Optional Systems, and re-letter any remaining subsections;

(K) [~~(J)~~] [~~the inspector may~~] delete Subsection L., Other, of Section I., Structural Systems; Subsection E., Other of Section IV, Plumbing System; and Subsection I., Other of Section V., Appliances;

(L) [~~(K)~~] [~~the inspector may~~] allocate such space in the "Additional Information Provided by the Inspector" section and in each of the spaces provided for comments for each inspected item as the inspector deems necessary, [~~or may~~] attach additional pages of comments to the report, or both; and

(M) [~~(L)~~] attach additional pages to the form if:

(i) it is necessary to report the inspection of a [~~part,~~] component, or system not contained in the standard form;[~~,~~] or

(ii) the space provided on the form is inadequate for a complete reporting of the inspection.[~~, the inspector may attach additional pages to the form. When providing comments or additional pages to report on items listed on a form, the inspector shall arrange the comments or additional pages to follow the sequence of the items listed in the form adopted by the Commission.~~]

(4) (No change.)

(5) The inspector shall indicate, by checking the appropriate boxes on the form, whether each item was inspected, not inspected, not present, [~~and/~~]or deficient and [~~shall~~] explain the findings in the corresponding section in the body of [~~appropriate spaee on~~] the report form.

(6) This section does not apply to the following:

(A) re-inspections of a property performed for the same client; [~~or~~]

(B) (No change.)

(C) inspections for which federal or state law requires use of a different report; [~~or~~]

(D) quality control construction inspections of new homes performed for builders, including phased construction inspections, inspections performed solely to determine compliance with building codes, warranty or underwriting requirements, or inspections required by a municipality and the builder or other entity requires use of a different report, and the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a builder or other entity in accordance with the builder's requirements. The report is not intended as a substitute for an inspection of the property by an inspector of the buyer's choice. Standard inspections performed by a Texas Real Estate Commission licensee and reported on Texas Real Estate Commission promulgated report forms may contain additional information a buyer should consider in making a decision to purchase." If a report form required for use by the builder or builder's employee does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector;[.]

(E) an inspection of a building or addition that is not substantially complete; or

(F) inspections of a single system or component as outlined in clause (ii) of this subparagraph, provided that the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a buyer or seller in accordance with the client's requirements. The report addresses a single system or component and is not intended as a substitute for a complete standard inspection of the property. Standard inspections performed by a Texas Real Estate Commission licensee and reported on Texas Real Estate Commission promulgated report forms may contain additional information a buyer should consider in making a decision to purchase."

(i) If the client requires the use of a report form that does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector.

(ii) An inspection is considered to be of a single system or component if the inspection only addresses one of the following or a portion thereof:

(I) foundation;

(II) framing/structure, as outlined in §535.213(e)(2) of this title (relating to Approval of Courses in Real Estate Inspection);

(III) building enclosure;

(IV) roof system;

(V) plumbing system;

(VI) electrical system;

(VII) HVAC system;

(VIII) a single appliance; or

(IX) a single optional system as stated in the Standards of Practice.

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 November 9, 2012.

TRD-201205832
Kerri T. Galvin
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 936-3092

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22 TAC §§535.227 - 535.233

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

The Texas Real Estate Commission (TREC) proposes the repeal of §§535.227 - 535.233, concerning real estate inspectors standards of practice. The repeal of the sections is proposed because the subjects addressed in these sections will be covered in new §§535.227 - 535.233 which TREC is simultaneously proposing as part of the Real Estate Inspector Committee comprehensive review and recommendations regarding real estate inspectors standards of practice. The Texas Real Estate Inspector Committee is an advisory committee of six professional inspectors and three public members appointed by TREC.

Kerri T. Galvin, Deputy General Counsel, has determined that for the first five-year period the repeal is in effect there will be no significant fiscal implications for the state or for units of local government as a result of repealing the rules. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of repealing the rules.

Ms. Galvin also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal will be increased clarity for inspectors and consumers alike, as well as standards that more accurately reflect current technology, codes, and practices that form the basis of many of the standards. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Kerri T. Galvin, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register.*

The repeal is proposed under Texas Occupations Code, §1101.151, which authorizes TREC to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed repeal.

§535.227. Standards of Practice: General Provisions.
§535.228. Standards of Practice: Minimum Inspection Requirements for Structural Systems.
§535.229. Standards of Practice: Minimum Inspection Requirements for Electrical Systems.
§535.230. Standards of Practice: Minimum Inspection Requirements for Heating, Ventilation, and Air Conditioning Systems.

§535.231. Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.

§535.232. Standards of Practice: Minimum Inspection Requirements for Appliances.

§535.233. Standards of Practice: Minimum Inspection Requirements for Optional Systems.

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 November 9, 2012.

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For further information, please call: (512) 936-3092

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22 TAC §§535.227 - 535.233

The Texas Real Estate Commission (TREC) proposes new §§535.227 - 535.233, concerning real estate inspectors standards of practice. The new sections are proposed to update and clarify the current Standards of Practice (Standards) for real estate inspectors. The proposed rules make several non-substantive changes to the Standards by making them easier to read and providing a clearer understanding of what an inspector is and is not required to inspect and report. In addition, the rules make several substantive changes to the Standards to encourage a more performance based approach to real estate inspections. The new rules are proposed following a comprehensive review of the Standards by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC. Both the substantive and non-substantive revisions are recommended by the Committee. The substantive changes to the Standards are as follows:

New §535.227(a) expands the current definition of "Accessible" to clarify that an item is not accessible if the inspector has to climb over obstacles to gain access to it; adds a definition for "Component;" expands the current definition of "Inspect;" and clarifies that an inspector is required to report deficiencies "as specified by these standards of practice;" expands the definition of "Performance;" adds a definition for "Substantially completed;" and adds a definition for "Technically exhaustive." Subsection (b)(3) clarifies the intent and limitations of the Standards; specifies that an inspector is not required to: inspect sub-surface drainage systems; determine compatibility, product lawsuits, listing, testing or protocol authority; determine the presence, absence or risk of "Chinese drywall;" determine the cause or source of a condition; verify sizing efficiency or adequacy of a gutter or downspout system; or light a pilot light.

New §535.228(a) amends current rule language relating to crawl space ventilation and drainage to focus on the performance of the item. It also removes and consolidates redundant exemplars found in the current Standards. Subsection (b) amends current rule language relating to grading and draining around the foundation to focus on the performance of the item. Subsection (c) removes the specific requirement that an inspector report as deficient a roof covering that is not appropriate for the slope of the roof. It also specifies that an inspector is not required to exhaustively examine all fasteners and adhesions. Subsection (d) amends current rule language relating to attic space ventilation to focus on the performance of the item. In addition to those items currently required to be inspected relating to exterior walls and windows, subsection (f) requires an inspector to report deficiencies in weather-stripping, gaskets or other air barrier materials. It also specifies that an inspector is not required to provide an exhaustive list of locations of deficiencies and water penetrations. Subsection (j) removes the requirement that an inspector report deficiencies in visible footings, piers, posts, pilings, joists, decking, water proofing at interfaces, flashing, surfaces coverings, and attachment points of porches, decks, balconies and carports.

New §535.229(a) consolidates several redundant ground and bonding items. It also removes the requirement that inspectors report as deficient the absence of arc-fault circuit interrupters. Subsection (b) requires an inspector to inspect installed carbon monoxide alarms. The new rule updates the ground-fault circuit interruption language and moves the doorbell language from §535.232(i) to §535.229(b)(3)(E)(v). It also removes and consolidates redundant exemplars found in the current Standards for switches and receptacles, and clarifies that an inspector is not required to remove the covers of junction, fixture, receptacle or switch boxes unless specifically required to do so by the Standards.

New §535.230(a) clarifies the intent of the Standards regarding heating equipment, including expanding the current rule language relating to inadequate access and clearances, gas shut off valves, and gas appliance connectors, to provide more specificity. The new rules require an inspector to report deficiencies in the performance of a heat pump in electrical units. Subsection (b) clarifies the intent of the Standards regarding cooling equipment and other evaporative coolers, including expanding the current rule language relating to inadequate access and clearances to provide more specificity. Subsection (c) removes the requirement to report winterized units that are drained and shut down and consolidates several exemplars found in the current Standards. Subsection (d) removes several items found in the current Standards, deemed to be unrealistic for an inspector to inspect. Subsection (e) clarifies at what outdoor temperature an inspector is required to operate a heat pump and specifies that an inspector is not required to verify the tonnage match of indoor coils and outside coils or condensing units.

New §535.231(a) removes the requirement that an inspector report on static water pressure and the lack of pressure reducing valves or expansion tanks. The new rule amends current rule language relating to fixtures and faucets not connected to appliances and fixture drains to focus on the performance of the item. The rule also removes and consolidates several exemplars found in the current Standards. Subsection (b) clarifies the intent of the Standards regarding water heaters, including expanding the current rule language relating to inadequate access and clearances, gas shut off valves, and gas appliance connectors, to provide more specificity. The rule also removes and consolidates several exemplars found in the current Standards. Subsection (c) clarifies the intent of the Standards regarding Hydro-massage therapy equipment, including expanding the current rule language relating to inadequate access and the performance and condition of components.

New §535.232 amends current rule language relating to several appliances to focus on the performance of the item. The rule

changes the titles of several subsections of current §535.232 to bring them in line with industry terminology. The rule also removes and consolidates several exemplars related to various appliances found in the current Standards. Specifically, the rule adds several new requirements for ranges, cooktops, and ovens, including requiring the inspector to report as deficient combustible material within a certain area of cooktop burners, certain limitations regarding gas shut-off valves or connectors, and deficiencies in mounting and performance. The rule removes the requirement that an inspector inspect trash compactors, adds a requirement under "Garage door operators" that inspector report as deficient installed photo electric sensors located more than six inches above the garage floor, and moves door bells requirements to new §535.229(b)(3)(E)(v).

New §535.233 removes the Outdoor Cooking Equipment section, Gas Supply section, Other Built-In Appliance section and Whole House Vacuum System section. The new section changes the titles of several paragraphs to bring them in line with industry terminology. Paragraph (1) clarifies the intent of the Standards regarding Landscape irrigation (sprinkler) systems, including requiring an inspector to report as deficient: inoperative zone valves, the absence of shut-off valves between the water meter and backflow device, and deficiencies in the performance of the water emission devices; such as, sprayer heads, rotary sprinkler heads, bubblers or drip lines. The new rule specifies that an inspector is not required to inspect sizing and effectiveness of backflow prevention device. Paragraph (2) requires an inspector to report as deficient the presence of a single blockable main drain (potential entrapment hazard), the absence of ground-fault circuit interrupter protection devices and deficiencies in lighting fixtures. The rule specifies that an inspector is not required to disassemble filters, or determine the effectiveness of entrapment covers. Paragraph (3) requires an inspector to report as deficient the absence of ground-fault circuit interrupter protection devices in grade-level portions of unfinished accessory buildings used for storage or work areas, boathouses, and boat hoists. Paragraph (5) requires an inspector to report on the location of the distribution field in a private septic system.

Kerri T. Galvin, Deputy General Counsel, has determined that for the first five-year period the new rules are in effect there will be no significant fiscal implications for the state or for units of local government as a result of enforcing or administering the new rules. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the new rules.

Ms. Galvin also has determined that for each year of the first five years the new rules are in effect the public benefit anticipated as a result of enforcing the new rules will be increased clarity for inspectors and consumers alike, as well as standards that more accurately reflect current technology, codes, and practices that form the basis of many of the standards. There is no anticipated economic cost to persons who are required to comply with the proposed new rules.

Comments on the proposal may be submitted to Kerri T. Galvin, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register.*

The new rules are proposed under Texas Occupations Code, §1101.151, which authorizes TREC to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed new rules.

§535.227. Standards of Practice: General Provisions.

(a) Definitions.

(1) Accessible--In the judgment of the inspector, capable of being approached, entered, or viewed without:

(A) hazard to the inspector;

(B) having to climb over obstacles, moving furnishings or large, heavy, or fragile objects;

(C) using specialized equipment or procedures;

(D) disassembling items other than covers or panels intended to be removed for inspection;

(E) damaging property, permanent construction or building finish; or

(F) using a ladder for portions of the inspection other than the roof or attic space.

(2) Chapter 1102--Texas Occupations Code, Chapter 1102.

(3) Component--A part of a system.

(4) Cosmetic--Related only to appearance or aesthetics, and not related to performance, operability, or water penetration.

(5) Deficiency--In the judgment of the inspector, a condition that:

(A) adversely and materially affects the performance of a system, or component; or

(B) constitutes a hazard to life, limb, or property as specified by these standards of practice.

(6) Deficient--Reported as having one or more deficiencies.

(7) Inspect--To operate in normal ranges using ordinary controls at typical settings, look at and examine accessible systems or components and report observed deficiencies as specified by these standards of practice.

(8) Performance--Achievement of an operation, function or configuration relative to accepted industry standard practices with consideration of age, as-built conditions and normal wear and tear from ordinary use.

(9) Report--To provide the inspector's opinions and findings on the standard inspection report form as required by §535.222 and §535.223 of this title (relating to Inspection Reports and Standard Inspection Report Form).

(10) Specialized equipment--Equipment such as thermal imaging equipment, moisture meters, gas leak detection equipment, environmental testing equipment and devices, elevation determination devices, and ladders capable of reaching surfaces over one story above ground surfaces.

(11) Specialized procedures--Procedures such as environmental testing, elevation measurement, calculations and any method employing destructive testing that damages otherwise sound materials or finishes.

(12) Standards of practice--Sections 535.227 - 535.233 of this title.

(13) Substantially completed--The stage of construction when a new building, addition, improvement, or alteration to an existing building is sufficiently complete that the building, addition, improvement or alteration can be occupied or used for its intended purpose.

(14) Technically exhaustive--A comprehensive investigation beyond the scope of a real estate inspection which would involve determining the cause or effect of deficiencies, exploratory probing or discovery, the use of specialized knowledge, equipment or procedures.

(b) Scope.

(1) These standards of practice define the minimum levels of inspection required for substantially completed residential improvements to real property up to four dwelling units. A real estate inspection is a non-technically exhaustive, limited visual survey and basic performance evaluation of the systems and components of a building using normal controls and does not require the use of specialized equipment or procedures. The purpose of the inspection is to provide the client with information regarding the general condition of the residence at the time of inspection. The inspector may provide a higher level of inspection performance than required by these standards of practice and may inspect components and systems in addition to those described by the standards of practice.

(2) General Requirements. The inspector shall:

(A) operate fixed or installed equipment and appliances listed within these standards of practice in at least one mode with ordinary controls at typical settings;

(B) visually inspect accessible systems or components from near proximity to the systems and components, and from the interior of the attic and crawl spaces; and

(C) complete the standard inspection report form as required by §535.222 and §535.223 of this title.

(3) General limitations. The inspector is not required to:

(A) inspect:

(i) items other than those listed within these standards of practice;

(ii) elevators;

(iii) detached buildings, decks, docks, fences, or waterfront structures or equipment;

(iv) anything buried, hidden, latent, or concealed;

(v) sub-surface drainage systems;

(vi) automated or programmable control systems, automatic shut-off, photoelectric sensors, timers, clocks, metering devices, signal lights, lightning arrestor system, remote controls, security or data distribution systems, solar panels or smart home automation components; or

(vii) concrete flatwork such as; driveways, sidewalks, walkways, paving stones or patios;

(B) report:

(i) past repairs that appear to be effective and workmanlike except as specifically required by these standards of practice;

(ii) cosmetic or aesthetic conditions; or

(iii) wear and tear from ordinary use;

(C) determine:

(i) insurability, warrantability, suitability, adequacy, compatibility, capacity, reliability, marketability, operating costs, recalls, counterfeit products, product lawsuits, life expectancy, age, energy efficiency, vapor barriers, thermostatic performance, compliance with any code, listing, testing or protocol authority, utility sources, or manufacturer or regulatory requirements except as specifically required by these standards of practice;

(ii) the presence or absence of pests, termites, or other wood-destroying insects or organisms;

(iii) the presence, absence, or risk of asbestos, lead-based paint, mold, mildew, corrosive gypsum board "Chinese Drywall" or any other environmental hazard, environmental pathogen, carcinogen, toxin, mycotoxin, pollutant, fungal presence or activity, or poison;

(iv) types of wood or preservative treatment and fastener compatibility; or

(v) the cause or source of a conditions;

(D) anticipate future events or conditions, including but not limited to:

(i) decay, deterioration, or damage that may occur after the inspection;

(ii) deficiencies from abuse, misuse or lack of use;

(iii) changes in performance of any component or system due to changes in use or occupancy;

(iv) the consequences of the inspection or its effects on current or future buyers and sellers;

(v) common household accidents, personal injury, or death;

(vi) the presence of water penetrations; or

(vii) future performance of any item;

(E) operate shut-off, safety, stop, pressure or pressure-regulating valves or items requiring the use of codes, keys, combinations, or similar devices;

(F) designate conditions as safe;

(G) recommend or provide engineering, architectural, appraisal, mitigation, physical surveying, realty, or other specialist services;

(H) review historical records, installation instructions, repair plans, cost estimates, disclosure documents, or other reports;

(I) verify sizing, efficiency, or adequacy of the ground surface drainage system;

(J) verify sizing, efficiency, or adequacy of the gutter and downspout system;

(K) operate recirculation or sump pumps;

(L) remedy conditions preventing inspection of any item;

(M) apply open flame or light a pilot to operate any appliance;

(N) turn on decommissioned equipment, systems or utility services; or

(O) provide repair cost estimates, recommendations, or re-inspection services.

(4) In the event of a conflict between specific provisions and general provisions in the standards of practice, specific provisions shall take precedence.

(5) Departure.

(A) An inspector may depart from the inspection of a component or system required by the standards of practice only if:

(i) the inspector and client agree the item is not to be inspected;

(ii) the inspector is not qualified to inspect the item;

(iii) in the judgment of the inspector, conditions exist that prevent inspection of an item;

(iv) the item is a common element of a multi-family development and is not in physical contact with the unit being inspected, such as the foundation under another building or a part of the foundation under another unit in the same building;

(v) the inspector reasonably determines that conditions or materials are hazardous to the health or safety of the inspector; or

(vi) in the judgment of the inspector, the actions of the inspector may cause damage to the property.

(B) If an inspector departs from the inspection of a component or system required by the standards of practice, the inspector shall:

(i) notify the client at the earliest practical opportunity that the component or system will not be inspected; and

(ii) make an appropriate notation on the inspection report form, stating the reason the component or system was not inspected.

(C) If the inspector routinely departs from inspection of a component or system required by the standards of practice, and the inspector has reason to believe that the property being inspected includes that component or system, the earliest practical opportunity for the notice required by this subsection is the first contact the inspector makes with the prospective client.

(c) Enforcement. Failure to comply with the standards of practice is grounds for disciplinary action as prescribed by Chapter 1102.

§535.228. Standards of Practice: Minimum Inspection Requirements for Structural Systems.

(a) Foundations. The inspector shall:

(1) render a written opinion as to the performance of the foundation; and

(2) report:

(A) the type of foundations;

(B) the vantage point from which the crawl space was inspected;

(3) generally report present and visible indications used to render the opinion of adverse performance, such as:

(A) binding, out-of-square, non-latching doors;

(B) framing or frieze board separations;

(C) sloping floors:

(D) window, wall, floor, or ceiling cracks or separations; and

(E) rotating, buckling, cracking, or deflecting masonry cladding;

(4) report as Deficient:

(A) deteriorated materials;

(B) deficiencies in foundation components such as; beams, joists, bridging, blocking, piers, posts, pilings, columns, sills or subfloor;

(C) deficiencies in retaining walls related to foundation performance;

(D) exposed or damaged reinforcement;

(E) crawl space ventilation that is not performing; and

(F) crawl space drainage that is not performing.

(5) The inspector is not required to:

(A) enter a crawl space or any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high;

(B) provide an exhaustive list of indicators of possible adverse performance; or

(C) inspect retaining walls not related to foundation performance.

(b) Grading and drainage. The inspector shall:

(1) report as Deficient:

(A) drainage around the foundation that is not performing;

(B) deficiencies in grade levels around the foundation; and

(C) deficiencies in installed gutter and downspout systems.

(2) The inspector is not required to:

(A) inspect flatwork or detention/retention ponds (except as related to slope and drainage);

(B) determine area hydrology or the presence of underground water; or

(C) determine the efficiency or performance of underground or surface drainage systems.

(c) Roof covering materials. The inspector shall:

(1) inspect the roof covering materials from the surface of the roof;

(2) report:

(A) type of roof coverings;

(B) vantage point from where the roof was inspected;

(C) evidence of water penetration;

(D) evidence of previous repairs to the roof covering material, flashing details, skylights and other roof penetrations; and

(3) report as Deficient deficiencies in:

(A) fasteners;

(B) adhesion;

(C) roof covering materials;

(D) flashing details;

(E) skylights; and

(F) other roof penetrations.

(4) The inspector is not required to:

(A) determine the remaining life expectancy of the roof covering;

(B) inspect the roof from the roof level if, in the inspector's judgment, the inspector cannot safely reach or stay on the roof or significant damage to the roof covering materials may result from walking on the roof;

(C) determine the number of layers of roof covering material;

(D) identify latent hail damage;

(E) exhaustively examine all fasteners and adhesion; or

(F) provide an exhaustive list of locations of deficiencies and water penetrations.

(d) Roof structures and attics. The inspector shall:

(1) report:

(A) the vantage point from which the attic space was inspected;

(B) approximate average depth of attic insulation;

(C) evidence of water penetration;

(2) report as Deficient:

(A) attic space ventilation that is not performing;

(B) deflections or depressions in the roof surface as related to adverse performance of the framing and decking;

(C) missing insulation;

(D) deficiencies in:

(i) installed framing members and decking;

(ii) attic access ladders and access openings; and

(iii) attic ventilators.

(3) The inspector is not required to:

(A) enter attics or unfinished spaces where openings are less than 22 inches by 30 inches or headroom is less than 30 inches;

(B) operate powered ventilators; or

(C) provide an exhaustive list of locations of deficiencies and water penetrations.

(e) Interior walls, ceilings, floors, and doors. The inspector shall:

(1) report evidence of water penetration;

(2) report as Deficient:

(A) deficiencies in the condition and performance of doors and hardware;

(B) deficiencies related to structural performance or water penetration; and

(C) the absence of or deficiencies in fire separation between the garage and the living space and between the garage and its attic.

(3) The inspector is not required to:

(A) report cosmetic damage or the condition of floor, wall, or ceiling coverings; paints, stains, or other surface coatings; cabinets; or countertops; or

(B) provide an exhaustive list of locations of deficiencies and water penetrations.

(f) Exterior walls, doors, and windows. The inspector shall:

(1) report evidence of water penetration;

(2) report as Deficient:

(A) the absence of performing emergency escape and rescue openings in all sleeping rooms;

(B) a solid wood door less than 1-3/8 inches in thickness, a solid or honeycomb core steel door less than 1-3/8 inches thick, or a 20-minute fire-rated door between the residence and an attached garage;

(C) missing or damaged screens;

(D) deficiencies related to structural performance or water penetration;

(E) deficiencies in:

(i) weather stripping, gaskets or other air barrier materials;

(ii) claddings;

(iii) water resistant materials and coatings;

(iv) flashing details and terminations;

(v) the condition and performance of exterior doors, garage doors and hardware; and

(vi) the condition and performance of windows and components.

(3) The inspector is not required to:

(A) report the condition of awnings, blinds, shutters, security devices, or other non-structural systems;

(B) determine the cosmetic condition of paints, stains, or other surface coatings;

(C) operate a lock if the key is not available; or

(D) provide an exhaustive list of locations of deficiencies and water penetrations.

(g) Exterior and interior glazing. The inspector shall:

(1) report as Deficient:

(A) insulated windows that are obviously fogged or display other evidence of broken seals;

(B) deficiencies in glazing, weather stripping and glazing compound in windows and doors; and

(C) the absence of safety glass in hazardous locations.

(2) The inspector is not required to:

(A) exhaustively inspect insulated windows for evidence of broken seals;

(B) exhaustively inspect glazing for identifying labels; or

(C) identify specific locations of damage.

(h) Interior and exterior stairways. The inspector shall:

(1) report as Deficient:

(A) spacing between intermediate balusters, spindles, or rails for steps, stairways, guards, and railings that permit passage of an object greater than 4 inches in diameter, except that on the open side of the staircase treads, spheres less than 4-3/8 inches in diameter may pass through the guard rail balusters or spindles; and

(B) deficiencies in steps, stairways, landings, guardrails, and handrails.

(2) The inspector is not required to exhaustively measure every stairway component.

(i) Fireplaces and chimneys. The inspector shall:

(1) report as Deficient:

(A) built-up creosote in accessible areas of the firebox and flue;

(B) the presence of combustible materials in near proximity to the firebox opening;

(C) the absence of fireblocking at the attic penetration of the chimney flue, where accessible; and

(D) deficiencies in the:

(i) damper;

(ii) lintel, hearth, hearth extension, and firebox;

(iii) gas valve and location;

(iv) circulating fan;

(v) combustion air vents; and

(vi) chimney structure, termination, coping, crown, caps, and spark arrestor.

(2) The inspector is not required to:

(A) verify the integrity of the flue;

(B) perform a chimney smoke test; or

(C) determine the adequacy of the draft.

(j) Porches, Balconies, Decks, and Carports. The inspector shall:

(1) inspect:

(A) attached balconies, carports, and porches;

(B) abutting porches, decks, and balconies that are used for ingress and egress; and

(2) report as Deficient:

(A) on decks 30 inches or higher above the adjacent grade, spacings between intermediate balusters, spindles, or rails that permit passage of an object greater than four inches in diameter; and

(B) deficiencies in accessible components.

(3) The inspector is not required to:

(A) exhaustively measure every porch, balcony, deck, or attached carport components; or

(B) enter any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high.

§535.229. Standards of Practice: Minimum Inspection Requirements for Electrical Systems.

(a) Service entrance and panels. The inspector shall:

(1) report as Deficient:

(A) a drop, weatherhead or mast that is not securely fastened to the building;

(B) the absence of or deficiencies in the grounding electrode system;

(C) missing or damaged dead fronts or covers plates;

(D) conductors not protected from the edges of electrical cabinets, gutters, or cutout boxes;

(E) electrical cabinets and panel boards not appropriate for their location; such as a clothes closet, bathrooms or where they are exposed to physical damage;

(F) electrical cabinets and panel boards that are not accessible or do not have a minimum of 36-inches of clearance in front of them;

(G) deficiencies in:

(i) electrical cabinets, gutters, cutout boxes, and panel boards;

(ii) the insulation of the service entrance conductors, drip loop, separation of conductors at weatherheads, and clearances;

(iii) the compatibility of overcurrent devices and conductors;

(iv) the overcurrent device and circuit for labeled and listed 240 volt appliances;

(v) bonding and grounding;

(vi) conductors;

(vii) the operation of installed ground-fault or arc-fault circuit interrupter devices; and

(H) the absence of:

(i) trip ties on 240 volt overcurrent devices;

(ii) appropriate connections;

(iii) anti-oxidants on aluminum conductor terminations;

(iv) a main disconnecting means.

(2) The inspector is not required to:

(A) determine present or future sufficiency of service capacity amperage, voltage, or the capacity of the electrical system;

(B) test arc-fault circuit interrupter devices when the property is occupied or damage to personal property may result, in the inspector's judgment;

(C) conduct voltage drop calculations;

(D) determine the accuracy of overcurrent device labeling;

(E) remove covers where hazardous as judged by the inspector;

(F) verify the effectiveness of overcurrent devices; or

(G) operate overcurrent devices.

(b) Branch circuits, connected devices, and fixtures. The inspector shall:

(1) manually test the installed and accessible smoke and carbon monoxide alarms;

(2) report the type of branch circuit conductors;

(3) report as Deficient:

(A) the absence of ground-fault circuit interrupter protection in all:

(i) bathroom receptacles;

(ii) garage receptacles;

(iii) outdoor receptacles;

(iv) crawl space receptacles;

(v) unfinished basement receptacles;

(vi) kitchen countertop receptacles; and

(vii) receptacles that are located within six feet of the outside edge of a sink;

(B) the failure of operation of ground-fault circuit interrupter protection devices;

(C) missing or damaged receptacle, switch or junction box covers;

(D) the absence of:

(i) equipment disconnects;

(ii) appropriate connections, such as copper/aluminum approved devices, if branch circuit aluminum conductors are discovered in the main or sub-panel based on a random sampling of accessible receptacles and switches;

(E) deficiencies in:

(i) receptacles;

(ii) switches;

(iii) bonding or grounding;

(iv) wiring, wiring terminations, junction boxes, devices, and fixtures, including improper location;

(v) doorbell and chime components;

(vi) smoke and carbon monoxide alarms;

(F) improper use of extension cords;

(G) deficiencies in or absences of conduit, where applicable; and

(H) the absence of smoke alarms:

(i) in each sleeping room;

(ii) outside each separate sleeping area in the immediate vicinity of the sleeping rooms; and

(iii) in the living space of each story of the dwelling.

(4) The inspector is not required to:

(A) inspect low voltage wiring;

(B) disassemble mechanical appliances;

(C) verify the effectiveness of smoke alarms;

(D) verify interconnectivity of smoke alarms;

(E) activate smoke or carbon monoxide alarms that are or may be monitored or require the use of codes;

(F) verify that smoke alarms are suitable for the hearing-impaired; or

(G) remove the covers of junction, fixture, receptacle or switch boxes unless specifically required by these standards.

§535.230. Standards of Practice: Minimum Inspection Requirements for Heating, Ventilation, and Air Conditioning Systems.

(a) Heating equipment. The inspector shall:

(1) report:

(A) the type of heating systems; and

(B) the energy sources;

(2) report as Deficient:

(A) inoperative units;

(B) deficiencies in the thermostats;

(C) inappropriate location;

(D) the lack of protection from physical damage;

(E) burners, burner ignition devices or heating elements, switches, and thermostats that are not a minimum of 18 inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation;

(F) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;

(G) when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement;

(H) deficiencies in mounting and performance of window and wall units;

(I) in electric units, deficiencies in:

(i) performance of heat pumps;

(ii) performance of heating elements; and

(iii) condition of conductors; and

(J) in gas units:

(i) gas leaks;

(ii) flame impingement, uplifting flame, improper flame color, or excessive scale buildup;

(iii) the absence of a gas shut-off valve within six feet of the appliance;

(iv) the absence of a gas appliance connector or one that exceeds six feet in length;

(v) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings; and

(vi) deficiencies in:

(I) combustion, and dilution air;

(II) gas shut-off valves;

(III) access to a gas shut-off valve that prohibits full operation;

(IV) gas appliance connector materials; and

(V) the vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances.

(b) Cooling equipment other than evaporative coolers. The inspector shall:

(1) report the type of systems;

(2) report as Deficient:

(A) inoperative units;

(B) inadequate cooling as demonstrated by its performance;

(C) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;

(D) when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement;

(E) noticeable vibration of blowers or fans;

(F) water in the auxiliary/secondary drain pan;

(G) a primary drain pipe that discharges in a sewer vent;

(H) missing or deficient refrigerant pipe insulation;

(I) dirty coils, where accessible;

(J) condensing units lacking adequate clearances or air circulation or that has deficiencies in the fins, location, levelness, or elevation above grade surfaces;

(K) deficiencies in:

(i) the condensate drain and auxiliary/secondary pan and drain system;

(ii) mounting and performance of window or wall units; and

(iii) thermostats.

(c) Evaporative coolers. The inspector shall:

(1) report:

(A) type of systems; and

(B) the type of water supply line;

(2) report as Deficient:

(A) inoperative units;

(B) inadequate access and clearances;

(C) deficiencies in performance or mounting;

(D) missing or damaged components;

(E) the presence of active water leaks; and

(F) the absence of backflow prevention.

(d) Duct systems, chases, and vents. The inspector shall report as Deficient:

(1) damaged duct systems or improper material;

(2) damaged or missing duct insulation;

(3) the absence of air flow at accessible supply registers;

(4) the presence of gas piping and sewer vents concealed in ducts, plenums and chases;

(5) ducts or plenums in contact with earth; and

(6) deficiencies in:

(A) filters;

(B) grills or registers; and

(C) the location of return air openings.

(e) The inspector is not required to:

(1) program digital thermostats or controls;

(2) inspect:

(A) for pressure of the system refrigerant, type of refrigerant, or refrigerant leaks;

(B) winterized or decommissioned equipment; or

(C) duct fans, humidifiers, dehumidifiers, air purifiers, motorized dampers, electronic air filters, multi-stage controllers, sequencers, heat reclaimers, wood burning stoves, boilers, oil-fired units, supplemental heating appliances, de-icing provisions, or reversing valves;

(3) operate:

(A) setback features on thermostats or controls;

(B) cooling equipment when the outdoor temperature is less than 60 degrees Fahrenheit;

(C) radiant heaters, steam heat systems, or unvented gas-fired heating appliances; or

(D) heat pumps, in the heat pump mode, when the outdoor temperature is above 70 degrees;

(4) verify:

(A) compatibility of components;

(B) tonnage match of indoor coils and outside coils or condensing units;

(C) the accuracy of thermostats; or

(D) the integrity of the heat exchanger; or

(5) determine:

(A) sizing, efficiency, or adequacy of the system;

(B) balanced air flow of the conditioned air to the various parts of the building; or

(C) types of materials contained in insulation.

§535.231. Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.

(a) Plumbing systems. The inspector shall:

(1) report:

(A) location of water meter; and

(B) location of homeowners main water supply shut-off valve;

(2) report as Deficient:

(A) the presence of active leaks;

(B) the absence of:

(i) fixture shut-off valves;

(ii) dielectric unions, when applicable; and

(iii) back-flow devices, anti-siphon devices, or air gaps at the flow end of fixtures; and

(C) deficiencies in:

(i) water supply pipes and waste pipes;

(ii) the installation and termination of the vent system;

(iii) the performance of fixtures and faucets not connected to an appliance;

(iv) water supply, as determined by viewing functional flow in two fixtures operated simultaneously;

(v) fixture drain performance;

(vi) orientation of hot and cold faucets;

(vii) installed mechanical drain stops;

(viii) commodes, fixtures, showers, tubs, and enclosures; and

(ix) the condition of the gas distribution system.

(3) The inspector is not required to:

(A) operate any main, branch, or shut-off valves;

(B) operate or inspect sump pumps or waste ejector pumps;

(C) verify the performance of:

(i) the bathtub overflow;

(ii) clothes washing machine drains or hose bibbs; or

(iii) floor drains;

(4) inspect:

(A) any system that has been winterized, shut down or otherwise secured;

(B) circulating pumps, free-standing appliances, solar water heating systems, water conditioning equipment, filter systems, water mains, private water supply systems, water wells, pressure tanks, sprinkler systems, swimming pools, or fire sprinkler systems;

(C) inaccessible gas supply system components for leaks;

(D) for sewer clean-outs; or

(E) for the presence or performance of private sewage disposal systems; or

(5) determine:

(A) quality, potability, or volume of the water supply; or

(B) effectiveness of backflow or anti-siphon devices.

(b) Water heaters. The inspector shall:

(1) report:

(A) the energy source;

(B) the capacity of the units;

(2) report as Deficient:

(A) inoperative units;

(B) leaking or corroded fittings or tanks;

(C) damaged or missing components;

(D) the absence of a cold water shut-off valve;

(E) if applicable, the absence of a pan or a pan drain system that does not terminate over a waste receptor or to the exterior of the building above the ground surface;

(F) inappropriate locations;

(G) the lack of protection from physical damage;

(H) burners, burner ignition devices or heating elements, switches, or thermostats that are not a minimum of 18 inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation;

(I) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;

(J) when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement;

(K) the absence of or deficiencies in the temperature and pressure relief valve and discharge piping;

(L) a temperature and pressure relief valve that failed to operate, when tested manually;

(M) in electric units, deficiencies in:

(i) performance of heating elements; and

(ii) condition of conductors; and

(N) in gas units:

(i) gas leaks;

(ii) flame impingement, uplifting flame, improper flame color, or excessive scale build-up;

(iii) the absence of a gas shut-off valve within six feet of the appliance;

(iv) the absence of a gas appliance connector or one that exceeds six feet in length;

(v) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings; and

(vi) deficiencies in:

(I) combustion and dilution air;

(II) gas shut-off valves;

(III) access to a gas shut-off valves that prohibit full operation;

(IV) gas appliance connector materials; and

(V) vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances.

(3) The inspector is not required to:

(A) verify the effectiveness of the temperature and pressure relief valve, discharge piping, or pan drain pipes;

(B) operate the temperature and pressure relief valve if the operation of the valve may, in the inspector's judgment, cause damage to persons or property; or

(C) determine the efficiency or adequacy of the unit.

(c) Hydro-massage therapy equipment. The inspector shall:

(1) report as Deficient:

(A) inoperative units;

(B) the presence of active leaks;

(C) deficiencies in components and performance;

(D) missing and damaged components;

(E) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish; and

(F) the absence or failure of operation of ground-fault circuit interrupter protection devices.

(2) The inspector is not required to determine the adequacy of self-draining features of circulation systems.

§535.232. Standards of Practice: Minimum Inspection Requirements for Appliances.

(a) Dishwashers. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) rusted, missing or damaged components;

(4) the presence of active water leaks; and

(5) the absence of backflow prevention.

(b) Food waste disposers. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components; and

(4) the presence of active water leaks.

(c) Range hoods and exhaust systems. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components;

(4) ducts that do not terminate outside the building, if the unit is not of a re-circulating type or configuration; and

(5) improper duct material.

(d) Electric or gas ranges, cooktops, and ovens. The inspector shall report as Deficient:

(1) inoperative units;

(2) missing or damaged components;

(3) combustible material within thirty inches above the cook top burners;

(4) absence of an anti-tip device, if applicable;

(5) gas leaks;

(6) the absence of a gas shut-off valve within six feet of the appliance;

(7) the absence of a gas appliance connector or one that exceeds six feet in length;

(8) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings; and

(9) deficiencies in:

(A) thermostat accuracy (within 25 degrees at a setting of 350 degrees F);

(B) mounting and performance;

(C) gas shut-off valves;

(D) access to a gas shut-off valves that prohibits full operation; and

(E) gas appliance connector materials.

(e) Microwave ovens. The inspector shall inspect built-in units and report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting; and

(3) missing or damaged components.

(f) Mechanical exhaust systems and bathroom heaters. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components;

(4) ducts that do not terminate outside the building; and

(5) a gas heater that is not vented to the exterior of the building unless the unit is listed as an unvented type.

(g) Garage door operators. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components;

(4) installed photo electric sensors located more than six inches above the garage floor; and

(5) door locks or side ropes that have not been removed or disabled.

(h) Dryer exhaust systems. The inspector shall report as Deficient:

(1) missing or damaged components;

(2) the absence of a dryer exhaust system when provisions are present for a dryer;

(3) ducts that do not terminate to the outside of the building;

(4) screened terminations; and

(5) ducts that are not made of metal with a smooth interior finish.

(i) The inspector is not required to:

(1) operate or determine the condition of other auxiliary components of inspected items;

(2) test for microwave oven radiation leaks;

(3) inspect self-cleaning functions;

(4) disassemble appliances;

(5) determine the adequacy of venting systems; or

(6) determine proper routing and lengths of duct systems.

§535.233. Standards of Practice: Minimum Inspection Requirements for Optional Systems.

If an inspector agrees to inspect a component described in this section, §535.227 of this title (relating to Standards of Practice: General Provisions) and the applicable provisions of this section apply.

(1) Landscape irrigation (sprinkler) systems. The inspector shall:

(A) manually operate all zones or stations on the system through the controller;

(B) report as Deficient:

(i) the absence of a rain or moisture sensor;

(ii) inoperative zone valves;

(iii) surface water leaks;

(iv) the absence of a backflow prevention device;

(v) the absence of shut-off valves between the water meter and backflow device;

(vi) deficiencies in the performance and mounting of the controller;

(vii) missing or damaged components; and

(viii) deficiencies in the performance of the water emission devices; such as, sprayer heads, rotary sprinkler heads, bubblers or drip lines.

(C) The inspector is not required to inspect:

(i) for effective coverage of the irrigation system;

(ii) the automatic function of the controller;

(iii) the effectiveness of the sensors; such as, rain, moisture, wind, flow or freeze sensors; or

(iv) sizing and effectiveness of backflow prevention device.

(2) Swimming pools, spas, hot tubs, and equipment. The inspector shall:

(A) report the type of construction;

(B) report as Deficient:

(i) the presence of a single blockable main drain (potential entrapment hazard);

(ii) a pump motor, blower, or other electrical equipment that lacks bonding;

(iii) the absence of or deficiencies in safety barriers;

(iv) water leaks in above-ground pipes and equipment;

(v) the absence or failure in performance of ground-fault circuit interrupter protection devices; and

(vi) deficiencies in:

(I) surfaces;

(II) tiles, coping, and decks;

(III) slides, steps, diving boards, handrails, and other equipment;

(IV) drains, skimmers, and valves;

(V) filters, gauges, pumps, motors, controls, and sweeps;

(VI) lighting fixtures; and

(VII) the pool heater that these standards of practice require to be reported for the heating system.

(C) The inspector is not required to:

(i) disassemble filters or dismantle or otherwise open any components or lines;

(ii) operate valves;

(iii) uncover or excavate any lines or concealed components of the system;

(iv) fill the pool, spa, or hot tub with water;

(v) inspect any system that has been winterized, shut down, or otherwise secured;

(vi) determine the presence of sub-surface water tables;

(vii) determine the effectiveness of entrapment covers;

(viii) determine the presence of pool shell or subsurface leaks; or

(ix) inspect ancillary equipment such as computer controls, covers, chlorinators or other chemical dispensers, or water ionization devices or conditioners other than required by this section.

(3) Outbuildings. The inspector shall report as Deficient:

(A) the absence or failure in performance of ground-fault circuit interrupter protection devices in grade-level portions of unfinished accessory buildings used for storage or work areas, boathouses, and boat hoists; and

(B) deficiencies in the structural, electrical, plumbing, heating, ventilation, and cooling systems that these standards of practice require to be reported for the principal building.

(4) Private water wells. The inspector shall:

(A) operate at least two fixtures simultaneously;

(B) recommend or arrange to have performed coliform testing;

(C) report:

(i) the type of pump and storage equipment;

(ii) the proximity of any known septic system;

(D) report as Deficient deficiencies in:

(i) water pressure and flow and performance of pressure switches;

(ii) the condition of accessible equipment and components; and

(iii) the well head, including improper site drainage and clearances.

(E) The inspector is not required to:

(i) open, uncover, or remove the pump, heads, screens, lines, or other components of the system;

(ii) determine the reliability of the water supply or source; or

(iii) locate or verify underground water leaks.

(5) Private sewage disposal (septic) systems. The inspector shall:

(A) report:

(i) the type of system;

(ii) the location of the drain or distribution field;

(iii) the proximity of any known water wells, underground cisterns, water supply lines, bodies of water, sharp slopes or breaks, easement lines, property lines, soil absorption systems, swimming pools, or sprinkler systems;

(B) report as Deficient:

(i) visual or olfactory evidence of effluent seepage or flow at the surface of the ground;

(ii) inoperative aerators or dosing pumps; and

(iii) deficiencies in:

(I) accessible components;

(II) functional flow;

(III) site drainage and clearances around or adjacent to the system; and

(IV) the aerobic discharge system.

(C) The inspector is not required to:

(i) excavate or uncover the system or its components;

(ii) determine the size, adequacy, or efficiency of the system; or

(iii) determine the type of construction used.

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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Kerri T. Galvin
Deputy General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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SUBCHAPTER S. RESIDENTIAL RENTAL LOCATORS

22 TAC §535.300

The Texas Real Estate Commission (TREC) proposes an amendment to §535.300, concerning Advertising by Residential Rental Locators. The amendment updates the telephone numbers of the Commission and the Standards and Enforcement Services Division that are listed in the required notice in publications where residential rental locators place advertisements.

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

Ms. DeHay also has determined that for each year of the first five years the amendment as proposed is in effect the public benefit anticipated as a result of enforcing the amended section will be consistency between the Rules and the Act.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register.*

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

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

§535.300. Advertising by Residential Rental Locators.

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

(c) Advertisements in a printed publication shall be deemed to be in compliance with the requirements of subsection (b) of this section if the publication in which an advertisement appears contains this notice at the beginning of the section in which the advertisement appears: Notice. Residential rental locators are required to be licensed by the Texas Real Estate Commission (P.O. Box 12188, Austin, Texas 78711-2188, (512) 936-3000 or (512) 936-3005 [~~1-800-250-8732 or 512-465-3960~~]). Locators may advertise apartment units in general terms, and all units may not have the same features. The amount of rent quoted in an advertisement may be the starting rent for a basic unit or for a unit which does not have all advertised features.

(d) - (f) (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.

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CHAPTER 539. RULES RELATING TO THE RESIDENTIAL SERVICE COMPANY ACT

SUBCHAPTER D. DEFINITIONS

22 TAC §539.31

The Texas Real Estate Commission (TREC) proposes amendments to Chapter 539, §539.31, concerning Rules Relating to the Residential Service Company Act. The amendments to §539.31 define Chapter 1303 of the Texas Occupations Code as the Act.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the amended section. There is no anticipated economic effect on small businesses, micro-businesses or local or state employment as a result of implementing the amended section.

Ms. DeHay also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended section will be enhanced consumer protection for purchasers of residential service contracts. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes TREC to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.31. Residential Service Contract.

A contract or agreement whereby a person, for a fee, undertakes to indemnify against or reimburse the costs of maintenance, repair, or replacement of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property is not a "residential service contract" within the meaning of the Residential Service Company Act, Texas Occupations Code, Chapter 1303 (Act), §1303.002(5).

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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SUBCHAPTER G. APPLICATION AND MAINTENANCE OF LICENSE

22 TAC §§539.61 - 539.66

The Texas Real Estate Commission (commission) proposes amendments to §539.61, and new §§539.62 - 539.66, concerning Application and Maintenance of License. The amendments to §539.61, concerning Application and Licensing, change the title of the section to "Application for Residential Service Company License" and delete subsection (c) because it is moved to new §539.63. New §539.62, concerning Application to Approve Evidence of Coverage/Schedule of Charges, requires that each approved evidence of coverage must include a form number and approval date, and requires that a company obtain the commission's prior approval before offering discounts or other change in any amount to be charged a consumer. New §539.63, concerning Termination of Application, authorizes the commission to terminate an application if the applicant fails to respond within 90 days after the commission notifies the applicant to provide additional information. New §539.64, concerning Mailing Address and Other Contact Information, requires companies to provide a mailing address, telephone number and email address to the commission, report subsequent changes to such information within 10 days after a change, and deems the last known mailing address provided to the commission to be the address of the company if it fails to update the information. New §539.65, concerning Change in Company Ownership or Officers, requires a company to report changes in its ownership or officers to the commission on new Form RSC 8-0 adopted by reference in §539.71(3). New §539.66, concerning Change in Operation, requires a residential service company to notify the commission within 30 days if the company wishes to begin issuing and administering contracts in affiliation with another company, and requires a company to provide additional information regarding the relationship between the company and the affiliate.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amended and new sections are in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the sections. There is no anticipated economic effect on small businesses, micro-businesses or local or state employment as a result of implementing the amended and new sections.

Ms. DeHay also has determined that for each year of the first five years the amended and new sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhanced consumer protection for purchasers of residential service contracts. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and new section.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments and new sections are proposed under Texas Occupations Code, §1303.051, which authorizes the commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments or new sections.

§539.61. Application for Residential Service Company License [~~and Licensing~~].

(a) The Texas Real Estate Commission adopts by reference Application Form RSC 1-3 [~~1-2~~] approved by the commission. This document is published by and available from the Texas Real

Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov [~~www.trec.state.tx.us~~].

(b) (No change.)

[~~(c) An application for residential service company license or an application to approve evidence of coverage/schedule of charges in §539.71(2) of this chapter (relating to Miscellaneous Forms) will be terminated and the commission shall take no further action if the applicant fails to submit a response within 90 days after the commission mails a request to the applicant for curative action.~~]

§539.62. Application to Approve Evidence of Coverage/Schedule of Charges.

(a) Each approved evidence of coverage shall be designated by a unique form number and include the commission's approval date.

(b) A discount or any other change in any amount to be charged a consumer by a residential service company for coverage under a residential service contract constitutes a change to a schedule of charges previously approved by the commission. A residential service company must obtain the commission's prior approval of a revised schedule of charges before offering the discount or other price reduction.

§539.63. Termination of Application.

An application for residential service company license in §539.61(a) of this title (relating to Application for Residential Service Company License) or an application to approve evidence of coverage/schedule of charges in §539.71(2) of this title (relating to Miscellaneous Forms) will be terminated and the commission shall take no further action if the applicant fails to submit a response within 90 days after the commission mails a request to the applicant for curative action.

§539.64. Mailing Address and Other Contact Information.

Each residential service company shall furnish a mailing address, telephone number and email address to the commission and shall report all subsequent changes within 10 days after a change of any of the listed contact information on the form Notice of Modification, RSC 8-0. If the residential service company fails to update the mailing address, the last known mailing address provided to the commission will be deemed to be the address of the residential service company. Failure to provide the information in a timely manner constitutes a violation of §1303.352(a)(7) of the Act.

§539.65. Change in Company Ownership or Officers.

A residential service company shall report changes in its ownership or officers to the commission on the form Notice of Modification, RSC 8-0. Failure to provide the information in a timely manner constitutes a violation of §1303.352(a)(7) of the Act.

§539.66. Change in Operation.

If a residential service company wishes to begin issuing and administering contracts in affiliation with another company, the residential service company shall give the commission no less than 30 days written notice before commencing such action. The residential service company shall also provide the commission with copies of any contract and any advertising to be issued or administered by the affiliate. All contracts issued or administered by an affiliate must clearly indicate the relationship between the residential service company and the affiliate. Failure to provide to the commission in a timely manner written notice of affiliation with another company, any contract or any advertising to be issued by the affiliate constitutes a violation of §1303.352(a)(1) of the Act.

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

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SUBCHAPTER H. MISCELLANEOUS FORMS

22 TAC §539.71

The Texas Real Estate Commission (TREC) proposes an amendment to §539.71, concerning Miscellaneous Forms. The amendment to §539.71 adopts by reference new Form RSC 8-0 and Form RSC 9-0.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the amended section. There is no anticipated economic effect on small businesses, micro-businesses or local or state employment as a result of implementing the amended section.

Ms. DeHay also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be enhanced consumer protection for purchasers of residential service contracts. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendment is proposed under Texas Occupations Code, §1303.051, which authorizes TREC to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendment.

§539.71. Miscellaneous Forms.

The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These forms are published and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov [~~www.trec.state.tx.us~~].

(1) Residential Service Company Bond, Form RSC 2-4; [~~and~~]

(2) Application to Approve Evidence of Coverage/Schedule of Charges, Form RSC 3-2;[~~.~~]

(3) Notice of Modification, Form RSC 8-0; and

(4) Consent to Service of Process, Form RSC 9-0.

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 November 9, 2012.

TRD-201205838
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 936-3092

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SUBCHAPTER I. FINANCIAL ASSURANCES

22 TAC §539.81, §539.82

The Texas Real Estate Commission (TREC) proposes an amendment to §539.81 and new §539.82, concerning Financial Assurances. The title of Subchapter I is changed from Funded Reserves to Financial Assurances to more accurately reflect the contents of the subchapter. The amendment to §539.81, concerning Funded Reserves, authorizes the commission to accept, with prior authorization, other types of assets as funded reserves such as government backed instruments; and requires companies to complete monthly reconciliations to prove that the company meets the minimum funded reserve requirements of the Act, and increase the funded reserve as required. New §539.82, concerning Security, requires each company to confirm by February 1 of each year that the security required by §1303.154(b) of the Act is sufficient, or increase the amount to meet the minimum required.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amended and new sections are in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the sections. There is no anticipated economic effect on small businesses, micro-businesses or local or state employment as a result of implementing the amended and new sections.

Ms. DeHay also has determined that for each year of the first five years the amended and new sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhanced consumer protection for purchasers of residential service contracts. There is no anticipated economic cost to persons who are required to comply with the proposed amendment and new section.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendment and new section are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendment or new section.

§539.81. Funded Reserves.

(a) Each residential service company licensed by the commission shall maintain funded reserves in the amount required by [~~the Residential Service Company Act (Act), Texas Occupations Code, Chapter 1303,~~] Subchapter D of the Act. Accounts containing funded reserves must be identified as such and may not be encumbered or commingled with funds which are not reserves. Separate funded reserves are required for service contracts written in Texas unless the company's combined funded reserves meet the minimum reserve requirements of the Act, Subchapter D, calculated on the basis of all outstanding contracts. Each company shall maintain a level of liquidity equal to or greater than the amount of its funded reserve. Funded reserves may be maintained in the following liquid assets only:

(1) in cash or savings deposits, time deposits, certificates of deposit, [~~NOW accounts~~] or money market accounts in solvent banks, savings and loan associations and credit unions and branches thereof, organized under the laws of the United States of America or its states; [~~or~~]

(2) in investment grade notes, bonds, bills or other evidences of indebtedness or obligations of the United States of America or of a state or unit of local government or in a money market mutual fund which invests in the securities listed in this paragraph. For the purposes of this section, the term "investment grade" shall mean a security rated BBB and above by a nationally recognized securities rating organization such as Standard & Poor's; or[~~.~~]

(3) in other governmentally backed financial instruments acceptable to the commission, provided prior permission is obtained.

(b) Each residential service company shall complete a monthly reconciliation to confirm that it meets the minimum funded reserve requirements of the Act, Subchapter D. If the minimum reserve requirement has not been met, the residential service company shall take immediate steps to increase the amount of its funded reserve to meet the minimum funded reserve required.

(c) [~~(b)~~] The commission may suspend or revoke the license of a residential service company for failure to comply with this section.

§539.82. Security.

Each residential service company licensed by the commission shall maintain a security in the amount required by Subchapter D of the Act. Each residential service company shall confirm, by February 1 of each year, that the security required by §1303.154(b) of the Act is sufficient based on the amount of claims the residential service company paid in this state during the preceding calendar year. If the required amount of security is not sufficient, the residential service company shall take immediate steps to increase the amount of its security to meet the minimum security required and shall give the commission written notice of the increase and documentation evidencing the increase.

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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SUBCHAPTER J. ANNUAL REPORT

22 TAC §539.91

The Texas Real Estate Commission (TREC) proposes an amendment to §539.91, concerning Annual Report. The

amendment to §539.91 adopts by reference a revised annual report form and requires companies to file an Annual Report by February 1 of each year for the preceding calendar year.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the amended section. There is no anticipated economic effect on small businesses, micro-businesses or local or state employment as a result of implementing the amended section.

Ms. DeHay also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be enhanced consumer protection for purchasers of residential service contracts. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendment is proposed under Texas Occupations Code, §1303.051, which authorizes TREC to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendment.

§539.91. Annual Report.

(a) The Texas Real Estate Commission adopts by reference the Annual Report Form RSC 6-4 [~~form RSC 6-3~~] approved by the commission. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov [~~www.trec.state.tx.us~~].

(b) Each residential service company shall file an Annual Report no later than February 1 of each year for the preceding calendar year, with the financial statements filed no later than April 1.

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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Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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SUBCHAPTER N. MID-YEAR REPORT

22 TAC §539.137

The Texas Real Estate Commission (TREC) proposes an amendment to §539.137, concerning Mid-Year Report. The amendment to §539.137 adopts by reference amendments to the Mid-Year Report Form and changes the filing date from August 15 to August 1.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the amended section. There is no anticipated economic effect on small businesses, micro-businesses or local or state employment as a result of implementing the amended section.

Ms. DeHay also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be enhanced consumer protection for purchasers of residential service contracts. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Occupations Code, §1303.051, which authorizes TREC to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendment.

§539.137. Mid-Year [~~Mid-year~~] Report.

(a) The Texas Real Estate Commission adopts by reference Mid-Year [~~Mid-year~~] Report Form RSC 7-3 [~~7-2~~] approved by the commission. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov [~~www.trec.state.tx.us~~].

(b) Each residential service company shall file a Mid-Year Report [~~mid-year report~~] no later than August 1 [~~15~~] of each year for the preceding months of January through June.

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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Loretta R. DeHay
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SUBCHAPTER Q. ISSUES AFFECTING CONSUMERS

22 TAC §539.160, §539.161

The Texas Real Estate Commission (TREC) proposes new Subchapter Q, §539.160 and §539.161, concerning Issues Affecting Consumers. New §539.160, concerning Copy of Residential Service Company Contract, requires companies to provide a contract holder a copy of a residential service contract within 15 days after payment is made or the residential service contract becomes effective, whichever is sooner. New §539.161, concerning Advertising, subjects companies to disciplinary action if

they use a side-by-side comparison in advertising if the contracts being compared are not substantially the same.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the sections. There is no anticipated economic effect on small businesses, micro-businesses or local or state employment as a result of implementing the new sections.

Ms. DeHay also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhanced consumer protection for purchasers of residential service contracts. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register.*

The new sections are proposed under Texas Occupations Code, §1303.051, which authorizes TREC to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed new sections.

§539.160. Copy of Residential Service Company Contract.

A residential service company is required to provide a contract holder a complete copy of each new or revised residential service contract within 15 days after payment is made or the residential service contract becomes effective, whichever is sooner. Failure to provide the copy constitutes a violation of §1303.352(a)(7) of the Act. The residential service company may provide the copy of the evidence of coverage by U.S. mail, email or other means of delivery acceptable to the commission.

§539.161. Advertising.

A residential service company is subject to discipline under §1303.352(a)(1) of the Act if it utilizes a side-by-side comparison in its advertising and the contracts being compared do not have substantially the same covered items and exclusions.

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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Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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SUBCHAPTER X. FEES

22 TAC §539.231

The Texas Real Estate Commission (TREC) proposes amendments to §539.231, concerning Fees. The amendments to §539.231 clarify that the filing fees for an application to approve an evidence of coverage and schedule of charges also applies to changes to an approved evidence of coverage and schedule of charges.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the amended section. There is no anticipated economic effect on small businesses, micro-businesses or local or state employment as a result of implementing the amended section.

Ms. DeHay also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended section will be enhanced consumer protection for purchasers of residential service contracts. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes TREC to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.231. Fees.

The commission shall charge and collect the following fees:

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

(3) a fee of $250 for filing an application to approve an evidence of coverage or changes to an approved evidence of coverage; and

(4) a fee of $250 for filing an application to approve a schedule of charges or changes to an approved schedule of charges.

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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Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 85. HEALTH AUTHORITIES

SUBCHAPTER A. LOCAL PUBLIC HEALTH

25 TAC §85.2

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §85.2, concerning the Public Health Funding and Policy Committee.

BACKGROUND AND PURPOSE

The 82nd Texas Legislature, Regular Session, 2011, passed Senate Bill 969, which amended the Health and Safety Code by adding new Chapter 117. Chapter 117 establishes the Public Health Funding and Policy Committee (committee) within the department. The chapter requires the committee to define the core public health services a local health entity should provide in a county or municipality; evaluate public health in the state and identify initiatives for areas that need improvement; identify all funding sources available for use by local health entities to perform core public health functions; and establish public health policy priorities for the state. At least annually, the committee is to make recommendations to the department regarding the use and allocation of funds available exclusively to local health entities to perform core public health functions; ways to improve the overall public health of citizens in the state; methods for transitioning from a contractual relationship to a cooperative-agreement relationship between the department and the local health entities; and methods for fostering a continuous collaborative relationship between the department and the local health entities.

The committee is governed by the Government Code, Chapter 2110, concerning state agency advisory committees. Government Code, §2110.005, requires the Executive Commissioner, by rule, to state the purpose and tasks of the committee and to describe the manner in which the committee shall report to the department. The Executive Commissioner proposes new §85.2 to comply with those requirements and to provide other operational standards for the committee.

SECTION-BY-SECTION SUMMARY

New §85.2 stipulates the basis for the committee's creation, applicable law, purpose, tasks, abolition of the committee under the Texas Sunset Act, composition, terms of office, officers, meetings, attendance, staff, procedures, subcommittees, statements by members, reports, and reimbursement for expenses.

FISCAL NOTE

Paul McGaha, Acting Assistant Commissioner, Regional and Local Health Services Division, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the rule as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Dr. McGaha has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the rule as proposed because small businesses and micro-businesses will not be required to alter their business practices in order to comply with the rule.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

PUBLIC BENEFIT

In addition, Dr. McGaha has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the rule. The public benefit of the new rule will be to specify the roles, responsibilities, and procedures of the committee as the committee provides advice and assistance to the department regarding local public health funding and policy.

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 proposed new rule 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 by mail to Carolyn Bivens, Center for Consumer and External Affairs, Mail Code 1911, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; by telephone at (512) 776-2370; or by email to carolyn.bivens@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 new rule is authorized by Health and Safety Code, Chapter 117, which directs the establishment of the Public Health Funding and Policy Committee; Government Code, §2110.005, which requires a state agency to develop tasks and methods of reporting for advisory committees that report to that agency; 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 new rule affects Government Code, Chapters 531 and 2110, and Health and Safety Code, Chapters 117 and 1001.

§85.2. Public Health Funding and Policy Committee.

(a) The committee.

(1) The Public Health Funding and Policy Committee (committee) shall be appointed under and governed by this section.

(2) The committee is established under the Health and Safety Code, Chapter 117, which requires the Commissioner of the

Department of State Health Services (commissioner) to establish the Public Health Funding and Policy Committee.

(b) Applicable law. The committee is subject to the Health and Safety Code, Chapter 117, and Government Code, Chapter 2110, concerning state agency advisory councils.

(c) Purpose. The purpose of the committee is to provide policy level advice and assistance to the Department of State Health Services (department) in the organization and funding of local public health in Texas and the relationship between local public health entities and the department.

(d) Tasks. As required by the Health and Safety Code, §117.101, the committee shall:

(1) define the core public health services a local health entity should provide in a county or municipality;

(2) evaluate public health in this state and identify initiatives for areas that need improvement;

(3) identify all funding sources available for use by local health entities to perform core public health functions;

(4) establish public health policy priorities for this state; and

(5) at least annually, make formal recommendations to the department regarding:

(A) the use and allocation of funds available exclusively to local health entities to perform core public health functions;

(B) ways to improve the overall public health of citizens in this state;

(C) methods for transitioning from a contractual relationship between the department and the local health entities to a cooperative-agreement relationship between the department and the local health entities; and

(D) methods for fostering a continuous collaborative relationship between the department and the local health entities.

(6) The committee shall carry out any other tasks assigned by the commissioner.

(e) Committee abolished. As required by the Health and Safety Code, §117.002, the committee shall be subject to the Texas Sunset Act, Government Code, Chapter 325. Unless continued in existence as provided by the Government Code, Chapter 325, the committee is abolished and this section expires September 1, 2023.

(f) Composition. As required by the Health and Safety Code, §117.052, the committee shall be composed of nine members, appointed by the commissioner to include:

(1) two regional health directors, each of whom is serving as a health authority in a municipality or county;

(2) one local health entity representative of a municipality or county with a population of 50,000 or less;

(3) one local health entity representative from a municipality or county with a population greater than 50,000 but less than 250,000;

(4) one local health entity representative from a municipality or county with a population of at least 250,000;

(5) two local health entity representatives, each of whom serves in a municipality or county as the health authority; and

(6) two representatives of schools of public health at institutions of higher education in this state.

(g) Terms of Office. As required by the Health and Safety Code, §117.053, the term of office of each member shall be six years.

(1) Committee members serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year.

(2) If a vacancy occurs on the committee, a person shall be appointed to fill the vacancy for the unexpired term in the same manner as the original appointment.

(h) Officers. As required by the Health and Safety Code, §117.055, the committee shall select from its members the presiding officer and an assistant presiding officer.

(1) The presiding officer shall serve until December 31 of each even-numbered year. The assistant presiding officer shall serve until December 31 of each odd-numbered year. Both the presiding officer and the assistant presiding officer may holdover until his or her replacement is elected by the committee.

(2) The presiding officer shall preside at all committee meetings which he or she attends, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the council. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) If the office of presiding officer or assistant presiding officer becomes vacant, it may be filled by vote of the committee.

(4) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. As required by the Health and Safety Code, §117.056, the committee shall meet as necessary to conduct committee business.

(1) The committee shall meet at least quarterly, or more frequently, at the call of the presiding officer.

(2) To ensure appropriate representation from all areas of this state, the committee may meet by videoconference or telephone conference call. A meeting held by videoconference or telephone conference call under this subsection must comply with the requirements applicable to a telephone conference call under Government Code, §551.125(c), (d), (e), and (f). Government Code, §551.125(b) and §551.127 do not apply to the committee.

(3) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(4) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(5) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(6) The agenda for each committee meeting shall include an opportunity for any person to address the committee on matters relating to committee business. The presiding officer may establish procedures for such public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members and subcommittee members shall attend meetings of subcommittees to which the members and subcommittee members are assigned.

(1) A member shall notify the presiding officer, or appropriate department staff, if he or she is unable to attend a scheduled meeting.

(2) It shall be grounds for removal from the committee if a member or subcommittee member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, absence from more than half of the committee and subcommittees meetings during a calendar year, or absence from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(k) Staff. Staff support for the committee shall be provided by the department. In accordance with the Health and Safety Code, §117.104, using existing personnel and videoconferencing equipment, local health entities, or their designees, may assist the committee in the performance of its duties under this section.

(l) Procedures. Roberts Rules of Order shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once a quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the council and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer also may appoint nonmembers of the committee to serve on subcommittees, subject to the approval of the commissioner.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members.

(1) The Health and Human Services Commission (commission), the State Health Services Council (council), the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member or subcommittee member except when a statement or action is in pursuit of specific instructions from the commission, council, department, or committee.

(2) The committee and its members or subcommittee members may not participate in legislative activity in the name of the commission, the council, the department, or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member or subcommittee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member or subcommittee member should not disclose confidential information acquired through his or her committee membership.

(5) A committee member or subcommittee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member or subcommittee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter, but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(o) Reports to department. The committee shall file an annual written report with the department.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the council, the status of any rules which were recommended by the committee to the council, and anticipated activities of the committee for the next year.

(2) The report shall identify all costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.

(3) The report shall cover the meetings and activities in the immediately preceding fiscal year and shall be filed with the council each January. The report shall be signed by the presiding officer.

(p) In accordance with the Health and Safety Code, §117.1033, beginning in 2012, not later than November 30 of each year the committee shall file a report on the implementation of the Health and Safety Code, Chapter 117 with the governor, the lieutenant governor, and the speaker of the house of representatives.

(q) Reimbursement for expenses. In accordance with the Health and Safety Code, §117.054, a committee member is not entitled to compensation for service on the committee and is not entitled to reimbursement for any travel expenses.

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-201205877

Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 776-6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL

The Texas Department of Insurance proposes amendments to 28 Texas Administrative Code Chapter 34, Subchapter E, Fire Extinguisher and Installation §§34.501, 34.504, 35.506, 34.510, 34.513, 34.514, 34.516, 34.517, 34.519, 34.520, and 34.521; Subchapter F, Fire Alarm Rules, §§34.607, 34.611, 34.613, 34.619, 34.620, 34.623, 34.628, and 34.630; Subchapter G, Fire Sprinkler Rules, §§34.701, 34.704, 34.706, 34.707, 34.712, 34.713, 34.715, 34.716, 34.721, 34.723, and 34.724; Subchapter H, Storage and Sale of Fireworks, §§34.811, 34.815, and 34.817; and Subchapter L, Fire Standard Compliant Cigarettes, §34.1203 and §34.1212.

The proposed amendments make substantive changes to §§34.506, 34.519, 34.521, 34.623, 34.706, 34.721, 34.815, and 34.817 to clarify the intent of the rule or to better reflect the statutory purpose. Additionally, §§34.516, 34.715, and 34.811 are amended to conform with similar testing requirements in §34.615. The amendments also implement House Bill (HB) 1951, enacted by the 82nd Legislature, Regular Session, amending Insurance Code §6002.158. Other amendments implement portions of Senate Bill (SB) 14, enacted by the 78th Legislature, Regular Session, repealing Insurance Code Article 5.33C. The proposed amendments also adopt certain updated National Fire Protection Association (NFPA) codes applicable to the fire alarm and fire sprinkler rules. Finally, the proposed amendments update numerous obsolete statutory references and make nonsubstantive editorial changes to improve readability and consistency and conform to current agency style.

Substantive Changes

TDI and the state fire marshal proposed several minor but substantive changes to clarify the intent of the rule or to better reflect the statutory purpose.

A proposed amendment to Subchapter E, §34.506(19) of the fire extinguisher rules clarifies the definition of "direct supervision" so that the definition agrees with the language used in §34.517(e) of this subchapter. The word "installation" replaces "work" so that the term is less general and more applicable to the actual installation of engineered fixed fire extinguisher systems. The final sentence of the definition is amended to read "The licensee performing the direct supervision of an engineered fixed fire extinguisher system is not required to be on-site at all times when the installation is performed."

A proposed amendment to §34.516 adds new subsection (g) to require that any non-NICET test required for a license must have been completed in the last year. A proposed amendment to §34.715 adds new subsection (f) to require that any non-NICET test required for a license must have been completed in the last year. A similar change is proposed to add a new §34.811(d) and also redesignates existing subsections (d) - (g) as subsections (e) - (h). These amendments ensure that the knowledge demonstrated by passing the test is current. These amendments bring the testing requirements for the fire extinguisher, fire sprinkler, and fireworks rules up to the standard for fire alarm licensure testing requirements in §34.615(e).

Proposed amendments to §34.519 eliminate an unnecessary and redundant task. The amended section no longer requires the submission of certificates of installation to the state fire marshal's office. In Figure: 28 TAC §34.519(b) the existing installation label is deleted and replaced with an updated label. New §34.519(d) provides directions to clarify who should receive copies of the certificate of installation. Additionally, the certificate of installation in Figure: 28 TAC §34.519(c) is deleted and replaced with a new certificate to make conforming changes.

A proposed amendment to §34.521(a) clarifies that a red tag is required for a portable extinguisher or fixed system where an impairment exists, and not merely found. This change clarifies that ignorance of an impairment is not an excuse for failing to identify and properly tag an impaired fire extinguisher or fixed system. The first sentence is amended to state, "If impairments exist which make a portable extinguisher or fixed system unsafe or inoperable, the owner or the owner's representative must be notified in writing of all impairments."

A proposed amendment to §34.611 adds language to §34.611(a)(5) so a residential fire alarm superintendent may act as a fire alarm technician. This amendment makes the section consistent with Insurance Code §6002.154(d). Another amendment deletes §34.611(f)(2) and redesignates the remainder of the paragraphs in that subsection because of redundancy with §34.611(e).

Proposed amendment to §34.619(b) allows a local authority having jurisdiction to waive the requirement that fire alarm and detection system plans be signed and dated with an original signature. The existing section already allows a local authority having jurisdiction to waive the requirement of having plans submitted. The proposed amendment would allow local authorities having jurisdiction to waive the original signature requirement on submitted plans. In 2006, TDI amended §34.717(c) to make a similar change with respect to fire sprinkler system plans.

TDI proposes additional language for §34.623(a) of the fire alarm rules to require yellow labels to identify systems where required inspection, testing, and maintenance services are not being performed. This change clarifies that a fire alarm and fire detection system must be both installed and maintained in compliance with applicable codes and standards. With the proposed change, §34.623(a) states, "If, after any service, inspection or test, a system does not comply with applicable codes and standards adopted at the time the system was installed or is not being tested or maintained in accordance with those standards, a completed yellow label must be attached to the outside of the control panel cover or, if the system has no panel, in a permanent location to indicate that corrective action is necessary."

A proposed amendment to §34.706 of the fire sprinkler rules adds a definition of "employee" and redesignates existing paragraphs (6) - (21) as paragraphs (7) - (22). The term is defined as, "An individual that performs tasks assigned by the employer. The employee's pay is subject to the deduction of social security and federal income tax. The employee may be full time, part time, or seasonal. For the purposes of this section, employees

of a registered firm who are paid through a staff leasing company are considered to be employees of the registered firm." This additional definition clarifies the nature and role of an employee and is consistent with Labor Code Chapter 91.

A proposed amendment to §34.721 clarifies that a yellow tag is appropriate if the fire protection sprinkler system is found to be noncompliant with the applicable NFPA standard at the time it was installed. The additional language adds the limiting language "at the time it was installed" to §34.721(a). The yellow tag in Figure: 28 TAC §34.721(g) is deleted and replaced with a tag containing instructions that more closely mirror the text of §34.721(a). Additionally, the new figure updates the inspection dates.

Two new paragraphs are proposed for §34.815(b). The first is due to moving the language in §34.817(q) regarding sales tax permit requirements to a more appropriate location in the rules. The second proposed change clarifies that retail permits cannot be sold along with fireworks to a non-retailer. Resale of a retail permit to a non-retailer would otherwise allow the purchase of fireworks year round in contravention of Occupations Code Chapter 2154.

A proposed change to §34.817(f) of the Storage and Sale of Fireworks subchapter is made to address the appropriate storage of fireworks. The language "Fireworks shall not be sold or stored for future sale at any inhabited dwelling, house, apartment, or other structure used in whole or in part as a home or place of abode by any person or persons" is added to §34.817(f) to ensure the protection, safety, and preservation of life and property. Additionally, in connection with the proposed new §34.815(b)(5) regarding sales tax permits, §34.817(q) will be deleted.

Update Minimum Standards

Proposed amendments to §34.607 and §34.707 update four applicable NFPA code standards. In Subchapter F, Fire Alarm Rules, amendments to §34.607 update the adopted NFPA standards for NFPA 11, Standard for Low-, Medium-, and High-Expansion Foam; NFPA 13, Standard for the Installation of Sprinkler Systems; NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes; and NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height. These four NFPA codes are brought up to the 2010 versions of the NFPA codes. Amending these NFPA standards makes the applicable standards for the fire alarm rules consistent with those already adopted in §34.707 for the fire sprinkler rules.

NFPA 11-2010, Standard for Low-, Medium-, and High-Expansion Foam and Combined Agent Systems, incorporates requirements previously found in NFPA 11A, Standard for Medium- and High-Expansion Foam and adds a new chapter to address compressed air foam systems. The updated standard revises some chapters to accommodate the incorporation of medium- and high-expansion foam systems previously regulated by NFPA 11A.

NFPA 13-2010, Standard for the Installation of Sprinkler Systems, adds definitions relating to private water supply terms; clarifies the requirements of Ordinary Hazard Group 1 and Group 2 Occupancies where storage is present; revises requirements relating to trapeze hangers and bracing criteria; re-organizes the requirements relating to storage according to storage size, type, material, and commodity; specifies new requirements for listed expansion chambers; clarifies ceiling pocket rules; and clarifies the formulas used in calculating large antifreeze systems.

NFPA 13D-2010, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, includes new spacing and obstruction rules addressing sloped ceilings, ceiling pockets, ceiling fans, and kitchen cabinets; specifies installation, design, and acceptance requirements for pumps; clarifies the acceptability of insulation as a method of freeze protection and the acceptability of wells as a water source; specifies new requirements for listed dry pipe or preaction residential sprinkler systems, as well as clarifies requirements for multipurpose combined and networked sprinkler systems; and adopts specific obstruction rules for residential sprinklers.

NFPA 13R-2010, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height; includes spacing and obstruction rules addressing sloped ceilings, ceiling pockets, ceiling fans, and kitchen cabinets; clarifies the requirements for utilizing quick-response sprinklers within NFPA 13R regulations; adds new requirements addressing architectural features within dwelling units; and clarifies the requirements covering closets, including obstructions within closets and protection of mechanical closets.

A proposed amendment to §34.707 updates the NFPA-2008, Standard for the Installation of Stationary Pumps for Fire Protection. Revised NFPA 20-2010, Standard for the Installation of Stationary Pumps for Fire Protection, updates the standard to conform with the latest edition of the Manual of Style for NFPA Technical Committee Documents; adds provisions addressing the use of fire pump drivers using variable speed pressure limiting control; adds acceptance test criteria for replacement of critical path components of a fire pump installation; refines requirements for variable speed drives were refined; adds requirements for break tanks and component replacement testing tables; and adds requirements on fire pumps for high-rise buildings and for pumps arranged in series.

Copies of the standards are available for public inspection in the state fire marshal's office. The NFPA also makes available codes for read-only inspection online through their website at www.nfpa.org. To view the NFPA codes on the NFPA website, users must create a free account and agree to certain terms and conditions.

Nonsubstantive Amendments

The rule updates numerous obsolete statutory references. These changes are nonsubstantive and are made to reflect the Texas Legislature's recodification of the Insurance Code. HB 2636, 80th Legislature, 2007, repealed and recodified Article 5.43-1 as Insurance Code Chapter 6001.

Portions of Article 5.43-2 were repealed and recodified as Insurance Code Chapter 6002 in the nonsubstantive Insurance Code revision contained in HB 2636, 80th Legislature, Regular Session, 2007. The remaining portions of Article 5.43-2, including changes made by HB 2118, relating to the new licensing category of residential fire alarm technicians, were repealed and recodified as Insurance Code Chapter 6002 in the nonsubstantive Insurance Code revision contained in SB 1969, 81st Legislature, Regular Session, 2009. Article 5.43-3 was repealed and recodified as Insurance Code Chapter 6003 in the nonsubstantive Insurance Code revision contained in HB 2636. The affected sections are §§34.501, 34.504, 34.510, 34.513, 34.514, 34.516, 34.517, 34.613, 34.620, Figure: 28 TAC §34.620(g), 34.701,

34.704, 34.706, 34.712, 34.713, 34.715, 34.716, 34.723, and 34.724. Finally, §34.713(b)(2)(A) is amended so that the language tracks the changed National Institute for Certification in Engineering Technologies' (NICET) terminology which has replaced "fire protection automatic sprinkler" with "water-based fire protection."

The Business and Commerce Code Chapter 36, which codified the Assumed Business or Professional Name Act, was repealed in the nonsubstantive Business and Commerce Code revision, Acts 2007, 80th Legislature, Chapter 885, §2.47. The Business and Commerce Code Chapter 36 was re-adopted as the Business and Commerce Code Chapter 71 in the same nonsubstantive Business and Commerce Code revision. The affected sections are §34.514 and §34.713.

The service tag in Figure: 28 TAC §34.520(g) is deleted and replaced with a new tag that updates the part of the tag showing the date of last service.

The proposed rules also make numerous nonsubstantive editorial changes to reflect agency style and improve readability. These changes replace "shall" with "must" or "will" and amend inconsistent capitalization.

The proposed rules also update obsolete web addresses in §§34.630, 34.1203, and 34.1212.

HB 1951 - 28 TAC §34.628 and §34.630

Section 34.630 is amended so that subsection (f) refers to Renewal Application for Training School Approval form and deletes the form number, consistent with new agency style.

Article 15 of HB 1951 amended Insurance Code §6002.158, related to residential fire alarm technicians. The amendment reduced the curriculum requirement for the residential fire alarm technician course from eight to seven hours. Proposed amended §34.628 makes the corresponding change to the rule that implements §6002.158.

SB 14 - 28 TAC §34.716(f)

What is now §34.716(f) was adopted in 1996 to implement Article 5.33C, in 21 TexReg 7663. In 2003, SB 14 repealed Insurance Code Articles 5.33A and 5.33C, providing for certificates used for premium credits and discounts on insurance rates. Section 34.716 was formerly 37 TAC §541.14. Section 34.716(f) is obsolete and proposed for deletion.

The proposed rules amend §34.1212 to delete form numbers from the Certification by Manufacturer for Fire Standard Compliant Cigarette (FSCC) and Application for Fire Standard Compliant Cigarette Marking Approval forms, consistent with agency style.

FISCAL NOTE. Chris Connealy, state fire marshal, has determined that for each year of the first five years the proposed sections will be in effect, there will no measurable fiscal impact to state government and no measurable impact to local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Connealy has also determined that for each year of the first five years the proposal is in effect, there is an anticipated public benefit of more orderly administration of the licensing process and increased clarity in regulatory requirements.

TDI drafted the proposed rules to maximize public benefits while mitigating costs. Except for the costs associated with the updated NFPA codes and the testing requirements in §§34.516(g), 34.715(f), and 34.811(d) to require that any test required for a license must have been completed in the last year, the proposed changes will have no expected financial impact on the public. The proposed nonsubstantive amendments will have no expected financial impact on the public.

Costs Relating to NFPA Code Updates

The costs for compliance will vary between the smallest and largest businesses because the amount of work a business does may vary with firm size. Businesses and individuals may face higher costs to meet the updated code standards. The estimated cost to purchase all of the proposed updated NFPA standards is approximately $500. However, because fire alarm firms will only need to purchase the applicable standards in their area of expertise, the cost may actually be less. These costs will apply equally to small and micro businesses. However, TDI has considered the purpose of the adopted NFPA standards, which is to provide for the safety of lives and property, and has determined that it is neither legal nor feasible to waive the provisions of the proposed amendments for small or micro businesses.

The proposed amendments adopt four revised NFPA codes. Because of revisions in the updated codes, building owners and licensees may be required to meet more stringent or altered code requirements, and building owners and licensees may have higher costs to comply with the more recent version of the NFPA codes. However, these costs will be individualized based on the existing condition of the building, the number of buildings affected by the updated standards, and the work processes of licensees.

Costs Relating to One Year Testing Requirements

Proposed amendments to §§34.516(g), 34.715(f), and 34.811(d) requiring that any non-NICET test required for a license must have been completed in the last year may have a cost to some licensee applications. Formerly, an individual who had already passed the applicable exam, even if many years before, could use that examination grade for meeting licensing requirements. The proposed amendments may mean that some individuals will have to demonstrate their command of the subject matter by taking and passing an exam within one year of application. This revised testing requirement does not apply to NICET exams. For non-NICET exams, testing is done through Prometric and the tests cost $40.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by Government Code §2006.002(c), the department has determined that the proposed amendments may have an adverse economic effect on small or micro businesses that must comply with the proposed rules. The cost of compliance with the proposal may vary between large businesses and small or micro businesses, and TDI's cost analysis and resulting estimated costs for building owners licensees in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro businesses.

The SFMO and TDI do not directly regulate the building owners that may need to comply with the updated NFPA codes. Because of the broad scope of potential building owners, it is impossible to determine what effects the rule will have on small or micro businesses. According to the state comptroller, 91.6 percent of all businesses are small or micro businesses

(https://fmx.cpa.state.tx.us/fmx/legis/ecoeffect/). TDI estimates that many small or micro businesses may be required to comply with the updated NFPA codes. However, because the costs attributable to the rule vary with the amount of code compliant work, size, and number of buildings, TDI anticipates that the proposal is likely to have a smaller cost impact on small or micro businesses because such businesses and licensees are likely to have fewer buildings and less work requiring code compliance.

The proposed amendments adopt NFPA 13-2010, Standard for the Installation of Sprinkler Systems, NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, and NFPA 13R-2010, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, for the purposes of the Fire Alarm Rules. Additionally, the proposed amendments adopt NFPA 20-2010, Standard for the Installation of Stationary Pumps for Fire. The updated standards are necessary to better protect the health and safety of the public. TDI has determined, in accord with Government Code §2006.002(c-1), that the proposal substantially contributes to the health and safety of Texas citizens by incorporating more current fire alarm and fire sprinkler NFPA standards. There are no regulatory alternatives to the adoption of the updated standards in this proposal that will sufficiently protect the health and safety of Texas citizens affected by the rules.

The proposed amendments add licensing examination requirements to §§34.516(g), 34.715(e), and 34.811(d). It is unknown to how many fire extinguisher, fire sprinkler, and fireworks license applicants these rules would apply. The updated examination standards are necessary to better protect the health and safety of the public. TDI has determined, in accord with Government Code §2006.002(c-1), that the proposal substantially contributes to the health and safety of Texas citizens by requiring proof of recent examination passage to determine the applicant's knowledge and ability. There are no regulatory alternatives to the adoption of the revised testing requirements in this proposal that will sufficiently protect the health and safety of Texas citizens affected by the rules.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 27, 2012, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Chris Connealy, State Fire Marshal, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

SUBCHAPTER E. FIRE EXTINGUISHER AND INSTALLATION

28 TAC §§34.501, 34.504, 35.506, 34.510, 34.513, 34.514, 34.516, 34.517, 34.519 - 34.521

STATUTORY AUTHORITY. The amendments are proposed pursuant to Government Code §417.004 and §417.005, Insurance Code §§6001.051, 6001.052, 6002.051, 6002.052, 6003.051, 6003.052, 6003.054, and §36.001, Occupations Code §2154.051 and §2154.052, and Health and Safety Code §796.008. Government Code §417.004 specifies that the commissioner of insurance shall perform the rulemaking functions previously performed by the Texas Commission on Fire Protection. Government Code §417.005 specifies that the commissioner of insurance may, after consulting with the state fire marshal, adopt necessary rules to guide the state fire marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the commissioner of insurance.

Insurance Code §6001.051(a) specifies that the department shall administer Insurance Code Chapter 6001. Insurance Code §6001.051(b) specifies that the commissioner may issue rules the commissioner considers necessary to administer Chapter 6001 through the state fire marshal. Insurance Code §6001.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards published by the National Fire Protection Association; recognized by federal law or regulation; published by any nationally recognized standards-making organization; or contained in the manufacturer's installation manuals. Insurance Code §6001.052(b) specifies that the commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that the commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Insurance Code §6002.051(a) specifies that the department shall administer Chapter 6002. Insurance Code §6002.051(b) specifies that the commissioner may adopt rules as necessary to administer Chapter 6002, including rules the commissioner considers necessary to administer Chapter 6002 through the state fire marshal. Insurance Code §6002.052(a) specifies that in adopting necessary rules, the commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association; standards recognized by federal law or regulation; or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. Insurance Code §6002.052(b) specifies that rules adopted under Section 6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate. Insurance Code §6002.052(c) specifies that the commissioner shall also adopt standards applicable to fire alarm devices, equipment, or systems regu-

lated under this chapter, and that in adopting standards, the commissioner may allow the operation of a fire alarm monitoring station that relies on fire alarm devices or equipment approved or listed by a nationally recognized testing laboratory without regard to whether the monitoring station is approved or listed by a nationally recognized testing laboratory if the operator of the station demonstrates that the station operating standards are substantially equivalent to those required to be approved or listed.

Insurance Code §6003.051(a) specifies that the department shall administer Chapter 6003. Insurance Code §6003.051(b) specifies that the commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal. Insurance Code §6003.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards adopted by federal law or regulation; standards published by a nationally recognized standards-making organization; or standards developed by individual manufacturers. Section 6003.054(a) further specifies that the state fire marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

Occupations Code §2154.051 states that the commissioner shall determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays. Section 2154.052 further provides that the commissioner shall adopt and the state fire marshal shall administer rules the commissioner considers necessary for the protection, safety, and preservation of life and property. Under §2154.052(e), a rule may not be adopted under Occupations Code Chapter 2154 that is more restrictive than a rule in effect on September 1, 1998, without specific statutory authority.

Health and Safety Code §796.008 states that the state fire marshal may adopt rules to administer the cigarette fire safety standards chapter.

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

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

§34.501 - Insurance Code §6001.052

§34.504 - Insurance Code §6001.052

§34.506 - Insurance Code §§6001.051, 6001.052, 6001.155, and 6001.251

§34.510 - Insurance Code §6001.052

§34.513 - Insurance Code §6001.052

§34.514 - Insurance Code §6001.052

§34.516 - Insurance Code §§6001.051, 6001.052, and 6001.157

§34.517 - Insurance Code §6001.052

§34.519 - Insurance Code §§6001.051, 6001.052, 6001.155, and 6001.251

§34.520 - Insurance Code §§6001.051, 6001.052, 6001.155, and 6001.251

§34.521 - Insurance Code §§6001.051, 6001.052, 6001.155, and 6001.251

§34.501. Purpose.

The purpose of this subchapter is to regulate the business of leasing, renting, selling, installing, and servicing of portable fire extinguishers and the planning, certifying, installing, or servicing of fixed fire extinguisher systems and to prohibit portable fire extinguishers, fixed fire extinguisher systems, and extinguisher equipment not labeled or listed by a testing laboratory approved by the commissioner in the interests of protecting and preserving lives and property pursuant to [~~the~~] Insurance Code Chapter 6001 [~~, Article 5.43-1~~].

§34.504. Exceptions.

The exceptions of [~~the~~] Insurance Code §6001.156 [~~, Article 5.43-1, §6,~~] are applicable to the sections of this subchapter.

§34.506. Definitions.

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

(1) - (18) (No change.)

(19) Direct supervision--The oversight by a licensee of the services performed by another licensee or permittee. The licensee, performing the direct supervision at the shop, must be present[~~,~~] at all times[~~,~~] on the premises where the supervised licensee or permittee is performing the service. When not at the shop, the individual being supervised must be within sight of the licensee performing the direct supervision when installing or servicing portable fire extinguishers or pre-engineered fixed fire extinguisher systems. The licensee performing the direct supervision of an engineered fixed fire extinguisher system is not required to be on-site at all times when the installation [~~work~~] is performed.

§34.510. Certificates of Registration.

(a) - (d) (No change.)

(e) Shop. A registered firm must establish and maintain a shop whether at a specific location or in a mobile unit designed so that servicing, repairing, or hydrostatic testing can be performed. The shop must be adequately equipped to service or test all fire extinguishers or systems the registered firm installs and services. At a minimum a firm must [~~shall~~] maintain the following:

(1) (No change.)

(2) a copy of the most recently adopted [~~Texas~~] Insurance Code Chapter 6001 [~~Article 5.43-1~~] and this chapter;

(3) - (7) (No change.)

(8) if performing internal maintenance for portable extinguishers, a written notice must [~~shall~~] be kept on file indicating the registered firm performing the maintenance or, at a minimum, the following additional items are required:

(A) - (L) (No change.)

(9) if performing hydrostatic testing for portable extinguishers, a written notice must [~~shall~~] be kept on file indicating the

registered firm performing the test or, at a minimum, the following additional items are required:

(A) - (F) (No change.)

(10) if performing maintenance for DOT specification portable fire extinguishers, a written notice must [~~shall~~] be kept on file indicating the registered firm which would perform the hydrostatic test when required or, at a minimum, the following additional items are required:

(A) - (B) (No change.)

(11) (No change.)

(f) - (m) (No change.)

§34.513. Alterations of Certificates, Licenses, or Permits.

Alteration of such documents renders them invalid and is the basis for administrative action pursuant to [~~the~~] Insurance Code §6001.252 [~~, Article 5.43-1, §7~~].

§34.514. Applications.

(a) Certificates of registration.

(1) Applications for certificates and branch office certificates must be submitted on forms provided by the state fire marshal and accompanied by all other information required by [~~the~~] Insurance Code Chapter 6001[~~, Article 5.43-1,~~] and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the state fire marshal's office.

(2) Applications must be signed by the sole proprietor, or by each partner of a partnership, or by an officer of a corporation. For corporations, the application must be accompanied by the corporate charter of a Texas corporation, or, in the case of a foreign corporation, a copy of the Texas certificate of authority to do business. For applicants using an assumed name, the application must also be accompanied by evidence of compliance with the Assumed Business or Professional Name Act, Texas Business and Commerce Code, Chapter 71 [~~§36.01~~]. The application must [~~shall~~] also include written authorization by the applicant permitting the state fire marshal or the state fire marshal's [~~his~~] representative to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business to determine compliance with the provisions of [~~the~~] Insurance Code Chapter 6001 [~~, Article 5.43-1,~~] and this subchapter.

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

(5) The applicant must comply with the following requirements concerning liability insurance.

(A) - (B) (No change.)

(C) Evidence of public liability insurance, as required by [~~the~~] Insurance Code §6001.154, [~~Article 5.43-1, §4A,~~] must be in the form of a certificate of insurance executed by an insurer authorized to do business in this state.

(D) - (F) (No change.)

(b) Fire extinguisher licenses.

(1) Original applications for a license from an employee of a firm engaged in the business must be submitted on forms provided by the state fire marshal and accompanied by all other information required by [~~the~~] Insurance Code Chapter 6001 [~~, Article 5.43-1,~~] and this subchapter.

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

(c) Complete application required for renewal. Renewal applications for certificates of registration and licenses must be submitted on forms provided by the state fire marshal and accompanied by all other information required by [~~the~~] Insurance Code Chapter 6001 [~~, Article 5.43-1,~~] and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the state fire marshal's office.

(d) Timely filed. A license or registration will [~~shall~~] expire at 12:00 midnight on the date printed on the license or registration. A renewal application and fee for license or registration must be postmarked on or before the date of expiration to be accepted as timely. If a renewal application is not complete but there has been no lapse in the required insurance, the applicant will [~~shall~~] have 30 days from the time the applicant is notified by the state fire marshal's office of the deficiencies in the renewal application to submit any additional requirement. If an applicant fails to respond and correct all deficiencies in a renewal application within the 30-day period, a late fee may be charged.

(e) Requirements for applicants holding licenses from other states. An applicant holding a valid license in another state who desires to obtain a Texas license through reciprocity must submit the following documentation with the application in addition to all other information required by [~~the~~] Insurance Code Chapter 6001 [~~, Article 5.43-1,~~] and this subchapter:

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

(f) (No change.)

(g) Complete applications. The application form for a license or registration must be accompanied by the required fee and must, within 180 days of receipt by the department of the initial application, be complete and accompanied by all other information required by [~~the~~] Insurance Code Chapter 6001 [~~Article 5.43-1~~] and this subchapter, or a new application must be submitted, including all applicable fees.

§34.516. Tests.

(a) Applicants for licenses are required to take a test and obtain [~~at least~~] a grade of at least 70 percent [~~70%~~] on the test. Tests may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability. The test content, frequency, location, and outsource testing service must [~~shall~~] be designated by the state fire marshal.

(1) The Type B license test will include questions on the following:

(A) this subchapter and [~~the~~] Insurance Code Chapter 6001 [~~Article 5.43-1~~]; and

(B) (No change.)

(2) The Type A license test will include questions on the following:

(A) this subchapter and [~~the~~] Insurance Code Chapter 6001 [~~Article 5.43-1~~];

(B) - (D) (No change.)

(3) The Type K license test will include questions on the following:

(A) this subchapter and [~~the~~] Insurance Code Chapter 6001 [~~Article 5.43-1~~];

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

(4) The Type PL license test will include questions on the following:

(A) this subchapter and [~~the~~] Insurance Code Chapter 6001 [~~Article 5.43-1~~]; and

(B) (No change.)

(5) The Type R license test will include questions on this subchapter and Insurance Code Chapter 6001 [~~Article 5.43-1~~].

(b) - (f) (No change.)

(g) An applicant for a license must complete and submit all application requirements within one year of the successful completion of any test required for a license, except for testing conducted through NICET; otherwise, the test is voided and the individual will have to pass the test again.

§34.517. Installation and Service.

(a) - (f) (No change.)

(g) If the installation or servicing of a fixed fire extinguishing system includes the installation or servicing of any part of a fire alarm or detection system or [~~and/or~~] a fire sprinkler system other than the installation and servicing of mechanical or pneumatic detection or [~~and/or~~] actuation devices in connection with the fire extinguishing system, the licensing requirements of the appropriate Insurance Code Chapters 6002 or 6003 [~~Article 5.43-2 or 5.43-3~~] must be satisfied.

(h) - (k) (No change.)

§34.519. Installation Labels for Fixed Extinguisher Systems.

(a) After an installation has been completed, an installation label must be affixed to the control head or panel of the fixed fire extinguisher system [~~and an installation certificate form shall be sent to the state fire marshal's office~~]. The signature of the licensee on the label certifies that the system has been installed according to law. Labels must [~~shall~~] be five inches in height and four inches in width and must [~~shall~~] be of the gum label type. They must [~~shall~~] not be red in color. Installation labels must [~~shall~~] contain only the following information in the format of the label shown in subsection (b) of this section:

(1) - (6) (No change.)

(b) Installation label:
Figure: 28 TAC §34.519(b)
[~~Figure: 28 TAC §34.519(b)~~]

(c) Certificate of Installation [~~(Form Number FML 010)~~].
Figure: 28 TAC §34.519(c)
[~~Figure: 28 TAC §34.519(c)~~]

(d) After completion of the installation, modification, or addition of a fixed fire extinguisher system, the licensee must complete an installation certificate in the format provided by the state fire marshal under subsection (c) of this section. When an installation certificate has been completed, legible copies must be distributed as follows:

(1) original to owner or posted on site at control head or panel;

(2) a copy to main authority having jurisdiction, if required; and

(3) a copy certifying firm to retain in their office for access by SFMO.

§34.520. Service Tags.

(a) - (f) (No change.)

(g) Service tag:
Figure: 28 TAC §34.520(g)
[~~Figure: 28 TAC §34.520(g)~~]

§34.521. Red Tags.

(a) If impairments exist [~~are found~~] which make a portable extinguisher or fixed system unsafe or inoperable, the owner or the owner's [~~his~~] representative must be notified in writing of all impairments. The registered firm must [~~shall~~] notify the owner or the owner's [~~his~~] representative immediately and must also notify the local authority having jurisdiction (AHJ) when available within 24 hours by phone, fax, or email [~~e-mail~~] describing the impairments or deficiencies. A copy of the written notice to the owner must [~~shall~~] be submitted to the AHJ within three [~~3~~] business days. A completed red tag must be attached to indicate that corrective action or replacement is necessary. The signature of the licensee on the tag certifies that the impairments listed indicate that the equipment is unsafe or inoperable. A service tag must not be attached until the impairments have been corrected or the portable extinguisher or fixed system replaced and the extinguisher or fire extinguisher system reinspected and found to be in good operating condition.

(b) - (e) (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 November 8, 2012.

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Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 463-6326

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SUBCHAPTER F. FIRE ALARM RULES

28 TAC §§34.607, 34.611, 34.613, 34.619, 34.620, 34.623, 34.628, 34.630

STATUTORY AUTHORITY. The amendments are proposed pursuant to Government Code §417.004 and §417.005, Insurance Code §§6001.051, 6001.052, 6002.051, 6002.052, 6003.051, 6003.052, 6003.054, and §36.001, Occupations Code §2154.051 and §2154.052, and Health and Safety Code §796.008. Government Code §417.004 specifies that the commissioner of insurance shall perform the rulemaking functions previously performed by the Texas Commission on Fire Protection. Government Code §417.005 specifies that the commissioner of insurance may, after consulting with the state fire marshal, adopt necessary rules to guide the state fire marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the commissioner of insurance.

Insurance Code §6001.051(a) specifies that the department shall administer Insurance Code Chapter 6001. Insurance Code §6001.051(b) specifies that the commissioner may issue rules the commissioner considers necessary to administer Chapter 6001 through the state fire marshal. Insurance Code §6001.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards published by the National Fire Protection Association; recognized by federal law or regulation; published by any nationally recognized standards-making organization; or contained in the manufacturer's installation manuals. Insurance

Code §6001.052(b) specifies that the commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that the commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Insurance Code §6002.051(a) specifies that the department shall administer Chapter 6002. Insurance Code §6002.051(b) specifies that the commissioner may adopt rules as necessary to administer Chapter 6002, including rules the commissioner considers necessary to administer Chapter 6002 through the state fire marshal. Insurance Code §6002.052(a) specifies that in adopting necessary rules, the commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association; standards recognized by federal law or regulation; or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. Insurance Code §6002.052(b) specifies that rules adopted under Section 6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate. Insurance Code §6002.052(c) specifies that the commissioner shall also adopt standards applicable to fire alarm devices, equipment, or systems regulated under this chapter, and that in adopting standards, the commissioner may allow the operation of a fire alarm monitoring station that relies on fire alarm devices or equipment approved or listed by a nationally recognized testing laboratory without regard to whether the monitoring station is approved or listed by a nationally recognized testing laboratory if the operator of the station demonstrates that the station operating standards are substantially equivalent to those required to be approved or listed.

Insurance Code §6003.051(a) specifies that the department shall administer Chapter 6003. Insurance Code §6003.051(b) specifies that the commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal. Insurance Code §6003.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards adopted by federal law or regulation; standards published by a nationally recognized standards-making organization; or standards developed by individual manufacturers. Section 6003.054(a) further specifies that the state fire marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

Occupations Code §2154.051 states that the commissioner shall determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays. Section 2154.052 further provides that the commissioner shall adopt and the state fire marshal shall administer rules the commissioner considers necessary for the protection, safety, and preservation of life and property. Under §2154.052(e), a rule may not be adopted under Occupations Code Chapter 2154 that is more restrictive than a rule in effect on September 1, 1998, without specific statutory authority.

Health and Safety Code §796.008 states that the state fire marshal may adopt rules to administer the cigarette fire safety standards chapter.

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

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

§34.607 - Insurance Code §6002.051 and §6002.052

§34.611 - Insurance Code §§6002.051, 6002.052, and 6002.154

§34.613 - Insurance Code §6002.051 and §6002.052

§34.619 - Insurance Code §6002.051 and §6002.052

§34.620 - Insurance Code §6002.051 and §6002.052

§34.623 - Insurance Code §6002.051 and §6002.052

§34.628 - Insurance Code §§6002.051, 6002.052, and 6002.158

§34.630 - Insurance Code §6002.051 and §6002.052

§34.607. Adopted Standards.

(a) The commissioner adopts by reference those sections of the following copyrighted minimum standards, recommendations, and appendices concerning fire alarm, fire detection, or supervisory services or systems, except to the extent they are at variance with [~~to~~] sections of this subchapter, [~~the~~] Insurance Code Chapter 6002, or other state statutes. The standards are published by and are available from the National Fire Protection Association, Quincy, Massachusetts. A copy of the standards will [~~shall~~] be kept available for public inspection at the State Fire Marshal's Office.

(1) NFPA 11-2010 [~~11-2005~~], Standard for Low-, Medium-, and High-Expansion Foam.

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

(4) NFPA 13-2010 [~~13-2007~~], Standard for the Installation of Sprinkler Systems.

(5) NFPA 13D-2010 [~~13D-2007~~], Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.

(6) NFPA 13R-2010 [~~13R-2007~~], Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.

(7) - (17) (No change.)

(b) (No change.)

§34.611. Licenses and Approvals.

(a) Types of licenses [~~Licenses~~] and approvals [~~Approvals~~]. The following licenses and approvals are issued by the State Fire Marshal's Office in accordance with [~~the~~] Insurance Code Chapter 6002 and this subchapter. As required by [~~the~~] Insurance Code Chapter 6002, an individual or entity must be licensed or approved [~~in order~~] to lawfully perform the functions for which the license or approval is issued.

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

(5) Residential fire alarm superintendent license--For planning, installing, certifying, inspecting, testing, servicing, monitoring, and maintaining fire alarm or fire detection devices and systems in single-family or two-family residences. A residential fire alarm superintendent may act as a fire alarm technician.

(6) - (8) (No change.)

(b) Pocket license [~~License~~] and approval [~~Approval~~].

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

(c) Duplicate license [~~License~~]. A duplicate license must be obtained from the state fire marshal to replace a lost or destroyed license. The license holder or registered firm must submit written notification of the loss or destruction without delay, accompanied by the required fee.

(d) Licensee responsibilities relating to revised licenses [~~Responsibilities Relating to Revised Licenses~~]. A change in the licensee's name, the licensee's mailing address, or a new or additional registered firm employing the licensee requires a revised license. Within 14 days after the change requiring the revision, the license holder must submit written notification of the necessary change accompanied by the required fee.

(e) Registered firms' responsibilities relating to licensees [~~Firms' Responsibilities Relating to Licensees~~]. A registered firm must submit notification of any licensee employment, termination, or resignation within 14 days of its occurrence.

(f) Restrictions on licensees and registered firms [~~Licensees and Registered Firms~~].

(1) (No change.)

[~~(2) A registered firm must notify the state fire marshal within 14 days after termination of employment of a licensee.~~]

(2) [~~(3)~~] Each person who engages in the activities of the business must have the appropriate license issued by the state fire marshal unless excepted from the licensing provisions by [~~the~~] Insurance Code §6002.155.

(g) Restrictions on approval holders [~~Approval Holders~~]. Approvals are not transferable.

(h) Responsibilities relating to revised approvals [~~Relating to Revised Approvals~~]. A change in an instructor's name or mailing address requires a revised approval. The change in the mailing address of a fire alarm training school requires a revised approval. Within 14 days after the change requiring the revision, the approval holder must submit written notification of the necessary change accompanied by the required fee.

§34.613. Applications.

(a) (No change.)

(b) Fire Alarm Licenses.

(1) To [~~In order to~~] be complete, applications for a license from an employee or agent of a registered firm must be submitted on forms provided by the state fire marshal and be accompanied by all fees, documents, and information required by [~~the~~] Insurance Code Chapter 6002 [~~, Article 5.43-2,~~] and this subchapter. Applications must be signed by the applicant and by a person authorized to sign on behalf of the registered firm. All applicants for any type of license must successfully complete a qualifying test regarding Insurance Code Chapter 6002 [~~, Article 5.43-2,~~] and the Fire Alarm Rules as designated by the State Fire Marshal's Office.

(2) - (7) (No change.)

(c) - (e) (No change.)

§34.619. Fire Alarm and Detection System Plans and Record Drawings.

(a) (No change.)

(b) Except for plans sealed by a Texas registered engineer or where specifically waived by the local authority having jurisdiction, at least one set of plans submitted for review, rating, permit, or record purposes must be dated and signed with an original signature, unless waived by the local authority having jurisdiction, by the applicable licensed planner, certifying that the plans meet the applicable codes and standards or were copied from sealed engineering plans with any violations of the applicable codes and standards noted. In addition, the plans must contain the license number of the licensee, the name, address, phone number, and the certificate of registration number of the registered firm. This information may be in the form of a stamp as shown in subsection (d) of this section.

(c) - (f) (No change.)

§34.620. Installation Labels.

(a) After the completion of an installation of new fire alarm equipment or a new system, or the extension, alteration, or modification to a fire alarm system already in place, an installation label must be affixed to the inside of the control panel cover, or, if the system has no panel, in a permanent location. Yellow or red labels must [~~shall~~] not be attached for the installation of a new system or new equipment used in the extension, alteration, or modification to an existing fire alarm system. Attachment of the installation label for a one-or-two-family residence certifies that the fire alarm equipment or system has been tested and complies with the requirements of [~~the~~] Insurance Code Chapter 6002 [~~Article 5.43-2~~], this subchapter, the adopted codes and standards, and the manufacturer's requirements.

(b) - (e) (No change.)

(f) Installation labels for one-or-two-family residence must contain the following information in the format of the label as set forth in subsection (g) of this section:

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

(5) the inscription "I [~~hereby~~] certify, on behalf of the registered firm, that the fire alarm equipment or system has been tested and complies with the requirements of [~~the~~] Insurance Code Chapter 6002 [~~Article 5.43-2~~], the Fire Alarm Rules, the adopted codes and standards, and the manufacturer's requirements."

(g) One-or-two-family residence installation label:
Figure: 28 TAC §34.620(g)
[~~Figure: 28 TAC §34.620(g)~~]

§34.623. Yellow Labels.

(a) If, after any service, inspection, or test, a system does not comply with applicable codes and standards adopted at the time the system was installed or is not being tested or maintained in accord with

those standards, a completed yellow label must be attached to the outside of the control panel cover or, if the system has no panel, in a permanent location to indicate that corrective action is necessary.

(b) - (h) (No change.)

§34.628. Requirements for Residential Fire Alarm Technician Training Course.

The training curriculum for a residential fire alarm technician training course must [~~shall~~] consist of at least seven [~~eight~~] hours of instruction on installing, servicing, and maintaining single-family and two-family residential fire alarm systems as defined by National Fire Protection Association Standard No. 72. The training curriculum for a residential fire alarm technician training course must include the following minimum instruction time for the following subjects:

(1) one hour of instruction on [~~the~~] Insurance Code Chapter 6002 and the Fire Alarm Rules;

[~~(2) one hour of instruction pertaining to the equipment, system, and other hardware relating to household fire alarms;~~]

(2) [~~(3)~~] one hour of instruction on the National Electric Code, NFPA 70;

(3) [~~(4)~~] four and one-half hours of total combined instruction on:

(A) NFPA 72;

(B) NFPA 101, the Life Safety Code; and

(C) the International Residential Code for One- and Two-Family Dwellings; and

(4) [~~(5)~~] one-half hour of instruction on the monitoring of household fire alarm systems.

§34.630. Application and Renewal Forms.

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

(f) The commissioner adopts by reference the Renewal Application for Training School Approval form [~~, Form Number SF246~~], which contains instructions for completion of the form, provides information regarding necessary filing documents pursuant to business entity type, and requires information to be provided regarding the applicant and course location and schedule.

(g) - (h) (No change.)

(i) The forms adopted by reference in this section are available at the department's website at www.tdi.texas.gov [~~www.tdi.state.tx.us~~].

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 November 8, 2012.

TRD-201205765
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 463-6326

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SUBCHAPTER G. FIRE SPRINKLER RULES

28 TAC §§34.701, 34.704, 34.706, 34.707, 34.712, 34.713, 34.715, 34.716, 34.721, 34.723, 34.724

STATUTORY AUTHORITY. The amendments are proposed pursuant to Government Code §417.004 and §417.005, Insurance Code §§6001.051, 6001.052, 6002.051, 6002.052, 6003.051, 6003.052, 6003.054, and §36.001, Occupations Code §2154.051 and §2154.052, and Health and Safety Code §796.008. Government Code §417.004 specifies that the commissioner of insurance shall perform the rulemaking functions previously performed by the Texas Commission on Fire Protection. Government Code §417.005 specifies that the commissioner of insurance may, after consulting with the state fire marshal, adopt necessary rules to guide the state fire marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the commissioner of insurance.

Insurance Code §6001.051(a) specifies that the department shall administer Insurance Code Chapter 6001. Insurance Code §6001.051(b) specifies that the commissioner may issue rules the commissioner considers necessary to administer Chapter 6001 through the state fire marshal. Insurance Code §6001.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards published by the National Fire Protection Association; recognized by federal law or regulation; published by any nationally recognized standards-making organization; or contained in the manufacturer's installation manuals. Insurance Code §6001.052(b) specifies that the commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that the commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Insurance Code §6002.051(a) specifies that the department shall administer Chapter 6002. Insurance Code §6002.051(b) specifies that the commissioner may adopt rules as necessary to administer Chapter 6002, including rules the commissioner considers necessary to administer Chapter 6002 through the state fire marshal. Insurance Code §6002.052(a) specifies that in adopting necessary rules, the commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association; standards recognized by federal law or regulation; or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. Insurance Code §6002.052(b) specifies that rules adopted under Section 6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate. Insurance Code §6002.052(c) specifies that the commissioner shall also adopt standards applicable to fire alarm devices, equipment, or systems regu-

lated under this chapter, and that in adopting standards, the commissioner may allow the operation of a fire alarm monitoring station that relies on fire alarm devices or equipment approved or listed by a nationally recognized testing laboratory without regard to whether the monitoring station is approved or listed by a nationally recognized testing laboratory if the operator of the station demonstrates that the station operating standards are substantially equivalent to those required to be approved or listed.

Insurance Code §6003.051(a) specifies that the department shall administer Chapter 6003. Insurance Code §6003.051(b) specifies that the commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal. Insurance Code §6003.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards adopted by federal law or regulation; standards published by a nationally recognized standards-making organization; or standards developed by individual manufacturers. Section 6003.054(a) further specifies that the state fire marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

Occupations Code §2154.051 states that the commissioner shall determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays. Section 2154.052 further provides that the commissioner shall adopt and the state fire marshal shall administer rules the commissioner considers necessary for the protection, safety, and preservation of life and property. Under §2154.052(e), a rule may not be adopted under Occupations Code Chapter 2154 that is more restrictive than a rule in effect on September 1, 1998, without specific statutory authority.

Health and Safety Code §796.008 states that the state fire marshal may adopt rules to administer the cigarette fire safety standards chapter.

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

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

§34.701 - Insurance Code §6003.051 and §6003.052

§34.704 - Insurance Code §6003.051 and §6003.052

§34.706 - Insurance Code §6003.051 and §6003.052

§34.707 - Insurance Code §6003.051 and §6003.052

§34.712 - Insurance Code §6003.051 and §6003.052

§34.713 - Insurance Code §6003.051 and §6003.052

§34.715 - Insurance Code §§6003.051, 6003.052, and 6003.156

§34.716 - Insurance Code §6003.051 and §6003.052; Senate Bill 14, 78th Legislature (2003)

§34.721 - Insurance Code §6003.051 and §6003.052

§34.723 - Insurance Code §6003.051 and §6003.052

§34.724 - Insurance Code §6003.051 and §6003.052

§34.701. Purpose.

The purpose of this subchapter is to regulate [~~the~~] persons engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems in the interest of safeguarding lives and property pursuant to [~~the~~] Insurance Code Chapter 6003 [~~, Article 5.43-3~~].

§34.704. Exceptions.

The exceptions of [~~the~~] Insurance Code §6003.002 [~~, Article 5.43-3, §2,~~] are applicable to the sections of this subchapter.

§34.706. Definitions.

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

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

(6) Employee--An individual that performs tasks assigned by the employer. The employee's pay is subject to the deduction of social security and federal income tax. The employee may be full time, part time, or seasonal. For the purposes of this section, employees of a registered firm who are paid through a staff leasing company are considered to be employees of the registered firm.

(7) [~~(6)~~] Firm--A person or organization as defined in this section.

(8) [~~(7)~~] Full-time--The number of hours that represents the regular, normal, or standard amount of time per week each employee of the firm devotes to work-related activities.

(9) [~~(8)~~] Full-time employment basis--An employee is considered to work on a full-time basis if the employee works per week at least the average number of hours worked per week by all other employees of the firm.

(10) [~~(9)~~] Inspection--A visual examination of a system or portion thereof to verify that it appears to be in operating condition and is free of physical damage.

(11) [~~(10)~~] Inspection, testing, and maintenance service--A service program provided by a qualified contractor in which all components unique to the property's systems are inspected and tested at the required times and necessary maintenance is provided and/or recommended. This program includes logging and retention of relevant records.

(12) [~~(11)~~] NFPA--National Fire Protection Association, a nationally recognized standards-making organization.

(13) [~~(12)~~] NICET--National Institute for the Certification in Engineering Technologies.

(14) [~~(13)~~] Organization--A corporation, partnership or other business association, or governmental entity.

(15) [~~(14)~~] Outsource testing service--The testing service selected by the state fire marshal to administer certain designated qualifying tests for licenses under this subchapter.

(16) [~~(15)~~] Person--A natural person.

(17) [~~(16)~~] Plan--To lay out, detail, draw, calculate, devise, or arrange an assembly of underground and overhead piping and appurtenances in accordance with either adopted fire protection standards or specifications especially designed by an engineer.

(18) [~~(17)~~] Registered firm--A person or organization holding a current certificate of registration.

(19) [~~(18)~~] Repair--Any work performed after initial installation on fire protection sprinkler systems, not including inspecting or testing.

(20) [~~(19)~~] Responsible managing employee--A responsible managing employee, as defined in [~~the~~] Insurance Code §6003.001(10) [~~, Article 5.43-3, §1(10)~~], and also referenced within this subchapter as an RME.

(21) [~~(20)~~] Sprinkler system--A sprinkler system, for fire protection purposes which:

(A) is an integrated system of underground and overhead piping designed in accordance with fire protection engineering standards;

(B) is an installation including a water supply such as a gravity tank, fire pump, reservoir, or pressure tank, or [~~and/or~~] connection by underground piping to a city main from the point of connection or valve where the primary purpose of the water is for a fire protection sprinkler system;

(C) includes, as the portion of the sprinkler system aboveground, a network of specially sized or hydraulically designed piping installed in a building, structure, or area, generally overhead, and to which sprinklers are connected in a systematic pattern;

(D) includes a controlling valve and a device for actuating an alarm when the system is in operation; and

(E) is usually activated by heat from a fire and discharges water over the fire area.

(22) [~~(21)~~] Testing--A procedure used to determine the status of a system as intended by conducting periodic physical checks on water-based fire protection systems such as water-flow tests, fire pump tests, alarm tests, and trip tests of dry pipe, deluge, or preaction valves. These tests follow up on the original acceptance test at intervals specified in the applicable adopted standard.

§34.707. Adopted Standards.

The commissioner [~~Commissioner~~] adopts by reference in their entirety the following copyrighted standards and recommended practices published by and available from the National Fire Protection Association, Inc. (NFPA), Batterymarch Park, Quincy, Massachusetts 02269. A copy of the standards will [~~shall~~] be kept available for public inspection in the State Fire Marshal's Office.

(1) - (7) (No change.)

(8) NFPA (20-2010) [~~(20-2008)~~], Standard for the Installation of Stationary Pumps for Fire Protection;

(9) - (15) (No change.)

§34.712. Alterations of Certificates or Licenses.

Alteration of certificates or licenses renders them invalid and is the basis for administrative action pursuant to [~~the~~] Insurance Code §6003.251 [~~, Article 5.43-3, §9~~].

§34.713. Applications.

(a) Certificates of registration.

(1) Applications for certificates must be submitted on forms provided by the state fire marshal and must be accompanied by all other information required by [~~the~~] Insurance Code Chapter 6003 [~~, Article 5.43-3,~~] and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the State Fire Marshal's Office [~~state fire marshal's office~~].

(2) Applications must [~~shall~~] be signed by the sole proprietor, or by each partner of a partnership, or by an officer of a corporation. For corporations, the application must be accompanied by the corporate charter of a Texas corporation, or, in the case of a foreign corporation, a copy of the Texas certificate of authority to do business. For applicants using an assumed name, the application must also be accompanied by evidence of compliance with the Assumed Business or Professional Name Act, [~~Texas~~] Business and Commerce Code Chapter 71 [~~Annotated, §36.01~~]. The application must [~~shall~~] also include written authorization by the applicant permitting the state fire marshal or the state fire marshal's [~~his~~] representative to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business to determine compliance with the provisions of [~~the~~] Insurance Code Chapter 6003 [~~, Article 5.43-3,~~] and this subchapter.

(3) For corporations, the application must also include the corporate taxpayer identification number, the charter number, and a copy of the corporation's current franchise tax certificate of good standing issued by the state comptroller [~~comptroller's office~~].

(4) An applicant must [~~shall~~] not designate as its full-time RME a person who is the designated full-time RME of another registered firm.

(5) - (6) (No change.)

(7) Insurance required.

(A) - (B) (No change.)

(C) Evidence of public liability insurance, as required by [~~the~~] Insurance Code §6001.152 [~~, Article 5.43-3, §5~~], must be in the form of a certificate of insurance executed by an insurer authorized to do business in this state, or a certificate of insurance for surplus lines coverage, secured in compliance with [~~the~~] Insurance Code[~~,~~] Chapter 981, as contemplated by Insurance Code §6001.152(c) [~~, Article 5.43-3, §5(b)~~].

(b) Responsible managing employee licenses.

(1) Original and renewal applications for a license from an employee of a firm engaged in the business must be submitted on forms provided by the state fire marshal and accompanied by all other information required by [~~the~~] Insurance Code Chapter 6003 [~~, Article 5.43-3,~~] and this subchapter [~~chapter~~].

(2) The following documents must accompany the application as evidence of technical qualifications for a license:

(A) RME-General:

(i) (No change.)

(ii) a copy of NICET's notification letter confirming the applicant's successful completion of the test requirements for certification at Level III for water-based fire protection [~~fire protection automatic sprinkler~~] systems layout.

(B) RME-Dwelling:

(i) (No change.)

(ii) a copy of the notification letter confirming at least a 70 percent [~~70%~~] grade on the test covering dwelling fire protection sprinkler systems, administered by the State Fire Marshal's Office or an outsource testing service, and one of the following:

(I) - (III) (No change.)

(C) - (D) (No change.)

(c) Complete applications. The application form for a license or registration must be accompanied by the required fee and must, within 180 days of receipt by the department of the initial application, be complete and accompanied by all other information required by [~~the~~] Insurance Code Chapter 6003 [~~Article 5.43-3~~] and this subchapter, or a new application must be submitted including all applicable fees.

§34.715. Tests.

(a) Each applicant for a license must [~~shall~~] take and pass with at least a 70 percent [~~70%~~] grade, a test covering this subchapter and [~~the~~] Insurance Code Chapter 6003 [~~, Article 5.43-3~~] and if applicable, a technical qualifying test as specified in §34.713(b) of this title (relating to Applications). The content, frequency, and location of the test must [~~shall~~] be designated by the State Fire Marshal's Office.

(b) - (e) (No change.)

(f) An applicant for a license must complete and submit all application requirements within one year of the successful completion of any test required for a license, except for testing conducted by NICET; otherwise, the test is voided and the individual will have to pass the test again.

§34.716. Installation, Maintenance, and Service

(a) All fire protection sprinkler systems installed under [~~the~~] Insurance Code Chapter 6003 [~~, Article 5.43-3,~~] must be installed under the supervision of the appropriate licensed responsible managing employee.

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

(b) Upon completion of the installation, the licensed responsible managing employee must [~~shall~~] have affixed a contractor's material and test certificate for aboveground and/or underground piping on or near the system riser. If the adopted installation standard does not require testing, all other sections except the testing portion of the contractor's material and test certificate must still be completed. The contractor's material and test certificate must [~~shall~~] be obtained from the State Fire Marshal's Office [~~state fire marshal's office~~]. The certificate must [~~shall~~] be distributed as follows:

(1) (No change.)

(2) second copy retained by the installing company at its place of business in a separate file used exclusively by that firm to retain all "Contractor's Material and Test Certificates." The certificates must [~~shall~~] be available for examination by the state fire marshal or the state fire marshal's representative upon request. The certificates must [~~shall~~] be retained for the life of the system; and

(3) (No change.)

(c) (No change.)

(d) Complete records must [~~shall~~] be kept of all service, maintenance, testing, and certification operations of the firm. The records must [~~shall~~] be available for examination by the state fire marshal or the state fire marshal's [~~his~~] representative.

(e) All vehicles used in service, maintenance, testing, or certification activities must [~~shall~~] prominently display the company name, telephone number, and certificate of registration number. The numbers and letters must be at least two inches in height and must be permanently affixed or magnetically attached to a side panel or [~~and/or~~] front door panel in a color contrasting with the background color of the vehicle. The certificate of registration number must [~~shall~~] be designated as: Texas Fire Sprinkler Registration (number) or it may be abbreviated to Tex: SCR (number).

[~~(f) A premium reduction certification inspection for one- and two-family dwellings must meet the following requirements:~~]

[~~(1) Only a dwelling type responsible managing employee is authorized to conduct a premium reduction certification inspection of a fire protection sprinkler system in a one- or two-family dwelling.~~]

[~~(2) The inspection will be conducted in accordance with the laws regulating the Texas Department of Insurance and this chapter.~~]

[~~(3) The system will be inspected to meet the minimum standards of the latest edition of NFPA 13D or the edition indicated in the adopted standards section of this chapter.~~]

(f) [~~(g)~~] Each registered firm must employ at least one full-time RME-General or RME-Dwelling licensee at each business office where fire protection sprinkler system planning is performed, who is appropriately licensed to conduct the business performed therein.

(g) [~~(h)~~] The planning of an automatic fire protection sprinkler system must [~~shall~~] be performed under the direct supervision of the appropriately licensed RME.

(h) [~~(i)~~] The planning, installation, or service of a fire protection sprinkler system must be in accord [~~accordance~~] with the minimum requirements of the applicable adopted standards in §34.707 of this title [~~subchapter~~] (relating to Adopted Standards) except when the plan, installation or service complies with a more recent edition of the standard that has been adopted by the political subdivision in which the system is installed.

§34.721. Yellow Tags.

(a) If a fire protection sprinkler system is found to be noncompliant with the applicable NFPA standards at the time it was installed or to contain equipment that has been recalled by the manufacturer, but the noncompliance or recalled equipment does not constitute an emergency condition, a completed yellow tag must be attached to the respective riser of each system to permit convenient inspection, to not hamper the system's actuation or operation, and also to indicate that corrective action is necessary.

(b) - (f) (No change.)

(g) Sample yellow tag:
Figure: 28 TAC §34.721(g)
[~~Figure: 28 TAC §34.721(g)~~]

§34.723. Enforcement.

(a) The state fire marshal is authorized and directed to enforce the provisions of [~~the~~] Insurance Code Chapter 6003 [~~Article 5.43-3~~] and this subchapter. The state fire marshal must [~~shall~~] make, or cause to be made, inspections from time to time and as circumstances dictate to determine that licensed firms and persons engaged in the business act in conformity with the requirements of the law and this subchapter.

(b) (No change.)

§34.724. Administrative Actions.

The failure to comply with the provisions of this subchapter and the provisions of Insurance Code Chapter 6003 [~~, Article 5.43-3~~] by certificate holders or licensees may subject them, as provided in Government

Code §417.010, to administrative action including, but not limited to, suspension, revocation, or refusal to issue or renew a license or a certificate of registration or issuance of a cease and desist order, [~~and/or~~] administrative penalty, [~~and/or~~] order for restitution to persons harmed, or combination of them.

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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Sara Waitt
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 463-6326

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SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

28 TAC §§34.811, 34.815, 34.817

STATUTORY AUTHORITY. The amendments are proposed pursuant to Government Code §417.004 and §417.005, Insurance Code §§6001.051, 6001.052, 6002.051, 6002.052, 6003.051, 6003.052, 6003.054, and §36.001, Occupations Code §2154.051 and §2154.052, and Health and Safety Code §796.008. Government Code §417.004 specifies that the commissioner of insurance shall perform the rulemaking functions previously performed by the Texas Commission on Fire Protection. Government Code §417.005 specifies that the commissioner of insurance may, after consulting with the state fire marshal, adopt necessary rules to guide the state fire marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the commissioner of insurance.

Insurance Code §6001.051(a) specifies that the department shall administer Insurance Code Chapter 6001. Insurance Code §6001.051(b) specifies that the commissioner may issue rules the commissioner considers necessary to administer Chapter 6001 through the state fire marshal. Insurance Code §6001.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards published by the National Fire Protection Association; recognized by federal law or regulation; published by any nationally recognized standards-making organization; or contained in the manufacturer's installation manuals. Insurance Code §6001.052(b) specifies that the commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that the commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Insurance Code §6002.051(a) specifies that the department shall administer Chapter 6002. Insurance Code §6002.051(b) specifies that the commissioner may adopt rules as necessary to administer Chapter 6002, including rules the commissioner considers necessary to administer Chapter 6002 through the state fire marshal. Insurance Code §6002.052(a) specifies that in adopting necessary rules, the commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association; standards recognized by federal law or regulation; or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. Insurance Code §6002.052(b) specifies that rules adopted under Section 6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate. Insurance Code §6002.052(c) specifies that the commissioner shall also adopt standards applicable to fire alarm devices, equipment, or systems regulated under this chapter, and that in adopting standards, the commissioner may allow the operation of a fire alarm monitoring station that relies on fire alarm devices or equipment approved or listed by a nationally recognized testing laboratory without regard to whether the monitoring station is approved or listed by a nationally recognized testing laboratory if the operator of the station demonstrates that the station operating standards are substantially equivalent to those required to be approved or listed.

Insurance Code §6003.051(a) specifies that the department shall administer Chapter 6003. Insurance Code §6003.051(b) specifies that the commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal. Insurance Code §6003.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards adopted by federal law or regulation; standards published by a nationally recognized standards-making organization; or standards developed by individual manufacturers. Section 6003.054(a) further specifies that the state fire marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

Occupations Code §2154.051 states that the commissioner shall determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays. Section 2154.052 further provides that the commissioner shall adopt and the state fire marshal shall administer rules the commissioner considers necessary for the

protection, safety, and preservation of life and property. Under §2154.052(e), a rule may not be adopted under Occupations Code Chapter 2154 that is more restrictive than a rule in effect on September 1, 1998, without specific statutory authority.

Health and Safety Code §796.008 states that the state fire marshal may adopt rules to administer the cigarette fire safety standards chapter.

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

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

§34.811 - Occupations Code §2154.051 and §2154.052

§34.815 - Occupations Code §2154.051 and §2154.052

§34.817 - Occupations Code §2154.051 and §2154.052

§34.811. Requirements, Pyrotechnic Operator License, Pyrotechnic Special Effects Operator License, and Flame Effects Operator License.

(a) Applicants for a pyrotechnic operator license, pyrotechnic special effects operator license or flame effects operator license must [~~shall~~] take a written test and obtain at least a passing grade of 70 percent [~~70%~~]. Written tests may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability. The content, frequency, and location of the tests must [~~shall~~] be designated by the state fire marshal.

(b) - (c) (No change.)

(d) An applicant for a license must complete and submit all application requirements within one year of the successful completion of any test required for a license; otherwise, the test is voided and the individual will have to pass the test again.

(e) [~~(d)~~] The state fire marshal may waive a test requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

(f) [~~(e)~~] A licensee whose license has been expired for two years or longer and makes application for a new license must pass another test.

(g) [~~(f)~~] A pyrotechnic operator license will [~~shall~~] not be issued to any person who fails to meet the requirements of subsection (a) of this section and the following:

(1) assisted in conducting at least five permitted or licensed public displays in [~~the State of~~] Texas under the direct supervision of and verified in writing by a pyrotechnic operator licensed in Texas;

(2) be at least 21 years of age.

(h) [~~(g)~~] The pocket license document issued along with the regular license document is for identification purposes only and must be carried by the licensee when engaged in the business.

§34.815. Retail Permits.

(a) A retail permit is [~~shall be~~] required for each retail stand or other retail sales location.

(b) Retail permits may be obtained at any time [~~of the year~~] from any participating manufacturer, distributor, or jobber holding a valid license to do business in Texas or from the state fire marshal, and must [~~shall~~] be signed by the applicant prior to the [~~said~~] permit becoming effective.

(1) A retail permittee must [~~shall~~] purchase Fireworks 1.4G only from a distributor or jobber licensed in this state.

(2) Bulk storage of Fireworks 1.4G by a retail permittee must [~~shall~~] be in compliance with §34.823 of this title (relating to Bulk Storage of Fireworks 1.4G).

(3) Fireworks 1.4G must [~~shall~~] be sold to the general public only at legally permitted retail fireworks sites and during the legal selling periods defined in the Occupations Code §2154.202.

(4) A copy of [~~the~~] Occupations Code Chapter 2154 and the fireworks rules, or a condensed version thereof, must [~~shall~~] be provided to the purchaser of a retail permit by the participating licensee at the time the permit is issued. Copies of [~~the~~] Occupations Code Chapter 2154 and the fireworks rules will [~~shall~~] be made available through the State Fire Marshal's Office [~~office~~].

(5) Prior to the issuance of a retail permit, the applicant must present evidence of a valid current sales tax permit issued by the state comptroller, and the sales tax permit number must be entered on the retail fireworks permit by the person issuing the permit.

(6) Retail permits may only be issued to individuals or groups engaged in the retail sales of fireworks.

(c) Any licensee purchasing books of permits for sale to retail operators shall properly account for all permits received.

(1) The licensee who issues retail permits shall return books containing duplicate copies of each issued permit to the State Fire Marshal's Office [~~office~~] within a week from the time the last permit in each book has been issued. All used and unused permits shall be returned no later than March 1 of each year.

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

§34.817. Retail Sales General Requirements.

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

(f) The display, offer for sale, or sales of fireworks from tents and motor vehicles is prohibited. Fireworks may not be sold or stored for future sale at any inhabited dwelling, house, apartment, or other structure used in whole or in part as a home or place of abode by any person or persons.

(g) - (p) (No change.)

[~~(q) Prior to the issuance of a retail permit, the applicant must present evidence of a valid current sales tax permit issued by the comptroller of public accounts, and the sales tax permit number must be entered on the retail fireworks permit by the person issuing the permit.~~]

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 November 8, 2012.

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Sara Waitt
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 463-6326

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SUBCHAPTER L. FIRE STANDARD COMPLIANT CIGARETTES

28 TAC §34.1203, §34.1212

STATUTORY AUTHORITY. The amendments are proposed pursuant to Government Code §417.004 and §417.005, Insurance Code §§6001.051, 6001.052, 6002.051, 6002.052, 6003.051, 6003.052, 6003.054, and §36.001, Occupations Code §2154.051 and §2154.052, and Health and Safety Code §796.008. Government Code §417.004 specifies that the commissioner of insurance shall perform the rulemaking functions previously performed by the Texas Commission on Fire Protection. Government Code §417.005 specifies that the commissioner of insurance may, after consulting with the state fire marshal, adopt necessary rules to guide the state fire marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the commissioner of insurance.

Insurance Code §6001.051(a) specifies that the department shall administer Insurance Code Chapter 6001. Insurance Code §6001.051(b) specifies that the commissioner may issue rules the commissioner considers necessary to administer Chapter 6001 through the state fire marshal. Insurance Code §6001.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards published by the National Fire Protection Association; recognized by federal law or regulation; published by any nationally recognized standards-making organization; or contained in the manufacturer's installation manuals. Insurance Code §6001.052(b) specifies that the commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that the commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Insurance Code §6002.051(a) specifies that the department shall administer Chapter 6002. Insurance Code §6002.051(b) specifies that the commissioner may adopt rules as necessary to administer Chapter 6002, including rules the commissioner considers necessary to administer Chapter 6002 through the state fire marshal. Insurance Code §6002.052(a) specifies that in adopting necessary rules, the commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association; standards recognized by federal law or regulation; or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. Insurance Code §6002.052(b) specifies that rules adopted under Section 6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate. Insurance Code §6002.052(c) specifies that the commissioner shall also adopt standards applicable to fire alarm devices, equipment, or systems regulated under this chapter, and that in adopting standards, the commissioner may allow the operation of a fire alarm monitoring station that relies on fire alarm devices or equipment approved or listed by a nationally recognized testing laboratory without regard to whether the monitoring station is approved or listed by a nationally recognized testing laboratory if the operator of the station demonstrates that the station operating standards are substantially equivalent to those required to be approved or listed.

Insurance Code §6003.051(a) specifies that the department shall administer Chapter 6003. Insurance Code §6003.051(b) specifies that the commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal. Insurance Code §6003.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards adopted by federal law or regulation; standards published by a nationally recognized standards-making organization; or standards developed by individual manufacturers. Section 6003.054(a) further specifies that the state fire marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

Occupations Code §2154.051 states that the commissioner shall determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays. Section 2154.052 further provides that the commissioner shall adopt and the state fire marshal shall administer rules the commissioner considers necessary for the protection, safety, and preservation of life and property. Under §2154.052(e), a rule may not be adopted under Occupations Code Chapter 2154 that is more restrictive than a rule in effect on September 1, 1998, without specific statutory authority.

Health and Safety Code §796.008 states that the state fire marshal may adopt rules to administer the cigarette fire safety standards chapter.

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

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

§34.1203 - Health and Safety Code §796.008

§34.1212 - Health and Safety Code §796.008

§34.1203. General Provisions Regarding Required and Voluntary Submissions.

(a) (No change.)

(b) Submissions.

(1) Promulgated certification forms and marking applications. The certification form and marking application form specified in §34.1212 of this title [subchapter] (relating to Promulgated and Alternate Certification Forms and Marking Applications) may be obtained from the State Fire Marshal's Office, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149221, Austin, Texas 78714-9221 or the department's website at www.tdi.texas.gov/forms/forms18.html [www.tdi.state.tx.us/forms/form18.html].

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

(c) (No change.)

§34.1212. Promulgated and Alternate Certification Forms and Marking Applications.

(a) Promulgated Certification by Manufacturer for Fire Standard Compliant Cigarette [(FSCC), Form Number SF250]. The commissioner adopts by reference the Certification by Manufacturer for Fire Standard Compliant Cigarette (FSCC), [Form Number SF250,] which contains instructions for completion of the form; information regarding certification fees; requires information to be provided regarding the certification type, cigarette manufacturer, testing entity, test method, testing and quality assurance program, and cigarette variety information required by [the] Health and Safety Code §796.005. The form is available at the department's website at www.tdi.texas.gov/forms/forms18.html [www.tdi.state.tx.us/forms/form18.html].

(b) Promulgated Application for Fire Standard Compliant Cigarette Marking Approval[, Form Number SF251]. The commissioner adopts by reference the Application for Fire Standard Compliant Cigarette Marking Approval[, Form Number SF251], which contains instructions for completion of the form and requires information to be provided regarding the cigarette manufacturer, marking approval, and a certification that the manufacturer will or has provided required information to cigarette wholesale dealers and agents. The form is available at the department's website at www.tdi.texas.gov/forms/forms18.html [www.tdi.state.tx.us/forms/form18.html].

(c) Alternate Certification Form or Marking Application. The information required by the promulgated certification form or marking application may be submitted in an alternate form in lieu of the promulgated certification form or marking application.

(1) Manufacturers may submit either an alternate form in lieu of the promulgated certification form or an alternate form in lieu of the promulgated marking application or both an alternate certification form and alternate marking application. Manufacturers may submit an alternate certification form in conjunction with the promulgated Application for Fire Standard Compliant Cigarette Marking Approval[, Form Number SF251]. Manufacturers may submit an alternate marking application in conjunction with the promulgated Certification by Manufacturer for Fire Standard Compliant Cigarette (FSCC)[, Form Number SF250].

(2) (No change.)

(3) A manufacturer may submit a request to the SFMO to use an alternate form in accordance with §34.1203 of this title (relating to General Provisions Regarding Required and Voluntary Submissions).

(4) (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.

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Sara Waitt
General Counsel
Texas Department of Insurance
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.22

The General Land Office (GLO) proposes amendments to 31 TAC §15.22, relating to Certification Status of Brazoria County Dune Protection and Beach Access Plan (Plan).

The intent of this rulemaking is to certify amendments to Brazoria County's Plan which incorporate the County's Erosion Response Plan (ERP) and adopt amendments to the Plan.

Copies of the County's Plan and the ERP can be obtained by contacting Richard Hurd, Brazoria County Park Director, (979) 864-1541, and from the GLO's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, phone number (512) 463-5277.

BACKGROUND AND ANALYSIS OF PROPOSED AMENDMENTS

Section 15.22 (relating to Certification Status of Brazoria County Dune Protection and Beach Access Plan) adopts the ERP as part of Brazoria County's (County) Plan. The ERP establishes a set-back line of 1,000 feet of the mean high tide for all areas of the county, except for the shore line adjacent to the San Bernard National Wildlife Refuge and the Justin Hurst Management Area, establishes construction requirements for properties and structures located seaward of the Dune Protection Line (DPL), establishes and defines exemptions from those requirements. The County also proposes an amendment to the Plan to adopt a Beach User Fee Plan for Quintana Beach County Park and San Luis Pass County Park.

FISCAL AND EMPLOYMENT IMPACTS

Ms. Helen Young, Deputy Commissioner for the GLO's Coastal Resources Program Area, has determined that for each year of the first five years the amended section as proposed is in effect there will be no additional cost to state government as a result of enforcing or administering the amended section.

Ms. Young has determined that there may be fiscal implications to local governments or additional costs of compliance for large and small businesses or individuals resulting from implementation of the amendment to the Plan to include the County's ERP. However, these fiscal impacts cannot be estimated with certainty at this time, since impacts of the plan are determined on a case-by-case basis depending on the characteristics of the

permittee, property, and type of construction. In addition, it is the opinion of the GLO that the costs to local governments of implementation of the provisions for construction in the ERP will be offset by a reduction in public expenditures for erosion and storm damage losses to private and public property.

Likewise, the costs of compliance for businesses or individuals will be offset by the reduction in losses to businesses and individuals due to storm damage. Implementation of the ERP will preserve beach dunes and delay erosion by reducing the intensity of storm surge. Additionally, the enhanced dune restoration and construction standards will result in increased protection for structures which are located landward of the DPL. Structures will also be protected by improvements in storm protection through upgrades to access points and the dune system. In addition, the presumption of compliance with the dune mitigation sequence requirements for avoidance and minimization of impacts to dunes and dune vegetation will simplify and reduce the cost to developers for crafting mitigation plans for construction seaward of the DPL.

The adoption of a Beach User Fee Plan in Brazoria County's Plan will have fiscal implications to local governments and may have additional costs of compliance for large and small businesses or individuals resulting from implementation of a beach user fee for two County parks. The County will charge $5.00 per car or $25.00 for an annual pass for parking and access to both Quintana Beach County Park and San Luis Pass County Park during peak visitation periods from Memorial Day to Labor Day. The estimated income to the County from fees for the two parks will be $11,000. The Beach User Fee Plan will have minor impacts on the users of the beach but the fee will provide resources that the County will use to protect and enhance beach dunes and dune vegetation. Also, the fees will be used to establish and maintain beach-related services and facilities for the preservation and enhancement of safe access to and from those public beaches by the public.

GLO has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. Young has also determined that for the first five years the amended section is in effect the public will benefit from the proposed amendments to the plan to adopt the ERP because the GLO will be able to administer the coastal public land program more efficiently, providing the public more certainty and clarity in the process. The public will benefit from the ERP because coastal public land, and therefore, the permanent school fund, will be protected with the certification of the amendments to the County's Plan by reducing the possibility of structures becoming located on state-owned submerged lands which increases expenditure of public funds for removal of the unauthorized structures.

In addition, the public will benefit from the adoption of the County's ERP because of reduced public expenditures associated with loss of structures and public infrastructure due to storm damage and erosion, disaster response costs, and loss of life. The County proposes to adopt an ERP as part of its Dune Protection and Beach Access Plan.

In the ERP, the County is proposing to establish a building setback line of 1,000 feet from the mean high tide for all areas of the county, except for the shore line adjacent to the San Bernard National Wildlife Refuge and the Justin Hurst Management Area, and establish construction requirements for properties and structures located seaward of the DPL. All structures must, to the maximum extent practicable, be constructed landward of the set-back line. Exemptions for construction are provided for construction where no practicable alterative exists, construction approved prior to the adoption of the ERP, and modifications to existing structures that do no increase the footprint of the structure, unless more than 50% of the existing structure has been damaged, in which case, the construction should be subject the ERP. Among other things, the construction standards specify that construction must be certified by a registered professional engineer as being compliant with the ERP requirements and provide evidence that the structure meets minimum requirements which include where structures can be located, elevation requirements, enclosure limitations, the requirement that the structure be feasible to relocate and designed to minimize impacts on natural hydrology. The plan also establishes that lots which span the set-back line will be considered two separate lots and all construction requirements for exempt property and variances identified in the plan will apply to the seaward portion of the lot. Enclosures below the BFE are permitted where the enclosure is no more than 299 square feet, are designed to minimize impact to hydrology and meet the requirements of National Flood Insurance Program regulations for V zone construction codified in Title 44 §60.3(a)(3) of the Code of Federal Regulation.

The Village of Surfside includes a one foot freeboard above BFE and requires, as part of the permitting process, a map delineating the location of the dune system on property where construction is proposed and, where no dune system exists, a dune construction plan.

The ERP also proposes improvements to access points. Compliance with the construction standards and implementation of modification to access points will reduce hazards created by storm surge and reduce coastal vulnerability to storm tide and erosion without the costs of constructing hard erosion control structures, which increases public expenses.

The ERP also includes enhanced dune protections and identifies priority restoration areas. Dune protections are important because natural dune processes are allowed to continue with minimal disturbance and the risk to life and property from storm damage and public expenses for disaster relief will be reduced by maintaining a natural buffer against normal storm tides. Identifying areas where restoration is needed will assist the local government in focusing mitigation and restoration in areas that may be vulnerable to storm inundation and are potential avenues for flood waters that may cause damage to public infrastructure and private properties. Additionally, existing structures and properties will be protected by local government implementation of plans to improve foredune ridges and beach access points to protect against storm surge. Scientific and engineering studies considered by the GLO noted that during Hurricane Alicia in 1983, vegetation line retreat and landward extent of storm washover deposits were greater for developed areas than for natural areas (Bureau of Economic Geology Circular 85-5). This difference is attributed in part to the fact that naturally occurring vegetated dunes in underdeveloped areas are stronger than reconstructed dunes that do not meet minimum height, width, and material requirements (Circular 85-5).

The County also proposes to adopt a Beach User Fee Plan for Quintana Beach County Park and San Luis Pass County Park which will be used to maintain and add amenities to the parks that will also protect the natural vegetation and dunes in the

parks. The Plan provides for an interlocal agreement between the Village of Surfside and the County in which both local governments agree to be responsible for enforcement and sales of their own beach permit systems within their respective jurisdictions. The public will benefit from the proposed amendments to the Plan because it will enable the County to protect and enhance beach dunes and dune vegetation and establish and maintain beach-related services and facilities for the preservation and enhancement of safe access to and from public beaches by the public.

ENVIRONMENTAL REGULATORY ANALYSIS

GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the actions are not subject to §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to §15.22 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§33.101 - 33.136 relating to the board's ability to grant rights in coastal public land and Texas Natural Resources Code §§61.061 - 61.082 relating to the right of local governments to charge beach access or parking fees with respect to public beaches.

TAKINGS IMPACT ASSESSMENT

GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. GLO has determined that the proposed rulemaking to certify the County's ERP and amendments to the Plan to adopt beach user fees as consistent with state law does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §17 and §19 of the Texas Constitution. GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. Furthermore, GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendment. The ERP establishes guidelines which providing exemptions for property for which the owner has demonstrated that no practicable alternative to construction seaward of the DPL exists. The definition of the term "practicable" in 31 TAC §15.2(55) of the Beach/Dune Rules allows a local government to consider the cost of implementing a technique such as the setback provisions in determining whether it is "practicable" in a particular application for development. In applying its regulation, the City will determine on a case-by-case basis to permit construction of habitable structures in the area seaward of the building setback line if certain construction conditions are met thereby avoiding severe and unavoidable economic impacts and thus an unconstitutional taking. In addition, building setback lines adopted by local governments under that section would not constitute a statutory taking under the Private Real Property Rights Preservation Act inasmuch as Texas Natural Resources Code §33.607(h) as added by HB 2819 provides that Chapter 2007, Government Code, does not apply to a rule or local government order or ordinance authorized by §33.607.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(E) - (I) and §505.11(c), relating to the Actions and Rules Subject to the CMP. GLO has reviewed these proposed actions for consistency with the CMP's goals and policies. The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction of in the Beach/Dune System). Because all requests for the use of coastal public land must continue to meet the same criteria for GLO approval, GLO has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to the Commissioner in order to provide him an opportunity to provide comment on the consistency of the proposed amended rule during the comment period.

The amended rule provides certification that the County's ERP is consistent with the CMP goals outlined in 31 TAC §501.12(1) - (3), and (6). These goals seek protection of Coastal Natural Resource Areas (CNRA), compatible economic development and multiple uses of the coastal zone, minimization of the loss of human life and property due to the impairment and loss of CNRA functions, and coordination of GLO and local government decision-making through the establishment of clear, effective policies for the management of CNRAs. The ERP is tailored to the unique natural features, degree of development, storm, and erosion exposure potential for the County. The County's ERP is also consistent with the CMP policies outlined in 31 TAC §501.26(a)(1) and (2) that prohibit construction within a critical dune area that results in the material weakening of dunes and dune vegetation or adverse effects on the sediment budget. The County's ERP will provide reduced impacts to critical dunes and dune vegetation by establishing requirements for construction in the DPL, reduce dune area habitat and biodiversity loss, and reduce structure encroachment on the beach which leads to interruption of the natural sediment cycle.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register, Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code §33.607, relating to GLO's authority to adopt rules for the preparation and implementation by a local government of a plan for reducing public expenditures for erosion and storm damage losses to public and private property and Texas Natural Resources Code §61.011 relating to the right of local governments to charge beach access or parking fees with respect to public beaches.

Texas Natural Resources Code §§33.601 - 33.613 and 61.011 are affected by the proposed amendments.

§15.22. Certification Status of Brazoria County Dune Protection and Beach Access Plan.

(a) Brazoria County has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The County's plan was adopted on August 9, 1993, and amended on September 27, 1993, April 8, 2008 and July 3, 2012. [~~September 27, 1993 and April 8, 2008.~~]

(b) The General Land Office certifies as consistent with state law Brazoria County's Dune Protection and Beach Access Plan as amended by the Erosion Response Plan. The Erosion Response Plan was adopted by the County Court on July 3, 2012 in Order No. VIII.B.3.f.

[~~(b) The General Land Office certifies as consistent with state law the following variances from §§15.4(c)(8), 15.5(b)(3), and 15.6(f)(3) of this title (relating to Dune Protection Standards, Beachfront Construction Standards, and Concurrent Dune Protection and Beachfront Construction Standards) in the Brazoria County's plan. The plan establishes special standards providing that:~~]

[~~(1) Paving or altering the grade below the lowest habitable floor is prohibited in the area between the line of vegetation and 25 feet landward of the north toe of the dune.~~]

[~~(2) Paving used under the habitable structure and for a driveway connecting the habitable structure and the street is limited to the use of unreinforced fibercrete in four- (4) foot by four- (4) foot sections, which shall be a maximum of four inches thick with sections separated by expansion joints, or pervious materials approved by the Floodplain Administrator and the driveway width shall be limited to no more than the width necessary to service two vehicles, in that area 25 feet landward of the north toe of the dune to 200 feet landward of the line of vegetation.~~]

[~~(3) The County shall assess a "Fibercrete Maintenance Fee" of $200.00 to be used to pay for the cleanup of fibercrete from the public beaches should the need arise.~~]

[~~(4) Reinforced concrete may be used under the habitable structure and for a driveway connecting the habitable structure and the street in that area landward of 200 feet from the line of vegetation.~~]

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 November 12, 2012.

TRD-201205875
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 475-1859

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31 TAC §15.34

The General Land Office (GLO) proposes amendments to 31 TAC §15.34, relating to Certification Status of Village of Surfside Beach Dune Protection and Beach Access Plan (Plan).

The intent of this rulemaking is to certify an amendment to the Village of Surfside Beach's Plan to incorporate Brazoria County's Erosion Response Plan (ERP).

Copies of Brazoria County's ERP can be obtained by contacting Richard Hurd, Brazoria County Park Director, (979) 864-1541, and from the GLO's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, phone number (512) 463-5277.

BACKGROUND AND ANALYSIS OF PROPOSED AMENDMENTS

Section 15.34 (relating to Certification Status of Village of Surfside Beach Dune Protection and Beach Access Plan) adopts the Brazoria County ERP as an amendment to the Village of Surfside Beach's (Surfside) Plan. The ERP establishes a set-back line of 1,000 feet from mean high tide for all areas of the Village to reduce future storm damage to public and private properties, establishes construction requirements for properties and structures located seaward of the Dune Protection Line (DPL), and establishes and defines exemptions from those requirements.

FISCAL AND EMPLOYMENT IMPACTS

Ms. Helen Young, Deputy Commissioner for the GLO's Coastal Resources Program Area, has determined that for each year of the first five years the amended section as proposed is in effect there will be no additional cost to state government as a result of enforcing or administering the amended section.

Ms. Young has determined that there may be fiscal implications to local governments or additional costs of compliance for large and small businesses or individuals resulting from implementation of the amendment to the Plan to include Brazoria County's ERP. However, these fiscal impacts cannot be estimated with certainty at this time, since impacts of the plan are determined on a case-by-case basis depending on the characteristics of the property, and type of construction. In addition, it is the opinion of the GLO that the costs to local governments of implementation of the provisions for construction in the ERP will be offset by a reduction in public expenditures for erosion and storm damage losses to private and public property.

Likewise, the costs of compliance for businesses or individuals will be offset by the reduction in losses due to storm damage. Implementation of the ERP will preserve beach dunes and delay erosion by reducing the intensity of storm surge. Additionally, the enhanced dune restoration and construction standards will result in increased protection for structures which are located landward of the DPL. Structures will also be protected by improvements in storm protection through upgrades to access points and the dune system. In addition, the presumption of compliance with the dune mitigation sequence requirements for avoidance and minimization of impacts to dunes and dune vegetation will simplify and reduce the cost to developers for crafting mitigation plans for construction seaward of the DPL.

The GLO has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. Young has also determined that for the first five years the amended section is in effect the public will benefit from the proposed amendments to the plan to adopt the ERP because the GLO will be able to administer the coastal public land program more efficiently, providing the public more certainty and clarity

in the process. The public will benefit from the ERP because coastal public land, and therefore, the permanent school fund, will be protected with the certification of the amendments to Surfside's Plan by reducing the possibility of structures becoming located on state-owned submerged lands which increases expenditure of public funds for removal of the unauthorized structures.

In addition, the public will benefit from the Surfside's adoption of Brazoria County's ERP because of reduced public expenditures associated with loss of structures and public infrastructure due to storm damage and erosion, disaster response costs, and loss of life. Surfside proposes to adopt an ERP as part of its Dune Protection and Beach Access Plan.

In adopting the ERP, Surfside is proposing to establish a building set-back line of 1,000 feet from mean high tide for all areas within the Village and establishes construction requirements for properties and structures located seaward of the DPL. All structures must, to the maximum extent practicable, be constructed landward of the set-back line. Exemptions for construction are provided for construction where no practicable alterative exists, construction approved prior to the adoption of the ERP, and modifications to existing structures that do no increase the footprint of the structure, unless more than 50% of the existing structure has been damaged, in which case, the construction should be subject the ERP. Among other things, the construction standards specify that construction must be certified by a registered professional engineer as being compliant with the ERP requirements and provide evidence that the structure meets minimum requirements which include where structures can be located, elevation requirements, enclosure limitations, the requirement that the structure be feasible to relocate and designed to minimize impacts on natural hydrology. The plan also establishes that lots which span the set-back line will be considered two separate lots and all construction requirements for exempt property and variances identified in the plan will apply to the seaward portion of the lot. Enclosures below the BFE are permitted where the enclosure is no more than 299 square feet, are designed to minimize impact to hydrology and meet the requirements of National Flood Insurance Program regulations for V zone construction codified in Title 44 §60.3(a)(3) of the Code of Federal Regulation.

The ERP includes different requirements for Surfside. Within the jurisdiction of Surfside, the ERP allows construction at one foot freeboard above BFE and requires, as part of the permitting process, a map delineating the location of the dune system on property where construction is proposed and, where no dune system exists, a dune construction plan.

The ERP also proposes improvements to access points. Compliance with the construction standards and implementation of modification to access points will reduce hazards created by storm surge and reduce coastal vulnerability to storm tide and erosion without the costs of constructing hard erosion control structures, which increases public expenses.

The ERP also includes enhanced dune protections and identifies priority restoration areas. Dune protections are important because natural dune processes are allowed to continue with minimal disturbance and the risk to life and property from storm damage and public expenses for disaster relief will be reduced by maintaining a natural buffer against normal storm tides. Identifying areas where restoration is needed will assist the local government in focusing mitigation and restoration in areas that may be vulnerable to storm inundation and are potential avenues for flood waters that may cause damage to public infrastructure and private properties. Additionally, existing structures and properties will be protected by local government implementation of plans to improve foredune ridges and beach access points to protect against storm surge. Scientific and engineering studies considered by the GLO noted that during Hurricane Alicia in 1983, vegetation line retreat and landward extent of storm washover deposits were greater for developed areas than for natural areas (Bureau of Economic Geology Circular 85-5). This difference is attributed in part to the fact that naturally occurring vegetated dunes in underdeveloped areas are stronger than reconstructed dunes that do not meet minimum height, width, and material requirements (Circular 85-5).

ENVIRONMENTAL REGULATORY ANALYSIS

GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the actions are not subject to §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to §15.34 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§33.101 - 33.136 relating to the board's ability to grant rights in coastal public land and Texas Natural Resources Code §§61.061 - 61.082 relating to the right of local governments to charge beach access or parking fees with respect to public beaches.

TAKINGS IMPACT ASSESSMENT

GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. GLO has determined that the proposed rulemaking to certify Surfside's adoption of Brazoria County's ERP as part of its plan as consistent with state law does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §17and §19 of the Texas Constitution. GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. Furthermore, GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendment. The ERP establishes guidelines which providing exemptions for property for which the owner has demonstrated that no practicable alternative to construction seaward of the DPL exists. The definition of the term "practicable" in 31 TAC §15.2(55) of the Beach/Dune Rules allows a local government to consider the cost of implementing a technique such as the setback provisions in determining whether it is "practicable" in a particular application for development. In applying its regulation, the City will determine on a case-by-case basis to

permit construction of habitable structures in the area seaward of the building setback line if certain construction conditions are met thereby avoiding severe and unavoidable economic impacts and thus an unconstitutional taking. In addition, building setback lines adopted by local governments under that section would not constitute a statutory taking under the Private Real Property Rights Preservation Act inasmuch as Texas Natural Resources Code §33.607(h) as added by HB 2819 provides that Chapter 2007, Government Code, does not apply to a rule or local government order or ordinance authorized by §33.607.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(E) - (I) and §505.11(c), relating to the Actions and Rules Subject to the CMP. GLO has reviewed these proposed actions for consistency with the CMP's goals and policies. The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction of in the Beach/Dune System). Because all requests for the use of coastal public land must continue to meet the same criteria for GLO approval, GLO has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to the Commissioner in order to provide him an opportunity to provide comment on the consistency of the proposed amended rule during the comment period.

The amended rule provides certification that Surfside's adoption of Brazoria County's ERP as part of its plan consistent with the CMP goals outlined in 31 TAC §501.12(1) - (3) and (6). These goals seek protection of Coastal Natural Resource Areas (CNRA), compatible economic development and multiple uses of the coastal zone, minimization of the loss of human life and property due to the impairment and loss of CNRA functions, and coordination of GLO and local government decision-making through the establishment of clear, effective policies for the management of CNRAs. The ERP is tailored to the unique natural features, degree of development, storm, and erosion exposure potential for Surfside. The ERP is also consistent with the CMP policies outlined in 31 TAC §501.26(a)(1) and (2) that prohibit construction within a critical dune area that results in the material weakening of dunes and dune vegetation or adverse effects on the sediment budget. The ERP will provide reduced impacts to critical dunes and dune vegetation by establishing requirements for construction in the DPL, reduce dune area habitat and biodiversity loss, and reduce structure encroachment on the beach which leads to interruption of the natural sediment cycle.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register, Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code §33.607, relating to GLO's authority to adopt rules for the preparation and implementation by a local government of a plan for reducing public expenditures for erosion and storm damage losses to public and private property.

Texas Natural Resources Code §§33.601 - 33.613 are affected by the proposed amendments.

§15.34. Certification Status of Village of Surfside Beach Dune Protection and Beach Access Plan.

(a) The Village of Surfside Beach has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The county's plan was adopted on December 12, 2000 and amended on June 29, 2012.

(b) The General Land Office certifies as consistent with state law the Village of Surfside's Beach Dune Protection and Beach Access Plan as amended by the Brazoria County Erosion Response Plan. The Erosion Response Plan was adopted by the Village of Surfside on June 29, 2012 by Resolution 06292012A.

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 November 12, 2012.

TRD-201205876
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 475-1859

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 2. SPORTS AND EVENTS TRUST FUND

SUBCHAPTER B. EVENTS TRUST FUND

34 TAC §§2.200 - 2.205

The Comptroller of Public Accounts proposes amendments to §2.200, concerning definitions, §2.201, concerning eligibility, §2.202, concerning request to establish a trust fund, §2.203, concerning reporting, and §2.204, concerning disbursements. The Comptroller of Public Accounts proposes new §2.205, concerning allowed and disallowed costs.

Section 2.200, concerning definitions, adds definitions of "cost," "local share," and "travel" in order to more clearly define what costs are compensable under the program. The definition of "event support contract" is also amended to clarify that the term does not include requests for bid, requests for proposals, bid responses or a selection letter from a site selection organization, except where specifically incorporated into the event support contract.

Section 2.201, concerning eligibility, is amended by designating the current provision as subsection (a) and by creating a new subsection (b) to provide that no event related contract may compel the comptroller to perform any act not otherwise authorized by law and that the comptroller is not obligated to enforce or compel any party to perform pursuant to an event related contract.

Section 2.202 concerning request to establish a trust fund is amended by amending subsection (a) to state that a request to participate in the trust fund program must include a request worksheet form, and an affidavit from the endorsing municipality, endorsing county, local organizing committee and any provider of economic data attesting to the accuracy of the information provided. New subsection (j) adds that a requestor must provide any additional information requested by the comptroller.

Section 2.203 is amended to describe in more detail the information required by the comptroller under the reporting requirement, including hotel information, attendance information, and ticket sale information.

Section 2.204 is amended by changing the name of the section to "Disbursement for Event Costs" from "Reimbursement". Section 2.204 is amended to change references to "reimbursement" to "disbursement" in subsections (a), (b), (e), and (f) of the rule in order to more fully follow the language used in statute. Section 2.204(c) is also amended to add a requirement that the requestor provide documentation affirming the participation of a local organizing committee. Section 2.204(e) is amended to add required items of information that requestors must provide in a disbursement request letter, including advertising costs, and copies of receipts and contracts. Section 2.204(e) also provides that a disbursement request letter submitted by a local organizing committee must include documentation showing the prior approval of the disbursement request by each endorsing municipality or endorsing county.

Section 2.204(f) is amended to clarify that funds in the trust fund must be fully expended within one year of the initial disbursement request. This subsection is also amended to specify the circumstances under which unexpended local funds shall be returned to an endorsing municipality or endorsing county prior to the expiration of the one-year period.

Section 2.204 is also amended by adding subsection (h) which specifies in what circumstances the comptroller will not consider a disbursement request, including situations where a disbursement request is not signed by a requestor or where the request is not supported by the event support contract.

Section 2.204 is also amended by adding new subsection (i) which requires that each disbursement request submitted to the comptroller be accompanied by a certification, that the certification be in the form identified in the subsection and signed by an official of the endorsing municipality or endorsing county. New subsection (i) also prohibits an endorsing municipality or endorsing county from delegating the obligation to approve a disbursement request or sign the certification to another person or entity.

Section 2.204 is further amended by adding a new subsection (j) which provides the proportion of state funds to local funds at which disbursements from the trust fund will be made by the comptroller in order to satisfy a municipal or county obligation.

New §2.205 is added to describe what types of costs will be allowed or not allowed under the Events Trust Fund program. Section 2.205(a) describes allowable costs such as the cost of hosting or sanction fees, facility maintenance, and security or public health related costs. Section 2.205(b) describes disallowed costs including the costs of gifts, alcoholic beverages, entertainment, or hospitality expenses.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rules 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 rules are in effect, the public benefit anticipated as a result of enforcing the rules will be by clarifying the requirements and procedures regarding the Events Trust Fund program. The proposed amendments would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposed rules may be submitted to Robert Wood, Director, Local Government Assistance and Economic Development Division, at Robert.wood@cpa.state.tx.us or at P.O. Box 13528, Austin, Texas 78711.

The amendments and new rule are proposed pursuant to Texas Revised Civil Statutes Annotated, Article 5190.14, §5C(p) which allows the comptroller to adopt rules to implement the provisions of Art. 5190.14, Sec. 5C, VTCS.

The rules implement Texas Revised Civil Statutes Annotated, Article 5190.14, §5C.

§2.200. Definitions.

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

(1) Comptroller--The Comptroller of Public Accounts for the state of Texas.

(2) Cost--Expenses and obligations required to attract, secure, and conduct an event under the event support contract net of revenues collected for the same specific expense or obligation.

(3) [~~(2)~~] Endorsing county--A county that contains within its boundaries at the time of application to the site selection organization a site selected by a site selection organization for one or more events.

(4) [~~(3)~~] Endorsing municipality--A municipality that contains within its boundaries at the time of application to the site selection organization a site selected by a site selection organization for one or more events.

(5) [~~(4)~~] Event support contract--A joinder undertaking, joinder agreement (as defined in Texas Civil Statutes, Article 5190.14, §1) or a similar contract signed [~~executed~~] by a local organizing committee, an endorsing municipality or an endorsing county and a site selection organization. The term does not include a request for bid, request for proposal, bid response or a selection letter from a site selection organization except as those documents may be incorporated by reference into the event support contract.

(6) [~~(5)~~] Event--An event or a related series of events held in this state for which a local organizing committee, endorsing county, or endorsing municipality seeks approval from a site selection organization to hold the event at a site in this state. The term includes any activities related to or associated with the event.

(7) [~~(6)~~] Highly competitive selection process--A process in which the requestor shall document that the site selection organization:

(A) has historically considered sites outside of Texas on a competitive basis and intends to do so in the future;

(B) shall not select more than one site in Texas or an adjoining state; and

(C) shall not select the site for the event more than one time in a calendar year.

(8) [~~(7)~~] Local organizing committee--A nonprofit corporation or its successor in interest that is subject to all requirements of a local organizing committee described in Art. 5190.14, VTCS and:

(A) has been authorized by an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively to pursue an application and bid with a site selection organization for selection as the site of an event; or

(B) with the authorization of an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively, has executed an agreement with a site selection organization regarding a bid to host an event.

(9) Local share--The contribution to the fund made by or on behalf of an endorsing municipality or endorsing county.

(10) [~~(8)~~] Market area--The geographic area within which the comptroller determines there is a reasonable likelihood of measurable economic impact directly attributable to the preparation for and presentation of the event and related activities.

(11) [~~(9)~~] Requestor--An endorsing county, endorsing municipality or local organizing committee that is requesting to participate [~~participation~~] in the trust fund program. The term includes one or more endorsing counties and/or one or more endorsing municipalities acting collectively or in conjunction with a local organizing committee.

(12) [~~(10)~~] Site selection organization--An entity that conducts or considers conducting an eligible event in this state.

(13) Travel--Includes lodging, mileage, rental car expense, airfare and meals that are incurred while a person travels.

(14) [~~(11)~~] Trust fund--The Events Trust Fund.

(15) [~~(12)~~] Trust fund estimate--The comptroller's determination of the incremental increase in tax receipts eligible to be deposited in the trust fund for an eligible event.

§2.201. Eligibility.

(a) An event is eligible for participation in the trust fund program only if:

(1) a site selection organization selects a site in Texas for the event;

(2) the event will not be held more than once a calendar year in Texas or an adjoining state; and

(3) the site selection is done through a highly competitive selection process.

(b) No joinder agreement, joinder undertaking, event support contract, interlocal agreement, or any other type of agreement may require, obligate or compel the comptroller to perform any act not required by law. The comptroller is not responsible or obligated to enforce or compel the performance of any party subject to the terms of any joinder agreement, joinder undertaking, event support contract, interlocal agreement or any other agreement to which an endorsing municipality, endorsing county or local organizing committee is a party.

§2.202. Request to Establish a Trust Fund.

(a) A request for participation in the trust fund program must contain:

(1) a letter from the municipality or county requesting participation in the trust fund program and signed by a person authorized to bind the municipality or county;

(2) a letter from the site selection organization on organization letterhead selecting the site in the endorsing municipality or endorsing county; [~~Texas; and~~]

(3) an economic impact study or other data sufficient for the comptroller to make the determination of the incremental increase in tax revenue associated with hosting the event in Texas including a listing of any [~~and~~] data for any related activities;[~~.~~]

(4) a Request Worksheet to Establish an Events Trust Fund form and any attachments; and

(5) an affidavit provided by each endorsing municipality, endorsing county, local organizing committee, and any party providing economic data to the agency in support of the request, attesting to the accuracy of the information provided.

(b) The economic impact study and other data submitted must contain detailed information on the direct expenditures and direct impact data for the endorsing municipality or endorsing county hosting the event and for the requested market area. The study must identify the source of the information. Any other data or information in the study addressing the indirect or induced impact of the event must be stated separately from the direct impact data such that the data for each can be easily distinguished.

(c) The request for participation and the economic impact report should propose the requestor's desired market area and include information to support the choice of market area. The comptroller shall make the final determination establishing the market area. An endorsing municipality or endorsing county that has been selected as the site for the event must be included in the market area for the event.

(d) A list of all related event activities proposed to be included in the trust fund estimate must include data for each activity, such as projected attendance figures, ticket sales, or any production or expenditure information related to the activity.

(e) The comptroller is not required to review or act on a request for participation that does not contain all items in subsections (a) - (d) of this section.

(f) A request for participation, including a request for determination of the amount of incremental increase in tax receipts must be submitted not later than four months before the date the event begins. Requests submitted outside this time frame shall not be reviewed.

(g) All requests must be submitted to: Deputy Comptroller, Comptroller of Public Accounts, 111 E. 17th Street, Austin, Texas 78774.

(h) The comptroller shall make a determination of the amount of incremental increase in tax receipts not later than the 30th day after the date the comptroller receives the completed request for participation and related information.

(i) A requestor must timely provide any additional information requested by the comptroller.

(j) [~~(i)~~] If the comptroller determines that the event, including any related event, has been held in the state within the previous five years, the estimated incremental increase in tax revenue will be reduced according to the following percentages, subject to adjustment to the extent the comptroller determines is necessary to reflect changes to the character, timing or location of the event:
Figure: 34 TAC §2.202(j)
[~~Figure: 34 TAC §2.202(i)~~]

§2.203. Reporting.

(a) After the conclusion of an event, a requestor must provide information related to the event, including [~~such as~~] attendance fig-

ures, hotel information, financial information, or other public information held [by the requestor]that the comptroller considers necessary to evaluate the success of the trust fund program. If available, information should include:

(1) total attendance at the event;

(2) total ticket sales for the event;

(3) number and price of tickets sold to out of state purchasers; and

(4) any other public information requested by the comptroller.

(b) Information provided under subsection (a) of this section, should only be provided if the requestor considers the information to be public.

(c) The comptroller may promulgate a form to collect information required under this section.

§2.204. Disbursements for Event Costs [Reimbursement].

(a) Disbursements [Reimbursement payments] from the trust fund shall be used to finance costs of the event related to:

(1) applying or bidding for selection as the site of an event in this state;

(2) [making the preparations necessary and desirable for the conduct of an event in this state, including] the construction or renovation of facilities to the extent authorized by law that are directly attributable to fulfilling obligations of the event support contract; and

(3) conducting an event in this state in accordance with the event support contract.

(b) Disbursements [Reimbursement payments] from the trust fund may not be used to make payments to a site selection organization or any other entity that are not directly attributable to allowable costs described in subsection (a) of this section. Disbursements [Payments to a site selection organization or any other entity] are subject to verification or audit by the comptroller to ensure compliance with this subsection.

(c) No later than the date of the event, the requestor shall [should] submit to the comptroller:

(1) a complete copy of the event support contract, any amendment to the contract, and any incorporated [related] documentation; [and]

(2) documentation affirming the participation of a local organizing committee, if one exists; and

(3) [(2)] if an endorsing municipality or endorsing county requests to have the local tax funds withheld from amounts that would otherwise be allocated [disbursed] to an endorsing municipality or endorsing county, the request must be submitted to the comptroller no later than the date of the event[,] with a proposed local funds withholding plan. The comptroller will make every effort to accommodate the proposed plan, but retains the authority to withhold at a different rate as necessary.

(d) No later than 90 days after the event, endorsing municipalities and endorsing counties without a proposed local funds withholding plan shall submit an amount up to or equal to the calculated local share.

(e) A disbursement request letter must contain:

(1) the Texas Taxpayer Identification Number or a comptroller Form AP-152 *Texas Application for Payee Identification Number* for each endorsing municipality, endorsing county or local organizing committee (as designated by an endorsing municipality or endorsing county) receiving disbursements [reimbursement] directly from the comptroller;

(2) the amount to be disbursed [reimbursed];

(3) a general explanation of the costs [expenses] the disbursement request [reimbursement] represents;

(4) copies and specifications for any publications or advertising cost included in the disbursement request;

(5) a detailed list presented in the form prescribed by the comptroller of costs included in the request;

(6) copies of the requestor's invoices, receipts, contracts, proof of payment, or other documents supporting the costs included in the disbursement request;

(7) for a request submitted by a local organizing committee, documentation showing the prior approval of the disbursement request by each contributing endorsing municipality and/or endorsing county;

(8) a statement indicating whether any information provided to the comptroller is confidential and exempt from public disclosure under the Texas Public Information Act (Government Code, Chapter 552), including the legal citation showing the exemption claimed; and

(9) a copy of any financial report the requestor is required to submit to the site selection organization under the event support contract.

[(4) a statement that the money was not used to solicit the relocation of a professional sports franchise located in the state;]

[(5) information indicating whether the payment will be made by direct deposit or by warrant;]

[(6) a detailed list of expenditures for reimbursement;]

[(7) copies of invoices for expenditures;]

[(8) supporting documentation showing payment of invoices; and]

[(9) a signed statement indicating that all payroll expenditures submitted for reimbursement have been paid.]

(f) Funds in the trust fund must be fully expended within one year of the date the first disbursement request is received by the comptroller unless an extension is granted by the comptroller. After this one year period and any extension period, the comptroller shall return the local share of any unexpended balances in the trust fund to the respective endorsing municipality and/or endorsing county in proportion to their initial contribution, regardless of the source of the local share. Prior to the end of this one year period plus any extension granted, the [The] comptroller may [shall] return any local share [funds] remaining unexpended in the trust fund upon request by an endorsing municipality and/or endorsing county or after the payment [reimbursement] of all costs [expenditures] is completed [to an endorsing municipality and/or endorsing county in proportion to their initial contribution to the fund].

(g) The comptroller may request supporting documentation or justification regarding any costs [expenditures] submitted for reimbursement.

(h) The comptroller will not consider a disbursement request that:

(1) is not signed by a requestor;

(2) requests reimbursement for costs belonging to any entity other than a requestor as a party to an event support contract;

(3) is submitted to the comptroller more than 90 days after the end date of the event unless the comptroller has granted an extension to the requestor; or

(4) is not supported by an event support contract.

(i) Each disbursement request must be accompanied by a certification completed by the endorsing municipality or endorsing county.

(1) The certification required by this subsection must be in the following form: Regarding the Events trust fund disbursement request in the amount of $_____, for the _____{name of event} I, _____{name of authorized official}, approve of each cost submitted for disbursement from the trust fund. I certify that each cost is necessary to fulfill obligations under the event support contract. I certify that the funds will not be used for the purpose of soliciting the relocation of a professional sports franchise located in this state; and that no costs sought for disbursement from the trust fund are also being reimbursed by another entity. I also certify that I have the authority to make this certification statement on behalf of the municipality or county and that I take responsibility for the disbursement being requested.

(2) The certification must be signed by an official of the endorsing municipality or endorsing county who is authorized to bind the municipality or county.

(3) An endorsing municipality or endorsing county may not delegate to another person or entity its obligation to approve a disbursement request or sign the certification required by this subsection.

(j) A disbursement made from the trust fund by the comptroller in satisfaction of a requestor's obligation shall be satisfied proportionately from the state and local revenue in the trust fund in the proportion of 6.25:1 of state funds to local share notwithstanding any agreements to the contrary made by a requestor.

§2.205. Allowed and Disallowed Costs.

(a) The following costs are supportive of the trust fund program goals and are generally allowable:

(1) construction and financing costs for public event facilities;

(2) fees charged by a site selection organization which must be paid as a prerequisite to holding an event, including hosting fees, sanction fees, participation fees, or bid fees;

(3) performance bonds or insurance required for hosting the event;

(4) improvements or maintenance to publicly owned real property within the designated market area that is ordered no earlier than three months prior to the event and that is directly related to hosting the event;

(5) security or public health related costs directly incurred as a result of the event;

(6) water or food necessary to the health or safety of people or animals involved in hosting or participating in the event;

(7) event facility costs, including:

(A) expense to rent a facility if the requestor is required to provide the facility at no cost under the event support contract;

(B) the purchase or rental of furnishings and equipment specifically required to be provided under the event support contract and that is ordered after the event support contract is signed;

(C) operational costs of the endorsing municipality's or endorsing county's facility that:

(i) are directly related to preparing for or hosting the event;

(ii) are net of any rent or rent related proceeds that is received as a result of hosting the event;

(iii) occur no earlier than 90 days prior to the event occurring; and

(iv) occur prior to or during the event unless the cost specifically relates to cleaning the facility after the event occurs.

(8) A requestor's staffing costs directly attributable to planning for or hosting the event that:

(A) are directly related to preparing for or hosting the event;

(B) are for a service that is not usually performed by the staff other than because the event is occurring;

(C) occur no earlier than 90 days prior to the event occurring; and

(D) occur prior to or during the event.

(9) a requestor's legal or professional service costs not prohibited under subsection (b)(5) of this section for:

(A) preparing a pre-event or post-event economic impact study;

(B) preparing event-related documents;

(C) fulfilling specific obligations of the event support contract;

(D) consulting on soliciting, preparing or hosting the event;

(10) market-area transportation and/or parking services for the event that are net of revenues earned from providing the transportation and/or parking;

(11) temporary signs and banners, when required by the event support contract;

(12) advertising for the event which:

(A) include the event name, date, and location; and

(B) are required by the event support contract;

(13) costs attributable to inclement weather occurring immediately before, during, or immediately after an event, except costs of damages;

(14) any other direct costs resulting from requirements of the event support contract that are not prohibited in subsection (b) of this section; and

(15) other costs determined by the comptroller to meet program objectives.

(b) Disbursements for the following costs are prohibited, regardless of their inclusion in and event support contract:

(1) any tax listed in Texas Revised Civil Statutes, Article 5190.14, Section 5C;

(2) gifts of any kind;

(3) grants to any person, entity or organization;

(4) alcoholic beverages;

(5) costs related to representing any entity, including a requestor, in front of:

(A) the legislature for any reason; or

(B) the comptroller for the purpose of seeking reimbursement from the trust fund;

(6) expenses related to gaming, raffles, or giveaways;

(7) expenses for religious items or religious publications of any kind, regardless of the religion or type of event;

(8) personal items and services;

(9) entertainment, hospitality or "VIP" expenses;

(10) food not specifically authorized in subsection (a)(6) of this section;

(11) individual's travel expenses not specifically authorized in subsection (a)(10) of this section, or that are not a component of a service contract under subsection (a)(9) of this section;

(12) reimbursement of any particular expense or obligation that was recouped or that will be recouped from another entity or from revenue earned under the event support contract that is identified to cover the cost;

(13) reimbursement of any cost not incurred, such as for lost profit or for an exchange-in-kind or product;

(14) damages of any kind; and

(15) any expenses which an endorsing municipality or endorsing county finds are unnecessary for the planning or conduct of an event.

(c) The comptroller may deny a disbursement for any event, cost, expense or obligation the comptroller deems unnecessary, fiscally irresponsible, or not supportive of program objectives.

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 November 12, 2012.

TRD-201205850
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 475-0387

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CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER A. GENERAL RULES

34 TAC §3.1

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

The Comptroller of Public Accounts proposes the repeal of §3.1, concerning request for extension of time in which to file report, because the provisions of that section are nearly verbatim statements of Tax Code, §111.057 (Extension for Filing Report) and Tax Code, §111.058 (Filing Extension Because of Natural Disaster). The comptroller has determined that additional guidance is not needed in an agency rule to address those statutory provisions.

John Heleman, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Heleman also has determined the repeal would benefit the public by removing from the Texas Administrative Code extraneous provisions lacking useful tax policy guidance for the public. There would be no anticipated significant economic cost to the public. This repeal is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the repeal 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 repeal 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 repeal implements no specific provision of the Tax Code, but is within the comptroller's authority to propose and adopt as part of her general authority under Tax Code, §111.002 and §111.0022.

§3.1. Request for Extension of Time in Which to File Report.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 6, 2012.

TRD-201205725
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §3.1

The Comptroller of Public Accounts proposes new §3.1, concerning private letter rulings and general information letters. The existing §3.1, concerning Request for Extension of Time in Which to File Report, is being repealed because the provisions of that section are nearly verbatim statements of Tax Code, §111.057 (Extension for Filing Report) and Tax Code, §111.058 (Filing Extension Because of Natural Disaster). The comptroller has determined that additional guidance is not needed in an agency rule to address those statutory provisions.

New §3.1 is proposed to adopt specific guidelines for the public to request, and the comptroller to issue, private letter rulings and general information letters. The purpose of the section is to distinguish between requests for taxability information that is already available in the form of rules, publications, and other

agency resources and requests for taxability information in situations where guidance is not already provided by law or by the comptroller. The section will assist the comptroller in balancing limited resources with the important responsibility to provide information to promote voluntary compliance. In addition, according to *Combs v. Entertainment Publ'ns, Inc,* 292 S.W.3d 712 (Tex.App.--Austin 2009, no pet.), the comptroller must follow the required statutory rulemaking process, which provides for public review and input, when issuing taxability guidance through statements of general applicability.

This section only applies to requests submitted to the comptroller as of the effective date of this section. Taxability letters issued by the comptroller to persons prior to the effective date of this section are eligible for detrimental reliance as provided for in §3.10 of this title (relating to Taxpayer Bill of Rights). Also, letters and other documents reflecting agency policy will remain on the comptroller's State Tax Automated Research System, but will continue to be evaluated for accuracy. These documents will also be incorporated into agency rules as time and resources permit.

Subsection (a) provides definitions for the terms "general information letter" and "private letter ruling." It also includes a definition for the term "related person" that is based on the definition of the term "related party" under Tax Code, Chapter 171, but is intended to apply to all taxes, fees and charges administered by the comptroller.

Subsection (b) provides information about general information letter requests. The subsection also states that a person cannot make a claim of detrimental reliance based on a general information letter.

Subsection (c) explains the requirements for private letter rulings, circumstances under which the comptroller will not issue such rulings, and options for how the comptroller can respond to requests for private letter rulings. Although the comptroller will not issue a private letter ruling under some circumstances, such as when a person is under audit, under §3.10 of this title, taxpayers still have the right to request assistance from the agency to answer taxability questions related to those matters.

Subsection (d) explains the binding effect of private letter rulings on the comptroller and when the comptroller will not be bound by such rulings. Only a person who receives a private letter ruling may rely on it. The subsection also explains that a person who receives a private letter ruling may claim detrimental reliance as provided under §3.10 of this title.

Subsection (e) explains the guidelines for any modification or revocation of a private letter ruling. It explains how the comptroller will notify a person that a private letter ruling has been revoked or modified. The notice provisions are based on those in Tax Code, §111.008.

Subsection (f) discusses confidentiality provisions relating to both general information letters and private letter rulings.

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 providing clear guidelines for taxpayers to request and the comptroller to issue general information letters and private letter rulings. 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 new section 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 new section implements no specific provision of the Tax Code, but is within the comptroller's authority to propose and adopt as part of her general authority under Tax Code, §111.002 and §111.0022.

§3.1. Private Letter Rulings and General Information Letters.

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

(1) General information letter--Information provided by the comptroller in response to any written inquiry about the taxability of an item or transaction, including a request for a private letter ruling that does not comply with the requirements necessary to request a private letter ruling.

(2) Private letter ruling--The comptroller's written determination on the application of relevant tax laws, rules, and policies to a specific set of facts submitted in a properly completed private letter ruling request.

(3) Related person--A person, corporation, or other legal entity, including an entity that is treated as a pass-through or disregarded entity for purposes of federal taxation, in which one person, corporation, or entity, or set of related persons, corporations, or entities, directly or indirectly owns or controls a greater than 50% interest in another entity.

(b) General information letters.

(1) General information letters are advisory in nature and are not binding on the comptroller for purposes of detrimental reliance under §3.10 of this title (relating to Taxpayer Bill of Rights).

(2) The comptroller will respond to a request for a general information letter by issuing a general information letter, by requesting additional information necessary to complete the general information letter, by directing the requestor to the relevant authorities such as agency rules, or by communicating that the comptroller declines to issue a response.

(c) Private letter rulings.

(1) A request for a private letter ruling must be in writing, must be clearly identified as such, and must contain:

(A) identifying information for the person or entity to which the ruling request relates, to include the name, address, Texas taxpayer and federal employer identification numbers, and state of formation, as applicable. The reporting entity of a combined group may request a private letter ruling related to franchise tax reporting on behalf of a combined group by including identification information for each member of the combined group that seeks to rely on the ruling

and including identifying information for each member of the combined group that is a party to any transactions described in the ruling request. The signature of the person making the request; the signature of an authorized representative of the person making the request; or the signature of any third party authorized to represent the person before the comptroller, accompanied by a power of attorney, must also be included. If a private letter ruling request does not contain the required identifying information, signature of the person making the request, signature of an authorized representative of the person making the request or a power of attorney if the request is submitted by a third party authorized to represent the taxpayer, the comptroller will still consider the request for a possible ruling; however, no detrimental reliance will be provided under §3.10 of this title unless the identity of the person or entity to which the ruling request relates is revealed. If the identity of the person or entity is revealed during the comptroller's review of the request, the comptroller may take any actions necessary to ensure that accurate taxability information is provided;

(B) a detailed statement of all relevant facts relating to the request;

(C) a true and correct copy of all relevant documents relating to the request. Relevant facts in documents should be detailed in the request and not merely incorporated by reference in the detailed statement;

(D) a statement disclosing whether or not the issue is under consideration by the comptroller in connection with an audit examination of any type, a refund request, a voluntary disclosure agreement, an administrative hearing, or litigation for the person or entity to which the ruling request relates or for a related person;

(E) a statement disclosing whether or not a request on the same or a similar issue has been or will be submitted to a taxing jurisdiction of another state;

(F) a statement of the private letter ruling requested from the comptroller;

(G) a statement of authorities supporting the requested ruling, an explanation of the grounds for the ruling and the relevant authorities to support the ruling; and

(H) a statement of authorities contrary to the requested ruling. Each person is under an affirmative duty to identify any and all authorities contrary to the requested ruling. If the requestor determines that there are no contrary authorities, or is unable to locate such authority, the request must include a statement that the requestor has identified all relevant authorities to the best of the requestor's knowledge.

(2) The comptroller may request any additional information needed to issue a private letter ruling, including required information that was not provided in the original request. The comptroller will not issue a private letter ruling if the requested information is not provided.

(3) The comptroller will not issue a private letter ruling if the request relates to the same or similar issue that is before the comptroller in the following actions or proceedings for the same person or a related person and for the same or any prior tax period:

(A) an audit examination of any type;

(B) a refund request;

(C) a voluntary disclosure agreement;

(D) an administrative hearing; or

(E) litigation.

(4) The comptroller will promptly acknowledge receipt of all private letter rulings. Subject to paragraph (3) of this subsection, the comptroller will respond in writing to a request for a private letter ruling by issuing a private letter ruling, by issuing a request for additional information, by issuing a letter that declines the request for private letter ruling, or by issuing a general information letter. As part of the process of evaluating the ruling request and determining whether to issue a private letter ruling, the comptroller will consider the extent to which the ruling will promote voluntary compliance by the greatest number of taxpayers and provide information to other persons who have an interest in the subject matter.

(d) Binding effect of private letter rulings.

(1) A person who receives a private letter ruling may rely on it prospectively from the date that the private letter ruling is issued and with respect only to the particular issue and the person identified in the request for the private letter ruling, subject to the exception that, for purposes of the franchise tax, a member of a combined group may rely on a private letter ruling that is issued to the reporting entity of a combined group to the extent that the private letter ruling relates to that member. Detrimental reliance applies to private letter rulings as provided by §3.10 of this title and subsection (c)(1)(A) of this section.

(2) Notwithstanding paragraph (1) of this subsection, a private letter ruling is not binding on the comptroller with respect to the person who requested the private letter ruling if:

(A) there has been a misstatement or omission of material facts in the request; or

(B) the facts subsequently developed are materially different from the facts on which the private letter ruling was based.

(3) Notwithstanding paragraph (1) of this subsection, a private letter ruling is not binding on the comptroller on a prospective basis if:

(A) there has been a change in the applicable laws, rules, or comptroller hearing decisions that the comptroller determines affects the validity of the ruling;

(B) there has been a final, non-appealable decision issued in a contested case or by a Texas or federal court that the comptroller determines affects the validity of the ruling; or

(C) the comptroller has modified or revoked the private letter ruling.

(e) Modification or revocation of a private letter ruling.

(1) The comptroller may modify or revoke a private letter ruling if the ruling is found to be in error or not in accordance with laws or current comptroller policy or guidelines. The revocation or modification of a private letter ruling shall not be applied retroactively to a person identified in subsection (d) of this section, concerning private letter rulings that are binding on the comptroller.

(2) The comptroller will provide written notice by mail, and service by mail will be complete when the notice is deposited in a U.S. Post Office. The comptroller will address the notice to the taxpayer or other person at the taxpayer's address as it appears in the records of the comptroller. If there are no records of the comptroller for the person making the request or on whose behalf the request has been made, the comptroller will rely on the contact information provided in the private letter ruling request. The comptroller is under no duty to otherwise notify the requestor of the modification or revocation.

(3) A ruling that is modified or revoked due to a change in federal or state law, a final decision of a court of law, or a change in agency rule is effective on the date of the event requiring the modifica-

tion or revocation. If a ruling is modified or revoked due to a change in comptroller policy that is not reflected in an agency rule, the ruling is effective until the date of the written notice sent to the requestor or person for which the request was made.

(f) Confidentiality. Information provided to the comptroller when requesting a general information letter or private letter ruling, and any general information letter or private letter ruling issued by the comptroller, remain confidential to the extent provided by the Public Information Act, Texas Government Code Ann., Chapter 552, and controlling interpretations as applied to the comptroller by the Attorney General's office and court decisions.

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 November 6, 2012.

TRD-201205726
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 475-0387

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34 TAC §3.10

The Comptroller of Public Accounts proposes amendments to §3.10, concerning taxpayer's bill of rights, which the comptroller is proposing be renamed taxpayer bill of rights. The section is being revised and reorganized to provide current information concerning agency policies and practices and legislative changes.

Subsection (a) still states the purposes in having a taxpayer bill of rights, which are updated to identify the Compact with Texans that all state agencies must develop.

New proposed subsection (b) explains the comptroller's commitment to providing timely and accurate information in a professional manner and explains the resources that exist to help taxpayers find answers to their questions. Some information from the current subsection (b) is proposed for deletion because it is outdated and no longer applicable. However, information from current paragraphs (1) and (2) is updated and retained in the section, but relocated. A new paragraph (5) is added to explain that additional information, including all private letter rulings issued under §3.1 of this title (relating to Private Letter Rulings and General Information Letters), will be maintained on the comptroller's State Tax Automated Research System.

Subsection (c) now explains the comptroller's longstanding policy regarding detrimental reliance, which is a policy that is not required by law, but is provided by the agency as a matter of equity. The taxes, fees, and other charges administered by the comptroller that are eligible for detrimental reliance are those that are collected and remitted on behalf of the state. If the comptroller provides incorrect guidance and a tax, fee or charge that should have been collected and remitted was not collected based on that incorrect guidance, then the seller of that item can be held harmless for the agency's error. In contrast to the taxes, fees and charges identified in subsection (c)(2) and (3) and as explained in subsection (c)(4), taxes, fees, and charges that are imposed directly on a person or are paid by the ultimate consumer and included in the price of an item are not eligible for detrimental reliance because no similar harm is caused if the agency provides incorrect information. Therefore, taxes such as the franchise tax, the mixed beverage tax, and fuels taxes do not qualify for detrimental reliance, although the comptroller may grant waiver of penalty and/or interest if incorrect taxability information was provided. Information that has always existed in this section is now supplemented with more detailed information about the four-part test that has existed for many years for taxpayers to prove they are entitled to relief, as well as specific information related to relief available to sellers and purchasers under the sales and use tax, as reflected in a December 13, 2007 memo on the agency's State Tax Automated Research System under accession #200712099L. Information about the extent to which the comptroller will provide detrimental reliance with respect to the other taxes, fees, and charges administered by the agency is also provided. The statement in current subsection (c)(1) that agency materials will be written in simple terms is now incorporated into new subsection (b)(4). Other information in current subsection (c) is proposed to be deleted because it is no longer accurate or is not appropriate for the section.

Under Senate Bill 1563, 76th Legislature, 1999, which added Government Code, Chapter 2113 (Customer Service), each state agency is required to have a customer relations representative and develop a Compact with Texans to explain and address customer service issues. Government Code, Chapter 2113 was renumbered as Government Code, Chapter 2114 by House Bill 2812, 77th Legislature, 2001. The comptroller calls this person the customer service liaison and subsection (d) is updated to reflect these changes and legislative mandates. In addition, all of the rights and responsibilities of the ombudsman have now been merged into the customer service liaison position, so taxpayers may now contact that person for the same type of assistance that was previously provided by the ombudsman.

Subsection (e) as proposed explains agency policy and practices that relate to the comptroller's commitment to helping taxpayers comply with their obligations and protect their rights, including information about the voluntary disclosure program and the confidentiality of taxpayer information. Information from the current subsection is incorporated to the extent it is still accurate, relevant or not otherwise covered by other sections of this title. New information is added to explain that taxpayers can ask for an independent review of an audit at a location near their primary place of business. Taxpayers can also ask for the Tax Policy Division to participate in taxability discussions or disputes related to audits and voluntary disclosure agreements. The new proposed subsection (e) also states the comptroller's policy with respect to audit leads and requests for private letter rulings and general information letters.

Subsection (f) is revised to explain the comptroller's commitment to welcoming input from taxpayers and the business community to improve customer service and provide comments on agency rules and procedures, including the comptroller's intent to host roundtable discussions and encourage open dialog between taxpayers and the agency. Current paragraph (1) is unnecessary because the information relating to interest due on refund claims is covered by §3.325 of this title (relating to Refunds and Payments Under Protest). Current paragraph (2) no longer reflects agency practice. Current paragraph (3) contains information that is stated and covered in more detail in §3.282 of this title (relating to Auditing of Taxpayer Records).

Current subsection (g) of this section that is proposed for deletion contains information that is now incorporated and updated in subsection (f) of this section.

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 providing taxpayers with improved explanatory information regarding agency policies and procedures. 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 amendments are proposed under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2, as well as taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement Government Code, §2114.006.

§3.10. Taxpayer [~~Taxpayer's~~] Bill of Rights.

(a) Purposes.

(1) Various state and federal laws that govern the comptroller's and taxpayers' responsibilities concerning the collection and payment of taxes and fees are addressed in other sections of this title. The Taxpayer Bill of Rights seeks to strike a balance and find ways to protect taxpayers' rights without interfering with the comptroller's responsibility to collect taxes and assess the accuracy of returns.

(2) The comptroller is legally required to establish a "Compact with Texans," which provides taxpayers with information about how customer service will be performed and monitored. This section explains the comptroller's customer service responsibilities and commitments to ensure that taxpayers receive the treatment and service to which they are entitled.

[~~(a) Taxpayer bill of rights. The goal of this bill of rights is not limited to protecting taxpayers and ensuring they receive the treatment and service to which they are entitled. The objective is to also strike a balance and find ways of protecting taxpayers without interfering with the government's responsibility to collect taxes and assess the accuracy of returns.~~]

(b) Taxpayers are entitled to useful resources and prompt [~~Prompt~~] and accurate [~~responses to requests for~~] information that is provided in a professional manner.

(1) The comptroller's website, Window on State Government, will contain information that is well-organized and useful to help taxpayers locate answers to their questions. Taxpayers can also elect to receive email updates relating to agency policies and practices through Window on State Government. [~~staff will respond promptly to requests for information. Phone calls from taxpayers will be returned within 48 hours. Taxpayers can expect a response to letters, faxes, and emails within a maximum of 10 days. If the information is not available, comptroller staff will notify the taxpayer, give a reason for the delay, and set a deadline for the material or information to be available. Comptroller staff will keep track of these requests and timeliness of responses.~~]

(2) Comptroller staff will respond promptly to requests for information whether in person, by phone, or in writing.

(3) The comptroller will seek feedback from taxpayers to ensure that they are receiving prompt and accurate responses to requests for information and that agency staff performs in a courteous and professional manner.

(4) The comptroller will write rules, publications, forms, and information on the agency's website in plain English and will promptly update information to reflect changes in laws and agency policy. Upon request, the comptroller will make agency publications available in different formats to meet taxpayers' needs.

(5) The comptroller will maintain the State Tax Automated Research (STAR) system on the comptroller's website to provide taxpayers with an additional source of information. All private letter rulings, including information about rulings that have been revoked or modified, issued in accordance with §3.1 of this title (relating to Private Letter Rulings and General Information Letters) will be maintained on STAR.

[~~(2) The comptroller will give relief to a taxpayer who follows erroneous advice given by an agency employee. The taxpayer, however, must have provided complete and accurate information to the agency employee. Relief will be provided only if that taxpayer, and not a third party, was harmed by following the erroneous advice.~~]

[~~(3) Annual staff performance reviews will include an assessment of how well an individual employee deals with the public and meets agency goals. Good communications with the public is one of the measures that will be used to determine merit pay increases.~~]

[~~(4) In addition, the comptroller will consult with companies experienced at establishing employee performance audits. Surveys and "mystery shoppers" will be used to identify weaknesses and weak links in the system.~~]

(c) Detrimental reliance policy. The comptroller will give relief to a taxpayer who follows erroneous advice given to the taxpayer by an agency employee. The taxpayer, however, must have provided complete and accurate information to the agency employee. The comptroller will give relief only if that taxpayer, and not a third party, was harmed by following the erroneous advice. See also §3.1 of this title.

(1) Unless otherwise provided by this section, a taxpayer must affirmatively prove and provide records as requested by the comptroller to show that it meets all four parts of the following test:

(A) the substance of the information or advice and its direct communication to the taxpayer must be in writing in accordance with §3.1 of this title;

(B) the taxpayer followed the information or advice;

(C) the taxpayer gave sufficient information to have resulted in correct advice and did not misrepresent information or withhold or conceal information that would affect the advice; and

(D) the taxpayer has suffered, or will suffer, harm based on the erroneous advice unless the comptroller provides relief to the taxpayer.

(2) Sales and use taxes under Tax Code, Chapter 151. Both sellers and purchasers of taxable items can receive relief based on detrimental reliance. Sellers of taxable items may receive waivers of tax, penalty, and/or interest. The following additional guidelines will be

used when a taxpayer has proven detrimental reliance related to the purchase of taxable items, provided the taxpayer meets the first three parts of the test stated in paragraph (1)(A) - (C) of this subsection and provided records as requested by the comptroller:

(A) all penalties and interest will be waived;

(B) tax will be waived on materials directly utilized and consumed in the performance of a service for, or sale of a product to, an unrelated third party;

(C) tax can only be waived for indirect materials or services when the taxpayer can prove that these items were used in computing prices or bids;

(D) tax on assets or tools directly used in the performance of services or sales may be partially exempted based upon their purchase dates and remaining life of the assets. This presumes that prices can be increased on future sales. A taxpayer with a long term contract or fixed bid can substantiate a larger waiver. For the purposes of computing the remaining life and value of an asset, the comptroller will use a 48 month useful life and straight line depreciation. The taxpayer cannot use other methods of valuation; and

(E) special consideration for waiver will be made if a taxpayer can prove that the advice was used in a decision to locate facilities in Texas.

(3) The following persons shall receive waivers of a tax, charge or fee that was not collected, plus penalty, and/or interest, if all elements of detrimental reliance are proven as indicated by paragraph (1) of this subsection and documents are made available to the comptroller to verify such a claim:

(A) persons who must collect and remit the fee on the sale of batteries under Health and Safety Code, §361.138;

(B) persons who must collect and remit the emergency service fee under Health and Safety Code, §771.071;

(C) persons who must collect and remit the emergency service fee for wireless telecommunications under Health and Safety Code, §771.0711;

(D) retail sellers of prepaid 9-1-1 emergency service fee under Health and Safety Code, §771.0712;

(E) persons who must collect and remit the equalization surcharge under Health and Safety Code, §771.072;

(F) surplus lines licensees who must collect premium taxes from policyholders to remit to the state under Insurance Code, Chapter 225;

(G) persons who must collect and remit the Texas emissions reduction plan surcharge under Tax Code, §151.0515 or §152.0215;

(H) persons who sell or rent motor vehicles and who must collect and remit taxes under Tax Code, Chapter 152;

(I) persons who must collect and remit hotel occupancy taxes under Tax Code, Chapter 156;

(J) persons who sell boats and boat motors who must collect and remit taxes under Tax Code, Chapter 160;

(K) persons who must collect and remit the fireworks tax under Tax Code, Chapter 161; and

(L) persons who must collect and remit the fee on delivery of certain petroleum products under Water Code, §26.3574.

(4) Taxes, fees, and charges other than those identified in paragraphs (2) and (3) of this subsection. If a taxpayer proves detrimental reliance in relation to the taxes, fees, and charges administered by the comptroller other than those identified in paragraphs (2) and (3) of this subsection, the comptroller will only consider granting a waiver of penalty and/or interest for the period(s) covered by the report, audit, or assessment.

[(c) Rules and regulations that are readily available and easy to understand.]

[(1) Rules and tax forms published by the comptroller will be written in simple, clear English without jargon and with judicious use of acronyms. A taxpayers' liaison committee will be created to critique these materials and ensure they meet these requirements.]

[(2) Rules will be readily available at comptroller offices throughout the state and at other agencies. They also will be made available through the comptroller's Internet site.]

[(3) Tax and regulatory information will be available at comptroller offices statewide. Taxpayers can obtain information and assistance from comptroller staff.]

(d) The customer service liaison. [A complaint system that is fair and timely.]

(1) The comptroller employs a customer service liaison [will appoint an ombudsman] to handle taxpayer complaints [by taxpayers, excluding issues being considered in the hearings process]. The customer service liaison has the authority [ombudsman will have the power] to determine if the complaint is valid and to work with staff to reach a resolution that is satisfactory to both the taxpayer and the agency. Certain matters are not within the authority of the customer service liaison to address, including disputes about the meaning of agency rules, disputes about taxability issues that are pending in the administrative hearings process or complaints about the law itself. [whether it stems from dissatisfaction with the law, rather than the way the rules are being enforced.]

(2) Contact information for the customer service liaison [The name, address, email, and phone number of the ombudsman] will be prominently displayed on comptroller materials, including on the agency's website and webpage devoted to the Compact with Texans, and in telephone directories statewide.

(3) If taxpayers approach [Taxpayers will also have recourse to] the Governor's Citizens Assistance Office with disagreements with or about employees, operations, or services at the comptroller's office, the customer service liaison will be notified and will take appropriate action. [The office notifies agencies when the complaint appears valid and concerns their employees, operations, or services. The comptroller's ombudsman will be notified whenever the assistance office receives a complaint about this agency.]

(4) The customer service liaison is required by law to submit a biennial [ombudsman's annual report will be used by the agency to track systemic problems and identify areas that can be improved. That report will be part of the agency's performance] report to the legislature to track systemic problems and identify areas that can be improved.

(5) Complaints and concerns submitted to the customer service liaison will receive a response within 10 working days.

(e) The comptroller helps taxpayers comply with the law and protect their rights. [A tax process that is fair, timely, and confidential.]

[(1) Taxpayers will be allowed to challenge estimates of tax liabilities and request a review of assessments and penalties.]

(1) [~~(2)~~] Taxpayers who are not currently under audit or investigation [~~have never been audited~~] and who come forward voluntarily to disclose their liability and pay taxes due may be eligible to have penalties and interest waived by entering into a Voluntary Disclosure Agreement. General information about these agreements is available on the comptroller's website [~~will not be charged penalties. Interest may also be waived, except on taxes that were collected from others but were not paid over when due~~].

(2) [~~(3)~~] Information provided by taxpayers will be kept confidential[~~,~~] to the extent allowed by law. [~~Confidential information will be removed from private taxpayer rulings, which should become available to the public within 60 days after they are issued.~~]

(3) [~~(4)~~] Taxpayers may [~~can~~] bring an attorney, accountant, or other representative to an audit conference and may also record the proceedings.

(4) Taxpayers may request a review of audit results by an independent audit reviewer and proceedings related to the review may occur at locations in Texas close to a taxpayer's primary place of business.

(5) Taxpayers have the right to request that staff from the Tax Policy Division be included in disputes and discussions about taxability issues when taxpayers are involved in an audit examination of any kind, or negotiating a voluntary disclosure agreement.

(6) The comptroller will not audit a person based on information provided in a request for a private letter ruling or general information letter under §3.1 of this title. However, if a person is otherwise selected for audit, the comptroller may review any letter or ruling received by that person to ensure compliance. Also, issuance of a letter or ruling does not prohibit the comptroller from auditing a person.

[~~(5) When cases are disputed, clear deadlines will be established, both for the state and the taxpayer.~~]

(f) The comptroller welcomes input from taxpayers and the business community in order to promote voluntary compliance.

(1) The comptroller welcomes suggestions from taxpayers on ways to improve the information and customer service the agency provides. Such suggestions can be submitted to the customer service liaison. See subsection (d) of this section.

(2) The comptroller will invite representatives and interested parties to participate in roundtable discussions on specific issues, or to learn about the needs and problems of a particular industry. The comptroller will review recommendations from these meetings internally, and will incorporate them into rules and procedures as appropriate. The comptroller will also consider comments and questions received from businesses, industry representatives, and others when developing rules and procedures. The comptroller circulates proposed amendments to existing rules and proposed new rules to a comptroller-appointed taxpayer advisory group to obtain their comments prior to filing with the Texas Register.

[~~(f) A tax system that is equitable.~~]

[~~(1) The same rate of interest will be paid to taxpayers who overpay their taxes, starting in January 2000, as is required of taxpayers who underpay their taxes. Refund requests that include all necessary information and do not require audit review are refunded within 30 days of receipt.~~]

[~~(2) Taxpayers may request administrative tax hearings at locations in Texas close to their primary place of business.~~]

[~~(3) The comptroller will expand the use of managed self-audits to allow certain businesses to audit their own records to determine if they have a sales tax liability. Direct payment permit holders will be allowed to sample and review a percentage of their purchase transactions to calculate their sales tax liability for reporting purposes. In addition, businesses will be allowed to use comptroller approved sampling methods to substantiate their claim for a sales tax refund.~~]

[~~(g) A closer working relationship with the business community.~~]

[~~(1) The comptroller will continue to convene focus groups with business people from specific industries to determine their needs and problems. Efforts will be made to obtain input from business people affected by rules, in addition to industry association representatives.~~]

[~~(2) Recommendations made by these focus groups will be circulated to appropriate divisions within the agency so that they are considered, and when appropriate, incorporated in rules and regulations. In addition, focus groups will be invited to provide comments on the need and cost-efficiency of rules that already are on the books.~~]

[~~(3) The comptroller will assign staff to follow up with participants of focus groups so that they know what happened to the ideas and information they provided.~~]

[~~(4) Business people will be encouraged to write to the comptroller with suggestions for ways of improving existing and proposed rules. The comptroller will acknowledge and consider all suggestions received.~~]

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 November 6, 2012.

TRD-201205727
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 450. VETERANS COUNTY SERVICE OFFICERS CERTIFICATE OF TRAINING

40 TAC §450.3

The Texas Veterans Commission (commission) proposes to amend §450.3 relating to General Provisions, which is located in Title 40, Part 15 of the Texas Administrative Code.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF SECTION

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed amendment is a minor revision to reflect that inquiries about Veterans County Service Officer certification should be directed to and answered by the Director, Claims Representation and Counseling. The point of contact that is currently in the rule is a position that no longer exists in the agency.

The proposed amendment is authorized under Texas Government Code §434.010, granting the commission the authority to establish rules, and Texas Government Code §434.038, granting the commission the authority to establish rules to carry out the purposes of Veterans County Service Officer Training and Certification.

PART II. EXPLANATION OF SECTION

§450.3. General Provisions.

The proposed amendment to §450.3(i) is necessary to correct the designated point of contact for the commission who is responsible for addressing inquiries and disputes concerning Veterans County Service Officer certification.

PART III. IMPACT STATEMENTS

Charlie C. Osborne, Jr., Chief Financial Officer, Texas Veterans Commission, has determined that for each year of the first five years the rule will be in effect, the following statements will apply:

There will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the proposed amended rule.

There are no anticipated economic costs to persons required to comply with the proposed amended rule.

An Economic Impact Statement and Regulatory Flexibility Analysis are not required because the proposed amended rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Shawn Deabay, Director, Veterans Employment Services, Texas Veterans Commission, has determined that there is no significant negative impact upon employment conditions in the state as a result of the proposed amended rule.

James O. Richman, Director, Claims Representation and Counseling, Texas Veterans Commission, 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 or administering the amendment will be clarification regarding the point of contact at the commission for addressing inquiries and disputes concerning Veterans County Service Officer certification.

PART IV. COORDINATION ACTIVITIES

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attn: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 463-3288; or emailed to *karen.fastenau@tvc.texas.gov.* For comments submitted electronically, please include "VCSO Certification Rule" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

The amended rule is proposed under Texas Government Code §434.010 and §434.038, which provide the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency and to establish rules to carry out the purposes of Veterans County Service Officer Training and Certification.

No other statutes, articles or codes are affected by this proposed amended rule.

§450.3. General Provisions.

(a) - (h) (No change.)

(i) Inquiries concerning certification of training shall be directed to and answered by the Director, Claims Representation and Counseling [~~chief of information and training~~] of the commission. Disputes shall be reviewed and a decision rendered by the Director, Claims Representation and Counseling [~~chief of information and training~~]. Disputes which remain unresolved shall be referred to the executive director of the commission or the executive director's designee(s). The decision of the executive director or the executive director's designee(s) shall be final.

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 November 9, 2012.

TRD-201205818
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 463-1981

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CHAPTER 451. VETERANS COUNTY SERVICE OFFICERS ACCREDITATION

40 TAC §451.3

The Texas Veterans Commission (commission) proposes to amend §451.3 relating to General Provisions, which is located in Title 40, Part 15 of the Texas Administrative Code.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF SECTION

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed amendment is a minor revision to reflect that inquiries about Veterans County Service Officer accreditation should be directed to and answered by the Director, Claims Representation and Counseling. The point of contact that is currently in the rule is a position that no longer exists in the agency.

The proposed amendment is authorized under Texas Government Code §434.010, granting the commission the authority to establish rules, and Texas Government Code §434.038, granting the commission the authority to establish rules to carry out the purposes of Veterans County Service Officer Training and Certification.

PART II. EXPLANATION OF SECTION

§451.3. General Provisions.

The proposed amendment to §451.3(j) is necessary to correct the designated point of contact for the commission who is responsible for addressing inquiries and disputes concerning Veterans County Service Officer accreditation.

PART III. IMPACT STATEMENTS

Charlie C. Osborne, Jr., Chief Financial Officer, Texas Veterans Commission, has determined that for each year of the first five years the rule will be in effect, the following statements will apply:

There will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the proposed amended rule.

There are no anticipated economic costs to persons required to comply with the proposed amended rule.

An Economic Impact Statement and Regulatory Flexibility Analysis are not required because the proposed amended rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Shawn Deabay, Director, Veterans Employment Services, Texas Veterans Commission, has determined that there is no significant negative impact upon employment conditions in the state as a result of the proposed amended rule.

James O. Richman, Director, Claims Representation and Counseling, Texas Veterans Commission, 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 or administering the amendment will be clarification regarding the point of contact at the commission for addressing inquiries and disputes concerning Veterans County Service Officer accreditation.

PART IV. COORDINATION ACTIVITIES

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attn: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 463-3288; or emailed to *karen.fastenau@tvc.texas.gov.* For comments submitted electronically, please include "VCSO Accreditation Rule" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

The amended rule is proposed under Texas Government Code §434.010 and §434.038, which provide the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency and to establish rules to carry out the purposes of Veterans County Service Officer Training and Certification.

No other statutes, articles or codes are affected by this proposed amended rule.

§451.3. General Provisions.

(a) - (i) (No change.)

(j) Inquiries concerning accreditation shall be directed to and answered by the Director, Claims Representation and Counseling [~~chief of information and training~~] of the commission. Disputes shall be reviewed and a decision rendered by the Director, Claims Representation and Counseling [~~chief of information and training~~]. Disputes which remain unresolved shall be referred to the executive director of the commission or the executive director's designee(s). The decision of the executive director or the executive director's designee(s) shall be final.

(k) (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 November 9, 2012.

TRD-201205819
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 463-1981

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CHAPTER 460. FUND FOR VETERANS' ASSISTANCE PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE PROGRAM

40 TAC §460.2

The Texas Veterans Commission (commission) proposes to amend Chapter 460, Subchapter A, §460.2, Definitions, which is located in Title 40, Part 15 of the Texas Administrative Code.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF SECTION

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The proposed amendment will enable the Fund for Veterans' Assistance to receive electronic documents and will eliminate different document delivery addresses for those documents submitted by U.S. Mail, overnight delivery, hand delivery or courier service. As public awareness of electronic communications and Internet usage continues to increase, demand for on-line submission of applications and other documents has increased. Moving to electronic submission of documents will reduce the transaction costs for the agency and for our grantees. In addition, the time spent by staff on applications submitted will be decreased due to the increased ease of data access and other efficiencies. The elimination of two document delivery addresses will facilitate submission of documents, as the current grant documents will contain the address and methods of delivery.

It is the mission of the Texas Veterans Commission to provide superior service through the agency programs of claims assistance, employment services, education and grants that will significantly improve the quality of life of Texas veterans and their families. This amendment meets this mission by providing procedures and guidance for the agency's authority to distribute grants to organizations also dedicated to improving the quality of life of Texas veterans and their families. By initiating electronic submissions the agency maintains its mission of superior service.

PART II. EXPLANATION OF SECTION

Subchapter A. General Provisions Regarding the Fund for Veterans' Assistance Program

§460.2. Definitions.

The proposed amendment updates the definition of "Received by Agency" to include electronic communications; deletes the mailing address where U.S. Mail documents are to be delivered, and deletes the physical address where overnight delivery, hand delivery, or courier service documents are delivered. The delivery address and methods will be contained in the current grant documents.

PART III. IMPACT STATEMENTS

Charlie C. Osborne, Jr., Chief Financial Officer, Texas Veterans Commission, has determined that for each year of the first five years the amendment will be in effect, the following statements will apply:

There will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the amendment.

There are no anticipated economic costs to persons required to comply with the amendment.

An Economic Impact Statement and Regulatory Flexibility Analysis are not required because the amendment will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Shawn Deabay, Director, Veterans Employment Services, Texas Veterans Commission, has determined that there is no significant negative impact upon employment conditions in the state as a result of the amendment.

Kathy Wood, Director, Fund for Veterans' Assistance, Texas Veterans Commission, has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the rules will be increased accountability and successful performance of the Fund for Veterans' Assistance resulting in meeting the needs of more Texas veterans and their families.

PART IV. COORDINATION ACTIVITIES

Comments on the proposed amendment may be submitted to Texas Veterans Commission, Attn: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 463-3288; or emailed to *karen.fastenau@tvc.texas.gov.* For comments submitted electronically, please include "FVA Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

The amendment is proposed under Texas Government Code §434.010, which authorizes the commission to establish rules that it considers necessary for the effective administration of the agency, and Texas Government Code §434.017, which authorizes the commission to establish rules governing the award of grants by the commission.

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

§460.2. Definitions.

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

(1) - (8) (No change.)

(9) Received by the Agency--Documents may be sent electronically or [~~All documents shall be addressed to Texas Veterans Commission, Director, Fund for Veterans' Assistance and delivered~~] by U.S. Mail, overnight delivery, hand delivery, or courier service [~~to the Texas Veterans Commission headquarters no later than the close of business on the specified date~~].

[~~(A) Documents delivered by U. S. Mail shall be addressed to Texas Veterans Commission, Director, Fund for Veterans' Assistance, Post Office Box 12277, Austin, Texas 78711-2277.~~]

[~~(B) Documents that are delivered by overnight delivery, hand delivery, or courier service shall be delivered to Texas Veterans Commission, Director, Fund for Veterans' Assistance, Stephen F. Austin Building, 1700 North Congress Avenue, Suite 800, Austin, Texas 78701.~~]

(10) - (11) (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 November 9, 2012.

TRD-201205820
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 463-1981

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 208. EMPLOYMENT PRACTICES
SUBCHAPTER A. JOB APPLICATION PROCEDURES

43 TAC §208.7

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

The Texas Department of Motor Vehicles (department) proposes repeal of §208.7, concerning Transition of Vacant Positions.

EXPLANATION OF PROPOSED REPEAL

The repeal is necessary because the rule no longer serves a business purpose.

House Bill 3097, 81st Legislature, Regular Session, 2009, created the Texas Department of Motor Vehicles from part of the motor carrier, motor vehicle, vehicle titles and registration, and automobile burglary and theft prevention authority divisions of TxDOT. Section 6.03 of that bill provided that TxDOT could transfer vacant full-time equivalent employee positions to the department through a Memorandum of Understanding in order to efficiently and effectively transition the department into a self-sufficient agency. The transfer of the vacant positions was intended to provide positions to fulfill the administrative functions of the department.

HB 3097 provided that in filling these positions, the department was to give first consideration to an applicant who, as of September 1, 2009, was a full-time employee of TxDOT.

This preferential provision was included as a hard coded statement in the department's Human Resources online (HR Online), workforce management system used by TxDMV for hiring the initial 66 identified central administrative positions. By July 1, 2011, those 66 positions had been filled. The provision was removed from the department HR online workforce management system by TxDOT on November 4, 2011, so it is no longer used.

FISCAL NOTE

Linda Flores, Chief Financial Officer, has determined that for each year of the first five years the repeal as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Dawn Heikkila, Chief Operating Officer, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal.

PUBLIC BENEFIT AND COST

Ms. Heikkila has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing or administering the repeal will be to clarify the department policy on filing vacant positions. There are no anticipated economic costs for persons required to comply with the repeal. There will be no adverse economic effect on small businesses or individuals.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeal to §208.7 may be submitted to Jennifer Soldano, Interim General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on December 27, 2012.

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 1001.

§208.7. Transition of Vacant Positions.

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 November 12, 2012.

TRD-201205869
Jennifer Soldano
Interim General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 467-3853

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) proposes amendments to Subchapter A, §217.3, Motor Vehicle Titles, and Subchapter B, §217.22, Motor Vehicle Registration, both relating to Vehicle Titles and Registration.

EXPLANATION OF PROPOSED AMENDMENTS

The proposed amendments are necessary to comply with the requirements of House Bill 2357, 82nd Legislature, Regular Session, 2011, which created Transportation Code, §520.004 requiring the department to establish standards for uniformity and service quality for the titling and registration of vehicles by the counties.

In response, the department formed a Standards Committee in conjunction with County Tax Assessor-Collectors (TACs). These rules implement the consensus of that committee as well as clarification of existing rule.

Section 217.3(g) clarifies that a TAC must hold county hearings for an interested person who has been refused a title, has a title revoked, or has a title suspended in accordance with Transportation Code, §501.052. Such a hearing may be appealed to a court with jurisdiction.

Section 217.3(j) is added to require new county employees to complete five department introductory online title modules within the first six months of hire and an additional five modules of the county TAC's choice within the first year of hire. A new county TAC is required to complete the online county TAC training within the first year of election or appointment. The department may allow a county to substitute its own training.

Section 217.3(k) is added to provide consistency in charging fees. The department and the county will charge the fees provided by statute or by rule.

Section 217.3(l) is added to clarify the charges related to mechanics' liens. A county is required by Property Code, §70.006 to send out notice of liens, and may charge a $25 fee. This subsection provides that the $25 is to be charged once per vehicle. If the mechanic needs to return with additional documentation in order for the county to process the notice, a second $25 will not be charged. The new subsection also clarifies that there is no charge for issuance of a title receipt or a duplicate title receipt at the time of application.

In accordance with the Transportation Code, §502.045, §217.22(d)(5) is clarified to explain that if a person has been arrested or cited for operation of a vehicle without registration then the full annual registration fee will be collected without change to the registration month. The remaining changes to the subsection combine information for ease of reference, but do not change the substance.

Section 217.22(f) is added to provide proof of eligibility for farm plates. An application for farm plates must be accompanied by a copy of the applicant's Texas Agriculture or Timber Registration card issued by the Texas Comptroller of Public Accounts. The card must be current, be legible, contain a registration number, and be in the name of the person or dba in which the vehicle will be registered.

Section 217.22(n) is added to require new county employees to complete five department introductory online title modules within the first six months of hire and an additional five modules of the

county TAC's choice within the first year of hire. A new county TAC is required to complete the online county TAC training within the first year of election or appointment. The department may allow a county to substitute its own training.

Section 217.22(o) is added to provide consistency in charging fees. The department and the county will charge the fees provided by statute or by rule. The section clarifies that the $2 fee for a duplicate registration receipt will be charged only if the receipt is printed for the customer.

FISCAL NOTE

Linda Flores, Chief Financial Officer, has determined that for each year of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Randy Elliston, Director, Vehicle Titles and Registration Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Elliston has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments is to standardize procedures related to vehicle titling and registration.

There are no anticipated economic costs for persons required to comply with the amendments. There will be no adverse economic effect on small businesses or individuals.

SUBMITTAL OF COMMENTS

Written comments on the amendments may be submitted to Jennifer Soldano, Interim General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on December 27, 2012.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.3

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §§501.0041, 502.0021, and 520.003, which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for each respective chapter of the Transportation Code; more specifically, Transportation Code, §520.004, which authorizes the department to establish standards for uniformity and service quality for the registering and titling of motor vehicles.

CROSS REFERENCE TO STATUTE

Property Code, §70.006, and Transportation Code, §§501.024, 501.052, 501.132, 502.045, and 502.058.

§217.3. Motor Vehicle Titles.

(a) Titles. Unless otherwise exempted by law or this chapter, the owner of any motor vehicle that is required to be registered in accordance with Transportation Code, Chapter 502, shall apply for a Texas title in accordance with Transportation Code, Chapter 501.

(1) Motorcycles, motor-driven cycles, and mopeds.

(A) The title requirements of a motorcycle, motor-driven cycle, and moped are the same requirements prescribed for any motor vehicle.

(B) A vehicle that meets the criteria for a moped and has been certified as a moped by the Department of Public Safety will be registered and titled as a moped. If the vehicle does not appear on the list of certified mopeds published by that agency, the vehicle will be treated as a motorcycle for title and registration purposes.

(2) Farm vehicles.

(A) The term motor vehicle does not apply to implements of husbandry, which may not be titled.

(B) Farm tractors owned by agencies exempt from registration fees in accordance with Transportation Code, §502.453, are required to be titled and registered with "Exempt" license plates issued in accordance with Transportation Code, §502.451.

(C) Farm tractors used as road tractors to mow rights of way or used to move commodities over the highway for hire are required to be registered and titled.

(D) Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §502.146, may be issued a Texas title.

(3) Neighborhood electric vehicles. The title requirements of a neighborhood electric vehicle (NEV) are the same requirements prescribed for any motor vehicle.

(4) Exemptions from title. Vehicles registered with the following distinguishing license plates may not be titled under Transportation Code, Chapter 501:

(A) vehicles eligible for machinery license plates and permit license plates in accordance with Transportation Code, §502.146; and

(B) vehicles eligible for farm trailer license plates in accordance with Transportation Code, §502.433, unless the owner chooses to title a farm semitrailer with a gross weight of more than 4,000 pounds that is registered in accordance with §502.146, as provided by Transportation Code, §501.036.

(5) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers shall apply for and receive a Texas title for any stand alone (full) trailer, including homemade or shopmade full trailers, or any semitrailer having a gross weight in excess of 4,000 pounds. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph to be titled.

(A) In the absence of a manufacturer's rated carrying capacity for a trailer or semitrailer, the rated carrying capacity will not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field bunkhouses are not designed as dwellings, but are classified as commercial semitrailers and must be registered and titled as commercial semitrailers if operated on the public streets and highways.

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle designed for living quarters and that is eight body feet or more in width or forty body feet or more in length (not including the hitch), is classified as a manufactured home or mobile home and is titled under the Texas Manufactured Hous-

ing Standards Act, Occupations Code, Chapter 1201, administered by the Texas Department of Housing and Community Affairs.

(ii) A house trailer-type vehicle that is less than eight feet in width and less than forty feet in length is classified as a travel trailer and shall be registered and titled.

(iii) A camper trailer shall be titled as a house trailer and shall be registered with travel trailer license plates.

(iv) A recreational park model type trailer that is primarily designed as temporary living quarters for recreational, camping or seasonal use, is built on a single chassis, and is 400 square feet or less when measured at the largest horizontal projection when in the set up mode shall be titled as a house trailer and may be issued travel trailer license plates. If the park model type trailer exceeds one hundred two inches in width or forty feet in length, the title will include a brand to indicate that an oversize permit must be obtained to move the trailer on the public roads.

(6) Vehicles that may not be titled. The department will not title a vehicle, with the exception of a trailer as defined in Transportation Code, §501.002, that does not have a body, motor, and frame manufactured by a motor vehicle manufacturer.

(b) Initial application for title.

(1) Time for application. A person must apply for the title not later than the 30th day after the date of assignment, except:

(A) that in a seller-financed sale, the title must be applied for not later than the 45th day after the date the motor vehicle is delivered to the purchaser;

(B) as provided by §215.144(e) of this title (relating to Record of Sales and Inventory); or

(C) a member of the armed forces or a member of a reserve component of the United States, a member of the Texas National Guard or of the National Guard of another state serving on active duty, must apply not later than the 60th day after the date of assignment of ownership.

(2) Place of application. When motor vehicle ownership is transferred, a title application must be filed with the county tax assessor-collector in the county in which the applicant resides or in the county in which the motor vehicle was purchased or encumbered, as selected by the applicant, except:

(A) as provided by Transportation Code, Chapters 501 and 502 and by §217.63(a) of this chapter (relating to Application for Non-repairable or Salvage Vehicle Title); or

(B) if a county has been declared a disaster area, the resident may apply at the closest unaffected county if the affected county tax assessor-collector estimates the county offices will be inoperable for a protracted period.

(3) Information to be included on application. An applicant for an initial title must file an application on a form prescribed by the department. The form will at a minimum require the:

(A) motor vehicle description including, but not limited to, the motor vehicle's:

(i) year;

(ii) make;

(iii) model;

(iv) identification number;

(v) body style;

(vi) manufacturer's rated carrying capacity for commercial motor vehicles; and

(vii) empty weight;

(B) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(C) odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(D) previous owner's name and city and state of residence;

(E) name and complete address of the applicant;

(F) name and mailing address of any lienholder and the date of lien, if applicable;

(G) signature of the seller of the motor vehicle or the seller's authorized agent and the date the title application was signed; and

(H) signature of the applicant or the applicant's authorized agent and the date the title application was signed.

(4) Vehicle identification number. If no vehicle identification number is die-stamped by the manufacturer on a motor vehicle, house trailer, trailer, semitrailer, or item of equipment required to be titled, or if the vehicle identification number assigned and die-stamped by the manufacturer has been lost, removed, or obliterated, the department will on proper application, presentation of evidence of ownership, and presentation of evidence of a law enforcement physical inspection, assign a vehicle identification number to the motor vehicle, trailer, or equipment. The manufacturer's vehicle identification number or the assigned vehicle identification number will be used by the department as the major identification of the motor vehicle or trailer in the issuance of a title.

(5) Accompanying documentation. The title application must be supported by, at a minimum, the following documents:

(A) evidence of vehicle ownership, as described in subsection (c) of this section;

(B) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(C) proof of financial responsibility in the applicant's name, as required by Transportation Code, §502.046, unless otherwise exempted by law;

(D) an identification certificate if required by Transportation Code, §548.256, and Transportation Code, §501.030, and if the vehicle is being titled and registered, or registered only; and

(E) a release of any liens, provided that if any liens are not released, they will be carried forward on the new title application with the following limitations.

(i) A lien recorded on out-of-state evidence as described in subsection (c) of this section cannot be carried forward to a Texas title when there is a transfer of ownership, unless a release of lien or authorization from the lienholder is attached.

(ii) A lien recorded on out-of-state evidence as described in subsection (c) of this section is not required to be released when there is no transfer of ownership from an out-of-state title and the same lienholder is being recorded on the Texas application as is recorded on the out-of-state title.

(c) Evidence of motor vehicle ownership. Evidence of motor vehicle ownership properly assigned to the applicant must accompany the title application. Evidence must include, but is not limited to, the following documents.

(1) New motor vehicles. A manufacturer's certificate of origin assigned by the manufacturer or the manufacturer's representative or distributor to the original purchaser is required for a new motor vehicle that is sold or offered for sale.

(A) The manufacturer's certificate of origin must be in the form prescribed by the department and must contain, at a minimum, the following information:

(i) motor vehicle description including, but not limited to, the motor vehicle's year, make, model, identification number, body style and empty weight;

(ii) the manufacturer's rated carrying capacity when the manufacturer's certificate of origin is invoiced to a licensed Texas motor vehicle dealer and is issued for commercial motor vehicles as that term is defined in Transportation Code, Chapter 502;

(iii) a statement identifying a motor vehicle designed by the manufacturer for off-highway use only; and

(iv) if the vehicle is a "neighborhood electric vehicle", a statement that the vehicle meets Federal Motor Vehicle Safety Standard 500 (49 C.F.R. §571.500) for low-speed vehicles.

(B) When a motor vehicle manufactured in another country is sold directly to a person other than a manufacturer's representative or distributor, the manufacturer's certificate of origin must be assigned to the purchaser by the seller.

(2) Used motor vehicles. A title issued by the department, a title issued by another state if the motor vehicle was last registered and titled in another state, or other evidence of ownership must be relinquished in support of the title application for any used motor vehicle. A letter of Title and Registration verification is required from a vehicle owner coming from a state that no longer titles vehicles after a certain period of time.

(3) Motor vehicles brought into the United States. An application for title for a motor vehicle last registered or titled in a foreign country must be supported by documents including, but not limited to, the following:

(A) the motor vehicle registration certificate or other verification issued by a foreign country reflecting the name of the applicant as the motor vehicle owner, or reflecting that legal evidence of ownership has been legally assigned to the applicant;

(B) verification of the vehicle identification number of the vehicle, on a form prescribed by the department, executed by a member of:

(i) the National Insurance Crime Bureau;

(ii) the Federal Bureau of Investigation; or

(iii) a law enforcement auto theft unit; and

(C) for motor vehicles that are less than 25 years old, proof of compliance with United States Department of Transportation (USDOT) regulations, including, but not limited to, the following documents:

(i) the original bond release letter with all attachments advising that the motor vehicle meets federal motor vehicle safety requirements or a letter issued by the USDOT, National Highway Traffic Safety Administration, verifying the issuance of the original bond release letter;

(ii) a legible copy of the motor vehicle importation form validated with an original United States Customs stamp, date, and signature as filed with the USDOT confirming the exemption from the bond release letter required in clause (i) of this subparagraph, or a copy thereof certified by United States Customs;

(iii) a verification of motor vehicle inspection by United States Customs certified on its letterhead and signed by its agent verifying that the motor vehicle complies with USDOT regulations;

(iv) a written confirmation that a physical inspection of the safety certification label has been made by the department and that the motor vehicle meets United States motor vehicle safety standards;

(v) the original bond release letter, verification thereof, or written confirmation from the previous state verifying that a bond release letter issued by the USDOT was relinquished to that jurisdiction, if the non United States standard motor vehicle was last titled or registered in another state for one year or less; or

(vi) verification from the vehicle manufacturer on its letterhead stationery.

(4) Alterations to documentation. An alteration to a registration receipt, title, manufacturer's certificate, or other evidence of ownership constitutes a valid reason for the rejection of any transaction to which altered evidence is attached.

(A) Altered lien information on any surrendered evidence of ownership requires a release from the original lienholder or a statement from the proper authority of the state in which the lien originated. The statement must verify the correct lien information.

(B) A strikeover that leaves any doubt about the legibility of any digit in any document will not be accepted.

(C) A corrected manufacturer's certificate of origin will be required if the manufacturer's certificate of origin contains an:

(i) incomplete or altered vehicle identification number;

(ii) alteration or strikeover of the vehicle's model year;

(iii) alteration or strikeover to the body style, or omitted body style on the manufacturer's certificate of origin; or

(iv) alteration or strikeover to the manufacturer's rated carrying capacity.

(D) A Statement of Fact may be requested to explain errors, corrections, or conditions from which doubt does or could arise concerning the legality of any instrument. A Statement of Fact will be required in all cases:

(i) in which the date of sale on an assignment has been erased or altered in any manner; or

(ii) of alteration or erasure on a Dealer's Reassignment of Title.

(5) Rights of survivorship. A signed "rights of survivorship" agreement may be executed by a natural person acting in an individual capacity in accordance with Transportation Code, §501.031.

(6) Identification required through August 31, 2013.

(A) An application for title is not acceptable unless the applicant presents a government-issued current photo identification of

the owner containing a unique identification number, expiration date, and birth date. The identification document may also be a document listed in paragraph (7)(A) of this subsection.

(B) The requirements of paragraph (7)(B) - (E) apply to this paragraph.

(7) Identification required on or after September 1, 2013.

(A) An application for title is not acceptable unless the applicant presents a current photo identification of the owner containing a unique identification number and expiration date. The identification document must be a:

(i) driver's license or state identification certificate issued by a state or territory of the United States;

(ii) United States or foreign passport;

(iii) United States military identification card;

(iv) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement; or

(v) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document.

(B) If the motor vehicle is titled in:

(i) more than one name, then the identification of one owner must be presented;

(ii) the name of a leasing company, then the identification of the lessee or lessor's employee along with a business card or authorization written on the lessor's letterhead matching the identification of the employee must be presented;

(iii) the name of a trust, then the identification of a trustee must be presented; or

(iv) the name of a business, government entity, or organization, then a business card or authorization written on letterhead must be presented matching the identification of the applicant.

(C) If a power of attorney is being used to apply for a title, then the applicant must show:

(i) identification matching the person or employee of the entity named as power of attorney;

(ii) a business card or authorization written on the letterhead of an entity named as power of attorney that matches the identification of the employee; and

(iii) identification of the owner or lienholder.

(D) Within this subsection, "current" is defined as not to exceed 12 months of expiration date.

(E) A person who holds a general distinguishing number issued under Chapter 503 of the Transportation Code or Chapter 2301, Occupations Code, is not required to submit the owner's identification to the county tax assessor-collector, but must retain a copy of the owner's current photo identification in the purchase and sales records as required under §215.144 of this title (relating to Record of Sales and Inventory).

(d) Title issuance.

(1) Issuance. The department or its designated agent will issue a receipt and process the application for title on receipt of:

(A) a completed application for title;

(B) accompanying documentation required by subsections (b)(4) and (c) of this section;

(C) the statutory fee for a title application, unless exempt under:

(i) Transportation Code, §501.138; or

(ii) Government Code, §431.039 and copies of official military orders are presented as evidence of the applicant's active duty status and deployment orders to a hostile fire zone; and

(D) any other applicable fees.

(2) Titles. The department will issue and mail or deliver a title to the applicant or, in the event that there is a lien disclosed in the application, to the first lienholder.

(3) Receipt. The receipt issued at the time of application for title may be used only as evidence of title and may not be used to transfer any interest or ownership in a motor vehicle or to establish a new lien.

(e) Replacement of title. If a title is lost or destroyed, the department will issue a certified copy of the title to the owner, the lienholder, or a verified agent of the owner or lienholder in accordance with Transportation Code, Chapter 501, on proper application and payment of the appropriate fee to the department.

(1) Identification required.

(A) An owner or lienholder may not apply for a certified copy of title unless the applicant presents a current photo identification of the owner or lienholder containing a unique identification number and expiration date. The identification document must be a:

(i) driver's license or state identification certificate issued by a state or territory of the United States;

(ii) United States or foreign passport;

(iii) United States military identification card;

(iv) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement; or

(v) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document.

(B) If the motor vehicle is titled in:

(i) more than one name, then the identification for each owner must be presented;

(ii) the name of a leasing company, then the identification of the lessor's employee along with a business card or authorization written on the lessor's letterhead matching the identification of the employee must be presented;

(iii) the name of a trust, then the identification of a trustee must be presented; or

(iv) the name of a business, government entity, or organization, then a business card or authorization written on letterhead must be presented matching the identification of the applicant.

(C) If a power of attorney is being used to apply for a certified copy of title, then the applicant must show:

(i) identification matching the person or employee of the entity named as power of attorney;

(ii) a business card or authorization written on the letterhead of an entity named as power of attorney that matches the identification of the employee; and

(iii) identification of the owner or lienholder.

(D) Within this subsection, "current" is defined as within six months of expiration date.

(2) Issuance. An application for a certified copy must be properly executed and supported by appropriate verifiable proof for the vehicle owner, lienholder, or agent regardless of whether the application is submitted in person or by mail.

(3) Denial. If issuance of a certified copy is denied, the applicant may resubmit the request with the required verifiable proof or may pursue the privileges available in accordance with Transportation Code, §501.052 and §501.053.

(4) Certified copy designation. A certified copy of an existing title will be marked "Certified Copy" until ownership of the vehicle is transferred, when the words "Certified Copy" will be eliminated from the new title.

(5) Fees. The fee for obtaining a certified copy of a title is $2 if the application is submitted to the department by mail and $5.45 if the application is submitted in person for expedited processing at one of the department's regional offices.

(f) Department notification of second hand vehicle transfers. A transferor of a motor vehicle may voluntarily make written notification to the department of the sale of the vehicle, in accordance with Transportation Code, §501.147. The written notification may be submitted to the department by mail, in person at one of the department's regional offices, or electronically through the department's Internet website.

(1) Records. On receipt of written notice of transfer from the transferor of a motor vehicle, the department will mark its records to indicate the date of transfer and will maintain a record of the information provided on the written notice of transfer.

(2) Title issuance. A title will not be issued in the name of a transferee until the transferee files an application for the title as described in this section.

(g) Bonded titles and County Tax Assessor-Collector Hearings.

(1) Application for bonded title. A person who has an interest in a motor vehicle to which the department has refused to issue a title or has suspended or revoked a title may file a bond with the department on a department form.

(A) [~~(2)~~] Value. The amount of the bond must be equal to one and one-half times the value of the vehicle as determined using the Standard Presumptive Value (SPV) from the department's Internet website. If the SPV is not available, then a national reference guide will be used. If the value cannot be determined by either source, then the person may obtain an appraisal.

(i) [~~(A)~~] The appraisal must be on a department form from a Texas licensed motor vehicle dealer for the categories of motor vehicles that the dealer is licensed to sell or a Texas licensed insurance adjuster who may appraise any type of motor vehicle.

(ii) [~~(B)~~] The appraisal must be dated and be submitted to the county tax assessor-collector within 30 days of the purchase or assignment.

(iii) [~~(C)~~] If the motor vehicle is 25 years or older, an appraisal less than $4,000 will not be accepted.

(B) [~~(3)~~] Administrative Fee. The applicant must pay the department a $15 administrative fee in addition to any other required fees.

(C) [~~(4)~~] Out-of-state vehicles. If the applicant is a Texas resident, but the evidence indicates that the vehicle is an out-of-state vehicle, the vehicle identification number must be verified by a Texas licensed Safety Inspection Station, a law enforcement officer, or a department Regional Service Center on a form prescribed by the department.

(D) [~~(5)~~] Issuance. On the filing of the bond, the department may issue a title.

(2) Appeal of refusal to Issue, or Revocation or Suspension of Title.

(A) The county tax assessor-collector must hold a hearing upon the application by an interested person aggrieved by a refusal to issue title, or a revocation or suspension of title.

(B) A person wishing to appeal the county tax assessor-collector hearing may appeal to a court with jurisdiction.

(h) Rescission, cancellation or revocation by affidavit.

(1) The department may rescind, cancel, or revoke an application for a title if a notarized affidavit is completed and presented to the department within 21 days of initial sale containing:

(A) a statement that the vehicle involved was a new motor vehicle in the process of a first sale;

(B) a statement that the dealer, the applicant, and any lienholder have canceled the sale;

(C) a statement that the vehicle was:

(i) never in possession of the title applicant; or

(ii) in the possession of the title applicant;

(D) the signatures of the dealer, the applicant, and any lienholder as principal to the document; and

(E) an odometer disclosure statement executed by the purchaser of the motor vehicle and acknowledged by the dealer if a statement is made pursuant to subparagraph (C)(ii) of this paragraph to be used for the purpose of determining usage subsequent to sale.

(2) A rescission, cancellation, or revocation containing the statement authorized under paragraph (1)(C)(ii) of this subsection does not negate the fact that the vehicle has been subject to a previous retail sale.

(i) Discharge of lien. A lienholder shall provide the owner, or the owner's designee, a discharge of the lien after receipt of the final payment within the time limits specified in Transportation Code, Chapter 501. The lienholder shall submit one of the following documents:

(1) the title including an authorized signature in the space reserved for release of lien;

(2) a release of lien form prescribed by the department, with the form filled out to include the:

(A) title or document number, or a description of the motor vehicle including, but not limited to, the motor vehicle's:

(i) year;

(ii) make;

(iii) vehicle identification number; and

(iv) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(B) printed name of lienholder;

(C) signature of lienholder or an authorized agent;

(D) printed name of the authorized agent if the agent's signature is shown;

(E) telephone number of lienholder; and

(F) date signed by the lienholder;

(3) signed and dated correspondence submitted on company letterhead that includes:

(A) a statement that the lien has been paid;

(B) a description of the vehicle as indicated in paragraph (2)(A) of this subsection;

(C) a title or document number; or

(D) lien information;

(4) any out-of-state prescribed release of lien form, including an executed release on a lien entry form;

(5) out-of-state evidence with the word "Paid" or "Lien Satisfied" stamped or written in longhand on the face, followed by the name of the lienholder, countersigned or initialed by an agent, and dated; or

(6) original security agreements or copies of the original security agreements if the originals or copies are stamped "Paid" or "Lien Satisfied" with a company paid stamp or if they contain a statement in longhand that the lien has been paid followed by the company's name.

(j) Training.

(1) A new county employee shall complete department online training as follows:

(A) five introductory title modules within the first six months of hire; and

(B) an additional five modules of the county tax assessor-collector's choice within the first 12 months of hire.

(2) A new tax assessor-collector shall complete the new tax assessor-collector online training course within the first 12 months of election or appointment.

(3) The department may allow a county to substitute its own training for the training required by paragraphs (1) and (2) of this subsection.

(k) Fees. The department and the county will charge required fees, and only those fees provided by statute or by rule.

(1) Mechanic lien fees. The $25 fee provided by Property Code, §70.006 may be charged once per vehicle.

(2) There is no charge for issuance of title receipt or the duplicate of title receipt at the time of 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 November 12, 2012.

TRD-201205870

Jennifer Soldano
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For further information, please call: (512) 467-3853

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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.22

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §§501.0041, 502.0021, and 520.003, which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for each respective chapter of the Transportation Code; more specifically, Transportation Code, §520.004, which authorizes the department to establish standards for uniformity and service quality for the registering and titling of motor vehicles.

CROSS REFERENCE TO STATUTE

Property Code, §70.006, and Transportation Code, §§501.024, 501.052, 501.132, 502.045, and 502.058.

§217.22. Motor Vehicle Registration.

(a) Registration. Unless otherwise exempted by law or this chapter, a vehicle to be used on the public highways of this state must be registered in accordance with Transportation Code, Chapter 502 and the provisions of this section. Transportation Code, Chapter 501, Subchapter E prohibits registration of a vehicle whose owner has been issued a salvage or nonrepairable vehicle title. These vehicles may not be operated on a public roadway.

(b) Initial application for vehicle registration.

(1) An applicant for initial vehicle registration must file an application on a form prescribed by the department. The form will at a minimum require:

(A) the signature of the owner;

(B) the motor vehicle description, including, but not limited to, the motor vehicle's year, make, model, vehicle identification number, body style, carrying capacity for commercial motor vehicles, and empty weight;

(C) the license plate number;

(D) the odometer reading, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(E) the name and complete address of the applicant; and

(F) the name, mailing address, and date of any liens.

(2) The application must be accompanied by the following documents:

(A) evidence of vehicle ownership as specified in Transportation Code, §501.030, unless the vehicle has been issued a nonrepairable or salvage vehicle title in accordance with Transportation Code, Chapter 501, Subchapter E;

(B) registration fees prescribed by law;

(C) any local fees or other fees prescribed by law and collected in conjunction with registering a vehicle;

(D) evidence of financial responsibility required by Transportation Code, §502.046, unless otherwise exempted by law; and

(E) any other documents or fees required by law.

(3) An initial application for registration must be filed with the tax assessor-collector of the county in which the owner resides, except:

(A) an application for registration as a prerequisite to filing an application for title may also be filed with the county tax assessor-collector in the county in which the motor vehicle is purchased or encumbered; or

(B) if a county has been declared a disaster area, the resident may apply at the closest unaffected county if the affected county tax assessor-collector estimates the county offices will be inoperable for a protracted period.

(4) The recorded owner of a vehicle that was last registered or titled in another jurisdiction and is subject to registration in this state may apply for registration if the owner cannot or does not wish to relinquish the negotiable out-of-state evidence of ownership to obtain a Texas title. On receipt of a form prescribed by the department and payment of the statutory fee for a title application and any other applicable fees, the department will issue a registration receipt to the applicant.

(A) Registration receipt. The receipt issued at the time of application may serve as proof of registration and evidences title to a motor vehicle for registration purposes only, but may not be used to transfer any interest or ownership in a motor vehicle or to establish a lien.

(B) Information to be included on the form. The form will include the:

(i) out-of-state title number, if applicable;

(ii) out-of-state license plate number, if applicable;

(iii) state or country that issued the out-of-state title or license plate;

(iv) lienholder name and address as shown on the out-of-state evidence, if applicable;

(v) statement that negotiable evidence of ownership is not being surrendered; and

(vi) signature of the applicant or authorized agent of the applicant.

(C) Accompanying documentation. An application for registration under this paragraph must be supported, at a minimum, by:

(i) a completed application for registration, as specified in paragraph (1) of this subsection;

(ii) presentation, but not surrender of, evidence from another jurisdiction demonstrating that legal evidence of ownership has been issued to the applicant as the motor vehicle's owner, such as a validated title, a registration receipt that is not more than six months past the date of expiration, a non-negotiable title, or written verification from the other jurisdiction; and

(iii) any other documents or fees required by law.

(D) Assignment. In instances in which the title or registration receipt is assigned to the applicant, an application for registration purposes only will not be processed. The applicant must apply for a title under Transportation Code, Chapter 501.

(E) Identification required through August 31, 2013.

(i) An application for initial registration is not acceptable unless the applicant presents a government-issued current photo identification of the owner containing a unique identification number, expiration date, and birth date. The identification document may also be a document listed in subparagraph (F)(i) of this paragraph.

(ii) The requirements of subparagraph (F)(ii)-(vi) apply to this subparagraph.

(F) Identification required on or after September 1, 2013.

(i) An application for initial registration is not acceptable unless the applicant presents a current photo identification of the owner containing a unique identification number and expiration date. The identification document must be a:

(I) driver's license or state identification certificate issued by a state or territory of the United States;

(II) United States or foreign passport;

(III) United States military identification card;

(IV) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement; or

(V) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document.

(ii) If the motor vehicle is titled in:

(I) more than one name, then the identification for one owner must be presented;

(II) the name of a leasing company, then the identification of the lessee or lessor's employee along with a business card or authorization written on the lessor's letterhead matching the identification of the employee must be presented;

(III) the name of a trust, then the identification of a trustee must be presented; or

(IV) the name of a business, government entity, or organization, then a business card or authorization written on letterhead must be presented matching the identification of the applicant.

(iii) If a power of attorney is being used to apply for a certified copy of title, then the applicant must show:

(I) identification matching the person or employee of the entity named as power of attorney;

(II) a business card or authorization written on the letterhead of an entity named as power of attorney that matches the identification of the employee; and

(III) identification of the owner.

(iv) Within this subparagraph, "current" is defined as not to exceed 12 months of expiration date.

(v) A person who holds a general distinguishing number issued under Chapter 503 of the Transportation Code or Chapter 2301, Occupations Code, is not required to submit the owner's identification to the county tax assessor-collector, but must retain a copy of the owner's current photo identification in the purchase

and sales records as required under §215.144 of this title (relating to Records of Sales and Inventory).

(vi) This paragraph does not apply to non-titled vehicles.

(c) Vehicle registration insignia.

(1) On receipt of a complete initial application for registration with the accompanying documents and fees, the department will issue vehicle registration insignia to be displayed on the vehicle for which the registration was issued for the current registration period.

(A) If the vehicle has a windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the inside lower left corner of the vehicle's front windshield within six inches of the vehicle inspection sticker in a manner that will not obstruct the vision of the driver.

(B) If the vehicle has no windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the rear license plate, except that registration receipts, retained inside the vehicle, may provide the record of registration for vehicles with permanent trailer plates.

(C) If the vehicle is registered as a former military vehicle as prescribed by Transportation Code, §504.502, the vehicle's registration number shall be displayed instead of displaying a symbol, tab, or license plate.

(i) Former military vehicle registration numbers shall be displayed on a prominent location on the vehicle in numbers and letters of at least two inches in height.

(ii) To the extent possible, the location and design of the former military vehicle registration number must conform to the vehicle's original military registration number.

(2) Unless otherwise prescribed by law, each vehicle registered under this subchapter:

(A) must display two license plates, one at the exterior front and one at the exterior rear of the vehicle that are securely fastened at the exterior front and rear of the vehicle in a horizontal position of not less than 12 inches from the ground, measuring from the bottom, except that a vehicle described by Transportation Code, §621.2061 may place the rear plate so that it is clearly visible; or

(B) must display one plate that is securely fastened at or as close as practical to the exterior rear of the vehicle in a position not less than 12 inches from the ground, measuring from the bottom if the vehicle is a road tractor, motorcycle, trailer or semitrailer.

(3) Each vehicle registered under this subchapter must display license plates:

(A) assigned by the department for the period; or

(B) validated by a registration insignia issued by the department that establishes that the vehicle is registered for the period.

(4) The department will cancel or not issue any license plate containing an alpha-numeric pattern that meets one or more of the following criteria.

(A) The alpha-numeric pattern conflicts with the department's current or proposed regular license plate numbering system.

(B) The executive director finds that the alpha-numeric pattern may be considered objectionable or misleading, including that the pattern may be viewed as, directly or indirectly:

(i) indecent (defined as including a reference to a sex act, an excretory function or material, or sexual body parts);

(ii) a vulgarity (defined as curse words);

(iii) derogatory (defined as an expression of hate directed toward people or groups that is demeaning to people or groups, or associated with an organization that advocates such expressions);

(iv) a reference to illegal activities or substances, or implied threats of harm; or

(v) a misrepresentation of law enforcement or other governmental entities and their titles.

(C) The alpha-numeric pattern is currently issued to another owner.

(5) The provisions of paragraph (1) of this subsection do not apply to vehicles registered with annual license plates issued by the department.

(d) Vehicle registration renewal.

(1) To renew vehicle registration, a vehicle owner must apply, prior to the expiration of the vehicle's registration, to the tax assessor-collector of the county in which the owner resides.

(2) The department will send a license plate renewal notice, indicating the proper registration fee and the month and year the registration expires, to each vehicle owner prior to the expiration of the vehicle's registration.

(3) The license plate renewal notice should be returned by the vehicle owner to the appropriate county tax assessor-collector or to the tax assessor-collector's deputy, either in person or by mail, unless the vehicle owner renews via the Internet. The renewal notice must be accompanied by the following documents and fees:

(A) registration renewal fees prescribed by law;

(B) any local fees or other fees prescribed by law and collected in conjunction with registration renewal; and

(C) evidence of financial responsibility required by Transportation Code, §502.046, unless otherwise exempted by law.

(4) If a renewal notice is lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner presents personal identification acceptable to the county tax assessor-collector. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(5) Renewal of expired vehicle registrations.

(A) In accordance with Transportation Code, §502.407, a vehicle with an expired registration may not be operated on the highways of the state after the fifth working day after the date a vehicle registration expires.

(B) If the owner has been arrested or cited for operating the vehicle without valid registration then a 20 percent delinquency penalty is due when registration is renewed, the full annual fee will be collected, and the vehicle registration expiration month will remain the same.

(C) If the county tax assessor-collector or the department determines that a registrant has a valid reason for being delinquent in registration, the vehicle owner will be required to pay for twelve months' registration. Renewal will establish a new registration expiration month that will end on the last day of the eleventh month following the month of registration renewal.

(D) If the county tax assessor-collector or the department determines that a registrant does not have a valid reason for being delinquent in registration, the full annual fee will be collected and the vehicle registration expiration month will remain the same.

(E) If a vehicle is registered in accordance with Transportation Code, §§502.255. 502.431, 502.435, 502.454, 504.315, 504.401, 504.405, 504.505, or 504.515 and if the vehicle's registration is renewed more than one month after expiration of the previous registration, the registration fee will be prorated.

~~[(F) Any delinquent registration submitted directly to the department for processing will be evaluated to verify the reason for delinquency. If the department determines that a registrant has a valid reason for being delinquent in registration, the vehicle owner will be required to pay for 12 months' registration. Renewal will establish a new registration expiration month that will end on the last day of the 11th month following the month of registration. If the department determines that a registrant does not have a valid reason for being delinquent in registration, the full annual fee will be collected and the vehicle registration expiration month will remain the same.]~~

(F) [~~(G)~~] Evidence of a valid reason may include receipts, passport dates, and military orders. Valid reasons may include:

(i) extensive repairs on the vehicle;

(ii) the person was out of the country;

(iii) the vehicle is used only for seasonal use;

(iv) military orders;

(v) storage of the vehicle;

(vi) a medical condition such as an extended hospital stay; and

(vii) any other reason submitted with evidence that the county tax assessor-collector or the department determines is valid.

(6) Refusal to renew registration for delinquent child support.

(A) Placement of denial flag. On receipt of a notice issued under Family Code, Chapter 232 for the suspension or nonrenewal of a motor vehicle registration, the department will place a registration denial flag on the motor vehicle record of the child support obligor as reported by the child support agency.

(B) Refusal to renew registration. While a motor vehicle record is flagged, the county tax-assessor collector shall refuse to renew the registration of the associated motor vehicle.

(C) Removal of denial flag. The department will remove the registration denial flag on receipt of a removal notice issued by a child support agency under Family Code, Chapter 232.

(7) License plate reissuance program. The county tax assessor-collectors shall issue new multi-year license plates at no additional charge at the time of registration renewal provided the current plates are over seven years old from the date of issuance, including permanent trailer plates.

(e) Replacement of license plates, symbols, tabs, and other devices.

(1) When a license plate, symbol, tab, or other registration device is lost, stolen, or mutilated, a replacement may be obtained from any county tax assessor-collector upon:

(A) the payment of the statutory replacement fee prescribed by Transportation Code, §502.060 or §504.007; and

(B) the provision of a signed statement, on a form prescribed by the department, that states:

(i) the license plate, symbol, tab, or other registration device furnished for the described vehicle has been lost, stolen, or mutilated, and if recovered, will not be used on any other vehicle; and

(ii) the replaced license plate, symbol, tab, or other device will only be used on the vehicle to which it was issued.

(2) If the owner remains in possession of any part of the lost, stolen, or mutilated license plate, symbol, tab, or other registration device, that remaining part must be removed and surrendered to the department on issuance of the replacement and request by the county tax assessor-collector.

(f) Farm vehicles. An applicant must provide a properly completed application for farm plates. The application must be accompanied by a copy of the applicant's Texas Agriculture or Timber Registration card issued by the Texas Comptroller of Public Accounts. The card must:

(1) be legible;

(2) be current;

(3) contain a registration number; and

(4) be in the name of the person or dba in which the vehicle will be registered issued pursuant to Transportation Code, §502.146.

(g) [~~(f)~~] Out-of-state vehicles. A vehicle brought to Texas from out-of-state must be registered within 30 days of the date on which the owner establishes residence or secures gainful employment, except as provided by Transportation Code, §502.090. Accompanying a completed application, an applicant must provide:

(1) an application for title as required by Transportation Code, Chapter 501, if the vehicle to be registered has not been previously titled in this state; and

(2) any other documents or fees required by law.

(h) [~~(g)~~] The owner of an electric personal assistive mobility device, as defined by Transportation Code, §551.201, is not required to register it. The device may only be operated on a residential street, roadway, or public highway in accordance with Transportation Code, §551.202.

(i) [~~(h)~~] A neighborhood electric vehicle:

(1) is required to be titled in accordance with Transportation Code, §502.042 in order to be registered for operation on public roads;

(2) may be operated on a residential street, roadway, or public highway in accordance with Transportation Code, §551.303;

(3) must comply with the evidence of financial responsibility requirements established in Transportation Code, §502.046;

(4) must display a "slow-moving-vehicle emblem" if it meets the definition of a "slow-moving vehicle" as described in Transportation Code, §547.001 [~~must meet the definition of a "slow-moving-vehicle" and must display a slow-moving-vehicle emblem as described in Transportation Code, §547.001~~]; and

(5) is subject to all traffic and other laws applicable to motor vehicles.

(j) [~~(i)~~] Enforcement of traffic warrant. A municipality may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of the vehicle is a person for whom a warrant of arrest is out-

standing for failure to appear or who has failed to pay a fine on a complaint involving a violation of a traffic law. In accordance with Transportation Code, §702.003, a county tax assessor-collector may refuse to register a motor vehicle if such a failure is indicated in the motor vehicle record for that motor vehicle. A municipality is responsible for obtaining the agreement of the county in which the municipality is located to refuse to register motor vehicles for failure to pay civil penalties imposed by the municipality.

(k) [~~(j)~~] Refusal to register due to traffic signal violation. A local authority, as defined in Transportation Code, §541.002, that operates a traffic signal enforcement program authorized under Transportation Code, Chapter 707 may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of a motor vehicle has failed to pay the civil penalty for a violation of the local authority's traffic signal enforcement system involving that motor vehicle. In accordance with Transportation Code, §707.017, a county tax assessor-collector may refuse to register a motor vehicle if such a failure is indicated in the motor vehicle record for that motor vehicle. The local authority is responsible for obtaining the agreement of the county in which the local authority is located to refuse to register motor vehicles for failure to pay civil penalties imposed by the local authority.

(l) [~~(k)~~] Refusal to register vehicle in certain counties. A county may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of the vehicle has failed to pay a fine, fee, or tax that is past due. In accordance with Transportation Code, §502.010, a county tax assessor-collector may refuse to register a motor vehicle if such a failure is indicated in the motor vehicle record for that motor vehicle.

(m) [~~(l)~~] Record notation. A contract between the department and a county, municipality, or local authority entered into under Transportation Code, §502.010, Transportation Code, §702.003, or Transportation Code, §707.017 will contain the terms set out in this subsection.

(1) To place or remove a registration denial flag on a vehicle record, the contracting entity must submit a magnetic tape or other acceptable submission medium as determined by the department in a format prescribed by the department.

(2) The information submitted by the contracting entity will include, at a minimum, the vehicle identification number and the license plate number of the affected vehicle.

(3) If the contracting entity data submission contains bad or corrupted data, the submission medium will be returned to the contracting entity with no further action by the department.

(4) The magnetic tape or other submission medium must be submitted to the department from a single source within the contracting entity.

(5) The submission of a magnetic tape or other submission medium to the department by a contracting entity constitutes a certification by that entity that it has complied with all applicable laws.

(n) Training.

(1) A new county employee shall complete department online training as follows:

(A) five introductory registration modules within the first six months of hire; and

(B) an additional five modules of the county tax assessor-collector's choice within the first 12 months of hire.

(2) A new tax assessor-collector shall complete the new tax assessor-collector online training within the first 12 months of election or appointment.

(3) The department may allow a county to substitute its own training for the training required by paragraphs (1) and (2) of this subsection.

(o) Fees.

(1) The department and the county will charge required fees, and only those fees provided by statute or rule.

(2) A $2 fee for a duplicate registration receipt will be charged if a receipt is printed for the customer.

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 November 12, 2012.

TRD-201205871
Jennifer Soldano
Interim General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 467-3853

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CHAPTER 218. MOTOR CARRIERS

SUBCHAPTER E. CONSUMER PROTECTION

The Texas Department of Motor Vehicles (department) proposes the repeal of §218.63, Annual Report, and the amendment to §218.50, Purpose and Scope, relating to Motor Carriers.

EXPLANATION OF PROPOSED REPEAL AND AMENDMENT

The repeal and amendment are necessary because §218.63 no longer serves a business purpose.

Section 218.63 requires every household goods carrier to file its annual operating report (report) with the department. This requirement was intended to provide shippers with information regarding the household goods carrier's claim history to help the shippers decide whether or not to use certain carriers to transport the shippers' goods.

Transportation Code, §643.153 requires the department to adopt rules to protect a consumer using the service of a motor carrier who is transporting household goods for compensation; however, there is no statutory requirement for this report. The household goods carriers submit the required information to the department; however, the department does not verify the information contained in the report. After the department receives the report, the department takes no further action on the report. In addition, the department can't recall receiving an open records request for the report since the current version of §218.63 became effective. Further, in this age of the internet, there are more current methods for shippers to obtain information by which to evaluate household goods carriers. The report is unnecessary because it does not add value to shippers or the department.

The department currently provides the public with online access to the Motor Carrier Complaint Management System (CMS), through which the public can file complaints involving motor

carriers, check the status of a complaint, and view the complaint history of specific motor carriers, including household goods carriers. In addition, §218.55, Information for Shippers, requires a household good carrier operating in intrastate commerce in Texas to provide to the shipper a copy of the department's information sheet entitled, *Your Rights and Responsibilities When You Move in Texas.* The information sheet informs shippers that they can access a searchable database to verify whether a mover is properly registered; they can contact the department's Enforcement Division to obtain information regarding a mover's complaint history; and they may contact the Better Business Bureau for additional information regarding a household goods carrier. This information sheet is available from the department, and it is available on the department's website.

In addition to the report, the department maintains all shippers' requests to the department for mediation of all shippers' claims against the household goods carrier under §218.62, Mediation by the Department.

The department does not use the report. The department's inspectors have access to the relevant records of the household goods carriers, so the Department's Enforcement Division can obtain the information it needs to investigate alleged violations of Chapter 643, Transportation Code, and any department rule or order adopted under Chapter 643. Household goods carriers are required to maintain records as required by §218.32, Motor Carrier Records, and §218.61, Claims. The department may inspect these records, which include claims records and moving services contracts.

The proposed amendment to §218.50 renumbers the rule reference to reflect the repeal of §218.63.

FISCAL NOTE

Linda Flores, Chief Financial Officer, has determined that for each year of the first five years the repeal and amendment as proposed are in effect, there are no fiscal implications for state or local governments as a result of enforcing or administering the repeal and amendment.

Mr. Jimmy Archer, Director of the Motor Carrier Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal and amendment.

PUBLIC BENEFIT AND COST

Mr. Archer has also determined that for each year of the first five years the repeal and amendment are in effect, the public benefit anticipated as a result of enforcing or administering the repeal and amendment will be the removal of an unnecessary reporting requirement for the industry, which should result in a cost savings to household goods carriers. There are no anticipated economic costs for persons required to comply with the repeal and amendment as proposed. There will be no adverse economic effect on small businesses or individuals.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeal and amendment may be submitted to Jennifer Soldano, Interim General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on December 27, 2012.

43 TAC §218.50

STATUTORY AUTHORITY

The amendment is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties for the Texas Department of Motor Vehicles under the Transportation Code; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643 regarding motor carrier registration; and more specifically, Transportation Code, §643.153, which authorizes the department to adopt rules governing consumer protection relating to household goods carriers.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643.

§218.50. Purpose and Scope.

This subchapter sets forth the department's policies and procedures to protect shippers of household goods against deceptive or unfair practices and unreasonably hazardous activities on the part of a household goods carrier. This subchapter also provides a mediation process administered by the department for claims on household goods shipments. Shipments of household goods transported subject to a United States Government Bill of Lading or to a written agreement with the United States Department of Defense are exempt from §§218.53 - 218.62 [~~218.63~~] of this subchapter.

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 November 12, 2012.

TRD-201205872
Jennifer Soldano
Interim General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 467-3853

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43 TAC §218.63

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

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties for the Texas Department of Motor Vehicles under the Transportation Code; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643 regarding motor carrier registration; and more specifically, Transportation Code, §643.153, which authorizes the department to adopt rules governing consumer protection relating to household goods carriers.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643.

§218.63. Annual Report.

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

Filed with the Office of the Secretary of State on November 12, 2012.

TRD-201205873

Jennifer Soldano
Interim General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 23, 2012
For further information, please call: (512) 467-3853

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.23

Proposed repeal of §18.23, published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3266), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on November 9, 2012.

TRD-201205821

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1 TAC §§18.24, 18.25, 18.27

Proposed new and amended §§18.24, 18.25, and 18.27, published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3266), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on November 9, 2012.

TRD-201205822

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 15. ALTERNATIVE FUELS RESEARCH AND EDUCATION DIVISION

SUBCHAPTER B. PROPANE CONSUMER REBATE PROGRAM

16 TAC §§15.101, 15.105, 15.110, 15.125, 15.150, 15.155, 15.160

The Railroad Commission of Texas withdraws the proposed amendments to §§15.101, 15.105, 15.110, 15.125, 15.150, 15.155, and 15.160 which appeared in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7641).

Filed with the Office of the Secretary of State on November 6, 2012.

TRD-2012005722
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Effective date: November 6, 2012
For further information, please call: (512) 475-1295

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TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 279. INTERPRETATIONS

22 TAC §279.2, §279.4

The Texas Optometry Board withdraws the proposed amendments to §279.2 and §279.4 which appeared in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7658).

Filed with the Office of the Secretary of State on November 7, 2012.

TRD-201205739
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: November 7, 2012
For further information, please call: (512) 305-8502

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.20, 537.28, 537.30 - 537.32, 537.37, 537.44, 537.47

The Texas Real Estate Commission withdraws the proposed amendments to §§537.20, 537.28, 537.30 - 537.32, 537.37, 537.44, and 537.47 which appeared in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7046).

Filed with the Office of the Secretary of State on November 8, 2012.

TRD-201205808

Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: November 8, 2012
For further information, please call: (512) 936-3092

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ADOPTED RULES

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

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 24. RESTRICTED CULTURAL RESOURCE INFORMATION

13 TAC §§24.5, 24.7, 24.9, 24.13, 24.15, 24.17, 24.19, 24.23

The Texas Historical Commission (hereinafter referred to as the commission) adopts amendments to §§24.5, 24.7, 24.9, 24.13, 24.15, 24.17, 24.19, and 24.23, concerning Restricted Cultural Resource Information, without changes to text as published in the August 24, 2012, issue of the *Texas Register* (37 TexReg 6411).

The adoption of these amendments is needed as part of the Commission's overall effort to clarify language allowing public access to restricted data and/or information. Implementation of registration procedures for public access to and use of this restricted information is the objective of this chapter.

No comments were received on the proposed amendments.

The amendments are adopted under §442.005(q) of the Texas Government Code, Title 4, Subtitle D, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably affect the purposes of 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 November 8, 2012.

TRD-201205763
Mark Wolfe
Executive Director
Texas Historical Commission
Effective date: November 28, 2012
Proposal publication date: August 24, 2012
For further information, please call: (512) 463-1858

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER E. STUDENT COMPLAINT PROCEDURE

19 TAC §§1.110 - 1.120

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§1.110 - 1.120, concerning Student Complaint Procedure. Section 1.115 is adopted with changes to the proposed text as published in the September 14, 2012, issue of the *Texas Register* (37 TexReg 7254) and will be republished. Sections 1.110 - 1.114 and 1.116 - 1.120 are being adopted without changes and will not be republished.

Specifically, the student complaint procedure proposed rules set up a student complaint procedure to comply with the United States Department of Education's "Program Integrity" regulations, which require each state to have a student complaint procedure in order for public and private higher education institutions to be eligible for federal Title IV funds. In December 2011, the Office of the Attorney General of Texas issued an opinion stating that the Texas Higher Education Coordinating Board (THECB) has authority under Texas Education Code §61.031 to promulgate procedures for handling student complaints about higher education institutions.

The agency's proposed complaint procedure states that current, former, and prospective students may e-mail (to StudentComplaints@thecb.state.tx.us) or mail a completed THECB student complaint form (to be available on the agency's website) to THECB's Office of General Counsel. A non-exhaustive list of exceptions to the types of complaints handled by THECB is provided in the rules. THECB will refer complaints alleging that an institution has violated state consumer protection laws to the Consumer Protection Division of the Office of the Attorney General of Texas for investigation and resolution, and will refer complaints pertaining to a component institution in a university system to the appropriate university system for investigation and resolution. Further, if THECB determines that a complaint is appropriate for investigation and resolution by the institution's accrediting agency or an educational association such as the Independent Colleges and Universities of Texas, Inc. (ICUT), the agency may refer the complaint to the accrediting agency or educational association. However, referral to such entities does not absolve the state of its responsibilities to further address and resolve the complaint under certain circumstances.

If a student complaint concerns compliance with the statutes and rules that THECB administers and the complaint has not been referred to another entity, THECB staff will initiate an investigation. Prior to initiating an investigation, however, the student must exhaust all grievance and appeal procedures that the institution has established to address student complaints and provide documentation to THECB of such exhaustion. As part of its investigation, THECB staff will request a response from the

institution and may also contact other persons or entities named in the student's complaint or in the institution's response. During its investigation, THECB staff will, in appropriate cases, attempt to facilitate an informal resolution to the complaint that is mutually satisfactory to the student and institution. In cases in which an informal resolution between the student and institution is not feasible, THECB staff shall evaluate the results of the investigation of the student complaint and recommend a course of action to the Commissioner. After receiving the staff recommendation, the Commissioner will consider the recommendation regarding the complaint and render a written determination either dismissing the complaint or requiring the institution to take specific actions to remedy the complaint. Under certain circumstances, the Commissioner can request the Board to review and decide the matter.

In addition to the proposed rules being published in the *Texas Register,* relevant stakeholders, including public and private institutions of higher education, university systems, accrediting agencies, and ICUT, have received copies of the proposed rules directly from THECB's Office of General Counsel for comment. Many entities, including University systems, were asked for input months ago as these rules were being developed. Suggestions were received and, in a number of instances, were incorporated into these rules. Since that activity occurred prior to publication of the final proposed rules, those suggestions are not reflected herein other than in the text of the rules themselves.

The following comments were received concerning the new sections.

Comment: The Austin Graduate School of Theology states: "[Its] only request would be that we not create unnecessary duplication. Those of us who are regionally accredited already meet the DoE standards on Student Complaint Procedures as part of our accreditation. [...] If THECB would continue to allow schools to use their complaint procedures that are already in place it would help streamline things."

Response: The THECB seeks to utilize procedures already in place while fulfilling its role in the U.S. Department of Education (ED) requirement that the State of Texas have ultimate responsibility for the student complaints process. No changes to already existing procedures that meet the ED's standards are anticipated. In proposed §1.116(b), the THECB requires "the complainant to exhaust all grievance and appeal procedures that the institution has established to address student complaints." Thus, THECB is neither creating a duplicative process nor hindering an institution's use of their ED-compliant complaint procedures. For example, if the THECB receives a complaint, determined to be under the purview of the THECB, from a student who has not exhausted the institution's established complaint procedure through no fault of the institution, then the THECB will, as indicated in proposed §1.116(b), request the complainant to exhaust the institution's procedures. If the institution is unable to resolve the complaint to the complainant's satisfaction, the complainant could then escalate the complaint by informing the THECB of the outcome and requesting THECB involvement. The THECB may act on the complaint based on relevant information such as the complaint, the associated documentation resulting from the institution's complaint process, and the institution's determination.

Comment: The Baptist School of Health Professions states: "Any private postsecondary school/College that is covered under the Texas Workforce Commission license to operate already has and is required to post the address and contact information for TWC specifically for students who wish to make a complaint. It would seem less likely that a complaint would be appropriately dealt with if it is having to go through several different agencies and in so doing create an onerous burden for the school who may have to respond to the complaint to several different agencies, THECB, TWC and potentially accrediting agencies."

Response: A complaint that is initiated by a student of a school which is operating under a Certificate of Approval falls under the purview of the Texas Workforce Commission (TWC). As such, the TWC is the ultimate authority for the State of Texas in those circumstances. However, some overlap may occur if, for example, the school has a degree program approved by the THECB as well as certain approvals from TWC. In such cases, a complaint may be initiated, in error, by a student to the inappropriate agency. However, this type of issue has been and should continue to be quickly resolved between the two agencies so that the complaint moves forward with only one agency. Likewise, a referral to other entities under proposed §1.115 would occur when indicated by the criteria given within the rule.

Comment: The Council of Arts Accrediting Associations stated: "Ideally the acceptance of a complaint by one agency while another is in the process of reviewing the same issue should be avoided. Opening a second conversation on the same topic at the same time could compromise the due process proceedings of both agencies. As well, a variance in outcomes could confuse the public. The ability to submit one complaint to multiple bodies simultaneously could promote shopping on the part of the complainant, rather than a focus on submitting the complaint to the body whose purview enables it to review the issue carefully and bring the issue to swift and appropriate conclusion." The Council of Arts Accrediting Associations also stated: "It is important that an agency accept a complaint only if the nature of the complaint falls within its purview, and it has guidelines and protocols that enable it to address the complaint with appropriate expertise."

Response: The THECB agrees and believes its proposed rules reflect as much. A complaint that is initiated by a student of a school which is operating under a Certificate of Approval falls under the purview of the Texas Workforce Commission. As such, the TWC is the ultimate authority for the State of Texas in those circumstances. However, some overlap may occur if, for example, the school has a degree program approved by the THECB as well as certain approvals from TWC. In such cases, a complaint may be initiated, in error, by a student to the inappropriate agency. However, this type of issue has been and should continue to be quickly resolved between the two agencies so that the complaint moves forward with only one agency. Likewise, a referral to other entities under proposed §1.115 would occur when indicated by the criteria given within the rule.

Comment: The Council of Arts Accrediting Associations further stated: "As Secretary-recognized bodies, our agencies must ensure autonomy in procedure and action, and the ability to operate and make decisions without external influence."

Response: As noted previously, the THECB seeks to utilize procedures already in place while fulfilling its role in the ED requirement that the State of Texas have ultimate responsibility for the student complaints process. No changes to already existing procedures that meet the ED's standards are anticipated. In proposed §1.116(b), the THECB requires "the complainant to exhaust all grievance and appeal procedures that the institution has established to address student complaints." Thus, THECB is neither creating a duplicative process nor hindering an institution's use of their ED-compliant complaint procedures. For example,

if the THECB receives a complaint, determined to be under the purview of the THECB, from a student who has not exhausted the institution's established complaint procedure through no fault of the institution, then the THECB will, as indicated in proposed §1.116(b), request the complainant to exhaust the institution's procedures. If the institution is unable to resolve the complaint to the complainant's satisfaction, the complainant could then escalate the complaint by informing the THECB of the outcome and requesting THECB involvement. The THECB may act on the complaint based on relevant information such as the complaint, the associated documentation resulting from the institution's complaint process, and the institution's determination.

Comment: The Council of Arts Accrediting Associations stated: "As agencies, it would be problematic for any one of us to attempt to "modify or reject" the action of another. As noted in point 2 above, an agency should accept a complaint only if the nature of the complaint falls within its purview. This ensures that the agency has the expertise to review the complaint appropriately."

Response: The THECB's intent is to refer complaints, if at all, to a single agency or entity for handling of the complaint. Thus, we modify the proposed introductory paragraph of §1.115 to state:

"1.115. Referral of Certain Complaints to Other Agencies or Entities.

"Once the Agency receives a student complaint form, the Agency may refer the complaint to another agency or entity as follows:..."

Comment: The University of Phoenix suggests the following modification to proposed §1.115(3):

If the Agency determines that the complaint is appropriate for investigation and resolution by the institution's recognized accrediting agency, the Agency may refer the complaint to the accrediting agency. If the Agency refers the complaint to such an accrediting agency, the Agency may request the accrediting agency [shall] to send [monthly] quarterly updates in writing to the Agency regarding the status of the investigation of the complaint and shall notify the Agency in writing of the outcome of the investigation/resolution process for the complaint. The Agency shall have the right to [accept, modify, or reject] adopt any decision proposed or made or any course of action proposed or taken by the accrediting agency as the final resolution of the matter before the Agency. In the alternative, the Agency shall have the right to enter its own decision based on the investigative findings of the accrediting agency to the extent they are able to be provided. The Agency shall have the right to terminate the referral of the complaint to the accrediting agency at any time and may proceed to investigate and adjudicate the complaint. [If the Agency determines that the accrediting agency is not appropriately addressing the complaint.] Similar comments were received from The Southern Association of Colleges and Schools Commission on Colleges and are addressed below.

Response: The THECB staff agrees with the suggested language. We therefore modify proposed §1.115(3) to better reflect the intent of the rule and the THECB's role when referring a complaint to an accreditor, as follows:

If the Agency determines that the complaint is appropriate for investigation and resolution by the institution's recognized accrediting agency, the Agency may refer the complaint to the accrediting agency. If the Agency refers the complaint to such [an] accrediting agency, the Agency may request the accrediting agency [shall] to send [monthly] quarterly updates in writing to the Agency regarding the status of the investigation of the complaint and shall notify the Agency in writing of the outcome of the investigation/resolution process for the complaint. The Agency shall have the right to [accept, modify, or reject] adopt any decision proposed or made or any course of action proposed or taken by the accrediting agency as the final resolution of the matter before the Agency. In the alternative, the Agency shall have the right to enter its own decision based on the investigative findings of the accrediting agency to the extent they are able to be provided. The Agency shall have the right to terminate the referral of the complaint to the accrediting agency at any time and may proceed to investigate and adjudicate the complaint. [If the Agency determines that the accrediting agency is not appropriately addressing the complaint.]

Comment: The Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) states: "The states cannot relieve an accrediting agency of its responsibilities to the Department of Education (DOE) as applies to the integrity section of the Higher Education Opportunities Act (HEOA) regulations. THECB cannot make judgments about a SACSCOC accredited institution's compliance with the SACSCOC standards if the complaint is related to our compliance issues. Although tempting, the accreditors cannot abdicate their responsibilities for this. The language makes THECB the determiner of an institution's compliance with our standards when a complaint is filed."

Response: As will be discussed in further detail below, the THECB's proposed rules are not attempting to "relieve an accrediting agency of its responsibilities to the Department of Education (DOE) as applies to the integrity section of the Higher Education Opportunities Act (HEOA) regulations." As previously noted, the THECB seeks to utilize procedures already in place while fulfilling its role in the ED requirement that the State of Texas have ultimate responsibility for the student complaints process. No changes to already existing procedures that meet the ED's standards are anticipated. In proposed §1.116(b), the THECB requires "the complainant to exhaust all grievance and appeal procedures that the institution has established to address student complaints." Thus, THECB is neither creating a duplicative process nor hindering an institution's use of their ED-compliant complaint procedures. For example, if the THECB receives a complaint, determined to be under the purview of the THECB, from a student who has not exhausted the institution's established complaint procedure, through no fault of the institution, then the THECB will, as indicated in proposed §1.116(b), request the complainant to exhaust the institution's procedures. If the institution is unable to resolve the complaint to the complainant's satisfaction, the complainant could then escalate the complaint by informing the THECB of the outcome and requesting THECB involvement. The THECB may act on the complaint based on relevant information such as the complaint, the associated documentation resulting from the institution's complaint process, and the institution's determination.

Comment: The SACSCOC states: "[The proposed rule] also makes it clear that if you refer [a complaint] and do not like our decision, you will terminate the referral for not appropriately addressing the [complaint]." The SACSCOC also stated: "If a complaint is referred to SACSCOC and further if SACSCOC determines that the complaint states facts that implicate SACSCOC Principles, then THECB does not have the right to "reject" or "modify" any decision based on those facts made by SACSCOC - regardless of whether THECB rules state it does or not."

The SACSCOC further stated: "I do not think that this process will fly with the federal government."

Response: As noted above, the THECB staff agrees with the University of Phoenix's suggested language and believes it equally applicable to the comments from the SACSCOC. We therefore modify proposed §1.115(3), to better reflect the intent of the rule and the THECB's role when referring a complaint to an accreditor, as follows:

"(3) If the Agency determines that the complaint is appropriate for investigation and resolution by the institution's recognized accrediting agency, the Agency may refer the complaint to the accrediting agency. If the Agency refers the complaint to such accrediting agency, the Agency may request the accrediting agency [shall] to send [monthly] quarterly updates in writing to the Agency regarding the status of the investigation of the complaint and shall notify the Agency in writing of the outcome of the investigation/resolution process for the complaint. The Agency shall have the right to [accept, modify, or reject] adopt any decision proposed or made or any course of action proposed or taken by the accrediting agency as the final resolution of the matter before the Agency. In the alternative, the Agency shall have the right to enter its own decision based on the investigative findings of the accrediting agency to the extent they are able to be provided. The Agency shall have the right to terminate the referral of the complaint to the accrediting agency at any time and may proceed to investigate and adjudicate the complaint. [If the Agency determines that the accrediting agency is not appropriately addressing the complaint.]"

Given the comments, THECB staff revisited with the U.S. Department of Education on the issue of final authority under a State's student complaint rules. We shared the comments of the Southern Association of Colleges and Schools Commission on Colleges (SACS) contending that THECB does not have certain authority under the "Program Integrity" regulations. The Department of Education disagreed with SACS and reiterated that the ultimate disposition of a student complaint must remain in the hands of the State, stating:

"The State has the final authority/responsibility for the complaint process that is not absolved simply by the State's referral to an accrediting agency and the State could resolve the complaint a different way if it believes that the referred process was somehow inappropriate, as the complaint process remains under the purview of the State. SACS does not seem comfortable with the position that the State could resolve a complaint differently than SACS. Once again, however, this does not change that the State has ultimate responsibility for the complaints, and that, as related to the state authorization regulations, the student complaints process is ultimately a State process over which the accreditor has no say."

Based on our history of student complaints, THECB staff would expect few student complaints to be referred by THECB to an accreditor. For those that are, THECB expects that it and every accreditor it recognizes will work collaboratively to resolve the complaints appropriately. It is in both parties' interest to do so. However, based on the Education Department's guidance, the THECB's rules need to allow for the fact that while an accreditor may attempt to resolve a student complaint in a certain manner, that would not preclude the State of Texas from taking further action on that complaint. As noted earlier, THECB's proposed rules are not attempting to "relieve an accrediting agency of its responsibilities to the Department of Education (DOE) as applies to the integrity section of the Higher Education Opportunities Act (HEOA) regulations." Simply stated, the THECB is precluded from forwarding student complaints to SACS or any other recognized accreditor for final resolution, i.e., without the possibility of further review by the THECB.

Comment: The Career Education Corporation states: "Because there are different applications depending on what category of institution a school may fall into, the proposed definition may lead to a lack of clarity and incorrect interpretation. We would recommend that the current definitions of institution under Texas Education Code §§61.003(8), 61.003(15) and 7.3(10) be utilized for this proposed language, as an alternative to creating another definition of higher education institution in Texas."

Response: This proposed subchapter affects various institutions that have been previously defined. Proposed §1.110 states that its listed words and terms have the given definitions "when used in this subchapter." The definition of "institution" in §1.110(5) is designed to encompass all existing statutory and rule definitions of the word, as well as any future definitions, without a need to amend the rule in the event of a future definitional change. Given the foregoing, no change was made to the proposed rules.

Comment: The Career Education Corporation states: "In the case that the Agency finds that a complaint has merit, we would recommend that [proposed §1.118] provide that the institution have an opportunity to present evidence and information to the Commissioner or other appropriate person(s) at the Agency before the Commissioner takes specific actions(s). This would ensure due process for all parties."

Response: As part of the THECB's investigation into allegations presented by a complaint, proposed §1.116(d) indicates that a written response to the complaint from the named institution is encouraged. The written response allows the institution to present to the THECB any evidence or information supporting its position. The context of proposed §1.118 is after the THECB has completed its investigation (which would have included an opportunity for the institution to respond), but where an informal resolution is not feasible between the complainant and institution. Therefore, whenever proposed §1.118 is utilized, the institution will have already had an opportunity to present any and all evidence and information it desires to the THECB. Given the foregoing, no change was made to the proposed rules.

Comment: Ashford University and University of the Rockies stated: "As proposed, §§1.118 - 1.120 do not provide any standard of review or a uniform decision-making process for how Agency staff or the Commissioner determines when a complaint should be forwarded. For clarity and to ensure a uniform process, we recommend that the Board articulate a standard of review to determine which instances are referred to the Commissioner and Board. Additionally, we recommend providing an opportunity for the institution to appeal and respond to a Panel and the Commissioner's determination prior to any final action or Board determination."

Response: As part of the THECB's investigation into the allegations presented by a complaint, proposed §1.116(d) indicates that a written response to the complaint from the named institution is encouraged. The written response allows the institution to present to the THECB any evidence or information supporting its position. The context of proposed §1.118 is after the THECB has completed its investigation (which would have included an opportunity for the institution to respond), but where an informal resolution is not feasible between the complainant and institution. Therefore, whenever proposed §1.118 is utilized, the institution will have already had an opportunity to present any and all evidence and information it desires to the THECB. Staff believes

a sufficient "standard of review" is articulated in the proposed rules. Additionally, a stakeholder may comment at a Board meeting pursuant to THECB policy on public testimony as set forth on its website. Given the foregoing, no change was made to the proposed rules.

Comment: The University of Texas System Vice Presidents for Student Affairs expressed support for the rules and recommended adopting definitions for a "current" or "prospective" student.

Response: Proposed §1.110, Definitions, defines words and terms that may otherwise have an ambiguous meaning or have a particular meaning for use within the proposed subchapter. THECB finds no definition for current or prospective student within the Texas Education Code. Under the Code Construction Act, Texas Government Code §311.011, Common and Technical Usage of Words, states that "words and phrases shall be read in context and construed according to the rules of grammar and common usage."

THECB believes that "current" and "prospective student" are common words that should be construed accordingly. Whether a current student is part-time, full-time, undergraduate, graduate, etc. makes no difference when it comes to filing a student complaint. A prospective student who wishes to initiate a complaint will have to be able to demonstrate a personal, particularized harm or injury. Given the foregoing, no change was made to the proposed rules.

Comment: The University of Texas System Vice Presidents for Student Affairs suggests the following modification to proposed §1.115(2):

"Complaints pertaining to an institution in the University of Texas System, Texas A&M University System, University of Houston System, University of North Texas System, Texas Tech University System, or Texas State University System shall be referred to the appropriate university system for investigation and resolution."

Response: The THECB's intent is to refer complaints, if at all, to a single agency or entity for handling of the complaint. Modifying proposed §1.115(2) as suggested would undermine this intent for those complaints referred to a university system. Rather than being seen as allowing a system to handle a complaint as it deems appropriate, the suggested modification could also be interpreted as allowing no action whatsoever (including oversight) to be taken in response to a complaint that is referred to any given university system. The latter would appear to run afoul of direction provided by the U.S. Department of Education in its March 17, 2011, interpretive letter. That letter stated, in pertinent part:

Question 13: For purposes of acting on complaints, would a governing board that has oversight of multiple institutions as part of a State university system satisfy the requirement that a complainant have access to a process that is independent of any institution?

Answer 13: As stated in the preamble to the final regulations (75 FR 66866 (Oct. 29, 2010)), "The State is not permitted to rely on institutional complaint and sanctioning processes in resolving complaints it receives as these do not provide the necessary independent process for reviewing a complaint. A State may, however, monitor an institution's complaint resolution process to determine whether it is addressing the concerns that are raised within it." A State may rely on a governing board or central office of a State-wide system of public institutions if the State has made the determination the governing board or central office is sufficiently independent to provide successful oversight of complaints for the institutions in that system. [Staff made such a determination in proposing the rules.] It would not be acceptable for such a board or central office to handle complaints for other institutions in the State.

The new sections are adopted under Texas Education Code, §61.031, which provides the Coordinating Board with the authority to establish policies and procedures relating to complaint investigation and resolution, §61.028, which provides that the Board can delegate these responsibilities to the Commissioner, and §61.027, which provides the Coordinating Board with the authority to adopt and publish rules and regulations to effectuate the provisions of Texas Education Code, Chapter 61.

§1.115. Referral of Certain Complaints to Other Agencies or Entities. Once the Agency receives a student complaint form, the Agency may refer the complaint to another agency or entity as follows:

(1) Complaints alleging that an institution has violated state consumer protection laws, e.g., laws related to fraud or false advertising, shall be referred to the Consumer Protection Division of the Office of the Attorney General of Texas for investigation and resolution.

(2) Complaints pertaining to an institution in the University of Texas System, Texas A&M University System, University of Houston System, University of North Texas System, Texas Tech University System, or Texas State University System shall be referred to the appropriate university system for investigation and resolution.

(3) If the Agency determines that the complaint is appropriate for investigation and resolution by the institution's recognized accrediting agency, the Agency may refer the complaint to the accrediting agency. If the Agency refers the complaint to such accrediting agency, the Agency may request the accrediting agency to send quarterly updates in writing to the Agency regarding the status of the investigation of the complaint and shall notify the Agency in writing of the outcome of the investigation/resolution process for the complaint. The Agency shall have the right to adopt any decision proposed or made or any course of action proposed or taken by the accrediting agency as the final resolution of the matter before the Agency. In the alternative, the Agency shall have the right to enter its own decision based on the investigative findings of the accrediting agency to the extent they are able to be provided. The Agency shall have the right to terminate the referral of the complaint to the accrediting agency at any time and may proceed to investigate and adjudicate the complaint.

(4) If the Agency determines that the complaint is appropriate for investigation and resolution by an educational association to which the institution belongs, the Agency may refer the complaint to the educational association. If the Agency refers the complaint to such an educational association, the educational association shall send monthly updates in writing to the Agency regarding the status of the investigation of the complaint and shall notify the Agency in writing of the outcome of the investigation/resolution process for the complaint. The Agency shall have the right to accept, modify, or reject any decision proposed or made or any course of action proposed or taken by the educational association. The Agency shall have the right to terminate the referral of the complaint to the educational association if the Agency determines that the educational association is not appropriately addressing 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 November 8, 2012.

TRD-201205754
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2012
Proposal publication date: September 14, 2012
For further information, please call: (512) 427-6114

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

SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

19 TAC §§4.53 - 4.55, 4.58 - 4.60

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§4.53 - 4.55 and 4.58 - 4.60, concerning Texas Success Initiative (House Bill 1244, 82nd Texas Legislature, Regular Session), without changes to the proposed text as published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 5956).

Specifically, the amendments to §4.53 and §4.54 provide institutions of higher education with uniform definitions for terminology frequently used regarding developmental education programs and coursework, as well as clarify intent of exemptions. Amendments to §4.55 and §4.58 are based on best practices and stakeholder recommendations for improving advising, placement testing, and program outcomes. The amendment to §4.59 is a result of House Bill 1244 (82nd Texas Legislature, Regular Session) which directs institutions of higher education to determine when a student is ready to perform freshman-level academic coursework. The amendment to §4.60 is a result of Senate Bill 162 (82nd Texas Legislature, Regular Session) which directs the Coordinating Board to develop a statewide plan ensuring specific components of developmental education are addressed. Based on research and best practices, these amendments ensure consistency, effectiveness, and efficiency across all developmental education programs in Texas, with the overall goal to increase student persistence and success in certificate, transfer, and program completions.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code, §51.307, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules to implement the provisions of Texas Education Code, §51.3062, concerning the Texas Success Initiative.

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 November 8, 2012.

TRD-201205755
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2012
Proposal publication date: August 10, 2012
For further information, please call: (512) 427-6114

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SUBCHAPTER G. EARLY COLLEGE HIGH SCHOOLS

19 TAC §§4.151, 4.153 - 4.156, 4.158 - 4.161

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§4.151, 4.153 - 4.156, and 4.158 - 4.161, concerning Early College High Schools and Middle Colleges, without changes to the proposed text as published in the August 3, 2012, issue of the *Texas Register* (37 TexReg 5698).

The amendments bring the Coordinating Board rules into better alignment with the Texas Education Code. Subchapter G is renamed from "Early College High Schools and Middle Colleges" to "Early College High Schools". These amendments delete all references to "Middle Colleges" found in Chapter 4, Subchapter G.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Education Code, Chapter 29, Subchapter Z, §29.908(d) which provides the Coordinating Board with the authority to adopt rules as necessary to exercise its powers and duties under Texas Education Code, §29.908 ("Early College Education Program").

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 November 8, 2012.

TRD-201205756
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2012
Proposal publication date: August 3, 2012
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 A. GENERAL PROVISIONS

19 TAC §5.8

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §5.8, concerning internet access to faculty information on institutional websites, without changes to the pro-

posed text as published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 5960).

Specifically, this new section, which requires that posted faculty information be aligned with the values and definitions used for that information in the Texas Higher Education Accountability System, will help ensure the consistency of posted information as allowable by Texas Education Code, §51.9745(d). The new section also includes definitions of three relevant terms. The requirements of Texas Education Code, §51.9745, apply beginning with the Fall 2012 semester.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Education Code, §51.9745, Internet Access to Faculty Information, which provides the Coordinating Board with authority to adopt rules pertaining to the posting of faculty-related measures.

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 November 8, 2012.

TRD-201205757
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2012
Proposal publication date: August 10, 2012
For further information, please call: (512) 427-6114

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

19 TAC §21.2105, §21.2107

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §21.2105 and §21.2107, concerning the Exemption Program for Veterans and their Dependents (The Hazlewood Act), without changes to the proposed text as published in the July 13, 2012, issue of the *Texas Register* (37 TexReg 5191).

Specifically, the purpose of the amendments is to authorize institutions to collect applications and supporting documentation on an annual or per-semester basis, whichever they choose. Annual documentation can lessen paperwork for the schools and students, but raises the possibility of required refunds if the applicant's eligibility changes in the course of a given academic year. The rules as amended will allow institutions to decide which approach to follow.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code, §54.2031(i), which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §54.2031.

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 November 8, 2012.

TRD-201205758
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2012
Proposal publication date: July 13, 2012
For further information, please call: (512) 427-6114

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS
SUBCHAPTER H. PROVISIONS FOR THE LICENSE PLATE INSIGNIA SCHOLARSHIP PROGRAM

19 TAC §22.145, §22.147

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §22.145 and §22.147, concerning the Provisions for the License Plate Insignia Scholarship Program, without changes to the proposed text as published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 5962).

Specifically, the amendment in §22.145(c) aligns the language in rule with the statute and clarifies that funds received through the License Plate Insignia Program are to be used to make scholarships to students with need or to make grants through the Texas Public Educational Grant Program.

The amendments in §22.147(2) and (3) clarify new procedures for community colleges and private institutions regarding the frequency and process by which the Board will issue funds to the institutions and eliminate scholarship application processing at the Coordinating Board for students receiving scholarships at private or independent institutions.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Transportation Code, §504.615, which provides the Coordinating Board with the authority to adopt rules necessary to administer the License Plate Insignia Scholarship Program.

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 November 8, 2012.

TRD-201205759

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2012
Proposal publication date: August 10, 2012
For further information, please call: (512) 427-6114

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SUBCHAPTER U. EXEMPTION FOR PEACE OFFICERS ENROLLED IN LAW ENFORCEMENT OR CRIMINAL JUSTICE COURSES

19 TAC §§22.531, 22.533, 22.534

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§22.531, 22.533 and 22.534, concerning the Exemption for Peace Officers Enrolled in Law Enforcement or Criminal Justice Courses, without changes to the proposed text as published in the July 13, 2012, issue of the *Texas Register* (37 TexReg 5191). Specifically, the enabling legislation (Texas Education Code, §54.2081, and Texas Education Code, §54.353) indicates that participating peace officers must be undergraduate students. This is currently incorrectly expressed in Board rules as a restriction that a peace officer may enroll only in undergraduate courses. To align Board rules with the legislation, §22.531 is amended by adding a definition of "undergraduate student"; §22.533 is amended to indicate the peace officer must be enrolled as an undergraduate student; and §22.534 is amended to remove the restriction that only undergraduate courses may be taken.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §54.2081, which provides the Coordinating Board with the authority to adopt rules governing the granting or denial of an exemption under 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 November 8, 2012.

TRD-201205760
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 28, 2012
Proposal publication date: July 13, 2012
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

DIVISION 7. RESOLUTION OF DISPUTES BETWEEN PARENTS AND SCHOOL DISTRICTS

19 TAC §§89.1151, 89.1165, 89.1170, 89.1180, 89.1185, 89.1191

The Texas Education Agency (TEA) adopts amendments to §§89.1151, 89.1165, 89.1170, 89.1180, 89.1185, and 89.1191, concerning special education services. The amendments are adopted without changes to the proposed text as published in the September 14, 2012, issue of the *Texas Register* (37 TexReg 7257) and will not be republished. The sections address resolution of disputes between parents and school districts. The adopted amendments clarify the timelines associated with special education due process hearings filed pursuant to the Individuals with Disabilities Education Act (IDEA), 20 USC §§1400, *et seq.,* and make minor technical corrections and clarifications.

The IDEA and its implementing regulations provide that parents or public education agencies may file due process complaints regarding the identification, evaluation, or educational placement of a child with a disability or regarding the provision of a free appropriate public education (FAPE) to the child. The IDEA requires the TEA, as the state education agency, to conduct due process hearings and have procedural safeguards in effect to ensure that each public education agency in the state meets the requirements for due process hearings. Accordingly, in 2001, the commissioner exercised rulemaking authority to adopt 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Commissioner's Rules Concerning Special Education Services, Division 7, Resolution of Disputes Between Parents and School Districts.

Adopted amendments to 19 TAC Chapter 89, Subchapter AA, Division 7, are necessary to clarify and align the rules with federal law and regulations, as follows.

Section 89.1151, Due Process Hearings, was amended to align the rule with federal law and clarify that there are exceptions to the one-year statute of limitations. Technical corrections were also made.

Section 89.1165, Request for Hearing, was amended to clarify that the model due process request form available from the TEA may be used by both parents and public education agencies. Minor technical corrections were also made.

Section 89.1170, Impartial Hearing Officer, was amended to change the term "appeal" to "hearing" in reference to the hearing officer's ability to complete the performance of duties. The term "hearing" more accurately refers to the stage in the proceeding in which the hearing officer is actively involved, while the term "appeal" refers to the stage in the proceeding after the hearing officer has rendered a decision.

Section 89.1180, Prehearing Procedures, was amended to make minor technical corrections.

Section 89.1185, Hearing, was amended in subsection (a) to clarify that requests for extension of time may be made by either party and are granted subject to the hearing officer's discretion

and to clarify that the timelines for expedited hearings cannot be extended. Section 89.1185 was also amended in subsection (p) to clarify that although a public education agency is not required to reimburse past expenses during the pendency of an appeal, all other aspects of the hearing officer decision that are adverse to the public education agency must be implemented within ten school days after the decision is rendered. Minor technical corrections were also made.

Section 89.1191, Special Rule for Expedited Due Process Hearings, was amended to align the rule with federal law regarding the timelines associated with expedited due process hearings.

The adopted amendments incorporate procedural requirements contained in the IDEA that public education agencies must follow; however, there are no 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.

The public comment period on the proposal began September 14, 2012, and ended October 15, 2012. No public comments were received.

The amendments are adopted under 34 Code of Federal Regulations (CFR), Part 300, which requires states to have policies and procedures in place to ensure the provision of a free appropriate public education to children with disabilities (34 CFR, §300.100) and that children with disabilities and their parents are afforded procedural safeguards (34 CFR, §300.121), and Texas Education Code (TEC), §29.001, which authorizes the commissioner of education to develop, and modify as necessary, a statewide design, consistent with federal law, for the delivery of services to children with disabilities in this state that includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all of those children between the ages of three and 21.

The amendments implement 34 CFR, §300.100 and §300.121, and TEC, §29.001.

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 November 8, 2012.

TRD-201205761
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: November 28, 2012
Proposal publication date: September 14, 2012
For further information, please call: (512) 475-1497

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CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING EDUCATOR AWARD PROGRAMS

19 TAC §102.1073

The Texas Education Agency (TEA) adopts an amendment to §102.1073, concerning district awards for teacher excellence. The amendment is adopted without changes to the proposed text as published in the August 3, 2012, issue of the *Texas Register* (37 TexReg 5699) and will not be republished. The section establishes procedures and adopts guidelines for the administration of awards for the student achievement program. The adopted amendment modifies the rule to allow districts to increase the combined minimum award amount to $2,000 to maximize the receipt of federal grant funding.

The Texas Education Code (TEC), Chapter 21, Subchapter O, establishes an educator incentive program that provides funding to districts interested in developing local incentive programs. Through 19 TAC §102.1073, adopted effective May 28, 2008, and amended effective June 24, 2010, the commissioner exercised rulemaking authority to establish and administer the grant award program.

Section 102.1073 states that annual award amounts should be valued at $3,000 or more, unless otherwise determined by the district planning committee. Minimum awards must be no less than $1,000 per eligible educator. The adopted amendment modifies subsection (h)(3) to allow districts to increase the combined minimum award amount to $2,000 to maximize the receipt of federal grant funding.

In addition, the adopted amendment updates a cross-reference to statute and makes technical edits.

The adopted amendment has no new procedural or 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.

The public comment period on the proposal began August 3, 2012, and ended September 4, 2012. No public comments were received.

The amendment is adopted under the TEC, §21.702, which requires the commissioner of education by rule to establish an educator excellence awards program under which school districts, in accordance with local awards plans approved by the commissioner, receive program grants from the agency for the purpose of providing awards to district employees; and the TEC, §21.707, which requires the commissioner of education to adopt rules necessary to administer the Educator Excellence Awards Program.

The amendment implements the TEC, §21.702 and §21.707.

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 November 8, 2012.

TRD-201205762

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: November 28, 2012
Proposal publication date: August 3, 2012
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 280. THERAPEUTIC OPTOMETRY

22 TAC §280.5

The Texas Optometry Board adopts amendments to §280.5, concerning Prescription and Diagnostic Drugs for Therapeutic Optometry, without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7659).

The amendments permit the use of electronic signatures for dangerous drug prescriptions, consistent with the safeguards imposed by the Texas State Board of Pharmacy at 22 TAC §291.34, concerning Records.

One comment was received. The commenter, the National Association of Chain Drug Stores, commented that it was concerned that the rule amendments "could be broadly interpreted to apply to all prescriptions, rather than apply only to written (hard copy) prescriptions." The commenter suggested adding the word "written" after "All" in subsection (c).

The Board agrees with the commenter that the amendment permitting use of a computer to generate a signature on a paper copy only applies to a hard copy of a dangerous drug prescription. The amendment clearly states that prescription with a replication of the licensee's manual signature is a substitute for the "written signature." Electronically transmitted prescriptions are specifically identified in a separate subsection (subsection (d)). That subsection states that the requirements for an electronic prescription drug order do not include the "written" signature requirements of subsection (c). Thus the amendment is clear in being a substitute for the signature on a paper copy of the prescription only and not applicable to the electronically transmitted or telephoned prescription considered in the separate subsection (d). Therefore the Board disagrees with the commenter that additional language is required and adopts the rule without change.

The amendments are adopted under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.358. The amendments comply with the requirements of 22 TAC §291.34.

The Texas Optometry Board interprets the Texas Optometry Act, Texas Occupations Code, §351.151, as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets the Texas Optometry Act, Texas Occupations Code, §351.358, as authorizing therapeutic optometrists to prescribe dangerous drugs and 22 TAC §291.34 as setting the requirements for prescription drug orders by the Texas State Board of Pharmacy.

No other sections are affected by the amendments.

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 November 7, 2012.

TRD-201205752
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: November 27, 2012
Proposal publication date: September 28, 2012
For further information, please call: (512) 305-8502

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.2

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.2, concerning Application Process, without changes to the proposed text published in the September 14, 2012, issue of the *Texas Register* (37 TexReg 7260). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted would clarify an applicant's rights and obligations following the denial of his or her application for licensure. The amendment grants the applicant twenty (20) days from the date of the denial, during which he or she may request a hearing to appeal the denial.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 November 9, 2012.

TRD-201205828
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: November 29, 2012
Proposal publication date: September 14, 2012
For further information, please call: (512) 305-7706

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.15

The Texas State Board of Examiners of Psychologists adopts an amendment to §465.15, concerning Fees and Financial Arrangements, without changes to the proposed text published in the September 14, 2012, issue of the *Texas Register* (37 TexReg 7261). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted would clarify a licensee's duty to provide notice to a person at least 30 days prior to utilizing a collection agency or legal measures to collect any unpaid fees.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 November 9, 2012.

TRD-201205829
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: November 29, 2012
Proposal publication date: September 14, 2012
For further information, please call: (512) 305-7706

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22 TAC §465.18

The Texas State Board of Examiners of Psychologists adopts an amendment to §465.18, concerning Forensic Services, without changes to the proposed text published in the September 14, 2012, issue of the *Texas Register* (37 TexReg 7262). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted would clarify the basic requirements for rendering a child visitation or parenting recommendation.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 November 9, 2012.

TRD-201205831
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: November 29, 2012
Proposal publication date: September 14, 2012
For further information, please call: (512) 305-7706

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 533. PRACTICE AND PROCEDURE

22 TAC §§533.4, 533.7, 533.8

The Texas Real Estate Commission (TREC) adopts amendments to §533.4 concerning Failure to Answer, Failure to Attend Hearing and Default; §533.7 concerning Proposals for Decision; and §533.8 concerning Final Orders, Motions for Rehearing, and Emergency Orders. Section 533.4 is adopted with changes to the proposed text as published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7041) and will be republished. Section 533.7 and §533.8 are adopted without changes and will not be republished.

The difference between §533.4(d) as adopted and as proposed is the deletion of the phrase "contained in the petition" because agency practice is such that factual allegations may be filed with SOAH using various document titles not just petitions.

The revision to §533.4 as adopted does not change the nature or scope so much that it could be deemed a different rule. The rule as adopted does not affect individuals other than those contemplated by the rule as proposed. The rule as adopted does not impose more onerous requirements than the proposed rule.

The amendments to §533.4 address situations in which a respondent fails to answer after receiving a notice of alleged violation or fails to attend a hearing. Failure to answer or attend a hearing will result in a default order against the respondent where findings of fact and conclusions of law set out in the notice of violation will be considered as admissions. If a case is dismissed from SOAH, the commission will be required to enter a default order against the respondent. If SOAH enters a default proposal for decision, the allegations filed with SOAH will be considered admissions.

The amendments to §533.7 clarify that while the commission welcomes SOAH judge recommendations regarding sanctions, the commission is responsible for imposing disciplinary action or assessing administrative penalties.

The amendments to §533.8 require the commission to explain why the commission did not follow the SOAH judge recommendations regarding disciplinary action or administrative penalties. Amendments to subsection (f) describe the requirements for filing a motion for rehearing. Amendments to subsection (g) address situations in which new evidence may be presented in a case.

The reasoned justification for the rules is consistency among sections in Chapter 533 and clarification of the commission's role in imposing disciplinary action and administration penalties.

No comments were received on the rules as proposed.

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

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendments.

§533.4. Failure to Answer, Failure to Attend Hearing and Default.

(a) If, within twenty days after receiving a Notice of Alleged Violation, the Respondent fails to accept the commission's determination and recommended administrative penalty and/or sanction, or fails to make a written request for a hearing on the determination, the commission shall enter a default order against the Respondent, incorporating the findings of fact and conclusions of law in the Notice of Alleged Violation, which shall be deemed admitted.

(b) After receiving a notice proposing disapproval of an application an Applicant may request a hearing in writing within twenty days of receipt of the notice or forfeit the right to a hearing unless otherwise provided by applicable law.

(c) The commission may delegate to the administrator the commission's authority to act under Texas Occupations Code §1101.704(b) and subsection (a) of this section.

(d) 1 TAC §155.501 and §155.503 (relating to Default Proceedings and Dismissal Proceedings) (SOAH rules) apply where a Respondent fails to appear on the day and time set for administrative hearing. In that case, the commission's staff may move either for dismissal of the case from SOAH's docket or for the issuance of a default proposal for decision by the judge. If the judge issues an order dismissing the case from the SOAH docket or issues a default proposal for decision, the factual allegations against the Respondent filed at SOAH shall be deemed admitted and the commission shall enter a default order against the Respondent as set out in the Notice of Hearing sent to the Respondent. No additional proof is required to be submitted to the commission before the commission enters the final order.

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 November 9, 2012.

TRD-201205800
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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Proposal publication date: September 7, 2012
For further information, please call: (512) 936-3092

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CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

22 TAC §535.2

The Texas Real Estate Commission (TREC) adopts an amendment to §535.2 concerning Broker's Responsibility without changes to the proposed text as published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7042). The section will not be republished.

The amendment changes the terms "designate" and "designation" to "delegate" and "delegation" to more closely track other rule provisions in the same chapter.

The reasoned justification for the rule is consistency of terminology among sections in Chapter 535.

No comments were received on the rule as proposed.

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

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendment.

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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Loretta R. DeHay
General Counsel
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For further information, please call: (512) 936-3092

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SUBCHAPTER C. EXEMPTIONS TO REQUIREMENTS OF LICENSURE

22 TAC §535.32

The Texas Real Estate Commission (TREC) adopts an amendment to §535.32 concerning Attorneys in Fact without changes to the proposed text as published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7043). The section will not be republished.

The amendment deletes the phrase "to be sold" to make it clear that an attorney in fact may buy, sell, or lease real property under the exemption in the Act.

The reasoned justification for the rule is consistency between the Rules and the Act.

No comments were received on the rule as proposed.

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

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendment.

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 G. MANDATORY CONTINUING EDUCATION

22 TAC §535.75

The Texas Real Estate Commission (TREC) adopts an amendment to §535.75 concerning Education Curriculum Standards Committee with changes to the proposed text as published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7043). The section will be republished.

The difference between the rule as proposed and as adopted is that the name of the committee was changed to Education Standards Advisory Committee.

The revision to the rule as adopted does not change the nature or scope so much that it could be deemed a different rule. The rule as adopted does not affect individuals other than those contemplated by the rule as proposed. The rule as adopted does not impose more onerous requirements than the proposed rule.

The amendment changes the makeup of the committee to be composed of seven brokers, four education related members, and one public member.

The reasoned justification for the rule will be a well-rounded committee composed of members familiar with the Act and Rules of the Commission.

No comments were received on the rule as proposed.

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

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendment.

§535.75. Education Standards Advisory Committee.

(a) The function of the Education Standards Advisory Committee (the committee) is to regularly review and revise curriculum standards, course content requirements and instructor certification requirements for core and MCE courses.

(b) The committee consists of 12 members appointed by the commission as follows:

(1) Seven members who have been engaged in the practice of real estate for at least five years before the member's appointment and who are actively engaged in that practice;

(2) Four members who are real estate instructors or owners of real estate schools accredited by the commission that provide core or continuing education;

(3) One member who represents the public.

(c) The Commission may appoint a non-voting member from the commission.

(d) Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(e) Members of the committee serve two-year terms, expiring on February 1 of each even-numbered year. A member may serve up to three consecutive terms on the committee, and may be reappointed after a break in service of at least two years. A member whose term has expired holds office until the member's successor is appointed. If a vacancy occurs during a member's term, the commission shall appoint a person to fill the unexpired term.

(f) At a regular meeting in May of each year, the committee shall elect from its members a presiding officer, assistant presiding officer, and secretary.

(g) The commission may remove a committee member if the member:

(1) does not have the qualifications required by subsection (b)(1) of this section;

(2) cannot discharge the member's duties for a substantial part of the member's term;

(3) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during each calendar year, unless the absence is excused by majority vote of the committee; or

(4) violates Chapter 1101 or Chapter 1102.

(h) If the administrator of the commission has knowledge that a potential ground for removal exists, the administrator shall notify the presiding officer of the commission that the potential ground exists.

(i) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(j) The committee may meet at the call of a majority of its members. The committee shall meet at the call of the commission.

(k) A quorum of the committee consists of seven members.

(l) The committee shall conduct its meetings in substantial compliance with Robert's Rules of Order.

(m) The secretary of the committee, or in the secretary's absence, a member designated by the chairman, shall prepare written minutes of each meeting and submit the minutes to the committee for approval and for filing with the commission.

(n) The committee shall submit semiannual reports to the commission on or before March 1 and September 1 of each year detailing the performance of the committee. The commission may require the report to be submitted on a form approved by the commission for that purpose. The committee may submit its written recommendations concerning the licensing and regulation of real estate inspectors to the commission at any time the committee deems appropriate. If the commission submits a rule to the committee for development, the chairman of the committee or the chairman's designate shall report to the commission after each meeting at which the proposed rule is discussed on the committee's consideration of the rule.

(o) The committee is automatically abolished on September 1, 2020 unless the commission subsequently establishes a different date.

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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Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

22 TAC §535.145

The Texas Real Estate Commission (TREC) adopts an amendment to §535.145, concerning False Promise, without changes to the proposed text as published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7044). The section will not be republished.

The amendment corrects a typographical error in the reference to the Act.

The reasoned justification for the amendment is grammatically correct rules.

No comments were received on the rule as proposed.

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

The statutes affected by this adoption are Texas Occupations Code, Chapter 1101 and Chapter 1102. No other statute, code or article is affected by the amendment.

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 November 9, 2012.

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Loretta R. DeHay
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Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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22 TAC §535.161

The Texas Real Estate Commission (TREC) adopts an amendment to §535.161, concerning Failing to Provide Information, without changes to the proposed text as published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7044). The section will not be republished.

The amendment corrects a typographical error in the reference to the Act.

The reasoned justification for the amendment is grammatically correct rules.

No comments were received on the rule as proposed.

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

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendment.

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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Effective date: November 29, 2012
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For further information, please call: (512) 936-3092

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §§535.215, 535.216, 535.218

The Texas Real Estate Commission (TREC) adopts amendments to §535.215 concerning Inactive Inspector Status; §535.216 concerning Renewal of License; and §535.218 concerning Continuing Education. The amendments are adopted without changes to the proposed text as published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7045) and will not be republished. The amendments were proposed at TREC's August 13, 2012 meeting to clarify the requirements and procedures necessary to renew an inspector

license timely on active or inactive status and reinstate after expiration or being inactive.

The reasoned justification for amendments to §§535.215, 535.216 and 535.218 is clarity in determining requirements for renewal or reinstatement of an inspector license.

No comments were received on the proposed amendments.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

The statute affected by the amendments is Texas Occupations Code, Chapter 1102. No other statute, code, or article is affected by the amendments.

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-201205806
Kerri T. Galvin
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Proposal publication date: September 7, 2012
For further information, please call: (512) 936-3092

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22 TAC §535.224

The Texas Real Estate Commission (TREC) adopts an amendment to §535.224 concerning Practice and Procedure without changes to the rule as published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7046). The amended rule will not be republished. The amendment replaces the term "business" with "mailing" in subsection (b)(1) to be consistent with the phrase "mailing address" as used in Chapters 533 and 535.

The reasoned justification for the amendment is consistency between various sections of Chapter 535.

No comments were received on the rule as proposed.

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

The statutes affected by this adoption are Texas Occupations Code, Chapter 1101 and Chapter 1102. No other statute, code or article is affected by the amendments.

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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Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.36

The General Land Office (GLO) adopts amendments to 31 TAC §15.36, relating to Certification Status of City of Galveston Dune Protection and Beach Access Plan (Plan), and adds the Erosion Response Plan as an appendix to the City's Plan. The amendments are adopted without changes to the proposed text as published in the July 20, 2012, issue of the *Texas Register* (37 TexReg 5406) and will not be republished.

INTRODUCTION

The intent of this adopted rulemaking is to fully certify the City of Galveston's Dune Protection and Beach Access Plan as well as its Erosion Response Plan which is incorporated as an appendix the City's Plan.

Copies of the City of Galveston Dune Protection and Beach Access Plan and the amendment to the Plan are available from the City of Galveston Department of Planning and Community Development, 823 Rosenberg, Galveston, Texas 77553, phone number (409) 797-3500 or on the internet at http://www.progressgalveston.com/sites/default/files/documents/12_0503_GALV_ERP_CC_FINAL_Adopted041212.pdf, and from the GLO's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, phone number (512) 463-5277.

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63) and the Beach/Dune Rules (31 TAC §§15.1 - 15.16, 15.21 - 15.36, 15.41, and 15.42), a local government with jurisdiction over Gulf Coast beaches must submit its dune protection and beach access plan and any amendments to such a plan to the GLO for certification. (31 TAC §15.3(o).) The GLO reviews a local beach access and dune protection plan and, if appropriate, certifies that the plan is consistent with state law by adoption or amendment of a rule as authorized in Texas Natural Resources Code §61.011(d)(5) and §61.015(b). The certification by rule reflects the state's approval of the plan, but the text of the plan is not adopted by the GLO. (31 TAC §15.3(o)(4).)

SECTION BY SECTION ANALYSIS

Section 15.36(a) (relating to Certification Status of City of Galveston Dune Protection and Beach Access Plan) is amended to change the definition of "Dune Conservation Areas" and add an area identified as "Enhanced Construction Zone" to the existing Plan.

Section 15.36(b) is amended to certify as consistent with state law the City of Galveston Erosion Response Plan that is incorporated as an Appendix to the City of Galveston Dune Protection and Beach Access Plan and becomes part of the existing Plan. Additional paragraphs of §15.36(b) related to the use of fibercrete were deleted as they no longer constitute variances from current Chapter 15.

Section 15.36(c) - (e) have been deleted as these sections related to the prior conditional certification of the Plan that is now fully certified.

REASONED JUSTIFICATION

The justification for the adopted regulations concerning the certification of the City of Galveston's Erosion Response Plan is that the public will benefit because coastal public land, and therefore, the permanent school fund, will be protected with the certification of the amendment to the Plan by reducing possibility of structures becoming located on state-owned submerged lands which increases expenditure of public funds for removal of the unauthorized structures.

In addition, adopted regulations are justified as the City of Galveston's Erosion Response Plan will result in reduced public expenditures associated with loss of structures and public infrastructure due to storm damage and erosion, disaster response costs, and loss of life. In areas where a restored or man-made dune is constructed, the City of Galveston is proposing to establish a Dune Conservation Area that will vary in size depending on whether man-made or natural dunes exist, and an Enhanced Construction Zone that extends an additional 125 feet landward of the Dune Conservation Area. Establishing a Dune Conservation Area is important because natural dune processes are allowed to continue with minimal disturbance and the risk to life and property from storm damage and public expenses of disaster relief will be reduced by allowing a natural buffer against normal storm tides. By encouraging the placement of structures (especially taller and larger structures) further landward, the additional hazards created by tall buildings when subjected to storm surge will reduce their vulnerability to storm tide and erosion. In addition, larger structures are more difficult to move and create increased pressure on the state and local government for the construction of hard erosion control structures, further increasing public expenses.

The adopted regulations are also justified due to the resulting reduced storm damage loss to properties exempted from constructing landward of the building set-back line with the establishment of enhanced building requirements in the setback area. Additionally, existing structures and properties constructed seaward of the building set-back line will be protected by local government implementation of plans to improve foredune ridges and beach access points to protect against storm surge. Scientific and engineering studies considered by the GLO noted that during Hurricane Alicia in 1983, vegetation line retreat and landward extent of storm washover deposits were greater for developed areas than for natural areas (Bureau of Economic Geology Circular 85-5). This difference is attributed in part to the fact that naturally occurring vegetated dunes are stronger than reconstructed dunes that do not meet minimum height, width, and material requirements. (Circular 85-5.)

SUMMARY AND RESPONSE TO COMMENTS

The GLO received three comments during the thirty-day comment period specified in the notice of proposed rulemaking published in the July 20, 2012, issue of the *Texas Register.* The GLO gave due consideration to the comments received by the agency during the thirty-day comment period.

The first commenter requests that the language used in the plan to define the Dune Conservation Area be modified. The commenter states that he owns property located between the Galveston Island Seawall and Stewart Beach and that beach maintenance practices by the local government have resulted in the formation of dunes on the edges of his property. The first commenter requests that the Erosion Response Plan be modified to limit the landward extent of the Dune Conservation Area in areas affected by beach maintenance by the local government. The first commenter provides justification for his suggested modification and suggests language to modify the City's Erosion Response Plan.

The GLO must either grant or deny certification of the Plan Amendment that was formally approved City of Galveston's under Ordinance No. 12-018. The applicable rules do not allow for the GLO's unilateral modification of the Plan. Therefore, the GLO makes no change based on these comments.

The first commenter's second set of comments relates to the reference in the *Texas Register* to a 75-foot landward limit and apparent discussions at the Planning Commission and City Council meetings as well as public discussions groups related to the 75-foot landward limit of the Dune Conservation Area. The first commenter also states that the 75-foot landward limit does not appear in the Erosion Response Plan that was submitted for certification by the GLO.

While the reference to 75 feet may not be explicit in the Erosion Response Plan, the GLO disagrees that the 75-foot landward limit does not constitute part of the Erosion Response Plan. Section 2.3 of the Erosion Response Plan establishes guidelines for a restored or man-made dune resulting in a minimum of a 50 foot wide dune. As set forth in Section 3.1 of the Erosion Response Plan, the landward extent of the Dune Conservation Area is located 25 feet landward of the north toe of a restored dune. Therefore, in this case, the resulting the minimum width of the Dune Conservation Area would be 75 feet. Commenter did not request any modifications to the Plan.

The commenter also states that the Galveston City Council did not approve the version of the Erosion Response Plan that has been provided to the GLO for certification and that a prior version of the plan was what it thought it was actually approving.

The GLO is not aware of the substance of the prior version(s) of the Erosion Response Plan or of discussions between the City and the public. Therefore, the GLO is unable to comment on any variations between an earlier version and the version of the Plan and Erosion Response Plan that was approved under Ordinance No 12-018 and submitted to the GLO for certification. In this rulemaking the GLO adopts the version that was submitted by the City to the GLO and represented as having been approved by the City Council. No changes were made based on these comments.

The second commenter disagrees with the GLO's statement that the Takings Impact Assessment Section of the rule included a statement that the rulemaking would not result in a taking of private property and that there are no adverse impacts to private property interests inasmuch as the property subject to the amendments is owned by the state.

The GLO agrees that the adopted rulemaking potentially impacts private property, located in an area landward of the line of mean

high tide and seaward of the dune protection line. However, for reasons set forth in the Takings Impact Assessment Section below, the GLO has determined that the adopted rulemaking will not result in a taking of private property. Therefore, the GLO has made no change based on these comments.

ENVIRONMENTAL REGULATORY ANALYSIS

GLO has evaluated the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to Chapter 15 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the adopted rulemaking implements legislative requirements in Texas Natural Resources Code §§33.101 - 33.136 relating to the school land board's ability to grant rights in coastal public land.

TAKINGS IMPACT ASSESSMENT

GLO has evaluated the adopted rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. GLO has determined that the adopted rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §17 and §19 of the Texas Constitution. Furthermore, GLO has determined that the adopted rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. GLO has determined that the adopted rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests.

The City of Galveston's Erosion Response Plan establishes and implements a building set-back line which includes exempts property for which the owner has demonstrated that no practicable alternatives to construction seaward of the building set-back line exist. The definition of the term "practicable" in §15.2(55) of the Beach/Dune Rules allows a local government to consider the cost of implementing a technique such as the set-back provisions in determining whether it is "practicable" in a particular application for development. In applying its regulation, the City of Galveston can determine on a case-by-case basis to permit construction of habitable structures in the area seaward of the building set-back line and landward of the line of vegetation if its denying a permit would cause severe and unavoidable economic impacts and thus avoid an unconstitutional taking. In addition, a building set-back line adopted by a local government under §33.607 would not constitute a statutory taking under the Private Real Property Rights Preservation Act inasmuch as Texas Natural Resources Code §33.607(h) as added by HB 2819 provides that Chapter 2007, Government Code, does not apply to a rule or local government order or ordinance authorized by §33.607.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The adopted amendments are subject to the Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(E) - (I) and §505.11(c), relating to the Actions and Rules Subject to the CMP. GLO has reviewed these adopted actions for consistency with the CMP's goals and policies. The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction of in the Beach/Dune System). Because all requests for the use of coastal public land must continue to meet the same criteria for GLO approval, GLO has determined that the actions are consistent with applicable CMP goals and policies.

The amended rule including the full certification of the City of Galveston's Dune Protection and Beach Access Plan and the Erosion Response Plan is consistent with the CMP goals outlined in 31 TAC §501.12(1) - (3) and (6). These goals seek protection of CNRAs, compatible economic development and multiple uses of the coastal zone, minimization of the loss of human life and property due to the impairment and loss of CNRA functions, and coordination of GLO and local government decision-making through the establishment of clear, effective policies for the management of CNRAs. The Erosion Response Plan is tailored to the unique natural features, degree of development, storm, and erosion exposure potential for the City of Galveston. The City's Erosion Response Plan is also consistent with the CMP policies outlined in 31 TAC §501.26(a)(1) and (2) that prohibit construction within a critical dune area that results in the material weakening of dunes and dune vegetation or adverse effects on the sediment budget. The City's Erosion Response Plan will provide reduced impacts to critical dunes and dune vegetation by placement of structures further landward, reduce dune area habitat and biodiversity loss, and reduce structure encroachment on the beach which leads to interruption of the natural sediment cycle.

No comments were received from the public or the Commissioner regarding the GLO's consistency determination. Consequently, the GLO has determined that the adopted actions are consistent with the applicable CMP goals and policies.

STATUTORY AUTHORITY

The amendments are adopted under the Texas Natural Resources Code §33.607, relating to GLO's authority to adopt rules for the preparation and implementation by a local government of a plan for reducing public expenditures for erosion and storm damage losses to public and private property, and §61.011.

Texas Natural Resources Code §§33.601 - 33.613 and 61.011 are affected by the adopted amendments.

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 November 12, 2012.

TRD-201205874

Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: December 2, 2012
Proposal publication date: July 20, 2012
For further information, please call: (512) 475-1859

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider for re-adoption, revision, or repeal Chapter 97, §97.101, concerning Meetings; §97.102, concerning Delegation of Duties; §97.103, concerning Recusal or Disqualification of Commission Members; §97.104, concerning Petitions for Adoption or Amendment of Rules; §97.105, concerning Frequency of Examination; §97.107, concerning Related Entities; §97.113, concerning Fees and Charges; §97.114, concerning Charges for Public Records; §97.115, concerning Reimbursement of Legal Expenses; §97.116, concerning Recovery of Costs for Extraordinary Services not Related to an Examination; §97.200, concerning Employee Training Program; §97.205, concerning Use of Historically Underutilized Businesses; §97.207, concerning Contracts for Professional or Personal Service; §97.300, concerning Gifts of Money or Property; and §97.401, concerning General Requirements, of Texas Administrative Code, Title 7, Part 6, in preparation for the Commission's Rule Review as required by §2001.039, Government Code.

An assessment will be made by the Commission as to whether the reasons for adopting or re-adopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Comments or questions regarding these rules may be submitted in writing to, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or electronically to info@cud.texas.gov. The deadline for comments is December 23, 2012.

The Commission also invites your comments on how to make these rules easier to understand. For example:

* Do the rules organize the material to suit your needs? If not, how could the material be better organized?

* Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?

* Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?

* Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

* Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register.* The proposed rules will be open for public comment prior to final adoption by the Commission.

TRD-201205883
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 13, 2012

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Texas Department of Public Safety

Title 37, Part 1

Pursuant to Government Code, §2001.039, the Texas Department of Public Safety (the department) files this notice of intent to review and consider for re-adoption, amendment, or repeal 37 TAC Chapter 3, concerning Texas Highway Patrol; Chapter 4, concerning Commercial Vehicle Regulations and Enforcement Procedures; Chapter 5, concerning Criminal Law Enforcement; Chapter 6, concerning License to Carry Handguns; Chapter 7, concerning Division of Emergency Management; Chapter 9, concerning Public Safety Communications; Chapter 13, concerning Controlled Substances; Chapter 15, concerning Driver License Rules; Chapter 16, concerning Commercial Driver License; Chapter 19, concerning Breath Alcohol Testing Regulations; Chapter 21, concerning Equipment and Vehicle Safety Standards; Chapter 25, concerning Safety Responsibility Regulations; Chapter 28, concerning DNA, CODIS, Forensic Analysis and Crime Laboratories; Chapter 29, concerning Practice and Procedure; Chapter 31, concerning Standards for an Approved Motorcycle Operator Training Course; Chapter 32, concerning Bicycles--Use and Safety; Chapter 33, concerning All-Terrain Vehicle Operator Education and Certification Program; and Chapter 34, concerning Negotiation and Mediation of Certain Contract Disputes.

The department will determine whether the reasons for adopting or re-adopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. Any changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register.*

Comments relating to this rule review will be accepted for a 30-day period following publication of this notice in the *Texas Register.* Comments should be directed to: Susan Estringel, Office of General Counsel, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0140.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comment should be labeled as such. Comments should include proposed alternative language as appropriate.

TRD-201205817
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Filed: November 9, 2012

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Adopted Rule Reviews

Texas Board of Architectural Examiners

Title 22, Part 1

The Texas Board of Architectural Examiners has concluded its review of Chapter 1, concerning Architects. The Board has determined the original purpose for adopting the rules in Chapter 1, continues to exist, except with regard to §1.63, concerning the replacement of certificates of registration and §1.152, concerning the malicious injury to the reputation of another by an architect. The proposed repeal of these rules is published elsewhere in this edition of the *Texas Register*. Except for those two rules, Chapter 1 is re-adopted. The proposed amendments to other rules arising from the Board's review of Chapter 1 are also published elsewhere in this edition of the *Texas Register*.

The rule review was conducted pursuant to Texas Government Code, §2001.039. Notice of the review was published for public comment for 30 days, in the June 8, 2012, issue of the *Texas Register* (37 TexReg 4257). The Board's Rules Committee also held two stakeholder meetings where it solicited internal and external comment. The Board received comment and agreed to amend or repeal certain rules as a result. The commentary is explained in the preambles for the proposed changes to those rules.

The Board disagreed with two public comments recommending amendments to rules within Chapter 1. One comment requested an amendment to §1.143 regarding recklessness in the practice of architecture. The commenter recommended an amendment to specify that personal injury or property damage need not have occurred for an architect's conduct to be deemed as reckless. The commenter also requested an amendment to deem an architect's conduct as reckless upon his or her failure to try to comply with the International Building Code as interpreted by the International Code Council and fire science and fire protection engineers. The Board disagreed with the comment due to the subjectivity of interpretations by others and a general public policy that building codes ought to be followed as written not as interpreted. The Board also expressed concern about limiting the ability of an architect, in conjunction with a building official, to accommodate specific circumstances in the design of a project in which alternative methods must be employed. The Board also noted a practical problem in attempting to prove an architect's subjective state of mind in lacking intent to try or attempt compliance with code interpretations.

The Board disagreed with a comment proposing a provision stating that personal injury or property damage is not necessary for an architect's conduct to be reckless because the current rule and Board precedent do not foreclose a finding of recklessness in the absence of damages. Proposing the amendment would be unnecessary and would imply incorrectly that currently personal or property damages are necessary for a finding of recklessness. A commenter requested an amendment to §1.175, which currently requires the Board's staff to have evidence of certain violations by architects evaluated by a consulting expert who is registered as an architect. The commenter requested that the rule be amended to allow Board staff to secure the evaluation of experts who are not architects, such as fire science engineers. The Board declined to adopt the amendment because the cases against architects arising from the practice of architecture should be within the scope of knowledge of an architect consulting expert. The Board also noted the amendment is unnecessary in that nothing in the rules currently prohibits agency staff from retaining the services of fire science experts, so long as they retain the services of an architect consulting expert. The Board received no other public comment.

This concludes the review of Chapter 1, concerning Architects.

TRD-201205892
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Filed: November 13, 2012

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The Texas Board of Architectural Examiners has concluded its review of Chapter 3, concerning Landscape Architects. The Board has determined the original purpose for adopting the rules in Chapter 3, continues to exist, except with regard to §3.63, concerning the replacement of certificates of registration and §3.152, concerning the malicious injury to the reputation of another by an architect. The proposed repeal of these rules is published elsewhere in this edition of the *Texas Register*. Except for those two rules, Chapter 3 is re-adopted. The proposed amendments to other rules arising from the Board's review of Chapter 3 are also published elsewhere in this edition of the *Texas Register*.

The rule review was conducted pursuant to Texas Government Code, §2001.039. Notice of the review was published for public comment for 30 days, in the June 8, 2012, issue of the *Texas Register* (37 TexReg 4257). The Board's Rules Committee also held two stakeholder meetings where it solicited internal and external comment. The Board received no public comment.

This concludes the review of Chapter 3, concerning Landscape Architects.

TRD-201205893
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Filed: November 13, 2012

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The Texas Board of Architectural Examiners has concluded its review of Chapter 5, concerning Registered Interior Designers. The Board has determined the original purpose for adopting the rules in Chapter 5, continues to exist, except with regard to §5.73 concerning the replacement of certificates of registration and §5.161, concerning the malicious injury to the reputation of another by an architect. The proposed repeal of these rules is published elsewhere in this edition of the *Texas Register*. Except for those two rules, Chapter 5 is re-adopted. The proposed amendments to other rules arising from the Board's review of Chapter 3 are also published elsewhere in this edition of the *Texas Register*.

The rule review was conducted pursuant to Texas Government Code, §2001.039. Notice of the review was published for public comment for 30 days, in the June 8, 2012, issue of the *Texas Register* (37 TexReg 4257). The Board's Rules Committee also held two stakeholder meetings where it solicited internal and external comment. The Board received no public comment.

This concludes the review of Chapter 5, concerning Registered Interior Designers.

TRD-201205894
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Filed: November 13, 2012

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The Texas Board of Architectural Examiners has concluded its review of Chapter 7, concerning Administration. The Board has determined the original purpose for adopting the rules in Chapter 7. Chapter 7 is re-adopted. Proposed amendments to §7.10, concerning General Fees, to repeal an obsolete fee and correct a typographical error are published elsewhere in this edition of the *Texas Register*.

The rule review was conducted pursuant to Texas Government Code, §2001.039. Notice of the review was published for public comment for 30 days, in the June 8, 2012, issue of the *Texas Register* (37 TexReg 4257). The Board's Rules Committee also held two stakeholder meetings where it solicited internal and external comment. The Board received no public comment.

This concludes the review of Chapter 7, concerning Administration.

TRD-201205895
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Filed: November 13, 2012

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Texas Historical Commission

Title 13, Part 2

The Texas Historical Commission (commission) adopts the review of Texas Administrative Code, Title 13, Part 2, Chapter 25, relating to Office of the State Archeologist; Chapter 26, relating to Practice and Procedure; Chapter 28, relating to Historic Shipwrecks; and Chapter 29, relating to Management and Care of Artifacts and Collections. This review was completed pursuant to Texas Government Code §2001.039. The commission has assessed whether the reasons for adopting or re-adopting these chapters continues to exist. Each section of Chapters 25, 26, 28, and 29 was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current general provisions in the governance of the commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act). The commission proposed the review of 13 TAC Chapters 25, 26, 28, and 29 in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1517).

Relating to the review of 13 TAC Chapters 25, 26, 28, and 29, the commission finds the reasons for adopting Chapters 25, 26, 28, and 29 continue to exist and re-adopts the rules. The commission received no comments related to the review of Chapters 25, 26, 28, and 29. At a later date, the THC plans to propose revisions to clarify language in the administration of the programs.

This concludes the review of 13 TAC Chapters 25, 26, 28, and 29.

TRD-201205847
Mark Wolfe
Executive Director
Texas Historical Commission
Filed: November 9, 2012

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Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) has completed its review required by the Texas Government Code §2001.039 of the following chapter of the Texas Administrative Code, Title 28, Part 2: Chapter 150, concerning Representation of Parties Before the Agency--Qualifications for Representatives. The reviewed sections in this chapter are subsequently referred to collectively in this Notice of Adopted Review as "the sections."

The notice of proposed rule review was published in the May 11, 2012, issue of the *Texas Register* (37 TexReg 3609). As provided in this notice, the Division reviewed and considered the sections for re-adoption, revision, or repeal.

The Division considered whether the reasons for adoption of the sections continue to exist.

The Division received comments from two commenters that addressed multiple rules within Chapter 150.

General Comment: Commenters state that all references to "Commission" need to be changed to "Division" or "Division of Workers' Compensation." Commenters state that statutory references also need to be updated as they refer to sections of the Texas Workers' Compensation Act prior to codification. For example, a commenter states that the reference in 150.3(a) to §1.30(40) needs to be changed to Labor Code §401.011(37) and the reference in that same rule to 2.09(e) needs to be changed to Labor Code §402.071. Also, a commenter states that any reference to the Texas Workers' Compensation Act should reference the appropriate Labor Code section and/or subsection.

Agency Response: This rule review process is a periodic administrative agency review of rules and commenters' suggestions are included in the process. The amendment of rules in Chapter 150 is a policy decision which would require analysis and formal rulemaking, including notice and an opportunity for further stakeholder input before any amendment. The Division agrees that future amendments to Chapter 150 may be required to update terminology and statutory references this chapter. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code.

§150.1(a): A commenter states that this rule should apply to any attorney employed by the Division of Workers' Compensation as well as those in practice before the Division of Workers' Compensation. The commenter also states that the word "observe" in subsection (a) should be replaced with "comply with" to make it clear that attorneys employed by or in practice before the Division of Workers' Compensation shall comply with the law. The commenter recommends subsection (a) read: "An attorney, employed by or in practice before the Division of Workers' Compensation shall comply with:"

Agency Response: The amendment of §150.1(a) is a policy decision which would require analysis and formal rulemaking, including notice and an opportunity for further stakeholder input before any amendment. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code.

§150.1(a): A commenter states that in addition to the Texas Disciplinary Rules of Professional Conduct and the Texas Lawyer's Creed, attorneys employed by the Division of Workers' Compensation as well as those in practice before the Division should be required by the Division to comply with the laws of the State of Texas. The commenter

suggests adding a subsection (a)(4) to read "(4) the laws of the State of Texas."

Agency Response: The amendment of §150.1(a) is a policy decision which would require analysis and formal rulemaking, including notice and an opportunity for further stakeholder input before any amendment. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code.

§150.1(a)(1): A commenter states that subsection (a)(1) should be changed to reflect all of the rules of the Division of Workers' Compensation not just "these rules."

Agency Response: The amendment of §150.1(a)(1) is a policy decision which would require analysis and formal rulemaking, including notice and an opportunity for further stakeholder input before any amendment. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code. The Division notes that under §150.2(c)(4) an attorney who violates a Division rule may be disqualified from representing any party before the Division and under §150.3(b) a representative who violates a Division rule may be subject to sanctions.

§150.1(b): A commenter suggests adding a sentence to subsection (b) that states, "an attorney is not required to represent a claimant for free." The commenter also recommends the reference to the Texas Workers' Compensation Act, §4.09 be changed to Texas Labor Code §408.221(i).

Agency Response: The amendment §150.1(b) is a policy decision which would require analysis and formal rulemaking, including notice and an opportunity for further stakeholder input before any amendment. The Division does agree that future amendments to this rule may be required to update references to statutory provisions in the Labor Code. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code.

§150.1(c): In addition to changing the reference to the Texas Workers' Compensation Act to the Labor Code, a commenter suggests amending subsection (c) to read "an attorney who fails to comply with this rule and who is employed by the Division of Workers' Compensation shall be subject to disciplinary action up to and including termination from employment. An attorney in practice before or who is employed by the Division of Workers' Compensation may be assessed an administrative penalty under Texas Labor Code section 415.021."

Agency Response: The amendment of §150.1(c) is a policy decision which would require analysis and formal rulemaking, including notice and an opportunity for further stakeholder input before any amendment. The Division does agree that future amendments to this rule may be required to update references to statutory provisions in the Labor Code. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code.

§150.2(c): In addition to changing the reference to the Texas Workers' Compensation Act to the Labor Code, a commenter recommends amending subsection (c) to read, "An attorney in practice before the Division of Workers' Compensation may be disqualified, after a hearing under Texas Labor Code section 415.034 from representing any party before the Division of Workers' Compensation for the activities set out in this subsection. The Administrative Law Judge of the State Office of Administrative Hearings shall make the final Decision and Order at the conclusion of the hearing. The rules of the State Office of Administrative Hearings will apply to the hearing process except that Administrative Law Judge shall make the final Decision and Order and no Motion for Rehearing is required for any appeal to the District Court."

Agency Response: The amendment of §150.2(c) is a policy decision which would require analysis and formal rulemaking, including notice and an opportunity for further stakeholder input before any amendment. The Division does agree that future amendments to this rule may be required to update references to statutory provisions in the Labor Code. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code.

§150.2(c)(3): A commenter states that subsection (c)(3) conflicts with Texas Disciplinary Rule of Professional Conduct 3.03(a) and should be deleted or repealed.

Agency Response: The deletion or repeal of §150.2(c)(3) is a policy decision which would require analysis and formal rulemaking, including notice and an opportunity for further stakeholder input before any amendment, deletion or repeal. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code. The Division does note that Rule 3.03 of the Texas Disciplinary Rules of Professional Conduct acts in conjunction with Division rules and does not preclude other Division rules applicable to representatives.

§150.3(a)(1): A commenter states that the reference to the State Board of Insurance should be corrected to the Texas Department of Insurance. The commenter also proposes amending subsection (a)(1) to read, "the person is an insurance adjuster holding a Texas Department of Insurance license to adjust workers' compensation claims, if the insurance carrier provides, to the Division of Workers' Compensation a written authorization from the insurance carrier to adjust workers' compensation claims. Written authorization is not required from an adjuster who is an employee of the insurance carrier. The insurance carrier shall provide the written authorization when an adjustor first takes any action on the claim including any investigation of the claim. The written authorization will identify the claim, the insurance carrier, the identity of the adjustor and will be signed and dated by the insurance carrier and filed with the Division of Workers' Compensation within seven days from the date the adjustor first takes any action on the claim."

Agency Response: The amendment §150.3(a)(1) is a policy decision which would require analysis and formal rulemaking, including notice and an opportunity for further stakeholder input before any amendment. The Division does agree that future amendments to this rule may be required to update the references in this rule. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code.

§150.3(a)(3): A commenter requests that this rule be clarified to explicitly state that Office of Injured Employee Counsel Ombudsmen are lay representatives. The commenter states that the Ombudsmen are representatives under the current terms of this provision and Labor Code §401.011(37) and the only reason commenter believes that the rule needs to explicitly state that Ombudsmen are representatives is that when the issue was raised in the past, the Division of Workers' Compensation has maintained that the Ombudsmen are not representatives. The commenter suggests that §150.3(a)(3) be amended to read, "the person files with the division a written power of attorney, or written authorization from the claimant, allowing that person access to confidential records. No fee or remuneration shall be received either directly or indirectly from a claimant. Ombudsmen with the Office of Injured Employee Counsel who receive a written authorization from an injured employee are included within the definition of representative in this subsection." The commenter states that although OIEC Ombudsmen maintain an adjuster's license, they do not function as an adjuster when they assist injured employees in the dispute resolution process. The commenter also says another advantage of this requested change is that it will make clear to all parties that documents need to be exchanged with Ombudsmen who need this information as much as lay representatives and attorneys do and for the same reasons.

Agency Response: The commenter is asking for a substantive amendment to this rule and not a clarification as §150.3(c)(3) does not apply when the person is an adjuster, regardless of the function of the adjuster. Additionally, Labor Code §404.105 provides that Labor Code Chapter 404 may not be construed as requiring or allowing legal representation for an individual injured employee by an ombudsman in any proceeding. The amendment of §150.3(c)(3) is a policy decision which would require analysis and formal rulemaking, including notice and an opportunity for further stakeholder input before any amendment. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code. The Division has determined that the reasons for adopting the sections continue to exist and the sections are retained in their present form. Any revisions in the future will be accomplished in accordance with the Administrative Procedure Act. This concludes the Division's review of Chapter 150. The completion of the review of this chapter concludes the rule review process.

TRD-201205816
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: November 9, 2012

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §83.120(a)

PRIVATE AND PUBLIC POST-SECONDARY COSMETOLOGY SCHOOLS (1500 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)			
		Practical Hours	**Theory Hours**
(A)	Haircutting and styling	450 hours	80 hours
(B)	Hair coloring	179 hours	31 hours
(C)	Cold waving	187 hours	33 hours
(D)	Orientation, rules and laws		50 hours
(E)	Manicuring and diseases	50 hours	75 hours
(F)	Shampoo	25 hours	10 hours
(G)	Chemistry and anatomy		55 hours
(H)	Salon management		60 hours
(I)	Hair and scalp treatment and diseases	45 hours	35 hours
(J)	Chemical hair relaxing	38 hours	12 hours
(K)	Facials, diseases and hair removal	50 hours	35 hours
PUBLIC SECONDARY PROGRAMS FOR HIGH SCHOOL STUDENTS (1000 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)			
(A)	Haircutting, styling, and related theory	400 hours	
(B)	Hair coloring and related theory	150 hours	
(C)	Cold waving and related theory	100 hours	
(D)	Manicuring and related theory	100 hours	
(E)	Orientation, rules and laws	75 hours	
(F)	Shampoo and related theory	75 hours	
(G)	Chemical hair relaxing and related theory	50 hours	
(H)	Facials and related theory	25 hours	
(I)	Hair and scalp treatment and related theory	25 hours	
CLASS A BARBER TO COSMETOLOGY OPERATOR (300 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)			
(A)	Haircutting, styling and related theory	30 hours	
(B)	Hair coloring and related theory	50 hours	
(C)	Permanent waving including chemical hair relaxing and related theory	30 hours	
(D)	Orientation, rules and laws	20 hours	
(E)	Manicuring and related theory	50 hours	
(F)	Shampoo and related theory	10 hours	
(G)	Chemistry	20 hours	
(H)	Salon management and practices	10 hours	
(I)	Hair and scalp treatment and related theory	5 hours	
(J)	Facials and related theory	75 hours	

Figure: 16 TAC §401.305(c)(8)

Terminal Type	Manual Entry	Playslip with No Payment Option Selected
GT1200 (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity	Playslip Rejected with message "Playslip Rejected. Select Payment Option."
GT1200C (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity.	Playslip Rejected with message "Playslip Rejected. Select Payment Option."
GT Mini (Retailer Terminal)	Default to CVO; retailer toggles to choose Annuity.	Not Applicable.
Gemini (Self-service Terminal)	CVO only - designated on on-line game Quick Pick buttons.	Playslip Rejected with message "Playslip Rejected. Select Payment Option."

Figure: 16 TAC §401.305(g)(3)

Lotto Texas Prizes	Extra Guaranteed Prize Amount
Jackpot Prize or Match 6-of-6	Not applicable
Second Prize or Match 5-of-6	Second Prize Amount Plus $10,000
Third Prize or Match 4-of-6	Third Prize Amount Plus $100
Fourth Prize or Match 3-of-6	Fourth Prize Amount Plus $10
Match 2-of-6	$2

Figure: 22 TAC §7.10(b)

Fee Description	Architects	Landscape Architects	Interior Designers
Exam Application	$100	$100	$100
Examination	****	***	**
Registration by Examination - Resident	$155	*$355	*$355
Registration by Examination - Nonresident	$180	*$380	*$380
Reciprocal Application	$150	$150	$150
Reciprocal Registration	*$400	*$400	*$400
Active Renewal - Resident	*$305	*$305	*$305
Active Renewal - Nonresident	*$400	*$400	*$400
Active Renewal 1-90 days late - Resident	*$457.50	*$457.50	*$457.50
Active Renewal greater than 90 days late - Resident	*$610	*$610	*$610
Active Renewal 1-90 days late - Nonresident	*$600	*$600	*$600
Active Renewal greater than 90 days late - Nonresident	*$800	*$800	*$800
Emeritus Renewal - Resident	$10	$10	$10
Emeritus Renewal - Nonresident	$10	$10	$10
Emeritus Renewal 1-90 days late - Resident	$15	$15	$15
Emeritus Renewal greater than 90 days late - Resident	$20	$20	$20
Emeritus Renewal 1-90 days late - Nonresident	$15	$15	$15
Emeritus Renewal greater than 90 days late - Nonresident	$20	$20	$20
Annual Business Registration	*****$30	*****$30	*****$30
Business Registration Renewal 1-90 days late	*****$45	*****$45	*****$45
Business Registration Renewal Greater than 90 days late	*****$60	*****$60	*****$60
Inactive Renewal - Resident	$25	$25	$25
Inactive Renewal - Nonresident	$125	$125	$125
Inactive Renewal 1-90 days late - Resident	$37.50	$37.50	$37.50
Inactive Renewal greater than 90	$50	$50	$50

days late - Resident			
Inactive Renewal 1-90 days late - Nonresident	$187.50	$187.50	$187.50
Inactive Renewal greater than 90 days late - Nonresident	$250	$250	$250
Reciprocal Reinstatement	$610	$610	$610
Change in Status - Resident	$65	$65	$65
Change in Status - Nonresident	$95	$95	$95
Reinstatement - Resident	$685	$685	$685
Reinstatement - Nonresident	$775	$775	$775
Certificate of Standing - Resident	$30	$30	$30
Certificate of Standing - Nonresident	$40	$40	$40
Replacement or Duplicate Wall Certificate - Resident	$40	$40	$40
Replacement of Duplicate Wall Certificate - Nonresident	$90	$90	$90
Duplicate Pocket Card	$5	$5	$5
Reopen Fee for closed candidate files	$25	$25	$25
Examination - Record Maintenance	$25	$25	$25
Returned Check Fee	$25	$25	$25
Application by Prior Examination	-	-	$100

*These fees include a $200 professional fee required by the State of Texas and deposited with the State Comptroller of Public Accounts into the General Revenue Fund. The fee for initial architectural registration by examination does not include the $200 professional fee. Under the statute, the professional fee is imposed only upon each renewal of architectural registration.

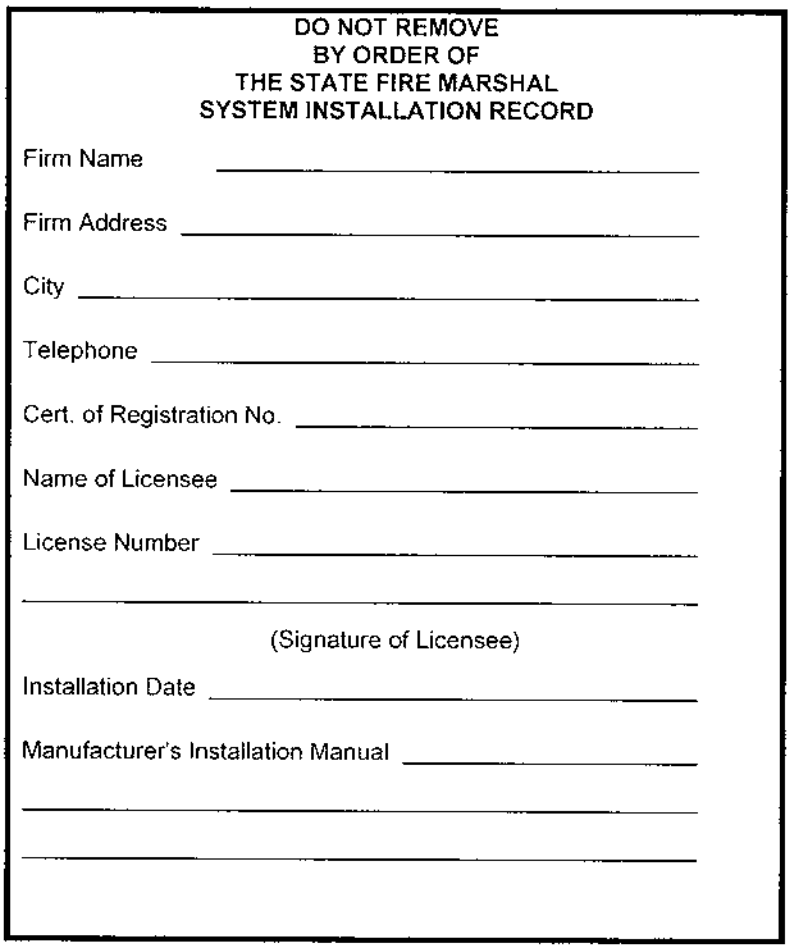
**Examination fees are set by the Board examination provider, the National Council for Interior Design Qualification ("NCIDQ"). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination is to be given.

***Examination fees are set by the Board's examination provider, the Council of Landscape Architectural Registration Boards ("CLARB"). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination is to be given.

****Examination fees are set by the Board's examination provider, the National Council of Architectural Registration Boards ("NCARB"). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination will be given.

*****Notwithstanding the amounts shown in each column, a multidisciplinary firm which renders or offers two or more of the regulated professions of architecture, landscape architecture, and interior design is required to pay only a single fee in the same manner as a firm which offers or renders services within a single profession.

Figure: 28 TAC §34.519(b)


DO NOT REMOVE
BY ORDER OF
THE STATE FIRE MARSHAL
SYSTEM INSTALLATION RECORD

Firm Name _____

Firm Address _____

City _____

Telephone _____

Cert. of Registration No. _____

Name of Licensee _____

License Number _____

_____

(Signature of Licensee)

Installation Date _____

Manufacturer's Installation Manual _____

_____

_____

Figure: 28 TAC §34.519(c)

Texas Department of Insurance
State Fire Marshal's Office Mail Code 112-FM
333 Guadalupe • P. O. Box 149221, Austin, Texas 78714-9221
512-305-7900 • 512-305-7910 fax • www.tdi.texas.gov

INSTALLING COMPANY _____
Address: _____
City: _____ Zip _____
Phone: _____
Company Certificate of Registration Number _____

PROTECTED PROPERTY
Name: _____
Street Address: _____
City: _____ *Zip:* _____
Owner or Owner's representative instructed on system operation & maintenance: ☐ Yes ☐ No
Owners Rep. if applicable: _____

LOCAL AUTHORITY HAVING JURISDICTION
Name: _____
Street Address: _____
City: _____ *Zip:* _____

HAZARD ANALYSIS
Name of area, room, building or hazard protected
_____
Primary Class of Protected Hazard
☐ Class A - Wood, paper, etc.
☐ Class B - Flammable liquids
☐ Class C - Electrical equipment
☐ Class D - Combustible metals
☐ Explosives
☐ _____

Kitchen Hoods & Appliance System

	Height	Length	Width
Overall Hood	____ ft x	____ ft x	____ ft
Plenum		____ ft x	____ ft
Exhaust duct perimeter		____ in	

Qty	Appliances Protected	Gas or Elect	Length	Width
____	Deep Fat Fryer	____	____ in x	____ in
____	Range	____	____ in x	____ in
____	Griddle	____	____ in x	____ in
____	Char Broiler	____	____ in x	____ in
____	Radiant Broiler	____	____ in x	____ in
____	Upright Broiler	____	____ in x	____ in
____	_____	____	____ in x	____ in
____	_____	____	____ in x	____ in
____	_____	____	____ in x	____ in

Other Type Hazards
Is hazard normally occupied? ☐ Yes ☐ No ☐ N/A
Size of Hazard
Total Volume _____ cuft
or Total Area _____ sqft

	Height	Length	Width
approx.	____ ft x	____ ft x	____ ft
approx.	____ ft x	____ ft x	____ ft
approx.	____ ft x	____ ft x	____ ft

Area sealed to prevent agent loss? ☐ Yes ☐ No ☐ N/A
Number of room air changes per minute? ____ /min. ☐ N/A
Warning & instruction signs posted? ☐ Yes ☐ No ☐ N/A

SYSTEM INFORMATION
System Manufacturer's Name: _____
Installation Manual: *UL Number:* _____ *Date:* _____
Design type: *Pre-engineered:* _____ *Engineered:* _____
If Pre-engineered, Model Number _____
Coverage Type: *Total Flooding:* _____ *Local App.:* _____
System Actuation: *Automatic:* _____ *Manual:* _____
Air/Fan shutdown on actuation? Yes: _____ *No:* _____
Design discharge rate or concentration level: _____
Design discharge time: *Seconds:* _____

AGENT INFORMATION
Type of agent provided: _____

Qty	*Storage cylinder*	*Manufacturer*	*Part No.*	*Amount of agent*
____	_____	_____	_____	_____
____	_____	_____	_____	_____

EQUIPMENT INFORMATION
Initiating Devices

Qty	*Item*	*Manufacturer*	*Part No.*	*Temperature*
____	Fusible Links	_____	_____	_____
____	Sprinkler Heads	_____	_____	_____
____	Heat Detectors	_____	_____	_____
____	Smoke Detectors	_____	_____	_____
____	Other Fire Detectors	_____	_____	_____
____	Manual Pull Stations	_____	_____	

Nozzles	*Part No.*	*Qty*	*Part No.*
____	_____	_____	_____
____	_____	_____	_____

Interlock	*Item*	*Manufacturer*	*Part No.*
____	Fan or A/C Shutdown	_____	_____
____	Gas line Shut-off	_____	_____
____	Electric Shut-off	_____	_____

Use the back of the form, or additional paper, to sketch the piping configuration and device location.

TESTING
Method system was tested: _____

This system was installed in accordance with the following codes:

NFPA	_____	Year	_____
NFPA	_____	Year	_____
_____	_____	Year	_____
_____	_____	Year	_____

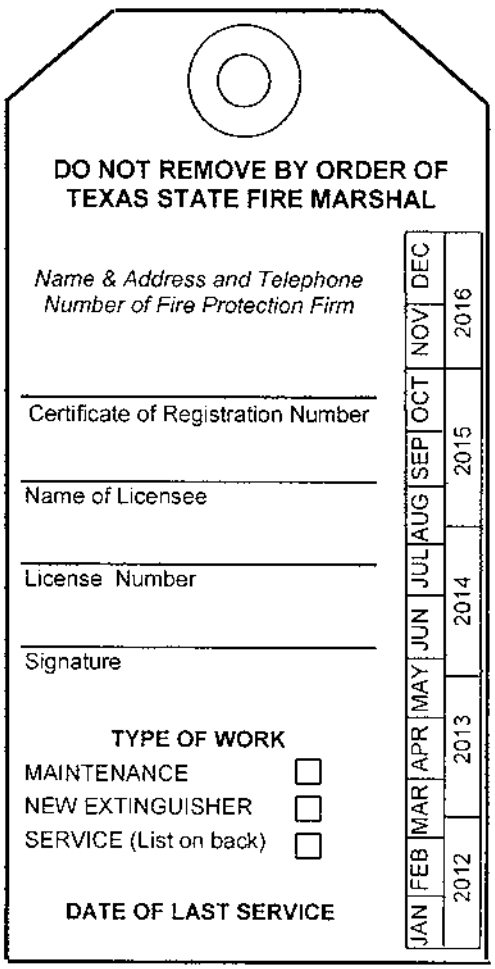
I certify that this fixed fire extinguishing system has been tested and complies with the requirements of Chapter 6001 of the Texas Insurance Code, as amended, and the fire extinguisher rules and adopted NFPA Standards.

_____ _____
Signature of Licensee & License Number

_____ _____
Planning Superintendent & License Number
Completion Date _____

Reproduce Form & Distribute
Original to Protected Premise
Copy 1 to Authority having Jurisdiction
Copy 2 Certifying Firm for access by SFMO
Form# FML 010 October 2012
SF205 Rev 10/12

Figure: 28 TAC §34.520(g)



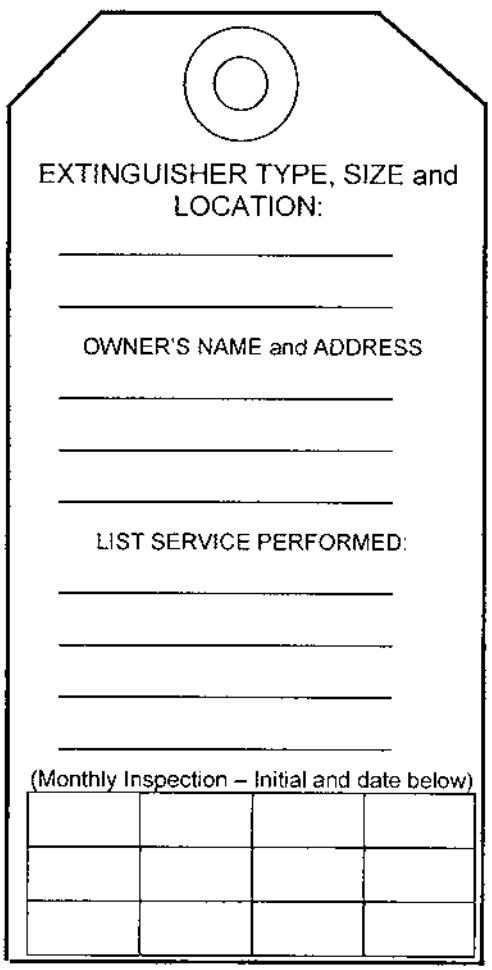


Figure: 28 TAC §34.620(g)

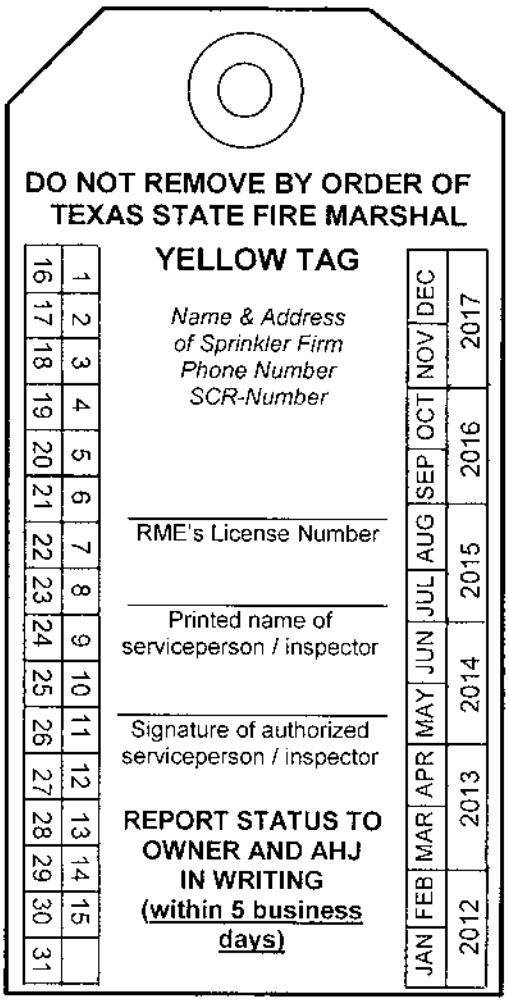
DO NOT REMOVE BY ORDER OF
TEXAS STATE FIRE MARSHAL
(for life of system)
1 or 2 family fire alarm/detection devices or system
INSTALLATION RECORD
(Post inside panel or if no panel in a permanent location)

Registered Firm's Name
Street Address
City, State, Zip
Phone Number ACR-(*number*)

Installation Date - Licensee Signature - License #

I hereby certify, on behalf of the registered firm, that the fire alarm equipment or system has been tested and complies with the requirements of Insurance Code Chapter 6002, the Fire Alarm Rules, the adopted codes and standards, and the manufacturer's requirements.

Figure: 28 TAC §34.721(g)



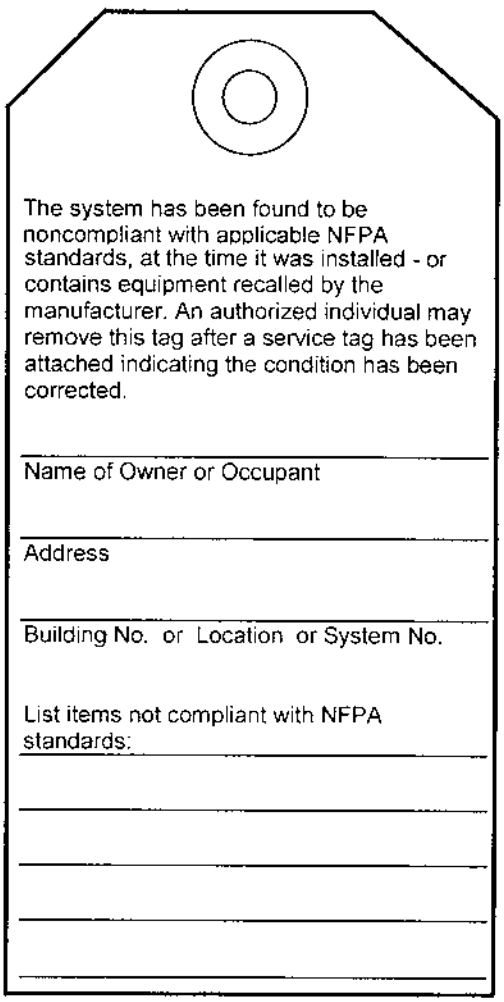


Figure: 34 TAC §2.202(j)

Number of Years the Event was Held in Texas in Last Five Years	Percent of Revenue Impact Used in Trust Fund Estimate
0	100.0%
1	85.5%
2	74.6%
3	66.2%
4	59.5%
5	54.1%

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

Notice of Settlement of a Texas Solid Waste Disposal Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal Act. Before the State may settle a judicial enforcement action, pursuant to 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.

Case Title and Court: *Ector County, Texas and the State of Texas acting by and through the Texas Commission on Environmental Quality v. Holloman Corporation,* Cause No. C-133,895, in the 244th Judicial District Court, Ector County, Texas.

Background: Employees of Holloman Corporation disposed of non-inert waste in an unlicensed landfill on the property of Holloman Corporation. The claim that Holloman engaged in the disposal of waste, in violation of the Texas Solid Waste Disposal Act, has been settled.

Proposed Agreed Judgment: The Agreed Final Judgment orders Holloman Corporation to pay $5,000.00 in civil penalties to be divided equally between Ector County and the State of Texas. In addition, Holloman Corporation shall pay attorney's fees of $1,000.00 to Ector County and $1,200.00 to the State of Texas. Defendants shall pay all court costs.

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 Charles C. Bissinger III, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 475-4011, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201205770
Katherine Cary
General Counsel
Office of the Attorney General
Filed: November 8, 2012

♦ ♦ ♦

Cancer Prevention and Research Institute of Texas

Request for Applications R-13-ETRA-1 - Early Translational Research Award

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas for innovative research projects addressing critically important questions that will significantly advance the treatment of cancer. The objective of this award is to "bridge the gap" between promising new discoveries achieved in the research laboratory and commercial development by funding attainment of a Target Product Profile for the therapeutic, device, or diagnostic assay through activities up to and including preclinical proof-of-principle data that demonstrate applicability to the planned clinical scenario. The work funded under this RFA must be deemed sufficiently robust such that successful completion would result in identification of a "lead" compound, assay, or device that, as a next stage, could be taken into full development in compliance with International Conference on Harmonization (ICH) Guidelines and U.S. regulatory guidance documents and regulations. Applicants must identify a clear path of development to achieve the Target Product Profile outlined in the application. Successful applicants would be eligible for a grant award of up to $1,000,000 for a period of 1 - 3 years.

A request for applications is available online at www.cprit.state.tx.us. Applications must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. Central Time on December 14, 2012. There is a cap on the number of applications that may be submitted per institution. Applicants are advised to consult with their institution's Office of Research and Sponsored Programs (or equivalent).

TRD-201205868
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: November 12, 2012

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/19/12 - 11/25/12 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/19/12 - 11/25/12 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201205888
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 13, 2012

♦ ♦ ♦

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 January 7, 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 January 7, 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: Ajmer S. Mattu dba Roberts Grocery; DOCKET NUMBER: 2012-1002-PST-E; IDENTIFIER: RN101443398; LOCATION: Gladewater, Gregg County; TYPE OF FACILITY: retail convenience store; RULE VIOLATED: 30 TAC §334.50(b)(2), and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tank (UST); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $4,005; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: American Marazzi Tile, Incorporated; DOCKET NUMBER: 2012-0216-AIR-E; IDENTIFIER: RN100218080; LOCATION: Sunnyvale, Dallas County; TYPE OF FACILITY: tile manufacturing plant; RULE VIOLATED: 30 TAC §117.445(b)(1)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit written notification within 15 days after testing was completed; 30 TAC §117.435(b) and (f) and §117.8010(5)(B) and THSC, §382.085(b), by failing to report test results in the units of the applicable emission specifications and to include a log of process operating levels (production rates) in the test results submitted on July 19, 2011 for Emission Point Numbers (EPNs) KS-A1, KS-A2, KS-1, KS-3, and KS-4; 30 TAC §§116.115(b)(2)(F) and (c), 117.410(d)(1)(B), and 122.143(4), New Source Review Permit Number 19841, Special Conditions Number 1, Federal Operating Permit Number O1147, Special Terms and Conditions Number 1.A., and THSC, §382.085(b), by failing to meet the carbon monoxide (CO) emissions specification of 400 dry parts per million (ppm) corrected to 3% oxygen at EPN BP-4; and 30 TAC §117.410(b)(13)(B) and (d)(1)(B) and §122.143(4) and THSC, §382.085(b), by failing to meet the CO emissions specification of 400 dry ppm corrected to 3% oxygen at EPNs KS-A1, KS-A2, and KD-A and to meet the nitrogen oxides emissions limit of 0.150 pounds per million British thermal units at EPN BP-3; PENALTY: $136,010; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Arkema, Incorporated; DOCKET NUMBER: 2012-1492-PWS-E; IDENTIFIER: RN104966320; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: refinery with a public water supply; RULE VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director prior to making any significant change or addition to the existing systems which results in an increase or decrease in production, treatment, storage, or pressure maintenance capacity; 30 TAC §290.46(e) and THSC, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher license; 30 TAC §290.109(c)(1)(A), by failing to collect routine distribution coliform samples at active service connections which are representative of water quality throughout the distribution system; and THSC, §370.008 and TWC, §5.702, by failing to pay all fees, including any associated late fees and penalties, for TCEQ Financial Administration Account Number 0500711; PENALTY: $150; ENFORCEMENT COORDINATOR: Andrea Linson, (512) 239-1482; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Asash Termite & Pest Control Company, Incorporated; DOCKET NUMBER: 2012-1432-PST-E; IDENTIFIER: RN101792083; LOCATION: Laredo, Webb County; TYPE OF FACILITY: non-retail fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide proper release detection for the suction piping associated with the underground storage tank system; PENALTY: $3,143; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(5) COMPANY: Azhar Niazi dba Tex's Grocery; DOCKET NUMBER: 2012-1394-PST-E; IDENTIFIER: RN101663201; LOCATION: Lampasas, Lampasas 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 (c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST system; PENALTY: $3,883; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: BASF FINA Petrochemicals Limited Partnership; DOCKET NUMBER: 2012-1277-AIR-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Federal Operating Permit Number O-2551, Special Terms and Conditions Number 20, New Source Review Permit Numbers 36644, PSDTX903M3, and N007M1, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to maintain compliance with the nitrogen oxides hourly maximum allowable emission rate for Boiler B-7290; PENALTY: $12,850; Supplemental Environmental Project offset amount of $5,140 applied to Texas Air Research Center - Flare Speciation and Air Quality Modeling; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: BAY AREA HEALTHCARE GROUP, LTD. dba Corpus Christi Medical Center; DOCKET NUMBER: 2012-1484-PST-E; IDENTIFIER: RN101433399; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: hospital with one underground storage tank (UST); RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the piping associated with the UST; PENALTY: $2,939; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8) COMPANY: Bell Hai Grocery, Incorporated dba Bell Hai Grocery; DOCKET NUMBER: 2012-1363-PST-E; IDENTIFIER: RN102394871; LOCATION: Heidenheimer, Bell 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: $3,750; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: BOENING BROTHERS DAIRY, INCORPORATED; DOCKET NUMBER: 2012-1669-PST-E; IDENTIFIER: RN101794204; LOCATION: Floresville, Wilson County; TYPE OF FACILITY: dairy farming operation; 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 a month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: CHAPPELL HILL WATER SUPPLY CORPORATION; DOCKET NUMBER: 2012-1465-PWS-E; IDENTIFIER: RN101239572; LOCATION: Chappell Hill, Washington 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 within 24 hours using the prescribed notification format as specified in 30 TAC §290.47(e); and 30 TAC §290.44(d) and §290.46(r), by failing to operate the facility to maintain a minimum pressure of 35 pounds per square inch (PSI) throughout the distribution system under normal operating conditions and a minimum pressure of 20 psi during emergencies such as fire fighting; PENALTY: $888; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: City of Gregory; DOCKET NUMBER: 2011-0152-MWD-E; IDENTIFIER: RN101917623; LOCATION: Gregory, San Patricio County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and §30.350(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010092001, Other Requirements Number 1, by failing to employ or contract with a licensed operator; 30 TAC §305.125(1) and (17), and §319.7(d), and TPDES Permit Number WQ0010092001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; 30 TAC §305.125(1) and §319.4, and TPDES Permit Number WQ0010092001, Monitoring and Reporting Requirements Number 1, by failing to monitor effluent at the intervals specified in the permit; and TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0010092001, Effluent Limitations and Monitoring Requirements Number 1, by failing to maintain compliance with permitted effluent limitations; PENALTY: $15,318; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(12) COMPANY: City of Huntsville; DOCKET NUMBER: 2012-1172-MWD-E; IDENTIFIER: RN101609568; LOCATION: Huntsville, Walker County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010781004, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater from the collection system into or adjacent to water in the state; PENALTY: $13,438; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: City of McGregor; DOCKET NUMBER: 2012-1036-MWD-E; IDENTIFIER: RN101609220; LOCATION: McGregor, McLennan County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010219002, Final Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, by failing to comply with permitted effluent limits; 30 TAC §305.125(1) and (17), and TPDES Permit Number WQ0010219002, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2011 by September 1, 2011; and 30 TAC §305.125(1) and (17), and §319.7(d), and TPDES Permit Number WQ0010219002, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; PENALTY: $22,427; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: City of Megargel; DOCKET NUMBER: 2012-1289-PWS-E; IDENTIFIER: RN101386605; LOCATION: Megargel, Archer County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the running annual average; and 30 TAC §290.46(f)(3)(c)(iii) and (4), by failing to submit routine reports and any additional documentation that the executive director may require to determine compliance with the requirements of this chapter; PENALTY: $1,104; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(15) COMPANY: City of Pflugerville; DOCKET NUMBER: 2012-1486-MWD-E; IDENTIFIER: RN104447495; LOCATION: Pflugerville, Travis County; TYPE OF FACILITY: water treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number WQ0011845006, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $2,375; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(16) COMPANY: City of Shiner; DOCKET NUMBER: 2012-0466-MWD-E; IDENTIFIER: RN101919181; LOCATION: Shiner, Lavaca County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010280001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits;

and TWC, §26.121(a)(1), 30 TAC §305.125(1), (4), and (5) and TPDES WQ0010280001, Final Effluent Limitations and Monitoring Requirements Number 4, Operational Requirements Number 1, and Contributing Industries and Pretreatment Requirements Number 1(d), by failing to control and regulate the type, character, and quality of waste which may be discharged to the facility, resulting in a discharge of foam into the receiving stream; PENALTY: $8,950; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(17) COMPANY: Cypress Hills Limited dba The Challenge at Cypress Hills; DOCKET NUMBER: 2012-1003-PWS-E; IDENTIFIER: RN101188787; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i), and (3)(A)(ii), by failing to collect routine distribution water samples for coliform analysis, and by failing to collect at least four repeat distribution samples within 24 hours of being notified of a total coliform-positive result; and 30 TAC §290.109(c)(4)(B), by failing to collect one raw groundwater source *escherichia coli* sample from the facility's well within 24 hours of being notified of a distribution total coliform-positive result; PENALTY: $2,490; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(18) COMPANY: Dolphin Petroleum, LP; DOCKET NUMBER: 2012-0894-AIR-E; IDENTIFIER: RN100216902; LOCATION: Refugio, Refugio County; TYPE OF FACILITY: oil and gas production plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), AO Docket Number 2010-0193-AIR-E, Ordering Provisions Number 2.a., Federal Operating Permit Number O-0257/Oil and Gas General Operating Permit Number 514, Site-wide Requirements (b)(1) and (2), and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days after the end of the certification period; PENALTY: $3,675; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(19) COMPANY: Douglas A. Bateman dba Bateman Water Works; DOCKET NUMBER: 2012-1589-PWS-E; IDENTIFIER: RN101198778; LOCATION: Rosharon, Brazoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite sampling to the TCEQ's executive director; 30 TAC §290.107(e), by failing to provide the results of triennial sampling for synthetic organic contaminants to the TCEQ's executive director; 30 TAC §290.109(c)(2)(A)(ii) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the month of March 2012; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; PENALTY: $590; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Dripping Springs Apartments, L.P.; DOCKET NUMBER: 2012-1020-MWD-E; IDENTIFIER: RN102768231; LOCATION: Dripping Springs, Hays County; TYPE OF FACILITY: wastewater treatment facility and disposal site; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and TCEQ Permit Number WQ0014146001, Effluent Limitations and Monitoring Requirements A, by failing to comply with the permitted effluent limitations; 30 TAC §305.125(1) and TCEQ Permit Number WQ0014146001, Monitoring Requirements Number 5, by failing to accurately calibrate all automatic flow measuring or recording devices and all totalizing meters for measuring flows at least annually unless authorized by the executive director for a longer period; 30 TAC §305.125(1) and TCEQ Permit Number WQ0014146001, Special Provisions (SP) Number 9, by failing to obtain and analyze soil samples from the land application site; and 30 TAC §305.125(1), TWC, §26.121(a)(1), and TCEQ Permit Number WQ0014146001, Operational Requirements Number 1, Permit Conditions Number 2.g, and SP Number 4, by failing to adequately maintain the drip irrigation system resulting in a discharge into or adjacent to water in the state; PENALTY: $7,646; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(21) COMPANY: DUNLAP-SWAIN TIRE COMPANY, INCORPORATED dba Dunlap Swain 14; DOCKET NUMBER: 2010-0757-PST-E; IDENTIFIER: RN101531622; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: full service auto repair and tire maintenance; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of Stage II equipment at least once every 12 months; PENALTY: $2,354; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: EM Biogas, LLC and Biosolids Management Group, Incorporated; DOCKET NUMBER: 2012-0761-IHW-E; IDENTIFIER: RN106351711; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: biogas plant; RULE VIOLATED: 30 TAC §335.4(1) and TWC, §26.121, by failing to prevent the unauthorized discharge of industrial solid waste into or adjacent to water in the state; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Federal Aviation Administration Houston Tracon District 190; DOCKET NUMBER: 2012-0686-PST-E; IDENTIFIER: RN102718392; LOCATION: Houston, Harris County; TYPE OF FACILITY: emergency generator; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the piping associated with the underground storage tank system; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: G. P. Plastics Corporation; DOCKET NUMBER: 2012-1553-AIR-E; IDENTIFIER: RN101341733; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: plastic bag manufacturing plant; RULE VIOLATED: 30 TAC §101.10(b)(2) and (e) and Texas Health and Safety Code, §382.085(b), by failing to submit an annual emissions inventory update by March 31, 2012; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: HAMEEDA INVESTMENTS, INCORPORATED dba Peachtree Food & Beer Wine; DOCKET NUMBER: 2012-0633-PST-E; IDENTIFIER: RN102223435; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,100; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Hari Enterprises, L.L.C. dba El Campo Truck Stop; DOCKET NUMBER: 2012-1209-PST-E; IDENTIFIER: RN102280518; LOCATION: El Campo, Wharton 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 per month (not to exceed 35 days between each monitoring); PENALTY: $9,525; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: IFS Coatings, Incorporated; DOCKET NUMBER: 2012-1555-AIR-E; IDENTIFIER: RN102985470; LOCATION: Gainesville, Cook County; TYPE OF FACILITY: powder coating manufacturing plant; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.085(b) and §382.0518(a), by failing to obtain proper authorization; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Ana Quinones, (512) 239-2608; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: J. T. Kennard III, George Shaw and Gail P. Shaw; DOCKET NUMBER: 2012-1185-MSW-E; IDENTIFIER: RN104885561; LOCATION: Azle, Tarrant County; TYPE OF FACILITY: unauthorized waste disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: James B. Madison and Deana M. Perdue d/b/a Madisons; DOCKET NUMBER: 2012-1189-PST-E; IDENTIFIER: RN102714011; LOCATION: Amarillo, Potter 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; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for piping associated with the UST system; PENALTY: $15,712; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(30) COMPANY: Jay Madi, Incorporated dba Beachside Market; DOCKET NUMBER: 2012-1416-PST-E; IDENTIFIER: RN103026571; LOCATION: Corpus Christi, Nueces 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 a month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(31) COMPANY: Jr.'s Texas Best, LLC dba Jr.'s Texas Best Smokehouse; DOCKET NUMBER: 2012-1496-PST-E; IDENTIFIER: RN104375290; LOCATION: Wharton, Wharton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST system; PENALTY: $3,880; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(32) COMPANY: LBC Houston, L.P.; DOCKET NUMBER: 2012-0565-AIR-E; IDENTIFIER: RN101041598; LOCATION: Seabrook, Harris County; TYPE OF FACILITY: bulk liquid storage and transfer; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O1001, General Terms and Conditions, by failing to submit a Permit Compliance Certification within 30 days after the end of the certification period; PENALTY: $6,038; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3553; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: LOVERS LANE EUROPEAN AUTOMOTIVE LLC dba Snappee Auto Care & Lube; DOCKET NUMBER: 2012-1182-PST-E; IDENTIFIER: RN101534113; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: auto mechanic shop; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the underground storage tanks (USTs) within 30 days from the date of the occurrence of the change or addition; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; 30 TAC §334.50(b)(1)(A) and (2) and (d)(1)(B)(ii), and TWC, §26.3475(b) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the suction piping associated with the USTs and also by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form; and 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95% capacity; PENALTY: $11,096; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(34) COMPANY: Mark Guess dba Guess Calf Ranch; DOCKET NUMBER: 2012-1452-AGR-E; IDENTIFIER: RN102096245; LOCATION: Summerfield, Parmer County; TYPE OF FACILITY: concentrated animal feeding operation; RULE VIOLATED: 30 TAC §321.37(d) and TCEQ General Permit Number TXG920820, Part III, Section A., Number 6, by failing to construct, operate, and maintain retention control structures to contain all wastewater including the runoff and direct precipitation from the 25-year, 24-hour rainfall event; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(35) COMPANY: Marlow Oil Distributor, Incorporated; DOCKET NUMBER: 2012-0145-PST-E; IDENTIFIER: RN101432953; LOCATION: Terrell, Kaufman County; TYPE OF FACILITY: wholesale fuel; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,250; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(36) COMPANY: Matthew L. Riggs dba West End Convenience Store; DOCKET NUMBER: 2012-1318-PST-E; IDENTIFIER: RN101431807; LOCATION: San Saba, San Saba 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 proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: $5,756; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(37) COMPANY: Maverick County; DOCKET NUMBER: 2012-0285-PWS-E; IDENTIFIER: RN101253565; LOCATION: Eagle Pass, Maverick County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4), by failing to maintain a disinfectant residual concentration of at least 0.5 milligrams per liter chloramine in the water throughout the distribution system; and 30 TAC §290.46(e)(6)(C) and Texas Health and Safety Code, §341.033(a), by failing to have at least one Class C or higher surface water operator on duty at the facility when it is in operation or provide the facility with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the facility is not staffed; PENALTY: $742; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(38) COMPANY: MINSA CORPORATION; DOCKET NUMBER: 2012-1153-IWD-E; IDENTIFIER: RN102597200; LOCATION: Muleshoe, Bailey County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and TCEQ Permit Number WQ0003032000, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; 30 TAC §305.125(9)(A) and TCEQ Permit Number WQ0003032000, Monitoring Requirements Number 7, by failing to report any noncompliance to the executive director which may endanger human health or safety or the environment; 30 TAC §319.6 and §319.9(d), by failing to conduct the required calibration for the facility's pH meter; 30 TAC §305.125(1) and TCEQ Permit Number WQ0003032000, Special Provisions (SP) I, by failing to prevent the application of wastewater to any zone containing standing water; 30 TAC §305.125(1) and TCEQ Permit Number WQ0003032000, Operational Requirements Number 1, by failing to properly operate and maintain all facilities and systems of treatment and control; 30 TAC §305.125(1) and TCEQ Permit Number WQ0003032000, SP P, by failing to obtain representative soil samples from the root zones of the land application area; 30 TAC §305.125(1) and TCEQ Permit Number WQ0003032000, SP H, by failing to maintain adequate signs stating that the irrigation water is from a non-potable water supply; 30 TAC §305.125(1) and TCEQ Permit Number WQ0003032000, SP Q, by failing to submit the annual cropping plan by September 30, 2011; 30 TAC §305.125(1) and TCEQ Permit Number WQ0003032000, SP C, by failing to maintain a site map identifying the locations of the five on-site public water supply wells and their respective 500-foot buffer zones on-site; 30 TAC §305.125(1) and TCEQ Permit Number WQ0003032000, SP G, by failing to maintain a readily accessible sampling point and flow measuring device for the discharge from the irrigation retention ponds; 30 TAC §305.125(1) and TCEQ Permit Number WQ0003032000, SP J, by failing to maintain a perennial crop of alfalfa or similar vegetative cover over the irrigated area; 30 TAC §305.125(1) and TCEQ Permit Number WQ0003032000, Conditions of the Permit, by failing to maintain effluent analysis results on-site for five years and available for review; 30 TAC §305.125(1) and TCEQ Permit Number WQ0003032000, Conditions of the Permit Number 1, by failing to submit effluent analysis results by September 30th of each calendar year; 30 TAC §305.125(1) and TCEQ Permit Number WQ0003032000, SP N and Monitoring Requirements Number 3.b, by failing to maintain the annual groundwater monitoring report on-site; 30 TAC §305.125(1) and TCEQ Permit Number WQ0003032000, Monitoring Requirements Number 5, by failing to conduct, at a minimum, annual calibration of all automatic flow measuring or recording devices and all totalizing meters for measuring flows; and 30 TAC §305.125(1) and TCEQ Permit Number WQ0003032000, SP R, by failing to submit an updated soil moisture monitoring plan within 90 days after the date of permit issuance; PENALTY: $34,315; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(39) COMPANY: Nazma Khan dba KV COUNTRY STORE; DOCKET NUMBER: 2012-1377-PST-E; IDENTIFIER: RN102272606; LOCATION: Wharton, Wharton 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 tank (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 piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $4,630; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(40) COMPANY: Petro-Chemical Transport, LLC; DOCKET NUMBER: 2012-1483-PST-E; IDENTIFIER: RN106456205; LOCATION: Carrollton, Dallas County; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §115.221(2) and Texas Health and Safety Code, §382.085(b), by failing to control displaced vapors by a vapor control or a vapor balance system during the transfer of gasoline from a tank-truck tank into the underground storage tanks located at 2600 Guadalupe Street in Austin, Travis County; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(41) COMPANY: Rafidi Enterprises, LLC dba Grande Mart; DOCKET NUMBER: 2012-1201-PST-E; IDENTIFIER: RN102263944; LOCATION: Brownsville, Cameron County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,250; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(42) COMPANY: RKL Holdings LLC dba Graford Mini Mart; DOCKET NUMBER: 2012-1341-PST-E; IDENTIFIER: RN104609011; LOCATION: Graford, Palo Pinto 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: $3,825; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(43) COMPANY: S.L.C. WATER SUPPLY CORPORATION; DOCKET NUMBER: 2012-1266-PWS-E; IDENTIFIER: RN101265908; LOCATION: Limestone County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(3)(c)(iii) and (4), by failing to submit routine reports and any additional documentation that the executive director may require to determine compliance with the requirements of this chapter; and 30 TAC §290.133(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the running annual average; PENALTY: $417; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(44) COMPANY: San Antonio Water System; DOCKET NUMBER: 2012-1550-MWD-E; IDENTIFIER: RN100851518; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: wastewater treatment facility with an associated collection system; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010137008, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of municipal wastewater from the collection system into water in the state; PENALTY: $39,375; Supplemental Environmental Project offset amount of $39,375 applied to Texas State University - Continuous Water Quality Monitoring Network; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(45) COMPANY: Sanhedrin II, L.P. dba Park Six West; DOCKET NUMBER: 2012-1351-PWS-E; IDENTIFIER: RN101281129; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e) and §290.113(e), by failing to timely report to the executive director annual sampling results for nitrate/nitrite and Stage 1 disinfectant byproducts monitoring for the 2009 - 2011 monitoring periods; 30 TAC §290.106(e) and §290.107(e), by failing to timely report to the executive director trienniel sampling results for volatile organic contaminants, metals, and minerals for the reporting period from January 1, 2008 - December 31, 2010; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay all annual Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 91012295 for Fiscal Years 1996 - 2011; PENALTY: $450; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(46) COMPANY: SORAHIM INVESTMENT, INCORPORATED dba SHOP N GO; DOCKET NUMBER: 2012-1343-PST-E; IDENTIFIER: RN102470556; LOCATION: Humble, Harris County; TYPE OF FACILITY: convenience store with retail gasoline sales; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the USTs; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $8,505; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(47) COMPANY: SPEEDY BUSINESS, INCORPORATED dba Speedy Food Market; DOCKET NUMBER: 2012-1355-PST-E; IDENTIFIER: RN101900637; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.72(3)(B), by failing to report a suspected release to the TCEQ within 24 hours of the discovery; and 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; PENALTY: $6,300; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(48) COMPANY: Stephen M. Mogonye; DOCKET NUMBER: 2012-1320-LII-E; IDENTIFIER: RN105733034; LOCATION: Channelview, Chambers County; TYPE OF FACILITY: irrigation and landscape business; RULE VIOLATED: 30 TAC §344.35(d)(5) and §344.38, by failing to maintain current and archival copies of landscape irrigation records for at least three years; and 30 TAC §344.63(4) and §344.35(d)(12), by failing to provide the homeowner with a design plan for the irrigation system that was installed on June 21, 2011, at 1014 Cleistes Lane, Richmond, Texas; PENALTY: $525; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(49) COMPANY: SUNSHINE STORES, INCORPORATED dba Sunshine Grocery Buna; DOCKET NUMBER: 2012-1052-PST-E; IDENTIFIER: RN102444007; LOCATION: Buna, Jasper County; TYPE OF FACILITY: convenience store with retail gasoline sales; 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 per month (not to exceed 35 days between each monitoring); PENALTY: $2,500; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(50) COMPANY: Town of Lakewood Village; DOCKET NUMBER: 2012-0512-MWD-E; IDENTIFIER: RN101917706; LOCATION: Lakewood Village, Denton County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(17) and §319.7(d) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010903001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; 30 TAC §305.125(17) and TPDES Permit Number WQ0010903001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2011; 30 TAC §305.125(1) and TPDES Permit Number WQ0010903001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; and 30 TAC §305.125(17) and §319.1 and TPDES Permit Number WQ0010903001, Monitoring and Reporting Requirements Number 1, by failing to submit complete effluent monitoring results at the intervals specified in the permit; PENALTY: $8,082; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(51) COMPANY: TRAK GROUP, INCORPORATED dba Trak 10; DOCKET NUMBER: 2012-1079-PST-E; IDENTIFIER: RN101435121; LOCATION: Garland, Dallas County; TYPE OF

FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,550; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(52) COMPANY: United Services Automobile Association; DOCKET NUMBER: 2012-1658-AIR-E; IDENTIFIER: RN101966075; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: insurance and financial services facility operating boilers and emergency generators; RULE VIOLATED: 30 TAC §122.146(2) and §122.143(4), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O-2846, General Terms and Conditions, by failing to submit the annual Permit Compliance Certification no later than 30 days after the end of the certification period; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Linda Ndoping, (512) 239-2569; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(53) COMPANY: USM Manufacturing L.L.C. dba Praters Foods; DOCKET NUMBER: 2012-1319-MLM-E; IDENTIFIER: RN101254803; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: frozen food processing facility with an associated wastewater treatment plant (WWTP); RULE VIOLATED: 30 TAC §290.46(e) and Texas Health and Safety Code, §341.033(a), by failing to operate the public water supply (PWS) facility under the direct supervision of a properly licensed individual holding the appropriate level of license to operate the PWS facility; 30 TAC §290.46(u), by failing to ensure that abandoned wells that are not in use and are non-deteriorated are either tested every five years or plugged; TWC, §26.121, by failing to obtain authorization prior to treating and discharging wastewater from the facility's processing operation; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities at the WWTP facility under the Texas Pollutant Discharge Elimination System Multi-Sector General Permit; PENALTY: $24,673; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(54) COMPANY: Waller County Road Improvement District 1; DOCKET NUMBER: 2012-1255-MWD-E; IDENTIFIER: RN104516364; LOCATION: Brookshire, Waller County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(17) and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014571001, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports by the 20th day of the following month for the monitoring periods ending March 31, 2011 - February 29, 2012; and 30 TAC §305.125(17) and TPDES Permit Number WQ0014571001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2011 by September 1, 2011; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(55) COMPANY: WALTER C. KELLER DISTRIBUTOR, INCORPORATED dba Tejano Mart 418; DOCKET NUMBER: 2012-1516-PST-E; IDENTIFIER: RN102241635; LOCATION: Donna, Hidalgo 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 proper corrosion protection for the underground storage tank system; PENALTY: $6,900; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-201205884
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 13, 2012

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Enforcement Orders

An agreed order was entered regarding City of Detroit, Docket No. 2010-2069-MWD-E on October 26, 2012 assessing $2,560 in administrative penalties with $512 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Select Energy Services, LLC and Braden Exploration, LLC, Docket No. 2011-1668-WR-E on October 26, 2012 assessing $2,350 in administrative penalties with $470 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tri Gaz, Inc. dba Tri Gaz 1, Docket No. 2011-2036-PST-E on October 26, 2012 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Raymond L. Jurica dba Tom's Food Market, Docket No. 2012-0038-PST-E on October 26, 2012 assessing $4,505 in administrative penalties with $901 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Munir Armad Munawar dba Sunrise Market 1, Docket No. 2012-0089-PST-E on October 26, 2012 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.N.V. BUSINESS INC. dba Bellaire Food Mart, Docket No. 2012-0350-PST-E on October 26, 2012 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EOG Resources, Inc., Docket No. 2012-0441-AIR-E on October 26, 2012 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ken Batchelor Cadillac Company, Inc., Docket No. 2012-0583-PST-E on October 26, 2012 assessing $3,740 in administrative penalties with $748 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Andrew Hinojosa, Docket No. 2012-0596-MSW-E on October 26, 2012 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CCMH Potomac LLC dba Houston Marriott Medical Center, Docket No. 2012-0621-PST-E on October 26, 2012 assessing $5,259 in administrative penalties with $1,051 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Texas, Inc., Docket No. 2012-0636-PWS-E on October 26, 2012 assessing $154 in administrative penalties with $30 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Samin Enterprises, Inc. dba Rowlett Shell, Docket No. 2012-0643-PST-E on October 26, 2012 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Ballinger, Docket No. 2012-0649-PWS-E on October 26, 2012 assessing $980 in administrative penalties with $196 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shivdeep Inc. dba Food Mart One, Docket No. 2012-0674-PST-E on October 26, 2012 assessing $5,212 in administrative penalties with $1,042 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DeCORDOVA BEND ESTATES OWNERS' ASSOCIATION, INC., Docket No. 2012-0704-WR-E on October 26, 2012 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kilgore, Docket No. 2012-0709-MWD-E on October 26, 2012 assessing $4,975 in administrative penalties with $995 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Union Water Supply Corporation, Docket No. 2012-0731-MWD-E on October 26, 2012 assessing $2,582 in administrative penalties with $516 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf West Landfill TX, LP, Docket No. 2012-0732-IWD-E on October 26, 2012 assessing $2,135 in administrative penalties with $427 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gary McNutt, Guy McNutt, and McNutt Bros. Dairy, Docket No. 2012-0746-AGR-E on October 26, 2012 assessing $3,010 in administrative penalties with $602 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trax, Inc. dba Valley View Conoco, Docket No. 2012-0754-PST-E on October 26, 2012 assessing $2,550 in administrative penalties with $510 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CASTLE WATER, INC., Docket No. 2012-0787-PWS-E on October 26, 2012 assessing $2,795 in administrative penalties with $559 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Spearman, Docket No. 2012-0791-PST-E on October 26, 2012 assessing $4,125 in administrative penalties with $825 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources Port Arthur, LLC, Docket No. 2012-0809-AIR-E on October 26, 2012 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BAIN TIRE CO. INC., Docket No. 2012-0819-PST-E on October 26, 2012 assessing $2,645 in administrative penalties with $529 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding West Road Water Supply Corporation and McDonald's Corporation, Docket No. 2012-0820-IWD-E on October 26, 2012 assessing $1,891 in administrative penalties with $377 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WG Operating, Inc., Docket No. 2012-0838-AIR-E on October 26, 2012 assessing $4,100 in administrative penalties with $820 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nick and Sons Inc dba Kwik Way Food Store 203, Docket No. 2012-0856-PST-E on October 26, 2012 assessing $3,570 in administrative penalties with $714 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Friends International, Inc. dba Super Deli & Grocery, Docket No. 2012-0865-PST-E on October 26, 2012 assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hanson Pipe & Precast LLC formerly known as Hanson Pipe & Precast, Inc., Docket No. 2012-0868-IWD-E on October 26, 2012 assessing $4,525 in administrative penalties with $905 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TERRA RENEWAL SERVICES, INC., Docket No. 2012-0917-IHW-E on October 26, 2012 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jasper Independent School District, Docket No. 2012-0931-PST-E on October 26, 2012 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AERONEV, L.L.C. dba Aeronev Hangar, Docket No. 2012-0973-PST-E on October 26, 2012 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FARMERS TRANSPORT, INC. dba Enchanted Harbor Utility, Docket No. 2012-1007-PWS-E on October 26, 2012 assessing $153 in administrative penalties with $30 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Richard Fessler dba Hallmark Jet Center, Docket No. 2012-1011-PST-E on October 26, 2012 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MARTIN TRANSPORT, INC., Docket No. 2012-1012-PST-E on October 26, 2012 assessing $2,380 in administrative penalties with $476 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PTCAA Texas, L.P. dba Flying J Travel Plaza 733, Docket No. 2012-1017-PST-E on October 26, 2012 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GARY POOLS, INC., Docket No. 2012-1024-PST-E on October 26, 2012 assessing $3,150 in administrative penalties with $630 deferred.

Information concerning any aspect of this order may be obtained by contacting Maggie Dennis, Enforcement Coordinator at (512) 239-2578, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southern Crushed Concrete, LLC, Docket No. 2012-1065-AIR-E on October 26, 2012 assessing $938 in administrative penalties with $187 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pineland, Docket No. 2012-1083-MWD-E on October 26, 2012 assessing $5,915 in administrative penalties with $1,183 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James E. Angel dba FAB-RITECH, Docket No. 2012-1098-AIR-E on October 26, 2012 assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Little "Nutt" Oil Co., Docket No. 2012-1123-PST-E on October 26, 2012 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Orange County Water Control and Improvement District No. 1, Docket No. 2012-1151-MWD-E on October 26, 2012 assessing $4,725 in administrative penalties with $945 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding City of College Station, Docket No. 2012-1532-WQ-E on October 26, 2012 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Stephen W. Mathews, Docket No. 2012-1540-OSI-E on October 26, 2012 assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding CJB Construction Inc, Docket No. 2012-1564-WQ-E on October 26, 2012 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding City of Nash, Docket No. 2012-1565-WQ-E on October 26, 2012 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding W & W Fiberglass Tank Company, Docket No. 2012-1566-WQ-E on October 26, 2012 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Smith Tank & Equipment Company, Docket No. 2012-1567-WQ-E on October 26, 2012 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Commercial Metals Company, Docket No. 2012-1568-WQ-E on October 26, 2012 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding City of Beeville, Docket No. 2012-1569-WQ-E on October 26, 2012 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Old Tymer Enterprises, Inc., Docket No. 2011-2253-PWS-E on November 7, 2012 assessing $7,370 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Baylor University, Docket No. 2011-1036-AIR-E on November 7, 2012 assessing $20,000 in administrative penalties with $4,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Silverlake Church, Docket No. 2011-1263-PWS-E on November 7, 2012 assessing $2,835 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Avalon Water Supply and Sewer Service Corporation, Docket No. 2011-1488-MWD-E on November 7, 2012 assessing $66,275 in administrative penalties with $66,275 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2012-0050-IWD-E on November 7, 2012 assessing $91,125 in administrative penalties with $18,225 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BOMBAY SEASONS INC dba Pete's Corner Store, Docket No. 2012-0221-PST-E on November 7, 2012 assessing $8,600 in administrative penalties with $1,720 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Azteca Milling, L.P., Docket No. 2012-0408-AIR-E on November 7, 2012 assessing $16,500 in administrative penalties with $3,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mertens, Docket No. 2012-0452-MWD-E on November 7, 2012 assessing $1,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MUREE VALLEY INTERNATIONAL INC dba Circle M Food Mart, Docket No. 2012-0535-PST-E on November 7, 2012 assessing $10,386 in administrative penalties with $2,077 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WTG GAS PROCESSING, L.P., Docket No. 2012-0564-AIR-E on November 7, 2012 assessing $13,563 in administrative penalties with $2,712 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding West Harris County Municipal Utility District No. 7, Docket No. 2012-0680-MWD-E on November 7, 2012 assessing $14,062 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ascend Performance Materials LLC, Docket No. 2012-0707-AIR-E on November 7, 2012 assessing $25,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ghuman Enterprise Inc. dba Amatos Food Mart 3, Docket No. 2012-0714-PWS-E on November 7, 2012 assessing $4,079 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas A&M University, Docket No. 2012-0775-AIR-E on November 7, 2012 assessing $9,890 in administrative penalties with $1,978 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CULLEN TEXACO, INC dba Cullen Shell, Docket No. 2012-0789-PST-E on November 7, 2012 assessing $33,850 in administrative penalties with $6,770 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Grand Saline, Docket No. 2012-0867-MWD-E on November 7, 2012 assessing $2,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dallas County Hospital District, Docket No. 2012-0888-PST-E on November 7, 2012 assessing $8,000 in administrative penalties with $1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201205900
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 14, 2012

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 7, 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 7, 2013.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Bhany Patel d/b/a Coastal Cooler; DOCKET NUMBER: 2011-1805-PST-E; TCEQ ID NUMBER: RN102238813; LOCATION: 430 United States Highway 181, Taft, San Patricio County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail gasoline sales; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the UST system; PENALTY: $2,629; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: C. J. RESOURCES, INC.; DOCKET NUMBER: 2012-0146-MSW-E; TCEQ ID NUMBER: RN104557335; LOCATION: 16434 Old Beaumont Highway, Houston, Harris County; TYPE OF FACILITY: source-separated vegetative material recycling facility; RULES VIOLATED: 30 TAC §37.921(a) and §328.5(d), by failing to establish and maintain financial assurance for the closure of a recycling facility that stores combustible materials outdoors; PENALTY: $2,326; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Delma Wilburn and Thelma Russell; DOCKET NUMBER: 2011-2003-PST-E; TCEQ ID NUMBER: RN101783991; LOCATION: 11096 State Highway 7 West, Center, Shelby County; TYPE OF FACILITY: underground storage tank (UST) system and a former grocery store involved in the retail sale of gasoline; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days from the date of occurrence of the change or addition; PENALTY: $3,600; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Donald R. Davis and Daniel L. Davis; DOCKET NUMBER: 2012-0395-MSW-E; TCEQ ID NUMBER: RN104256136; LOCATION: 5120 East University Drive, Denton, Denton County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: $7,850; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Jenson L. Gainer; DOCKET NUMBER: 2012-1214-LII-E; TCEQ ID NUMBER: RN104761135; LOCATION: 401 North Timberline Drive, Colleyville, Tarrant County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §344.24(a), by failing to comply with reasonable city requirements, ordinances, or regulations designed to protect the public water supply; and 30 TAC §344.62(b)(2), by failing to meet minimum design and installation requirements; PENALTY: $682; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: KHAN, INC. D/B/A KHAN'S FOOD MART; DOCKET NUMBER: 2012-0874-PST-E; TCEQ ID NUMBER: RN101550192; LOCATION: 9199 Bruton Road, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to ensure that the USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,000; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Lake Whitney Resorts, LLC; DOCKET NUMBER: 2012-0022-PWS-E; TCEQ ID NUMBER: RN105215651; LOCATION: 255 Suncountry Drive, Whitney, Hill County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.45(f)(1) and (5), and TCEQ Agreed Order Docket Number 2008-1942-MLM-E, Ordering Provision Number 2.d., by failing to provide a purchase water contract that authorizes a maximum hourly purchase rate to meet a minimum production capacity of 2.0 gallons per minute (gpm) per connection, or provide at least 1,000 gpm and be able to meet peak hourly demands, whichever is less; 30 TAC §290.46(n)(2), by failing to provide an up-to-date map of the distribution system; and 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; PENALTY: $11,827; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Myung Cha Cha d/b/a Youngs Mart 3; DOCKET NUMBER: 2012-1175-PST-E; TCEQ ID NUMBER: RN102048444; LOCATION: 400 North Johnson Street, Alice, Jim Wells County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the USTs; 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: $5,129; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(9) COMPANY: ROSEMIN ENTERPRISES, INC. d/b/a Express Store; DOCKET NUMBER: 2012-0739-PST-E; TCEQ ID NUMBER: RN101722247; LOCATION: 7355 Alabonson Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; PENALTY: $2,375; STAFF ATTORNEY: Cullen McMorrow, Litigation Division, MC 175, (512) 239-0607; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Signature Car Wash I, Ltd.; DOCKET NUMBER: 2012-1232-PST-E; TCEQ ID NUMBER: RN101534873; LOCATION: 902 North Central Expressway, McKinney, Collin County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $4,739; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: TRIUMPH BUSINESS LLC d/b/a Chevron Mart 5; DOCKET NUMBER: 2012-0790-PST-E; TCEQ ID NUMBER: RN100928555; LOCATION: 6530 West 43rd Street, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the 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: $5,775; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Xuan Van Nguyen d/b/a Super Gas Mart; DOCKET NUMBER: 2012-1254-PST-E; TCEQ ID NUMBER: RN102227014; LOCATION: 5014 East Amarillo Boulevard, Amarillo, Potter County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; PENALTY: $3,508; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

TRD-201205889
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 13, 2012

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 7, 2013.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 7, 2013.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Blanca Cruz d/b/a Las Mananitas Mexican Restaurant; DOCKET NUMBER: 2011-2322-PWS-E; TCEQ ID NUMBER: RN104709944; LOCATION: 9702 State Highway 16 South, Pipe Creek, Bandera County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.033(d), 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), and TCEQ Agreed Order Docket Number 2009-0695-PWS-E, Ordering Provisions Numbers 2.b. and 2.d., by failing to collect and submit routine distribution water samples for coliform analysis for November 2010, January 2011, and April 2011, and by failing to provide public notice of the failure to sample for November 2010, January 2011, and April 2011; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B) and TCEQ Agreed Order Docket Number 2009-0695-PWS-E, Ordering Provisions Numbers 2.b. and 2.d., by failing to collect and submit at least five routine distribution coliform samples the month following a coliform-positive sample result and by failing to provide public notice of the failure to conduct increased monitoring for August 2010 and June 2011; and 30 TAC §290.109(c)(2)(A)(i), THSC, §341.033(d), and TCEQ Agreed Order Docket Number 2009-0695-PWS-E, Ordering Provision Number 2.d., by failing to collect and submit routine distribution water samples for coliform analysis for the month of September 2011; PENALTY: $25,904; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Central State Shingle Recycling LLC; DOCKET NUMBER: 2012-0976-WQ-E; TCEQ ID NUMBERS: RN106192594 and RN101838456; LOCATION: 600 Block of South Railroad Street, Lewisville, Denton County (RN106192594) and 4912 Dozier, Hebron, Denton County (RN101838456); TYPE OF FACILITY: two scrap and waste recycling sites; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization for the sites to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System Multi-Sector Industrial General Permit Number TXR050000; PENALTY: $5,350; STAFF ATTORNEY: Jeff Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201205890
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 13, 2012

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Notice of Opportunity to Comment on Shutdown/Default Order of Administrative Enforcement Action

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 7, 2013.** The commission will consider any written comments received and the commission may withdraw or withhold approval of the S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 7, 2013.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing.**

(1) COMPANY: ARZAN BUSINESS, LLC. d/b/a Almeda Food Store; DOCKET NUMBER: 2012-0708-PST-E; TCEQ ID NUMBER: RN101878007; LOCATION: 4720 Almeda Genoa Road, Houston, Harris County; TYPE OF FACILITY: UST system and a convenience store with retail gasoline sales; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; PENALTY: $2,600; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201205891
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 13, 2012

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Notice of Water Quality Applications

The following notices were issued on November 2, 2012 through November 9, 2012.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 365 has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0013881001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility is located at 17110 Jarvis Road approximately 250 feet north of Jarvis Road and 3,150 feet east of Skinner Road in Harris County, Texas 77429.

KINDER MORGAN PETCOKE LP which operates a petroleum coke handling facility, has applied for a renewal of TPDES Permit No. WQ0002659000, which authorizes the discharge of stormwater on an intermittent and variable basis. The facility is located at 9847 Lawndale Street, Harris County, Texas 77017.

GULF WEST LANDFILL TX LP which operates a non-hazardous industrial waste stabilization and landfill disposal, has applied for a renewal of TPDES Permit No. WQ0003064000, which authorizes discharge of stormwater on an intermittent and variable basis. The facility is located at 2601 Jenkins Road, Anahuac, Chambers County, Texas 77514.

TERRA RENEWAL SERVICES INC has applied for a new permit, Proposed TCEQ Permit No. WQ0004989000, to authorize the land application of wastewater treatment plant sewage sludge and water treatment plant sludge for beneficial use on 320.9 acres. The anticipated date of the first application of sludge, subject to the issuance of the permit, is April 1, 2013. This permit will not authorize a discharge of pollutants into waters in the State. The sludge land application site will be located at 476 Brookshire Street, approximately one mile north of

the intersection of Highway 31 and Brookshire Street, northwest of the Community of Powell in Navarro County, Texas 75153.

CITY OF ITASCA has applied for a renewal of TPDES Permit No. WQ0010423001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 378,000 gallons per day. The facility is located at 904 South Hill Street, approximately one mile south of the City of Itasca, west of U.S. Highway 81 and adjacent to the Missouri, Kansas and Texas Railroad in Hill County, Texas 76055.

TRESCHWIG JOINT POWERS BOARD has applied for a renewal of TPDES Permit No. WQ0011141001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 4414 Treschwig Road, Spring, on the north bank of Cypress Creek approximately one mile north of Farm-to-Market Road 1960 and 2.5 miles east of the Missouri Pacific Railroad in Harris County, Texas 77373.

HUMBLE PARTNERS LIMITED PARTNERSHIP has applied for a renewal of TPDES Permit No. WQ0011161001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility is located at 520 Atascocita Road, approximately 1,000 feet east of the intersection of Atascocita Road and Old Humble Road, Humble, in Harris County, Texas 77396.

HYDRIL USA MANUFACTURING LLC has applied for a renewal of TPDES Permit No. WQ0011794001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located at 3300 North Sam Houston Parkway East, Houston, on the south side of North Belt Drive, approximately 0.5 mile west of the intersection of North Belt Drive and John F. Kennedy Boulevard, and 2.7 miles west of U.S. Highway 59 in Harris County, Texas 77032.

FAULKEY GULLY MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011832001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,420,000 gallons per day. The facility is located at 15503 Hermitage Oaks Drive, north of Louetta Road and west of State Highway 249, east of North Eldridge Parkway, Tomball in Harris County, Texas 77377.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 10 has applied for a renewal of TPDES Permit No. WQ0011912002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 16435 Cypress Point Drive in the City of Cypress, approximately 1,300 feet north of the intersection of Spring-Cypress Road and Dry Creek in Harris County, Texas 77429.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 21 Northwest Harris County Municipal Utility District No. 22, and Northwest Harris County Municipal Utility District No. 23 have applied for a renewal of TPDES Permit No. WQ0012144001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 4103 East Peachfield Circle, approximately one mile southeast of the intersection of Veterans Memorial Drive and Bammel-North Houston Road, northwest of the City of Houston in Harris County, Texas 77014.

WHOLESALE ROOFING SUPPLY HOUSTON INC has applied for a renewal of TPDES Permit No. WQ0012320001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,000 gallons per day. The facility is located at 1310 E. Richey Road, Houston, Texas, approximately 2200 feet east of the intersection of Hardy Road and Richey Road, north of the City of Houston in Harris County, Texas 77073.

CHAMP'S WATER COMPANY has applied for a renewal of TPDES Permit No. WQ0012730001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,400 gallons per day. The facility is located at 10717 Country Meadow Lane, approximately 150 feet west of the intersection of County Meadow Lane and Huffsmith-Kohrville and 2.3 miles south-southeast of the City of Tomball in Northwest Harris County, Texas 77375.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 32 has applied for a renewal of TPDES Permit No. WQ0013152001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 683,000 gallons per day. The facility is located at 6230 Pinelakes Boulevard, Spring, approximately 4,500 feet south of the intersection of Farm-to-Market Road 2920 and Kuykendahl Road, approximately 9,500 feet northeast of the intersection of Stuebner Airline Road and Spring Cypress Road in Harris County, Texas 77379.

RAYFORD CROSSING LTD has applied for a renewal of TPDES Permit No. WQ0014862001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 22,000 gallons per day. The facility is located at 29321 South Plum Creek Road, approximately 0.9 mile south of the intersection of Rayford Road and Geneva Road in Montgomery County, Texas 77386.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 454 has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0014870001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 252,000 gallons per day. The facility will be located approximately 2,800 feet south of Cypress Creek, north of Farm-to-Market Road 1960, and 3,600 feet west of Cypresswood Drive in Harris County, Texas 77338.

TERRA VERDE UTILITY COMPANY LLC has applied for a renewal of TPDES Permit No. WQ0014901001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located at 22602 Hegar Road on the southwest end of the Houston Oaks Country Club Lake, Hockley in Waller County, Texas 77477.

JOCO HOLDING CORPORATION has applied for a renewal of TCEQ Permit No. WQ0015034001 (formerly Permit No. WQ0002730000), which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day via surface irrigation of 20 acres of non-public access grass land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located on the east side of Interstate Highway 35 West, approximately 2,000 feet southeast of the Bethesda Road overpass and approximately 5.1 miles southeast of the City of Burleson in Johnson County, Texas 76097.

LAKE PARK PLACE LLC has applied for a new permit, proposed TPDES Permit No. WQ0015054001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility will be located at 500 Coleto Park Road, approximately 0.37 mile north west from the intersection of Highway 59 and Coleto Creek Road in Goliad County, Texas 77905.

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-201205899
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 14, 2012

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Lobby Activities Report due April 10, 2012

Jennifer E. Sellers, P.O. Box 684501, Austin, Texas 78768

Deadline: Lobby Activities Report due September 10, 2012

Benjamin W. Sebree, 50 Country Oaks, Buda, Texas 78610

Jennifer E. Sellers, P.O. Box 684501, Austin, Texas 78768

TRD-201205769
David A. Reisman
Executive Director
Texas Ethics Commission
Filed: November 8, 2012

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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 November 5, through November 9, 2012. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on November 14, 2012. The public comment period for this project will close at 5:00 p.m. on December 14, 2012.

FEDERAL AGENCY ACTIONS:

Applicant: Texas Parks and Wildlife Department (TPWD); Location: The project is located along the southern shoreline of the Gulf Intracoastal Waterway (GIWW), bordering the Salt Bayou Unit of the J. D. Murphree WMA, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: TX-BIG HILL BAYOU, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 402326; Northing: 3296143. Latitude: 29.805972 North and Longitude: -93.999222 West; Latitude: 29.793528 North and Longitude: -94.009667 West. Project Description: The applicant is proposing to discharge approximately 41,500 cubic yards of riprap within 5.78 acres of jurisdictional waters of the United States located along the south shore of the GIWW. The project is divided into two sections, each extending out from the riprap protection found along the banks on either side of the Salt Bayou Structure. The eastern section is 5,607 feet in length and is located adjacent to Compartment 13/16 to the right of Salt Bayou within the WMA. The western section is 4,456 feet in length and is located adjacent to Compartment 18. The project would result in the construction of approximately 10,063 linear feet of rock breakwaters designed for the purpose of protecting the coastal brackish marshes, located south of the GIWW, from erosive wave action occurring as a result of traffic in the channel. The breakwaters would have a top elevation of +3.0 feet NAVD and a base width of 25 feet. Rock will be 650# gradation in size. Riprap will be barged in and placed using barge-mounted excavators. Riprap will be tied into the existing bank by transitioning back to natural ground at a 45 degree angle. The breakwater will be between 0 and 220 feet from the top of the eroding earthen levee formed by side casting material during dredging of the GIWW and a minimum of 150 feet from the centerline of the channel. CMP Project No.: 12-0849 Type of Application: U.S.A.C.E. permit application #SWG-2012-00192 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (CWA).

Applicant: Mr. Greg Green, Ducks Unlimited; Location: The project site is located along the northern bank of the Gulf Intracoastal Waterway (GIWW), adjacent to the San Bernard Wildlife Refuge in Sargent, Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Sargent, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 249396; Northing: 3184238. Beginning Latitude: 28.784445, Longitude: -95.592222; Ending Latitude: 28.806100; Longitude: -95.549466 Project Description: The applicant proposes to construct a rock breakwater along a 3-mile section of the northern bank of the GIWW. For safety and navigation concerns, the toe of the breakwater will be placed at least 172.5 feet from the centerline of the channel in water depths of 1.5 feet. Approximately 23,436 cubic yards of 8-inch graded riprap will be placed within a 5.24-acre area of the GIWW during construction of the breakwater. The purpose of the breakwater is to accrete marsh behind it and prevent saltwater intrusion into Sargent Marsh. CMP Project No.: 12-0894 Type of Application: U.S.A.C.E. permit application #SWG-2012-00707 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (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. Andrea Finch, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873, or via email at andrea.finch@glo.texas.gov. Comments should be sent to Ms. Finch at the above address or by email.

TRD-201205907
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: November 14, 2012

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Office of the Governor

Notice of Justice Assistance Grant Program Supplemental Award - Wrongful Convictions Demonstration Project

The Governor's Criminal Justice Division (CJD) has been awarded an additional $148,000 in supplemental funds for its federal 2012 Edward Byrne Justice Assistance Grant Program (JAG). The addition of these funds brings the total 2012 JAG award to $14,539,389. Supplemental funds must be used to assist local law enforcement agencies with installing audio and video recording equipment in custodial interview rooms and implementing a process to catalogue and maintain the recordings.

Comments on the use of the supplemental funds should be submitted in writing to Judy Switzer by email at judy.switzer@gov.texas.gov or mailed to the Criminal Justice Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711. Comments must be received or postmarked no later than 30 days from the date of publication of this announcement in the *Texas Register*.

TRD-201205902
David Zimmerman
General Counsel
Office of the Governor
Filed: November 14, 2012

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Texas Department of Insurance

Company Licensing

Application to change the name of PUBLIC SERVICE MUTUAL INSURANCE COMPANY to PUBLIC SERVICE INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in New York, New York.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201205906
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: November 14, 2012

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Texas Lottery Commission

Notice of Public Comment Hearing

A public hearing to receive public comments regarding the proposed amendments to 16 TAC §402.450, relating to Request for Waiver, 16 TAC §402.453, relating to Request for Operating Capital Increase, and 16 TAC §402.503, relating to Bingo Gift Certificates, will be held on Wednesday, December 5, 2012, at 10:00 a.m. at 611 E. 6th Street, Austin, Texas 78701.

Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission, at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-201205815
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 9, 2012

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Notice of Public Comment Hearing

A public hearing to receive public comments regarding the proposed amendments to 16 TAC §401.305 relating to "Lotto Texas" On-Line Game Rule will be held on Wednesday, December 5, 2012, at 11:00 a.m. at 611 E. 6th Street, Austin, Texas 78701.

Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission, at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-201205845
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 9, 2012

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Public Utility Commission of Texas

Notice of Amended Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of amended petitions filed with the Public Utility Commission of Texas (commission) for designation as an eligible telecommunications carrier (ETC) in the State of Texas for the limited purpose of offering Lifeline Service to qualified households, pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of TAG Mobile, LLC for Designation as an Eligible Telecommunications Carrier in the State of Texas on a Wireless Basis for the Limited Purpose of Offering Lifeline Service. Docket Number 40759.

The Application: On October 24, and October 31, 2012, TAG Mobile filed an amended application and second amended application for designation as an ETC solely to provide Lifeline service to qualifying Texas households. TAG Mobile stated it will not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas. TAG Mobile requests designation as an ETC in the non-rural portions of the State of Texas. TAG Mobile provided a list of wire centers for which the Company requests ETC.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by December 14, 2012. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission's Customer Protection Division at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989 to reach the commission's toll-free number (888) 782-8477. All comments should reference Docket Number 40759.

TRD-201205882
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 2012

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On November 12, 2012, DeltaCom, Inc. (Applicant) filed an application to amend service provider certificate of operating authority (SPCOA) Number 60202. Applicant seeks approval for (1) a change in name to EarthLink Business; and (2) certain pro forma intra-company changes.

The Application: Application of DeltaCom, Inc. for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 40948.

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 November 30, 2012. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 40948.

TRD-201205897
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2012

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of a petition filed with the Public Utility Commission of Texas on November 5, 2012, for designation as an eligible telecommunications carrier (ETC) in the State of Texas for the limited purpose of offering Lifeline Service to qualified households, pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Sage Telecom, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Texas for the Limited Purpose of Offering Wireless Lifeline Service; Docket Number 40936.

The Application: Sage Telecom, Inc. (Sage) seeks ETC designation solely to provide wireless Lifeline service to qualifying Texas households and will not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas. Sage requests ETC designation for wireless operations in the requested wire centers of the non-rural ILEC Southwestern Bell Telephone Company d/b/a AT&T Texas. A list of requested wire centers is attached to the application as Attachment A. Sage will resell Sprint Spectrum Wireless Service to provide wireless service in the designated service area through an agreement with Sprint Spectrum.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by December 14, 2012. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989 to reach the commission's toll-free number (888) 782-8477. All comments should reference Docket Number 40936.

TRD-201205878
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 2012

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Request for Proposals for an Evaluation, Measurement, and Verification Program

RFP Number 473-13-00105

The Public Utility Commission of Texas (PUCT) is issuing this request for proposals (RFP) for an evaluation, measurement and verification (EM&V) Contractor. In 2011, the Texas Legislature enacted SB 1125, which required the PUCT to develop an evaluation, measurement, and verification (EM&V) framework that promotes effective program design and consistent and streamlined reporting. Proposers are encouraged to review the EM&V framework, embodied as P.U.C. Substantive Rule §25.181, relating to Energy Efficiency Goal.

Scope of Work:

The EM&V Contractor (an individual firm or team of firms) shall assist the PUCT by documenting the gross and net energy and demand impacts of utilities' individual energy efficiency and load management portfolios; determining cost-effectiveness; preparing and maintaining a statewide Technical Reference Manual (TRM); providing feedback for the PUCT, utilities, and other stakeholders on program portfolio performance; and providing input into the utilities' and ERCOT's planning activities.

Utilities shall conduct their own activities to determine projected and claimed savings values--with the EM&V Contractor providing evaluated savings based on due-diligence reviews, audits, verifications and independent analyses. The EM&V Contractor shall operate under the PUCT's supervision and oversight, and the EM&V Contractor shall offer independent analysis to the PUCT in order to assist in making decisions in the public interest.

RFP documentation may be obtained by contacting:

Purchaser

Public Utility Commission of Texas

P.O. Box 13326

Austin, Texas 78711-3326

(512) 936-7069

purchasing@puc.texas.gov

RFP documentation is also located on the PUCT website at http://www.puc.state.tx.us/agency/about/procurement/Default.aspx.

Deadline for proposal submission is 3:00 p.m., CT, on Tuesday, December 11, 2012.

TRD-201205881
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 2012

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Supreme Court of Texas

Adoption of Rules for Dismissals and Expedited Actions

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 12-9191

ADOPTION OF RULES FOR DISMISSALS AND EXPEDITED ACTIONS

ORDERED that:

1. In accordance with the Act of May 25, 2011, 82nd Leg., R.S., ch. 203, §§ 1.01, 2.01 (HB 274), amending section 22.004 of the Texas Government Code, Rules 91a and 169 of the Texas Rules of Civil Procedure and Rule 902(c) of the Texas Rules of Evidence are adopted as follows, and Rules 47 and 190 of the Texas Rules of Civil Procedure are amended as follows, effective March 1, 2013.

2. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this Order to each elected member of the Legislature; and

d. submit a copy of the Order for publication in the *Texas Register*.

3. These amendments may be changed in response to comments received on or before February 1, 2013. Any interested party may submit written comments directed to Marisa Secco, Rules Attorney, at P.O. Box 12248, Austin, TX 78711, or marisa.secco@txcourts.gov.

Dated: November 13, 2012

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Wallace B. Jefferson, Chief Justice

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Nathan L. Hecht, Justice

_____

David M. Medina, Justice

_____

Paul W. Green, Justice

_____

Phil Johnson, Justice

_____

Don R. Willett, Justice

_____

Eva M. Guzman, Justice

_____

Debra H. Lehrmann, Justice

PER CURIAM

In 2011, the 82nd Texas Legislature passed House Bill 274[1] (HB 274). HB 274 called upon the Court to promulgate four sets of procedural rule amendments in order to implement certain legislative policy initiatives. Two of those sets of rules - governing permissive appeals and offers of judgment - were completed by the Court last year.[2] This Order promulgates the remaining rules: a dismissal rule and a set of rules for expedited actions.

The Court is charged by the Texas Constitution with providing for "the efficient and uniform administration of justice".[3] The Legislature by enacting HB 274, and the Governor by signing it into law, have directed that a more determined effort be made to reduce the expense and delay of litigation, while maintaining fairness to litigants. Small measures cannot achieve that directive. These rules are a significant effort to improve the efficiency of the Texas court system while protecting the rights of litigants.

HB 274 added Government Code § 22.004(g), which calls for rules "for the dismissal of causes of action that have no basis in law or fact on motion and without evidence . . . [to be] granted or denied within 45 days of the filing of the motion to dismiss."[4] The Court referred the study of the dismissal rule to the Supreme Court Advisory Committee. A ten-member subcommittee, chaired by Hon. David Peeples, worked on drafting the dismissal rule. The full Committee reviewed the subcommittee's proposal, a second proposal drafted by a voluntary Working Group of representatives from the Texas Chapters of the American Board of Trial Advocates, the Texas Association of Defense Counsel, and the Texas Trial Lawyers Association, and a third proposal drafted by the State Bar of Texas Court Rules Committee. The Supreme Court Advisory Committee debated the proposals on November 18, 2011, and again on December 9, 2011. Following the Committee's review, the Court revised the subcommittee proposal. This Order contains the final proposed rule, Texas Rule of Civil Procedure 91a, "Dismissal of Baseless Causes of Action".

HB 274 also added Government Code § 22.004(h), which calls for "rules to promote the prompt, efficient, and cost-effective resolution of civil actions . . . in which the amount in controversy, inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of damage of any kind, does not exceed $100,000."[5] The Court appointed a Task Force to propose rule changes for these "expedited actions."[6] The Task Force was chaired by Hon. Thomas R. Phillips, former Chief Justice of the Court. The other members of the Task Force were: David Chamberlain, Denis Dennis, Martha S. Dickie, Wayne Fisher, Jeffrey J. Hobbs, Lamont Jefferson, Hon. Scott Jenkins, Kennon Peterson, Bradley Parker, Ricardo Reyna, and Alan Waldrop. In drafting its proposal, the Task Force reviewed the expedited actions rules proposed by the Working Group following the passage of HB 274. Two members of the Working Group were also members of the Task Force. The Task Force also studied expedited trial rules implemented in other states.

The Task Force completed its work and sent a report, proposing new rules and rule amendments, to the Court. The Court again referred study of the rules to the Supreme Court Advisory Committee, which reviewed the proposals of the Task Force on January 27 and 28, 2012. The Court also received a proposal from the State Bar of Texas Court Rules Committee. The Court reviewed the various proposals and drafted a set of rules that implements a mandatory expedited actions process for cases under $100,000. The final proposed rules - including new Texas Rule of Civil Procedure 169 and amendments to Texas Rules of Civil Procedure 47 and 190 and Texas Rule of Evidence 902 - are contained in this Order.

An important issue in formulating rules for expedited actions has been whether the rules should have a compulsory element to them or merely encourage lawyers to agree to more expedited procedures in smaller cases. Having carefully weighed the arguments of the Working Group, the report of the Task Force, the deliberations of the Supreme Court Advisory Committee, and the experience of other jurisdictions, the Court has concluded that the objectives of HB 274 cannot be achieved, or the benefits to the administration of justice realized, without rules that compel expedited procedures in smaller cases.

[1]Act of May 25, 2011, 82nd Leg., R.S., ch. 203, §§ 1.01, 2.01.

[2]See Misc. Docket Nos. 11-9182, 11-9183.

[3]TEX. CONST. art. V, § 31(b).

[4]Tex. Gov't Code § 22.004(g).

[5]Tex. Gov't Code § 22.004(h).

[6]Misc. Docket No. 11-9193.

DISMISSAL RULE

New Rule 91a, Texas Rules of Civil Procedure:

91a. Dismissal of Baseless Causes of Action

91a.1 Motion and Grounds. Except in a case brought under the Family Code or a case governed by Chapter 14 of the Texas Civil Practice and Remedies Code, a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought. A cause of action has no basis in fact if no reasonable person could believe the facts pleaded.

91a.2 Contents of Motion. A motion to dismiss must state that it is made pursuant to this rule, must identify each cause of action to which it is addressed, and must state specifically the reasons the cause of action has no basis in law, no basis in fact, or both.

91a.3 Time for Motion and Ruling. A motion to dismiss must be:

(a) filed within 60 days after the first pleading containing the challenged cause of action is served on the movant;

(b) filed at least 21 days before the motion is heard; and

(c) granted or denied within 45 days after the motion is filed.

91a.4 Time for Response. Any response to the motion must be filed no later than 7 days before the date of the hearing.

91a.5 Effect of Nonsuit or Amendment; Withdrawal of Motion.

(a) The court may not rule on a motion to dismiss if, at least 7 days before the date of the hearing, the respondent files a nonsuit of the challenged cause of action, or the movant files a withdrawal of the motion.

(b) If the respondent amends the challenged cause of action at least 7 days before the date of the hearing, the movant may, before the date of the hearing, file a withdrawal of the motion or an amended motion directed to the amended cause of action.

(c) Except by agreement of the parties, the court must rule on a motion unless it has been withdrawn or the cause of action has been nonsuited in accordance with (a) or (b). In ruling on the motion, the court must not consider a nonsuit or amendment not filed as permitted by paragraphs (a) or (b).

(d) An amended motion filed in accordance with (b) restarts the time periods in this rule.

91a.6 Hearing; No Evidence Considered. Each party is entitled to at least 14 days notice of the hearing on the motion to dismiss. The court may, but is not required to, conduct an oral hearing on the motion. The court may not consider evidence in ruling on the motion and must decide the motion based solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule 59.

91a.7 Award of Costs and Attorney Fees Required. Except in an action by or against a governmental entity or a public official acting in his or her official capacity or under color of law, the court must award the prevailing party on the motion all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court. The court must consider evidence regarding costs and fees in determining the award.

91a.8 Effect on Venue and Personal Jurisdiction. This rule is not an exception to the pleading requirements of Rules 86 and 120a, but a party does not, by filing a motion to dismiss pursuant to this rule or obtaining a ruling on it, waive a special appearance or a motion to transfer venue. By filing a motion to dismiss, a party submits to the court's jurisdiction in proceedings on the motion and is bound by the court's ruling, including an award of attorney fees and costs against the party.

91a.9 Dismissal Procedure Cumulative. This rule is in addition to, and does not supersede or affect, other procedures that authorize dismissal.

Comment to 2013 change: Rule 91a is a new rule implementing section 22.004(g) of the Texas Government Code, which was added in 2011 and calls for rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence. A motion to dismiss filed under this rule must be ruled on by the court within 45 days unless the motion, pleading, or cause of action is withdrawn, amended, or nonsuited as specified in 91a.5. If an amended motion is filed in response to an amended cause of action in accordance with 91a.5(b), the court must rule on the motion within 45 days of the filing of the amended motion and the respondent must be given an opportunity to respond to the amended motion. The term "hearing" in the rule includes both submission and an oral hearing. Attorney fees awarded under 91a.7 are limited to those associated with challenged cause of action, including fees for preparing or responding to the motion to dismiss.

RULES FOR EXPEDITED ACTIONS

Amendments to Rule 47, Texas Rules of Civil Procedure:

Rule 47. Claims for Relief

An original pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain:

(a) a short statement of the cause of action sufficient to give fair notice of the claim involved~~,~~;

(b) ~~in all claims for unliquidated damages only the~~ a statement that the damages sought are within the jurisdictional limits of the court~~,~~;

(c) a statement that the party seeks:

(1) only monetary relief of $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees; or

(2) monetary relief of $100,000 or less and non-monetary relief; or

(3) monetary relief over $100,000 but not more than $500,000; or

(4) monetary relief over $500,000 but not more than $1,000,000; or

(5) monetary relief over $1,000,000; and

(ed) a demand for judgment for all the other relief to which the party deems himself entitled.

Relief in the alternative or of several different types may be demanded; provided, further, that upon special exception the court shall require the pleader to amend so as to specify the maximum amount claimed. A party that fails to comply with (c) may not conduct discovery until the party's pleading is amended to comply.

Comment to 2013 change: Rule 47 is amended to require a more specific statement of the relief sought by a party. The amendment requires parties to plead into or out of the expedited actions process governed by Rule 169, added to implement section 22.004(h) of the Texas Government Code. A pleading other than a counterclaim that contains the statement in paragraph (c)(1) is governed by the expedited actions process. The further specificity in paragraphs (c)(2)-(5) is to provide information regarding the nature of cases filed and does not affect a party's substantive rights.

New Rule 169, Texas Rules of Civil Procedure:

Rule 169. Expedited Actions

(a) *Application.*

(1) The expedited actions process in this rule applies to a suit in which all claimants, other than counter-claimants, affirmatively plead that they seek only monetary relief aggregating $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.

(2) The expedited actions process does not apply to a suit in which a party has filed a claim governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code.

(b) *Recovery.* In no event may a party who prosecutes a suit under this rule recover a judgment in excess of $100,000, excluding post-judgment interest.

(c) *Removal from Process.*

(1) A court must remove a suit from the expedited actions process:

(A) on motion and a showing of good cause by any party; or

(B) if any claimant, other than a counter-claimant, files a pleading or an amended or supplemental pleading that seeks any relief other than the monetary relief allowed by (a)(l).

(2) A pleading, amended pleading, or supplemental pleading that removes a suit from the expedited actions process may not be filed without leave of court unless it is filed before the earlier of 30 days after the discovery period is closed or 30 days before the date set for trial. Leave to amend may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.

(3) If a suit is removed from the expedited actions process, then the court must continue the trial date and reopen discovery under Rule 190.2(c).

(d) *Expedited Actions Process.*

(1) Discovery. Discovery is governed by Rule 190.2.

(2) Trial Setting. On any party's request, the court must set the case for a trial date that is within 90 days after the discovery period in Rule 190.2(b)(1) ends.

(3) Time Limits for Trial. Each side is allowed five hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments.

(A) The term "side" has the same definition set out in Rule 233.

(B) Time spent on objections, bench conferences, and challenges for cause to a juror under Rule 228 are not included in the time limit.

(4) Alternative Dispute Resolution. Unless the parties have agreed to engage in alternative dispute resolution or are required to do so by contract, the court must not - by order or local rule - require the parties to engage in alternative dispute resolution.

(5) Expert Testimony. Unless requested by the party sponsoring the expert, a party may only challenge the admissibility of expert testimony as an objection to summary judgment evidence under Rule 166a or during the trial on the merits. This paragraph does not apply to a motion to strike for late designation.

Comments to 2013 change:

1. Rule 169 is a new rule implementing section 22.004(h) of the Texas Government Code, which was added in 2011 and calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions when the amount in controversy does not exceed $100,000.

2. The expedited actions process created by Rule 169 is mandatory; any suit that falls within the definition of 169(a)(1) is subject to the provisions of the rule. If multiple claimants each seek the monetary relief allowed under 169(a)(1) against the same defendant, the defendant may move to remove the case from the rule pursuant to 169(c)(1)(a).

3. Rule 169(b) specifies that a party who prosecutes a suit under this rule cannot recover a judgment in excess of $100,000. Thus, the rule in *Greenhalgh v. Service Lloyds Ins. Co.,* 787 S.W.2d 938 (Tex. 1990), does not apply.

4. The discovery limitations for expedited actions are set out in Rule 190.2, which is also amended to implement section 22.004(h) of the Texas Government Code.

Amendments to Rule 190, Texas Rules of Civil Procedure:

Rule 190. Discovery Limitations

. . .

190.2. Discovery Control Plan - ~~Suits Involving $50,000 or Less~~ **Expedited Actions and Divorces Involving $50,000 or Less (Level 1)**

(a) *Application.* This subdivision applies to:

(1) ~~any suit in which all plaintiffs affirmatively plead that they seek only monetary relief aggregating $50,000 or less, excluding costs, pre-judgment interest and attorneys' fees~~ any suit that is governed by the expedited actions process in Rule 169, and

(2) any suit for divorce not involving children in which a party pleads that the value of the marital estate is more than zero but not more than $50,000.

~~(b) Exceptions. This subdivision does not apply if:~~

~~(1) the parties agree that Rule 190.3 should apply;~~

~~(2) the court orders a discovery control plan under Rule 190.4; or~~

~~(3) any party files a pleading or an amended or supplemental pleading that seeks relief other than that to which this subdivision applies.~~

~~A pleading, amended pleading (including trial amendment), or supplemental pleading that renders this subdivision no longer applicable may not be filed without leave of court less than 45 days before the date set for trial. Leave may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.~~

(~~e~~b) *Limitations.* Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:

(1) Discovery Period. All discovery must be conducted during the discovery period, which begins when the suit is filed and continues until ~~30 days before the date set for trial~~ 180 days after the date the first request for discovery of any kind is served on a party.

(2) Total Time for Oral Depositions. Each party may have no more than six hours in total to examine and cross-examine all witnesses in oral depositions. The parties may agree to expand this limit up to ten hours in total, but not more except by court order. The court may modify the deposition hours so that no party is given unfair advantage.

(3) Interrogatories. Any party may serve on any other party no more than ~~25~~ 15 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

(4) Requests for Production. Any party may serve on any other party no more than 15 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.

(5) Requests for Admissions. Any party may serve on any other party no more than 15 written requests for admissions. Each discrete subpart of a request for admission is considered a separate request for admission.

(6) Requests for Disclosure. In addition to the content subject to disclosure under Rule 194.2, a party may request disclosure of all documents, electronic information, and tangible items that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses. A request for disclosure made pursuant to this paragraph is not considered a request for production.

(~~d~~c) Reopening Discovery. ~~When the filing of a pleading or an amended or supplemental pleading renders this subdivision no longer applicable.~~ If a suit is removed from the expedited actions process in Rule 169 or, in a divorce, the filing of a pleading renders this subdivision no longer applicable, the discovery period reopens, and discovery must be completed within the limitations provided in Rules 190.3 or 190.4, whichever is applicable. Any person previously deposed may be redeposed. On motion of any party, the court should continue the trial date if necessary to permit completion of discovery.

. . .

190.5. Modification of Discovery Control Plan

The court may modify a discovery control plan at any time and must do so when the interest of justice requires. Unless a suit is governed by the expedited actions process in Rule 169, t~~T~~he court must allow additional discovery:

(a) related to new, amended or supplemental pleadings, or new information disclosed in a discovery response or in an amended or supplemental response, if:

(1) the pleadings or responses were made after the deadline for completion of discovery or so nearly before that deadline that an adverse party does not have an adequate opportunity to conduct discovery related to the new matters, and

(2) the adverse party would be unfairly prejudiced without such additional discovery;

(b) regarding matters that have changed materially after the discovery cutoff if trial is set or postponed so that the trial date is more than three months after the discovery period ends.

Comment to 2013 change: Rule 190 is amended to implement section 22.004(h) of the Texas Government Code, which calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions when the amount in controversy does not exceed $100,000. Rule 190.2 now applies to expedited actions, as defined by Rule 169. Rule 190.2 continues to apply to divorces not involving children in which the value of the marital estate is not more than $50,000, which are otherwise exempt from the expedited actions process. Amended Rule 190.2(b) ends the discovery period 180 days after the date the first discovery request is served; imposes a fifteen limit maximum on interrogatories, requests for production, and requests for admission; and allows for additional disclosures. Although expedited actions are not subject to mandatory additional discovery under amended Rule 190.5, the court may still allow additional discovery if the conditions of Rule 190.5(a) are met.

New Rule 902(c), Texas Rules of Evidence:

Rule 902. Self-Authentication

. . .

(c) *Medical expenses affidavit.* A party may make prima facie proof of medical expenses by affidavit that substantially complies with the following form:

Affidavit of Records Custodian of

_____

STATE OF TEXAS §

COUNTY OF _____ §

Before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

My name is _____. I am of sound mind and capable of making this affidavit, and personally acquainted with the facts herein stated.

I am a custodian of records for _____. Attached to this affidavit are records that provide an itemized statement of the service and the charge for the service that _____ provided to _____ on _____. The attached records are a part of this affidavit.

The attached records are kept by _____ in the regular course of business, and it was the regular course of business of _____ for an employee or representative of _____, with knowledge of the service provided, to make the record or to transmit information to be included in the record. The records were made in the regular course of business at or near the time or reasonably soon after the time the service was provided. The records are the original or a duplicate of the original.

The services provided were necessary and the amount charged for the services was reasonable at the time and place that the services were provided.

The total amount paid for the services was $_____ and the amount currently unpaid but which _____ has a right to be paid after any adjustments or credits is $_____.

_____

Affiant

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, _____.

_____

Notary Public, State of Texas

Notary's printed name: _____My commission expires: _____

Comment to 2013 Change: Rule 902(c) is added to provide a form affidavit for proof of medical expenses. The affidavit is intended to comport with Section 41.0105 of the Civil Practice and Remedies Code, which allows evidence of only those medical expenses that have been paid or will be paid, after any required credits or adjustments. See Haygood v. Escabedo, 356 S.W.3d 390 (Tex. 2011).

TRD-201205903
Marisa Secco
Rules Attorney
Supreme Court of Texas
Filed: November 14, 2012

♦ ♦ ♦

Final Approval of Amendments to Texas Rules of Appellate Procedure 9, 38, 49, 52, 53, 55, 64, 68, 70, and 71

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 12-9190

FINAL APPROVAL OF AMENDMENTS TO TEXAS RULES OF APPELLATE PROCEDURE 9, 38, 49, 52, 53, 55, 64, 68, 70, and 71

ORDERED that:

1. Pursuant to section 22.004 of the Texas Government Code, the Supreme Court of Texas amends Rules of Appellate Procedure 9, 38, 49, 52, 53, 55, 64, 68, 70, and 71 as follows.

2. By Order dated August 10, 2012, in Misc. Docket No. 12-9129, the Court proposed amendments to Rules of Appellate Procedure 9, 38, 49, 52, 53, 55, 64, 68, 70, and 71 and invited public comment. Following public comment, the Court made revisions to the rules. This Order incorporates those revisions and contains the final version of Rules of Appellate Procedure 9, 38, 49, 52, 53, 55, 64, 68, 70, and 71, effective December 1, 2012.

2. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this Order to each elected member of the Legislature; and

d. submit a copy of the Order for publication in the *Texas Register.*

Dated: November 13, 2012.

_____

Wallace B. Jefferson, Chief Justice

_____

Nathan L. Hecht, Justice

_____

David M. Medina, Justice

_____

Paul W. Green, Justice

_____

Phil Johnson, Justice

_____

Don R. Willett, Justice

_____

Eva M. Guzman, Justice

_____

Debra H. Lehrmann, Justice

Rule 9. Papers Generally

* * *

9.4. Form

Except for the record, a document filed with an appellate court must - unless the court accepts another form in the interest of justice - be in the following form:

* * *

(e) *Typeface.* ~~A document must be printed in standard 10-character-per-inch (cpi) nonproportionally spaced Courier typeface or in 13-point or larger proportionally spaced typeface. But if the document is printed in a proportionally spaced typeface, footnotes may be printed in typeface no smaller than 10-point.~~ A document produced on a computer must be printed in a conventional typeface no smaller than 14-point except for footnotes, which must be no smaller than 12-point. A typewritten document must be printed in standard 10-character-per-inch (cpi) monospaced typeface.

* * *

(i) *Length.*

(1) Contents Included and Excluded. In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service, certification, certificate of compliance, and appendix.

(2) Maximum Length. The documents listed below must not exceed the following limits:

(A) A brief and response in a direct appeal to the Court of Criminal Appeals in a case in which the death penalty has been assessed: 37,500 words if computer-generated, and 125 pages if not.

(B) A brief and response in an appellate court (other than a brief under subparagraph (A)) and a petition and response in an original proceeding in the court of appeals: 15,000 words if computer-generated, and 50 pages if not. In a civil case in the court of appeals, the aggregate of all briefs filed by a party must not exceed 27,000 words if computer-generated, and 90 pages if not.

(C) A reply brief in an appellate court and a reply to a response to a petition in an original proceeding in the court of appeals: 7,500 words if computer-generated, and 25 pages if not.

(D) A petition and response in an original proceeding in the Supreme Court, a petition for review and response in the Supreme Court, a petition for discretionary review and response in the Court of Criminal Appeals, and a motion for rehearing and response in an appellate court: 4,500 words if computer-generated, and 15 pages if not.

(E) A reply to a response to a petition for review in the Supreme Court, a reply to a response to a petition in an original proceeding in the Supreme Court, and a reply to a response to a petition for discretionary review in the Court of Criminal Appeals: 2,400 words if computer-generated, and 8 pages if not.

(3) Certificate of Compliance. A computer-generated document must include a certificate by counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

(4) Extensions. A court may, on motion, permit a document that exceeds the prescribed limit.

(~~i~~j) *Nonconforming Documents.* Unless every copy of a document conforms to these rules, the court may strike the document and return all nonconforming copies to the filing party. The court must identify the error to be corrected and state a deadline for the party to resubmit the document in a conforming format. If another nonconforming document is filed, the court may strike the document and prohibit the party from filing further documents of the same kind. ~~The use of footnotes, smaller or condensed typeface, or compacted or compressed printing features to avoid the limits of these rules are grounds for the court to strike a document.~~

Comment to 2012 Change: Rule 9 is revised to consolidate all length limits and establish word limits for documents produced on a computer. All documents produced on a computer must comply with the word

limits. Page limits are retained for documents that are typewritten or otherwise not produced on a computer.

Rule 38. Requisites of Briefs

* * *

38.4. Length of Briefs

An appellant's brief or appellee's brief must be no longer than 50 pages, exclusive of the pages containing the identity of parties and counsel, any statement regarding oral argument, the table of contents, the index of authorities, the statement of the case, the issues presented, the signature, the proof of service, and the appendix. A reply brief must be no longer than 25 pages, exclusive of the items stated above. But in a civil case, the aggregate number of pages of all briefs filed by a party must not exceed 90, exclusive of the items stated above. The court may, on motion, permit a longer brief.

Rule 49. Motion and Further Motion for Rehearing

* * *

49.10. Length of Motion and Response

A motion or response must be no longer than 15 pages.

Rule 52. Original Proceedings

* * *

52.6. Length of Petition, Response, and Reply

Excluding those pages containing the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented, the signature, the proof of service, the certification, and the appendix, the petition and response must not exceed 50 pages each if filed in the court of appeals, or 15 pages each if filed in the Supreme Court. A reply may be no longer than 25 pages if filed in the court of appeals or 8 pages if filed in the Supreme Court, exclusive of the items stated above. The court may, on motion, permit a longer petition, response, or reply.

Rule 53. Petition for Review

* * *

53.6. Length of Petition, Response, and Reply

The petition and any response must be no longer than 15 pages each, exclusive of pages containing the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented, the signature, the proof of service, and the appendix. A reply may be no longer than 8 pages, exclusive of the items stated above. The Court may, on motion, permit a longer petition, response, or reply.

Rule 55. Brief on the Merits

* * *

55. 6.Length of Briefs

A brief on the merits or brief in response must not exceed 50 pages, exclusive of pages containing the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented the signature, and the proof of service. A brief in reply may be no longer than 25 pages, exclusive of the items stated above. The Court may, on motion, permit a longer brief.

Rule 64. Motion for Rehearing

* * *

64.6. Length of Motion and Response

A motion or response must be no longer than 15 pages.

Rule 68. Discretionary Review With Petition

* * *

68.5. Length of Petition and Reply

The petition must be no longer than 15 pages, exclusive of pages containing the table of contents, the index of authorities, the statement regarding oral argument, the statement of the case, the statement of procedural history, and the appendix. A reply may be no longer than 8 pages, exclusive of the items stated above. The Court may, on motion, permit a longer petition or reply.

Rule 70. Brief on the Merits

* * *

70.3.Brief Contents and Form

Briefs must comply with the requirements of Rules 9 and 38, except that they need not contain the appendix (Rule 38.1(k)). Copies must be served as required by Rule 68.11.

Rule 71. Direct Appeals

* * *

71.3. Briefs

Briefs in a direct appeal should be prepared and filed in accordance with Rules 9 and 38, except that the brief need not contain an appendix (Rule 38.1(k)), and the brief in a case in which the death penalty has been assessed may not exceed 125 pages. All briefs must be filed in the Court of Criminal Appeals. The brief must include a short statement of why oral argument would be helpful, or a statement that oral argument is waived.

TRD-201205901
Marisa Secco
Rules Attorney
Supreme Court of Texas
Filed: November 14, 2012

♦ ♦ ♦

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)*