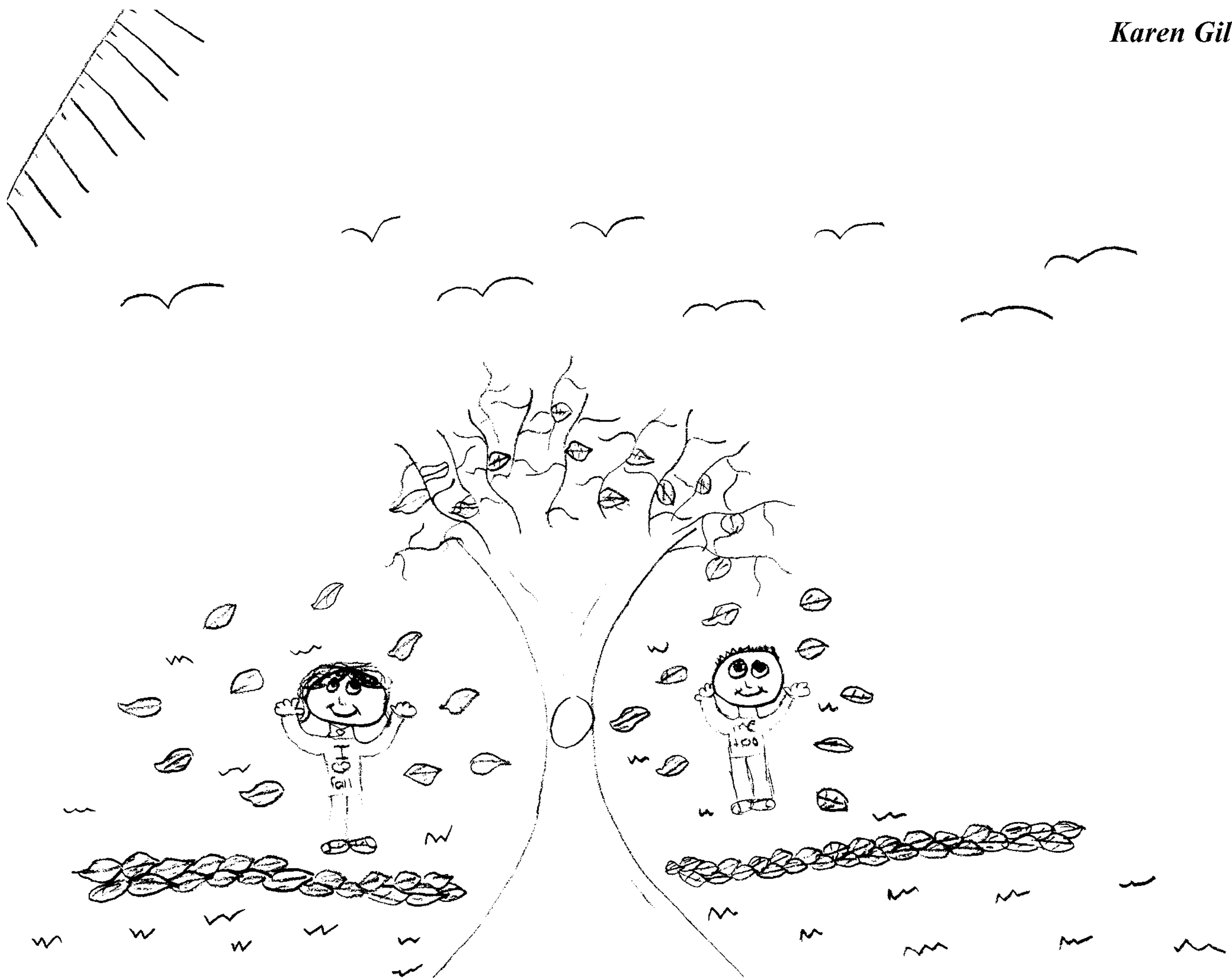
Texas Register

Volume 37 Number 42 October 19, 2012 Pages 8247 - 8358

Karen Gil



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

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

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

TEXAS REGISTER

a section of the
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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 4, 2012

Appointed to Texas Board of Nursing for a term to expire January 31, 2015, Shelby H. Ellzey of Midlothian (replacing Mary Jane Salgado of Eagle Pass who resigned).

Appointed to the Interstate Oil and Gas Compact Commission for a term at the pleasure of the Governor, William R. "Bill" Keffer of Dallas.

Designating Commissioner David J. Porter as the Official Representative of Texas on the Interstate Oil and Gas Compact Commission for a term at the pleasure of the Governor. Commissioner Barry Smitherman, who previously served as the Official Representative of Texas, will remain on the commission.

Appointed to the Education Commission of the States for a term to expire at the pleasure of the Governor, Michael L. Williams of Arlington (replacing Robert Scott of Austin who no longer qualifies).

Appointed to the Southern Regional Education Board for a term to expire June 30, 2014, Michael L. Williams of Arlington (replacing Robert Scott of Austin who no longer qualifies).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2013, Michael L. Williams of Arlington (replacing Robert Scott of Austin who no longer qualifies).

Appointed as Compact Commissioner to the Interstate Compact on Educational Opportunity for Military Children for a term to expire at the pleasure of the Governor, Michael L. Williams of Arlington (replacing Robert Scott of Austin).

Appointed to the Family Practice Residency Advisory Committee for a term to expire August 29, 2013, Linda Vega of Sugar Land (replacing Janet Claborn of Muleshoe whose term expired).

Appointed to the Family Practice Residency Advisory Committee for a term to expire August 29, 2014, Janet Meyers of Aubrey (replacing Joe Deason of Lufkin whose term expired).

Appointed to the Family Practice Residency Advisory Committee for a term to expire August 29, 2015, Idolina Araceli Davis of San Antonio (Ms. Davis is being reappointed).

Appointed to the Council on Sex Offender Treatment for a term to expire February 1, 2015, Elsie Allen of Fort Worth (replacing Joseph Gutheinz, Jr. of Houston who resigned).

Appointed to the Texas Real Estate Commission for a term to expire January 31, 2015, Thomas John "T.J." Turner of Austin (replacing Dona Scurry of El Paso who is deceased).

Appointed to the Texas Medical Board District Four Review Committee for a term to expire January 15, 2014, Phillip W. Worley of Hebbronville (replacing Noe Fernandez of McAllen who resigned).

Appointed to the Texas Medical Board District Four Review Committee for a term to expire January 15, 2016, James H. Dickerson, Jr. of New Braunfels (replacing Russell Parker of Austin who resigned).

Appointed to the Health and Human Services Council for a term to expire February 1, 2013, Thomas C. Wheat of University Park (replacing Ronald Luke of Austin who resigned).

Appointed to the Texas Council on Purchasing from People with Disabilities for a term to expire January 31, 2017, Glenn R. Hagler of Georgetown (replacing Margaret Pfluger of Lubbock whose term expired).

Appointed to the Commission on Uniform State Laws for a term to expire September 30, 2018, Marilyn E. Phelan of Granbury (reappointed).

Appointed to the Commission on Uniform State Laws for a term to expire September 30, 2018, Harry L. Tindall of Houston (reappointed).

Appointed to the Commission on Uniform State Laws for a term to expire September 30, 2018, Earl "Lee" Yeakel, III of Austin (reappointed).

Appointed to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for a term to expire December 31, 2015, Gary A. Haun of San Angelo (replacing James Paul Jay of Longview who resigned).

Appointed to the Red River Authority of Texas Board of Directors for a term to expire August 11, 2017, Nathan James Bell, IV of Paris (Mr. Bell is being reappointed).

Appointed to the Red River Authority of Texas Board of Directors for a term to expire August 11, 2017, Montford "Monty" Johnson, III of Amarillo (replacing Elizabeth Stephenson of Dallas who resigned).

Appointed to the Red River Authority of Texas Board of Directors for a term to expire August 11, 2017, B. Mayfield McCraw, II of Telephone (Mr. McCraw is being reappointed).

Rick Perry, Governor

TRD-201205276

Proclamation 41-3308

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, Archer, Armstrong, Bailey, Bandera, Baylor, Bexar, Blanco, Borden, Briscoe, Brooks, Brown, Burnet, Callahan, Cameron, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Comal, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, El Paso, Fannin, Fisher, Floyd, Foard, Frio, Gaines, Garza, Gillespie, Glasscock, Gray, Grayson, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hidalgo, Hockley, Howard, Hudspeth, Hutchinson, Irion, Jeff Davis, Jim Hogg, Jim Wells, Jones, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, Lamb, Lee, Lipscomb, Llano, Lubbock, Lynn, Martin, Mason, Maverick, McCulloch, Medina, Menard, Midland, Mitchell, Montague, Moore, Motley, Nolan, Nueces, Ochiltree, Oldham, Parmer, Potter, Presidio, Randall, Reagan, Real, Roberts, Runnels, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terry, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Webb, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wise, Yoakum, Zapata and Zavala.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 5th day of October, 2012.

Rick Perry, Governor

TRD-201205277

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-1087-GA

Requestor:

The Honorable Seth C. Slagle

Clay County Attorney

Post Office Drawer 449

Henrietta, Texas 76365-0449

Re: Whether a sheriff must produce and submit a policy manual to the commissioners court for approval (RQ-1087-GA)

Briefs requested by November 5, 2012

RQ-1088-GA

Requestor:

Ms. Michelle Hunter

Executive Director

State Bar of Texas

Post Office Box 12487

Austin, Texas 78711

Re: Whether State Bar president-elect candidates who are nominated by petition under section 81.01(c), Government Code, are nevertheless subject to State Bar election rules and policies (RQ-1088-GA)

Briefs requested by November 6, 2012

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

TRD-201205235
Katherine Cary
General Counsel
Office of the Attorney General
Filed: October 8, 2012

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 5. GENERAL ADMINISTRATION

1 TAC §355.8085

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8085, concerning the reimbursement methodology for physicians and other practitioners.

Background and Justification

Section 1202 of the Health Care and Education Reconciliation Act of 2010 (Pub.L. 111-152, 124 Stat. 1029) amended the Patient Protection and Affordable Care Act (PPACA) (Pub.L. 111-148). Section 1202 of the Health Care and Education Reconciliation Act of 2010 requires each state, beginning on January 1, 2013, to set its Medicaid rates for certain evaluation and management services and vaccine administration services provided by physicians specializing in family medicine, general internal medicine, or pediatric medicine equal to the 2013-2014 Medicare rates. These Medicare rates are typically higher than Medicaid rates for the same services. Section 1202 also specifies that, from January 1, 2013, through December 31, 2014, the federal government will reimburse 100 percent of the difference between a state's Medicaid rate in effect on July 1, 2009, and the 2013-2014 Medicare rate.

In addition to the changes outlined above, HHSC is also adding information regarding the methodology for determining rates for physician-administered drugs. Although this change is not required by PPACA, HHSC is proposing it at this time to improve transparency.

Section-by-Section Summary

Proposed §355.8085(1) describes the purpose of this reimbursement rule.

Proposed §355.8085(2) clarifies language, moves the definition of "resource-based reimbursement fees" to correct alphabetical order, adds a definition for "HHSC," and adds new subparagraph (F) to provide language outlining current Medicaid reimbursement methodologies for physician-administered drugs. The subparagraphs are relettered. As noted previously, the substance of subparagraph (F) is proposed to ensure transparency; this information is added to detail how physician-administered drug pricing is determined.

Proposed §355.8085(3) clarifies calculation of payment amounts.

Proposed §355.8085(4) adds language indicating that physicians specializing in family medicine, general internal medicine, or pediatric medicine will receive enhanced payments for certain evaluation and management services and vaccine administration services as a result of the enhanced payments required by section 1202 of the Health Care and Education Reconciliation Act of 2010.

While the proposed rule is consistent with HHSC's understanding of federal law, the federal Centers for Medicare and Medicaid Services currently has pending a proposed rule that, if adopted, may impose standards for reimbursement that differ from those standards HHSC believes are consistent with federal statute. Proposed paragraph (5) thus permits, but does not require, HHSC to revise its reimbursement methodology in response to the adoption of federal rules while HHSC determines whether and how to amend §355.8085.

Proposed §355.8085(6) adds language to specify that when determining the rates for providers reimbursed at a percentage of the rate paid to a physician (M.D. or D.O.) for the evaluation and management services and vaccine administration services impacted by paragraph (4), the base rate to which the percentage is applied will be the applicable rate in effect on December 31, 2012.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the period the amendment is in effect, there will be a fiscal impact to the state government of $869,996 for state fiscal year (SFY) 2013, $1,388,937 for SFY 2014, $485,617 for SFY 2015. The fiscal impact represents the state share of the cost of increasing the affected rates from their current level to the level in effect on July 1, 2009. Current payment rates are below those in effect on July 1, 2009, and the 100 percent federal match rate applies only to the cost of increasing rates from the level in effect on July 1, 2009, to the 2013-14 Medicare rate for the period January 1, 2013, through December 31, 2014. HHSC does not believe that it may extend payment of the Medicare rate for the affected services beyond December 31, 2014, without specific appropriation from the legislature.

Small and Micro-business Impact Analysis

Pam McDonald, Director of Rate Analysis, has determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the amendment. Providers will not be required to alter their business practices as a result of the amendment. There are no anticipated economic costs to persons who are required to comply with the amend-

ment. There is no anticipated negative effect on local employment in geographic areas affected by the amendment.

Public Benefit

Pam McDonald has also determined that for each of the years the amendment is in effect, the expected public benefit is enhanced rates that will be paid to physicians specializing in internal medicine, family practice, or pediatrics. It is assumed that access to Medicaid services provided by these physician specialists will improve as a result of the enhanced rates.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule that is specifically intended 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

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

Public Comment

Written comments on the proposal may be submitted to Dan Huggins, Director of Acute Care, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to Dan.Huggins@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8085. [~~Texas Medicaid~~] Reimbursement Methodology [~~(TMRM)~~] for Physicians and [~~Certain~~] Other Practitioners.

Reimbursement for physicians and [~~certain~~] other practitioners.

(1) Introduction. This section describes the Texas Medicaid reimbursement methodology (TMRM) that the Health and Human Services Commission (HHSC) uses to calculate payment for covered services provided by physicians and other practitioners. The TMRM facilitates a prospective payment system that is based on HHSC's determination of the adequacy of access to care. [~~Except as otherwise specified, the TMRM for covered services provided by physicians and certain other practitioners shall employ a prospective payment system based upon the determination of adequacy of access to health care services by the Texas Health and Human Services Commission (HHSC) or its designee as described in this section.~~]

(A) There is [~~shall be~~] no geographical or specialty reimbursement differential for individual services.

(B) HHSC reviews the [~~The~~] fees for individual services [~~will be reviewed~~] at least every two years [~~and will be~~] based upon either:

(i) historical payments, with adjustments, to ensure adequate access to appropriate health care services; or

(ii) actual resources required by an economically efficient provider to provide each individual service.

(C) The fees for individual services and [~~or~~] adjustments to the fees [~~thereto~~] must be made within available funding.

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

(A) Access-based reimbursement fees (ABRF)--Fees for individual services based upon historical payments adjusted, where HHSC [~~or its designee~~] deems necessary, to account for deficiencies relating to the adequacy of access to health care services as defined in subparagraph (B) of this paragraph.

(B) Adequacy of access--Measures of adequacy of access to health care services include[~~, but are not limited to,~~] the following determinations:

(i) adequate participation in the Medicaid program by physicians and other practitioners; and [~~and/or~~]

(ii) the ability of the eligible Medicaid population to receive adequate health care services in an appropriate setting.

[~~(C) Resource-based reimbursement fees (RBRF)--Fees for individual services based upon the determination by HHSC or its designee of the resources required by an economically efficient provider to provide individual services. An RBRF is defined mathematically by the following formula: RBRF1 = (RVUw-1 + RVUo-1 + RVUm-1) * CF where, RBRF1 = Resource-Based Reimbursement Fee for Service 1, RVUw-1 = Relative Value Unit for Work for Service 1, RVUo-1 = Relative Value Unit for Overhead for Service 1, RVUm-1 = Relative Value Unit for Malpractice for Service 1, and CF = Conversion Factor.~~]

(C) [~~(D)~~] Conversion factor--The dollar amount by which the sum of the three cost component relative value units (RVUs) is multiplied [~~in order~~] to obtain a reimbursement fee for each individual service. The initial value of the conversion factor is $26.873 for fiscal years 1992 and 1993. HHSC reviews the [~~The~~] conversion factor [~~will be reviewed~~] at the beginning of each state fiscal year biennium, with any adjustments made within available funding and based on the adjustments described in subparagraph (D) [~~(E)~~] of this paragraph or such other percentage approved by HHSC [~~or its designee~~]. HHSC [~~or its designee~~] may develop and apply multiple conversion factors for various classes of service, such as obstetrics, pediatrics, general surgeries, and/or primary care services.

(D) [~~(E)~~] Conversion factor adjustments--If funding is available and adjustments are made to the conversion factor(s), the adjustments may include inflation and/or access-based adjustments.

(i) Inflation adjustment--To account for general inflation, HHSC adjusts the conversion factor [~~is adjusted~~] by the fore-

casted rate of change of a specific inflation factor appropriate to physician or other professional services covered by the TMRM, the Personal Consumption Expenditures (PCE) chain-type price index, or some percentage thereof. To inflate the conversion factor for the prospective period, HHSC [~~or its designee~~] uses the lowest feasible inflation factor forecast that is consistent with the forecasts of nationally recognized sources available to HHSC [~~or its designee~~] at the time of preparation of the conversion factor(s).

(ii) Access-based adjustment--Adjustments to the conversion factor may also be made to ensure adequacy of access as defined in subparagraph (B) of this paragraph.

(E) HHSC--The Health or Human Services Commission or its designee.

(F) Physician-administered drugs or biologicals--

(i) HHSC reimburses fees for physician-administered drugs or biologicals based on one of the following:

(I) Equal to 89.5 percent of average wholesale price (AWP) if the drug or biological is considered a new drug or biological (that is, approved for marketing by the Food and Drug Administration within 12 months of implementation as a benefit of Texas Medicaid); or

(II) Equal to 85 percent of AWP if the drug or biological does not meet the definition of a new drug or biological.

(ii) Fees for biologicals and infusion drugs furnished through an item of implanted durable medical equipment (DME) equal to 89.5 percent of AWP.

(iii) Fees for physician-administered drugs other than biologicals and infusion drugs furnished through an item of implanted DME equal to 106 percent of the average sales price (ASP).

(iv) HHSC may use other data sources to determine Medicaid fees for drugs or biologicals when HHSC determines that AWP or ASP calculations are unreasonable or insufficient.

(G) [~~(F)~~] Relative value units (RVUs)--The relative value assigned to each of the three individual components that comprise the cost of providing individual Medicaid services. The three cost components of each reimbursement fee are intended to reflect the work, overhead, and professional liability expense required to provide each individual service. Except as otherwise specified, HHSC bases the [~~The~~] RVUs that are employed in the TMRM [~~must, except as otherwise specified, be based~~] upon the RVUs of the individual services as specified in the Medicare Fee Schedule. HHSC reviews [~~or its designee will review~~] any changes to or revisions of the various Medicare RVUs and, if applicable, adopt the changes as part of the TMRM, within available funding.

(H) Resource-based reimbursement fees (RBRF)--Fees for individual services based upon HHSC's determination of the resources that an economically efficient provider requires to provide individual services. An RBRF is defined mathematically using the following formula: RBRF = (total RVU * CF), where RBRF = Resource-Based Reimbursement Fee for Service; total RVU = Relative Value Unit, and CF = Conversion Factor.

(3) Calculating the payment amounts. The fee schedule that results from the TMRM must be composed of two separate components:

(A) the access-based reimbursement fees; and

(B) the resource-based reimbursement fees [~~composed of RVUs for the work, overhead, and malpractice components~~]. HHSC multiplies the RVU [~~The sum of these components must then be multiplied~~] by the conversion factor to produce a reimbursement fee for each individual service.

(4) Notwithstanding any contrary provisions, a physician specializing in family medicine, general internal medicine, or pediatric medicine will receive enhanced payments for certain evaluation and management services and vaccine administration services performed from January 1, 2013, through December 31, 2014, in compliance with federal legislation enacted as the Health Care and Education Reconciliation Act of 2010.

(5) HHSC may adjust the reimbursement methodology set forth in paragraphs (3) and (4) of this section based on the final direction provided by the Centers for Medicare and Medicaid Services.

(6) When determining payment rates for providers reimbursed at a percentage of the rate paid to a physician (M.D. or D.O.) for the evaluation and management services and vaccine administration services impacted by paragraph (4) of this section, the base rate to which the percentage is applied is the applicable rate in effect on December 31, 2012. Provider types with rates governed by this paragraph include physician assistants, certified nurse midwives, licensed midwives, nurse practitioners, and clinical nurse specialists, as outlined in §§355.8093, 355.8161, and 355.8281 of this chapter (relating to Physician Assistants; Reimbursement Methodology for Midwife Services; and Reimbursement Methodology).

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 October 8, 2012.

TRD-201205225
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: November 18, 2012
For further information, please call: (512) 424-6900

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)

SUBCHAPTER F. RESIDENTIAL FUELING FACILITIES

16 TAC §13.185

The Railroad Commission of Texas proposes amendments to §13.185, relating to Installation. The Commission proposes the amendments to allow the option of residential fueling for CNG vehicles to take place inside a garage or building, with certain requirements specified in subsection (b).

James Osterhaus, Director, LP-Gas Operations, Alternative Energy Division, has determined that for each of the first five years the proposed amendments will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mr. Osterhaus has determined that there may be some cost of compliance with the proposed amendments for individuals, small businesses, or micro-businesses. Mr. Osterhaus estimates a cost of $4,000 to $5,000 for the refueling equipment, and an installation cost of $1,000 to $1,500 for individuals, small businesses, or micro-businesses to comply with the proposed amendments. However, because the use of indoor fueling under the proposed amendments is voluntary, Mr. Osterhaus concludes that persons would not choose to pay the cost for the equipment or installation required for indoor fueling unless there would be a resulting economic benefit. Mr. Osterhaus also concludes that because this amendment is voluntary, there is likely no adverse economic impact on small businesses or micro-businesses.

Mr. Osterhaus has also determined that the public benefit anticipated as a result of enforcing or administering the amendments will be the option of residential fueling taking place inside a garage or building.

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 a 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. Osterhaus has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses and therefore the analysis described in Texas Government Code, §2006.002, is not required.

Pursuant to Texas Government Code, §2001.022, Mr. Osterhaus has determined that the proposed rulemaking will not have an adverse impact on local employment; therefore, Mr. Osterhaus has not prepared a local employment impact statement.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments will be accepted until 12:00 noon on Monday, November 19, 2012, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal, as well as an online comment form, will be available on the Commission's web site no later than the day after the 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. Osterhaus at (512) 463-6692. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.012.

Issued in Austin, Texas on October 2, 2012.

§13.185. Installation.

(a) All such residential refueling installations shall be installed in accordance with the rules in this chapter [~~Regulations for Compressed Natural Gas (CNG)~~].

(b) The primary concern for the location of the refueling system shall be based solely upon its safety. CNG compression and dispensing may [~~must~~] be located and conducted outdoors or indoors.

(1) If the compression unit and refueling connections are installed indoors, the following requirements must be met:

(A) the compression unit shall be mounted or otherwise located so that the unit is vented outdoors;

(B) where the CNG residential refueling equipment or the vehicle being fueled is located indoors, a gas detector set to operate at one-fifth the lower flammability limit (LFL) of natural gas shall be installed in the room; and

(C) the gas detector shall be located within six inches (150 mm) of the ceiling or the highest point in the room, and shall stop the compressor and operate an audible or visual alarm if the LFL is exceeded.

(2) CNG residential fueling equipment that is listed may utilize a combination of ventilation or gas detection to ensure that the room is maintained at a level below one-fifth of the LFL of natural gas, as detected by the gas detector described in paragraph (1)(C) of this subsection.

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

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

Filed with the Office of the Secretary of State on October 2, 2012.

TRD-201205192
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Earliest possible date of adoption: November 18, 2012
For further information, please call: (512) 475-1295

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGES FOR REPEATED AND EXCESS HOURS OF UNDERGRADUATE STUDENTS

19 TAC §§13.102, 13.104, 13.106, 13.107

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§13.102, 13.104, 13.106 and 13.107, concerning formula funding and tuition charges for repeated and excess hours of undergraduate students and the limitation on formula funding for developmental and remedial courses.

Specifically, a definition of non-course-based developmental education interventions will be added to the definitions in §13.102.

Section 13.104 and §13.106 will be amended to indicate that hours attempted in non-course-based developmental education interventions are allowable exemptions to the excess and repeated hours rules.

The proposed amendments to §13.107 will indicate that semester credit hours (SCH) attempted in non-course-based developmental education interventions fall under the limitation on formula funding for developmental education hours. Public two-year colleges may submit up to 27 SCH attempted in developmental education classes and interventions per student; public universities may submit up to 18 SCH attempted in developmental education classes and interventions per student. The amendments will also allow community colleges, public technical colleges, and public state colleges to convert contact hours to semester credit hours for the purpose of tracking funded and unfunded semester credit hours in developmental education interventions. Institutions will not be required to make a conversion, but may choose to do so.

Susan Brown, Assistant Commissioner, Planning and Accountability, has determined that for each year of the first five years the amended sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Ms. Brown has also determined that for each year of the first five years the proposed amendments are in effect, the public will benefit from having limitations on state funding that apply to all developmental education activities, not simply developmental courses. Defining non-course-based developmental education interventions will ensure consistency in reporting across institutions. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Gary W. Johnstone, Deputy Assistant Commissioner, Planning and Accountability, 1200 East Anderson Lane, Austin, Texas 78752, gary.johnstone@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §61.0595 which provides the coordinating board with authority to adopt rules relating to funding of excess undergraduate credit hours and Texas Education Code, §51.307 which allows the coordinating board to adopt rules for the administration of required and elective courses, including the Texas Success Initiative.

The proposed amendments affect Texas Education Code, §51.3062 and §61.0595.

§13.102. Definitions.

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

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

(4) Non-Course-Based Developmental Education Interventions (also known as Non-Semester-Length Interventions and also referred to as interventions)--Interventions that use learning approaches designed to address a student's identified weaknesses and effectively and efficiently prepare the student for college-level work. These interventions must be overseen by an instructor of record, must not fit traditional course frameworks, and cannot include advising or learning support activities already connected to a traditional course; interventions may include, but are not limited to, tutoring, supplemental instruction, or labs.

(5) [~~(4)~~] Remedial and Developmental Courses--Courses designed to correct academic deficiencies and bring students' skills to an appropriate level for entry into college. The term includes English as a Second Language (ESL) courses in which a student is placed as a result of failing the reading or writing portion of a test required by §4.56 of this title (relating to Assessment Instruments).

(6) [~~(5)~~] Repeated Hours for Attempted Course--Hours for a course that is the same or substantially similar to a course that the student previously attempted for two or more times at the same institution. Previously attempted courses from which the student withdraws before the official census date shall not count as an attempted course.

(7) [~~(6)~~] Repeated Hours for Completed Course--Hours for a course in which a student enrolls for two or more times that is the same as or substantially similar to a course that the student previously completed and received a grade of A, B, C, D, F, or Pass/Fail at the same institution.

(8) [~~(7)~~] Student--For the purposes of this subchapter, a student who has not been awarded a bachelor's degree or the equivalent.

(9) [~~(8)~~] Workforce Education Courses--Courses offered by two-year institutions for the primary purpose of preparing students to enter the workforce rather than academic transfer. The term includes both technical courses and continuing education courses.

§13.104. Exemptions for Excess Hours.

The following types of hours are exempt and are not subject to the limitation on formula funding set out in §13.103 of this title (relating to Limitation on Formula Funding for Excess Hours):

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

(3) hours from remedial and developmental courses and/or interventions, workforce education courses, or other courses that would not generate academic credit that could be applied to a degree at the institution if the course work is within the 27-hour limit at two-year colleges and the 18-hour limit at general academic institutions;

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

§13.106. Exemptions for Repeated Hours for Attempted Courses.

The following types of hours are exempt and are not subject to the limitation on formula funding set out in §13.105 of this title (relating to Limitation on Formula Funding for Repeated Hours for Attempted Course).

(1) hours for remedial and development courses and/or interventions, if the course work is within the 27-hour limit at two-year colleges and the 18-hour limit at general academic institutions;

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

§13.107. Limitation on Formula Funding for Remedial and Developmental Courses and Interventions.

(a) Institutions shall not submit for formula funding any hours for remedial and development courses and/or interventions for which a

student has exceeded 18 semester credit hours of remedial and developmental courses and/or interventions in a general academic teaching institution, or 27 semester credit hours of remedial and developmental courses and/or interventions in a public community college, public technical college, or public state college.

(b) Public community colleges, public technical colleges, or public state colleges may convert contact hours attempted in non-course-based developmental education interventions into semester credit hours to meet the requirements of subsection (a) of this section. For the purposes of this provision, 1 semester credit hour may equal no less than 9 contact hours or no more than 24 contact 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 October 5, 2012.

TRD-201205223
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 24, 2013
For further information, please call: (512) 427-6114

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 4. CONSUMER ASSISTANCE; CLAIM PROCESSES

28 TAC §§5.4200, 5.4211 - 5.4222, 5.4231 - 5.4241, 5.4251 - 5.4253

The Texas Department of Insurance proposes new 28 Texas Administrative Code §§5.4200, 5.4211 - 5.4222, 5.4231 - 5.4241, and 5.4251 - 5.4253. These sections implement new appraisal and mediation processes for the Texas Windstorm Insurance Association enacted in House Bill 3, 82nd Legislature, 2011, 1st Called Session. These sections address the appraisal and mediation processes; qualifications for appraisers, umpires, and mediators; and selection of umpires and mediators by the department, if necessary. These sections also address the obligations of umpires, mediators, claimants, and the association while participating in the processes.

House Bill 3 created specific claims handling processes for the association in Insurance Code Chapter 2210, Subchapter L-1. Insurance Code §2210.574 establishes an appraisal process, and Insurance Code §2210.575 establishes a mediation process. Insurance Code §2210.580 requires the commissioner to adopt rules regarding the provisions of Insurance Code Chapter 2210, Subchapter L-1, including:

(1) qualifications and selection of appraisers for the appraisal process;

(2) qualifications and selection of mediators for the mediation process;

(3) procedures and deadlines for the association claims handling; and

(4) any other matters regarding claims handling that are not inconsistent with Chapter 2210.

Rules adopted under §2210.580 must:

(1) promote the fairness of the process;

(2) protect the rights of aggrieved policyholders; and

(3) ensure that policyholders may participate in the claims review process without the necessity of engaging legal counsel.

Overview

This proposal sets out detailed processes for appraisal when a claimant disputes the amount the association will pay for a covered loss, and for mediation when the association denies coverage for a claim. The sections provide qualifications and ethical requirements, and list conflicts of interest for appraisers, appraisal umpires, and mediators. Insurance Code Subchapter L-1 requires the department to select an umpire or mediator if the parties cannot agree on one. Thus, these sections establish umpire and mediator rosters, along with requirements to qualify for, register for, and remain on the rosters.

These sections apply to all association appraisals and mediations regardless of whether the department selects the umpire or mediator. Under Insurance Code §2210.580 and §2210.575(j), the commissioner's authority to adopt rules for association claims processes extends beyond disputes where the department selects the umpire or mediator. First, Insurance Code §2210.580(a)(1) requires the commissioner to adopt rules for the qualification and selection of appraisers and mediators. Second, Insurance Code §2210.580(a)(4) requires the commissioner to adopt rules concerning any other matters that are consistent with Chapter 2210, Subchapter L-1. Third, Insurance Code §2210.575(j) requires the commissioner to establish mediation process rules that include provisions for expediting mediation, facilitating the ability of claimants to appear with or without counsel, and providing that formal rules of evidence do not apply to mediation. These requirements are not limited to disputes where the department appoints the umpire or mediator.

Among those requirements are rules for qualification and selection of umpires, as well as for costs and disclosure of conflicts of interest. Other requirements for appraisers, umpires, and mediators include obligations such as general duties, fairness, and confidentiality. The intent of these requirements is to ensure consistency and promote the fairness of the process throughout all association appraisals and mediations. They also protect the rights of aggrieved policyholders by ensuring that those involved in the claims process act fairly and independently. Requirements for disclosure of conflicts of interest ensure that parties and the department have the information they need to decide whether a person should serve for a particular dispute. Requiring that all costs shared by the parties be reasonable and necessary gives some guidance to the parties and those they hire about how much each party can be required to pay.

These sections set out a variety of ethical requirements for appraisers, umpires, and mediators. They include prohibiting appraisers from withdrawing except under limited circumstances, prohibiting ex parte communications, and requiring confidentiality. These requirements promote the fairness of the process,

protect the rights of aggrieved policyholders, and help ensure that the claimant can participate without an attorney.

These requirements are derived from the following sources:

(1) *Texas Code of Judicial Conduct,* available at: http://www.courts.state.tx.us/Judethics/canons.asp;

(2) *Texas Supreme Court Ethical Guidelines for Mediators,* available at: http://www.supreme.courts.state.tx.us/MiscDocket/05/05910700.pdf:

(3) Texas Civil Practice and Remedies Code, Chapter 154;

(4) *Code Of Ethics For Appraisers In Insurance Appraisals,* created by the Windstorm Insurance Network, available at: http://www.windnetwork.com/wind_files/WINDAppraiserCodeofEthicsJan2012.pdf;

(5) *Code of Ethics for Umpires in Insurance Appraisals,* created by the Windstorm Insurance Network, available at: http://windnetwork.com/wind_files/WINDCodeofEthics_Fall2007.pdf; and

(6) The department's Hurricane Ike Mediation Pilot Program.

Appraisal Process

When the association accepts coverage for a claim, in full or in part, it notifies the claimant of the amount the association will pay for the covered loss. A claimant who disputes that amount may begin the appraisal process by demanding appraisal under the association policy. The association must give the claimant a notice explaining the appraisal process within seven days of the demand, unless that notice was included with the association's notice accepting the claim. The association and the claimant (the parties) each select an appraiser. Because Insurance Code §2210.574(d)(2) requires the parties to share appraisal costs equally, each party must tell the other party the fees the appraiser will charge.

The two appraisers must then select an independent and qualified appraisal umpire. The umpire participates in the dispute only if the two appraisers cannot agree on the value of the claim. If the two appraisers cannot agree on an umpire, either may request the department to select an umpire. If a party requests an umpire, the department will create a selection panel consisting of at least five umpires from the umpire roster. The department will notify those umpires of possible inclusion on an umpire selection panel. Those umpires must respond to the department, stating whether they would accept selection as umpire for the dispute. Responses must include information about conflicts of interest. Based on this information, the department determines which umpires will be on the umpire selection panel.

The department then sends the umpire selection panel to the parties. The parties may agree on an umpire from the panel. If the parties do not agree, they may object to umpires on the panel. Objections may be based on good cause, or on the fact that the umpire is insured by the association. The department then selects an umpire from the umpires that the parties or appraisers have not objected to.

After an appraiser has considered all information from the parties and all other reasonably available information, the appraiser must give the parties an itemized written appraisal. If the appraisers agree on the amount of the loss, that is the final decision. If the two appraisers fail to agree, the umpire participates in the decision. The umpire reviews the itemized appraisals and all of the information that either party submits. An itemized decision agreed to by any two of the three (appraisers and umpire) is binding on the parties as to the amount of loss the association will pay for the claim.

Additional obligations for department-selected umpires include sending the parties a notice stating whether the umpire is insured by the association, and charging a specified fee of $150 per hour. The department-selected umpire and the parties must sign an appraisal contract, and the umpire must notify the department when the appraisal is complete.

Mediation Process

When the association denies coverage for a claim, in full or in part, the association notifies the claimant of the decision. If the claimant disputes that decision and gives the association a notice of intent to file suit, the association may request mediation. The association must give the claimant a notice explaining the mediation process. The association and the claimant must select a mediator. If they cannot agree on a mediator, either party may request the department to select a mediator from the mediator roster.

If a party requests a mediator, the department will create a selection panel consisting of at least five mediators from the mediator roster. The department will notify those mediators of possible inclusion on a mediator selection panel. Those notified must respond, stating whether they would accept selection as mediator for the dispute. Responses must include information about conflicts of interest. Based on this information, the department determines which mediators will be on the mediator selection panel.

The department then sends the mediator selection panel to the parties. The parties may agree on a mediator from the panel. If the parties do not agree, they may object to mediators on the panel based on good cause, or on the fact that the mediator is insured by the association. The department then selects a mediator from the mediators that neither party has objected to.

The mediator must select a location, schedule the mediation, and notify the parties of the time and place for the mediation. The mediator must review all information that the parties submit. The mediator must conduct the mediation, and comply with the Texas Supreme Court Ethical Guidelines for Mediators. Additional obligations for department-selected mediators include sending the parties a notice stating whether the mediator is insured by the association, and charging a specified fee of $150 per hour. The department-selected mediator and the parties must sign a mediation contract and the mediator must notify the department when the mediation is complete.

General Sections

The final three sections in this proposal--§§5.4251 - 5.4253--apply to both appraisal and mediation. Section 5.4251 provides requirements for submitting items to the department. Section 5.4252 provides requirements and instructions for a party to object to a department-selected mediator or umpire. Section 5.4253 gives notice that the department may in the future decide to outsource some or all of the department's or the commissioner's functions related to these rules.

This proposal is necessary to implement the appraisal and mediation processes required under HB 3. The following discussion outlines the rule sections that establish the processes and requirements.

§5.4200. Definitions.

Section 5.4200 provides definitions for key terms in this division.

§5.4211. Appraisal Process.

Section 5.4211 outlines the appraisal process, which is found in §§5.4211 - 5.4222. The appraisal process in these sections corresponds to the process in the association policy, as required by Insurance Code §2210.574(d)(1).

§5.4212. Appraisal Process - Appraiser Qualifications and Conflicts of Interest.

Section 5.4212 provides qualifications for appraisers for all association appraisals, as required by Insurance Code §2210.080. The qualifications were chosen from the construction and insurance industry because they reflect the skills an appraiser needs to properly determine the cost to repair damage.

Section 5.4212 also describes potential conflicts of interest that could cause an appraiser to be biased. Unbiased appraisers promote the fairness of the process. These potential conflicts were chosen because they demonstrate factors that may cause an appraiser to have a personal or financial interest in conflict with the appraiser's duties. Commenters in the informal comment process suggested some of the potential conflicts for umpires and they function similarly for appraisers.

Potential conflicts do not automatically mean that an appraiser may not be on the roster or may not serve for a particular dispute. Rather, the process simply gives the parties the information about the conflicts and allows them to decide whether the potential conflict is significant.

§5.4213. Appraisal Process - Appraiser Obligations.

Section 5.4213 provides obligations for appraisers for all association appraisals, including ethical requirements. These requirements promote the fairness of the process, as do the other subsections in §5.4213.

§5.4214. Appraisal Process - Umpire Qualifications and Conflicts of Interest.

Section 5.4214 provides qualifications for umpires for all association appraisals. Insurance Code §2210.580 requires the commissioner to adopt rules concerning qualifications and selection of appraisers, mediators, and members of the expert panel. While §2210.580 does not specifically mention umpires, it does require rules for any other matters regarding the handling of claims that are consistent with Subchapter L of Chapter 2210. Given the importance of the umpire to the appraisal process, it is consistent with Subchapter L to provide rules for the qualifications and selection of umpires.

A person who qualifies to be an appraiser under §5.4212 also qualifies to be an umpire. Additionally, attorneys and judges may qualify as umpires. Attorneys and judges typically have experience evaluating information and making decisions about conflicting evidence.

Umpires must disclose conflicts when they register for the umpire roster. They must also disclose conflicts when the department or the parties select them. Potential conflicts do not automatically mean that an umpire may not be on the roster or may not serve for a particular dispute. Rather, the parties or the department can consider those conflicts when selecting an umpire.

In contrast, subsection (b)(2) provides that a qualified umpire may not have any disqualifying conflicts of interest listed in subsection (e). Disqualifying conflicts are critical enough that an umpire who has one cannot avoid at least the appearance of bias. Thus, a person with a disqualifying conflict may not serve as umpire for a dispute where the conflict applies. Some disqualifying conflicts--such as being related to the claimant--bar an umpire only from a particular dispute. Others, such as being an association employee, bar the umpire from all association appraisals, and prevent the umpire from being on the umpire roster.

§5.4215. Appraisal Process - Umpire Roster.

Section 5.4215 establishes requirements and an application procedure for a person to be placed on the umpire roster required by Insurance Code §2210.574. Subsection (e) allows the department to limit the number of umpires on the roster, which the department might do to limit administrative costs. The department will publish the umpire roster on its website. This offers the public access to the information, which benefits policyholders seeking qualified umpires and umpires seeking employment.

An umpire's term on the roster is three years. Umpires may register for another term, and there is no limit to the number of terms an umpire may serve.

§5.4216. Appraisal Process - Removal of Umpire from Roster.

Section 5.4216 establishes the process and reasons the department may use to remove umpires from the roster. This promotes the fairness of the process and protects the rights of policyholders by ensuring that the department can remove an umpire from the roster if the umpire does not meet the rule requirements.

§5.4217. Appraisal Process - Umpire Selection by Department.

Section 5.4217 establishes the selection process when the appraisers cannot agree on an umpire and a party asks the department to select an umpire from the umpire roster. Under §5.4217, the department will create an umpire selection panel consisting of several potential umpires. The parties have the opportunity to object to umpires on the umpire selection panel. The department then selects an umpire from those remaining on the umpire selection panel.

Although the statute does not require an umpire selection panel, this process will help ensure that the selected umpire is unbiased. The department still makes the final umpire selection, but the parties are in a better position than the department to determine whether a particular umpire has a conflict related to them or to the particular dispute. Likewise, the statute does not require allowing parties to object to umpires for good cause. Nonetheless, allowing parties to object to umpires on the umpire selection panel protects the rights of aggrieved claimants because it helps ensure that the department does not select a biased umpire.

The conflict of interest provisions of Insurance Code §2210.010 apply to umpires. Section 2210.010(a) states that "'presiding officer' *includes* a judge, mediator, arbitrator, appraiser, or panel member" (emphasis added). Section 2210.010 then provides requirements for people that the commissioner assigns "to act as presiding officer to preside over or resolve a dispute." The commissioner selects an umpire under §2210.574(e) to participate in the resolution of a dispute. The purpose of the umpire is to resolve the dispute when the appraisers are unable to do so. Thus, the requirements of Insurance Code §2210.010 apply to umpires.

In contrast, although §2210.010 mentions appraisers, the requirements from §2210.010 do not apply to a party's appraiser under this rule. The commissioner does not assign or select appraisers for disputes. Thus, for purposes of this rule, appraisers are not treated as presiding officers under §2210.010.

§5.4218. Appraisal Process - Umpire Obligations.

Section 5.4218 establishes obligations for umpires for all association appraisals. To promote fairness and protect the rights of policyholders, §5.4218 contains requirements for conflicts of interest, ethics, and fees. Based on informal comments, §5.4218(d) limits the umpire's work to only those items on which the appraisers disagree. This promotes efficiency in the appraisal process, thus reducing costs for both parties.

§5.4219. Appraisal Process - Additional Obligations for Department-Selected Umpires.

Section 5.4219 provides additional obligations that apply only to umpires that the department selects. The parties and mediator must sign a contract that requires the parties and the umpire to comply with this title, under subsection (c). Using a contract helps ensure that the parties are aware of their rights and responsibilities.

In subsection (e), the department has set a maximum umpire fee of $150 per hour. Insurance Code §2210.580 requires the commissioner to adopt rules that are not inconsistent with Subchapter L-1, and that promote the fairness of the process. A set fee helps ensure the fairness of the process because all claimants using the department-selected umpires will pay the same hourly rate. This is reasonable because the fees umpires charge vary widely. It would not be fair to claimants with similar claims for the department to select umpires with widely different fees.

Subsection (d)(4) allows umpires to charge for travel costs. The department will try to select umpires from the same area as the claimant, to minimize travel costs for most appraisals. Nonetheless, there may be circumstances where the department selects an umpire who must travel. This might occur when there is no umpire close to the claimant, the appraisal requires special expertise, or there is a major storm and all local umpires are busy.

§5.4220. Appraisal Process - Prohibited Communications.

Section 5.4220 provides confidentiality requirements for parties, appraisers, and umpires. Prohibiting private communications between the umpire and one party helps ensure that the umpire is not unduly influenced by that party and helps the umpire avoid the appearance of bias. Likewise, prohibiting communications with third parties helps ensure that the umpire is not influenced by the third parties and prevents the appearance of bias. These prohibitions promote the fairness of the process and protect the claimant's rights.

§5.4221. Appraisal Process - Costs.

As required by Insurance Code §2210.574(d)(2), §5.4221 requires each party to pay one-half of all costs charged or incurred in connection with the appraisal. Section 5.4221 applies to all appraisals under the Insurance Code, not just those involving commissioner appointed umpires. Subsection (a) limits costs to those that are reasonable and necessary. Because each party is potentially liable for costs that the other party incurs, it promotes the fairness of the process to ensure that one party may not charge the other for unreasonable or unnecessary costs. Insurance Code §2210.580 authorizes these requirements because they relate to the claims process and are consistent with and promote the purposes of Subchapter L-1.

§5.4222. Appraisal Process - Extensions of Deadlines.

Insurance Code §2210.581 authorizes the commissioner, on a showing of good cause, to extend any deadlines established under Insurance Code Chapter 2210, Subchapter L-1, for up to 120 days in aggregate. Thus, §5.4222 provides that the commissioner may extend appraisal deadlines. A request for an extension must be submitted as required under §5.4251 of this title.

Insurance Code §2210.010 separately authorizes the commissioner, on a showing of good cause, to extend the deadline to submit an objection under Insurance Code §2210.010(e). As stated in §5.4222(d), an extension for purposes of Insurance Code §2210.010 does not count against the 120-day aggregate limit for extensions under Insurance Code §2210.581. Finally, the commissioner may not extend the deadline for the umpire to notify the parties that the umpire is insured by the association because Insurance Code §2210.010(b) does not state that the commissioner may extend that deadline.

§5.4231. Mediation Process.

Section 5.4211 outlines the mediation process in §§5.4231 - 5.4241. Section 5.4231(d) allows the parties to participate in mediation without an attorney, as required by Insurance Code §2210.580(b). Subsection (d) also prohibits the association from bringing an attorney to the mediation if the claimant does not. This promotes fairness and prevents disparities in bargaining power, enabling claimants to appear without attorneys.

Section 5.4231(e) provides that mediations are confidential settlement negotiations. Thus, information presented will not be admissible under Rule 408 of the Texas Rules of Evidence unless it is otherwise admissible. Additionally, no one is permitted to record the mediation and parties must give all notes to the mediator to destroy. These requirements correspond to the Texas Supreme Court Ethical Guidelines for Mediators, which require confidentiality by mediators.

Section 5.4231(h) requires mediation agreements to be written and signed. Subsection (h) allows partial agreements, and allows agreements for parts of the claim for which the association accepts coverage, which would normally go to appraisal under §2210.574. This applies only if some part of the claim is subject to resolution under Insurance Code §2210.575. If an agreement is not reached, disputes as to the amount of loss under Insurance Code §2210.574 must be resolved under that section and department rules concerning the appraisal process. A mixed claim does not extend or abate any timeline under Insurance Code Chapter 2210, unless extended by the commissioner on a showing of good cause. This subsection is consistent with Chapter 2210, Subchapter L, because it promotes efficiency and helps prevent litigation.

§5.4232. Mediation Process - Mediator Qualifications and Conflicts of Interest.

Section 5.4232 provides qualifications for mediators for all association mediations. It also describes both potential and disqualifying conflicts of interest. To qualify as a mediator, §5.4232(b) requires a 40-hour basic mediation course that either:

(1) is conducted by an alternative dispute resolution system described in Texas Civil Practice and Remedies Code §154.021(a)(1); or

(2) complies with Texas Mediation Trainers Roundtable standards.

Requiring mediation courses that meet these standards is consistent with the qualifications for mediators in Texas Civil Practice and Remedies Code §154.052. To qualify under §154.052(a), a person must have completed a 40-hour "course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court making the appointment."

Under Insurance Code §2210.575, a court will not be involved in the association's mediation process, so allowing courses that meet the Texas Mediation Trainers Roundtable standards allows flexibility while still ensuring that the mediation courses meet minimum standards. The Texas Mediator Credentialing Association has adopted the Roundtable standards, and more than 20 mediation organizations have affirmed that their training meets the standards. See http://tmtr.org/trainers/.

This proposal divides conflicts of interest between potential conflicts and disqualifying conflicts, under subsections (d) and (e). Mediators must disclose conflicts when they register for the umpire roster. They must also disclose conflicts when they are selected for a dispute by the department or the parties. Potential conflicts do not automatically mean that a mediator may not be on the roster or may not serve for a particular dispute. Rather, the parties or the department can consider those conflicts when selecting a mediator.

In contrast, subsection (b)(2) requires that a qualified mediator may not have any disqualifying conflicts of interest listed in subsection (e). Disqualifying conflicts are critical enough that a mediator who has one cannot avoid the appearance of bias. Thus, a mediator with a disqualifying conflict may not serve as mediator for a dispute where the conflict applies. Some disqualifying conflicts--such as being related to the claimant--bar a mediator only from a particular dispute. Others, such as being an association employee, bar the mediator from all association mediations, and prevent the mediator from being on the mediator roster.

§5.4233. Mediation Process - Mediator Roster.

Section 5.4233 establishes requirements and an application procedure for a person to be placed on the mediator roster required by Insurance Code §2210.575(i). Subsection (e) allows the department to limit the number of mediators on the roster, which the department might do to limit administrative costs. The department will publish the mediator roster on its website. This offers the public access to information, which benefits policyholders seeking mediators and mediators seeking employment.

A mediator's term on the roster is three years. Mediators may register for another term, and there is no limit to the number of terms a mediator may serve.

§5.4234. Mediation Process - Removal of Mediator from Roster.

Section 5.4234 establishes the process and reasons the department may use to remove mediators from the roster. This promotes the fairness of the process and protects the rights of policyholders by ensuring that the department can remove a mediator from the roster if the mediator is not meeting rule requirements.

§5.4235. Mediation Process - Mediator Selection by Department.

Section 5.4235 outlines the process that takes place when the parties cannot agree on a mediator and a party asks the department to select a mediator from the mediator roster. Under §5.4235, the department will create a mediator selection panel consisting of several potential mediators. The parties have the opportunity to object to mediators on the mediator selection panel. The department then selects a mediator from those remaining on the mediator selection panel.

Although the statute does not require a mediator selection panel, the process helps to ensure that the selected mediator is unbiased. The department still makes the final mediator selection, but the parties are in a better position than the department to determine whether a particular mediator has a conflict related to them or to the particular dispute. Likewise, allowing parties to object to mediators for good cause is within the department's authority to allow, as discussed previously under §5.4217 (Appraisal Process - Umpire Selection by Department). Additionally, offering a mediator selection panel expedites the mediation process, as required by Insurance Code §2210.575(j), because the department does not have to start over with the selection process if a party validly objects to a mediator.

§5.4236. Mediation Process - Mediator Obligations.

Section 5.4236 establishes mediator obligations for all association mediations. The obligations are derived from Texas Civil Practice and Remedies Code Chapter 154, the Texas Supreme Court Ethical Guidelines for Mediators, and the department's Hurricane Ike Mediation Pilot Program. To promote fairness and protect the rights of policyholders, §5.4218 contains requirements for conflicts of interest, ethics, and fees. To ensure the efficiency of the process, the mediator is required to schedule the mediation, choose a location, and give notice to the parties of the date, time, and place.

The confidentiality requirements in subsection (j) are derived from the Texas Supreme Court Ethical Guidelines for Mediators, Guideline 8, Comment C, and from the department's Hurricane Ike Mediation Pilot Program.

Subsection (l) requires mediators to comply with the Texas Supreme Court Ethical Guidelines for Mediators. These are commonly followed by mediators. For example, the Texas Mediator Credentialing Association has made those guidelines mandatory. See http://www.txmca.org/ethics.htm.

§5.4237. Mediation Process - Additional Obligations for Department-Selected Mediators.

Section 5.4237 provides additional obligations that apply only to umpires that the department selects. The parties and mediator must sign a contract that requires them to comply with this title, under subsection (d). Using a contract helps ensure that the parties are aware of their rights and responsibilities.

In subsection (e), the department has set a maximum mediator fee of $150 per hour. Insurance Code §2210.580 requires the commissioner to adopt rules that are not inconsistent with Subchapter L-1, and that promote the fairness of the process. A set fee helps ensure the fairness of the process because all claimants using the department-selected mediators will pay the same hourly rate. This is reasonable because the fees mediators charge vary widely. It would not be fair to claimants with similar claims for the department to select mediators with widely different fees.

Subsection (e) authorizes the mediator to charge a four-hour minimum fee to ensure that the mediation process has a reasonable chance of success. The mediator rules authorize a four-hour minimum while the appraisal rules authorize a two-hour minimum because of the different nature of the work. In mediation, it is important that the parties have an opportunity to fully explore the issues and do not feel financial pressure to settle too quickly. That pressure does not exist in appraisal.

Subsection (f) allows mediators to charge for travel costs. The department will try to select mediators from the same area as the claimant, to minimize travel costs for most mediations. Nonetheless, there may be circumstances where the department selects a mediator who must travel. This might occur when there is no

mediator close to the claimant, the mediation requires special expertise, or there is a major storm and all local mediators are busy.

§5.4238. Mediation Process - Association Obligations and §5.4239. Mediation Process - Claimant Obligations and Privileges.

Sections 5.4238 and 5.4239 detail the obligations of the association and the claimant, respectively. Because most of the obligations apply to both, the discussion below covers both sections.

The claimant may attend the mediation with or without an attorney, under 5.4239(d). The association may only be represented by an attorney if the claimant is also represented by an attorney, under §5.4238(e). These provisions help to ensure that the claimant may participate in the mediation process without an attorney, as required by Insurance Code §2210.575(j) and §2210.580(b). The association inherently is in a stronger position than the claimant. Association personnel have experience with insurance, claims, and mediations. Adding an attorney to the team facing an unrepresented claimant only increases the disparity, and does not further the goal of ensuring that a claimant may participate without an attorney.

Section 5.4238 and §5.4239 contain requirements to ensure the efficiency and fairness of the process. For example, the parties must be represented in the mediation by someone who knows the facts and is authorized to settle. The parties may bring other people to assist the primary representative. Additionally, the parties must inform each other about who will attend the mediation, and comply with requirements for rescheduling.

To promote fairness, the parties must negotiate in good faith, under §5.4238(j) and §5.4239(i). The department recognizes that the association is in a superior bargaining position because association personnel have experience with insurance, claims, and mediation. Thus, to further ensure fairness and protect the claimant's rights, particularly where a claimant is not represented by an attorney, a claimant may rescind the mediation agreement if the claimant has not accepted payment, under subsection (j). Correspondingly, if the claimant does not rescind or if the claimant's attorney signs the mediation agreement, the agreement acts as a release of the association's liability on the claim, under subsection (k). This helps ensure that the process is fair to the association as well as to the claimant.

§5.4240. Mediation Process - Costs.

As required by Insurance Code §2210.575(h), §5.4240 requires each party to pay one-half of all costs charged or incurred in connection with the mediation. In subsection (b)(4), the department limited costs to those that are reasonable and necessary. Because each party is potentially liable for costs that the other party incurs, it promotes the fairness of the process to ensure that one party may not charge the other for unreasonable or unnecessary costs.

If a party cancels with less than 24 hours notice or fails to appear for mediation, the party must pay the mediator a $50 rescheduling fee to compensate the mediator. If the association fails to appear for mediation, subsection (e) requires the association to pay the claimant for any actual costs incurred in attending the mediation, plus the cost of lost wages. This promotes fairness and protects the claimant's rights by preventing the association from abusing the mediation process. This requirement is derived from the department's Hurricane Ike Mediation Pilot Project.

§5.4241. Mediation Process - Deadlines and Extensions.

Section 5.4241 explains the 60-day deadline to complete mediation under Insurance Code §2210.575. Subsection (c) provides for deadline extensions by agreement or by the commissioner. Insurance Code §2210.581 authorizes the commissioner, on a showing of good cause, to extend any deadlines established under Insurance Code Chapter 2210, Subchapter L-1, for up to 120 days in aggregate. Thus, §5.4241 provides that the commissioner may extend mediation deadlines. A request for an extension must be submitted as required under §5.4251 of this title.

Insurance Code §2210.010 separately authorizes the commissioner, on a showing of good cause, to extend the deadline to submit an objection under Insurance Code §2210.010(e). As stated in §5.4241(f), an extension for purposes of Insurance Code §2210.010 does not count against the 120-day aggregate limit for extensions under Insurance Code §2210.581. Finally, the commissioner may not extend the deadline for the umpire to notify the parties that the umpire is insured by the association because Insurance Code §2210.010(b) does not state that the commissioner may extend that deadline.

§5.4251. Requests and Submissions to the Department.

Section 5.4251 provides requirements for submitting items to the department. This section applies to all the department mediations and appraisals. Items that may be submitted include requests to be on the mediator or umpire roster, requests for the department to appoint a mediator or an umpire, and objections to mediators or umpires.

§5.4252. Objections.

Section 5.4252 provides requirements and instructions for a party to object to a department-selected mediator or umpire. Parties may object either because the association insures the mediator or for good cause, under subsections (b), (c), and (e). Although good cause objections are not specifically authorized by statute, they are consistent with Subchapter L, and they further the purposes of fairness and efficiency of the process.

Insurance Code §2210.010(c) allows parties to object if the presiding officer is insured by the association. More broadly, §2210.010(d) requires the commissioner to assign a different presiding officer if the commissioner determines that the presiding officer has a direct financial or personal interest in the outcome of the dispute. This authority extends beyond replacing a presiding officer for being insured by the association. It allows the department to replace a presiding officer for good cause. Section 2210.580 gives the department authority to adopt this requirement because it is consistent with Subchapter L and the purposes listed in §2210.580(b).

Subsection (d) provides that a party who does not object to a mediator on a selection panel may not object later for good cause based on information the department provided with the selection panel. This provision promotes the efficiency of the process because it prevents a party from waiting to object until after a mediator is selected or after the mediation has started. Claimants' rights are protected because they may object later based on other information.

§5.4253. Contract Administrator.

Section 5.4253 gives notice that the department may in the future decide to outsource some or all of the department's or the commissioner's functions related to these rules. Government Code Chapter 2155 gives the department authority to issue contracts for services.

FISCAL NOTE. C.H. Mah, Associate Commissioner of the Property and Casualty Section, Regulatory Policy Division, has determined that for each year of the first five years of the proposed rules, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on state government, local employment, or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Mah has also determined that for each year of the first five years the proposed sections are in effect, there will be public benefits resulting from the proposal and costs to persons required to comply with the proposal.

A. Anticipated Public Benefits

The anticipated public benefit is the availability of the appraisal and mediation processes to resolve claim disputes, as required by Insurance Code §2210.574 and §2210.575. Further, the sections provide benefits by:

(1) promoting the fairness of the processes;

(2) protecting the rights of aggrieved policyholders; and

(3) ensuring that policyholders may participate in the claims review process without the necessity of engaging legal counsel.

B. Estimated Costs to Comply with this Proposal

The association, appraisers, umpires, mediators, and claimants will incur costs to comply with this proposal. Costs will only occur if a claimant disputes the association's decision on a claim. The number of disputed claims will depend on the number of claims filed with the association.

Costs under this proposal include the cost of sending applications, notices, requests, responses, and objections to the department or the parties. Based on the cost of printing and mailing, the department estimates that it will cost less than $1.00 to print and mail each item. People might also fax or email these items, which costs even less than mailing.

(1) Mediator and Umpire Fees and Costs

As discussed under §5.4219 and §5.4237, the department set the fees to be charged by department-selected umpires and mediators. The department based these fees on information submitted by umpires and mediators on the temporary rosters. To prepare for the possibility that the department might need an umpire or mediator before these sections are effective, the department created a temporary roster of qualified umpires. The department required umpires on the roster to submit their fees. The submitted fees ranged from an hourly rate of $62.50 to $250 for residential appraisals, and $75 to $300 for commercial appraisals. The median fee is $150 for both commercial and residential, while the average is $161.17 for residential and $175.73 for commercial.

Given that all umpires on the roster are qualified, and that no one is compelled to be on the roster, it is rational to set a consistent reasonable fee for the department-selected umpires. Having claimants in similar circumstances pay the same fee promotes the fairness of the process. The department chose to use the median of $150 for the fee because medians are usually not skewed by highs and lows, while averages may be.

There may be other costs associated with the appraisal and mediation processes including travel, copies, or postage. Travel costs may include airfare, mileage, hotel, and meals. The department cannot estimate these costs per claim because they will depend on factors related to the specific nature of each dispute. Factors include the location of the property; the type, value, and complexity of the claim; and the source of the copies and the type of shipping chosen.

(2) Association

The department has determined that the association will incur costs to send an explanation of the mediation or appraisal process to claimants, under §5.4211(b) and §5.4231(b). The number of notices will depend on the number of disputed claims. The department estimates that it will take an association attorney approximately one hour to prepare the notices. The hourly salary of the association's legal vice-president, David Weber, is approximately $71 per hour, based on his web-posted salary translated into a 40-hour week for 52 weeks per year. Thus, the cost of the notices would be $71 plus approximately $1 per notice for mailing. Because the number of notices corresponds to the number of disputed claims, the department cannot estimate the actual number of notices.

(3) Appraisers

Appraisers for disputed association claims will incur costs to comply with appraiser obligations in §5.4213. Appraisers may incur costs to determine their conflicts of interest and sending them to the parties, under §5.4213(b). The amount of time it will take to determine the conflicts of interest will depend on the nature of and parties to the dispute, and the number of conflicts the appraiser has. While it is impossible to determine this figure with certainty, the department estimates it will take between 30 minutes and two hours to determine conflicts. Based on the median hourly charge of $150 for umpires on the roster--many of whom are appraisers--the cost would range between $75 and $300.

(4) Umpires and Mediators

People who choose to register for the umpire or mediator rosters will incur costs to submit a registration. This cost will recur every three years as the umpire or mediator renews the registration, under §5.4215 and §5.4233. Umpires and mediators on the rosters will incur costs to respond to the department requests for information for the selection panel, under §5.4217 and §5.4235. The department estimates it will take approximately 15 minutes to prepare a registration or to respond to department requests. Based on the median hourly charge of $150 for umpires and mediators on the roster, the cost would range from $37.50 to $75.

Umpires may incur costs to determine their conflicts of interest and send them to the department or to the parties, under §§5.4215, 5.4217, 5.4218, 5.4233, 5.4235, and 5.4236. The amount of time it will take to determine the conflicts of interest will depend on the nature of and parties to the dispute, and the number of conflicts the umpire has. While it is impossible to determine this figure with certainty, the department estimates it will take between 30 minutes and two hours to determine conflicts. Based on the median hourly charge of $150 for umpires and mediators on the roster, the cost would range between $75 and $300.

(5) Parties

Parties may incur costs to send the department requests to select an umpire or mediator, under §5.4211 and §5.4231. Parties may also incur costs to send the department objections to umpires or mediators, under §§5.4217, 5.4235, and 5.4252. The number of requests and objections will depend on the number

of disputed claims where the appraisers or parties cannot agree on an umpire or mediator.

Parties will incur costs if the department selects an umpire or mediator for their dispute. Each party must pay one-half of the hourly rate of $150 for umpires or $150 for mediators. As discussed above, these costs are based on the hourly rates charged under §5.4220 for umpires and §5.4237 for mediators.

The association estimates that the average mediation takes six hours. The association also estimates that on a residential claim, the average appraiser spends 12 to 16 hours working, while the average umpire spends 8 to 12 hours. The association estimates that commercial claims typically involve more hours, but it is impossible to accurately estimate them because they vary widely in complexity.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) requires that if a proposed rule may have an adverse economic impact on small businesses or micro businesses, state agencies must prepare an economic impact statement that assesses the potential impact of the proposed rule on these businesses. The agency must also prepare a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The department has determined that this rule may have an adverse economic effect on the association and small or micro businesses.

The Association.

The association has approximately 150 employees, including employees who are providing services by contract to the Fair Access to Insurance Plan, and gross receipts over $400 million. Based on these factors, the association does not meet the definition of a small or micro business under Government Code §2006.001(1) and (2), and, therefore, Government Code §2006.002(c) does not require an analysis of the economic impact of this proposal on the association.

Small and Micro Businesses.

The department estimates that the number of small and micro businesses potentially subject to the proposed rule is between 50 and 10,000. The small and micro businesses that the rule could potentially impact are:

(1) appraisal firms,

(2) adjuster and public adjusters firms,

(3) mediation firms,

(4) engineering firms,

(5) architecture firms,

(6) law firms,

(7) construction firms, and

(8) any small business insured by the association.

The association currently has approximately 13,300 commercial policies in force, some of which insure small businesses that could have a disputed claim. The department's temporary umpire and mediator rosters have 37 and 54 people on them, respectively. The department estimates that the number of businesses whose employees or proprietors are qualified to be on the rosters, and might seek registration, is significantly higher. Some businesses may serve as appraisers and incur costs under this proposal. Again, these numbers will depend on the number of disputed claims and cannot be reasonably estimated.

Economic Impact.

The economic impact of this proposal on small and micro businesses will vary. For those acting as appraisers, umpires, and mediators, the impact will largely depend on the time spent determining conflicts of interest. For the association and claimants, the impact will be minimal--merely the cost of sending objections to the department--unless they ask the department to select an umpire or mediator. In that case, the parties will each have to pay one-half of the cost of the umpire or mediator, based on the rate set in this rule. The number of hours will vary depending on whether the claim is residential or commercial, and based on the complexity of the claim.

Alternative Methods.

Under Government Code §2006.002(c-1), the department considered requiring alternative means of compliance for small and micro businesses. The first alternative means considered was to not enforce requirements under the rule. For roster applications, this alternative is not practical because the department has no way of knowing that someone is interested in serving as an umpire or mediator unless that person submits an application. For other items that must be sent to the department or parties, this alternative is not practical because the information is necessary for the proper functioning of the process.

Regarding small and micro businesses that are claimants, it would not be practical to exempt them from the requirements of the rules because it would introduce significant uncertainty into the process. For certain requirements, it would violate the statutes. The rules are designed to ensure that the processes are fair and efficient, which provides a benefit to the businesses.

The second alternative the department considered was to exempt small and micro businesses from some of the requirements in §§5.4215, 5.4217, 5.4233, and 5.4235 (relating to, respectively, Appraisal Process - Umpire Selection by Department; Appraisal Process - Umpire Roster; Mediation Process - Mediator Roster; and Mediation Process - Mediator Selection by Department). This alternative may consist of allowing small and micro businesses to register for a roster or be placed on a selection panel without submitting all the information called for in those rules. However, this alternative is not practical because the commissioner cannot effectively select members for the rosters or for disputes without having complete information on all the candidates. Allowing small or micro businesses to submit either no information or abbreviated information would deny the commissioner the information necessary to select appropriate umpires and mediators.

The third alternative the department considered was to set a separate fixed rate for small or simple disputes or claims, which might benefit small and micro business claimants. The department rejected this alternative because there is no clear way to determine the value or complexity of a dispute. The issues vary with each party and often change during the claim resolution process. Each party may have a very different estimate of the value of the claim. Additionally, where the association has denied a claim for lack of coverage, there may be no reliable information on the value or details of a claim. Thus, the department instead set a reasonable fixed rate for all claims.

The fourth alternative the department considered was to allow umpires and mediators to set their own fees, and the department

would use cost as a factor in selecting mediators for a dispute. The department rejected this approach because there is no clear way to use cost when it is not possible to readily determine the value or complexity of a dispute. Additionally, umpires and mediators on the temporary rosters had a wide range of fees and did not have a consistent method of charging. For mediators, fees ranged from $50 to $300 per party per hour. Some mediators did not charge a minimum fee while others charged for eight hours. Likewise, umpire fees ranged from $62.50 to $300 per party per hour, with minimum charges ranging from zero to eight hours.

None of these alternatives provided any significant benefits to small or micro businesses, they are not consistent with the statutes, and they are not practical to implement. Thus, the department has rejected these alternatives.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. Therefore, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you wish to comment on the proposal, you may do so in writing no later than 5:00 p.m. on November 19, 2012. Send the comment to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must submit any request for a public hearing separately to the Office of Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 before the close of the public comment period. If the department holds a hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The department proposes these rules under Government Code Chapter 2155 and Insurance Code §§2210.008, 2210.575, 2210.580, 2210.581, and 36.001. Government Code Chapter 2155 gives the department authority to issue contracts for services. Insurance Code §2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules to implement Chapter 2210. Section 2210.575(d) allows the commissioner by rule to extend the 60-day period to request alternative dispute resolution. Section 2210.575(j) requires the commissioner to establish rules to implement §2210.575, including provisions for expediting alternative dispute resolution, facilitating the ability of a claimant to appear with or without counsel, establishing qualifications necessary for mediators to be placed on the roster, and providing that formal rules of evidence will not apply to the proceedings.

Section 2210.580 requires the commissioner to adopt rules regarding the provisions of Insurance Code Chapter 2210, Subchapter L-1, including:

(1) qualifications and selection of appraisers for the appraisal procedure, mediators for the mediation process, and members of the expert panel;

(2) procedures and deadlines for the payment and handling of claims by the association as well as the procedures and deadlines for a review of a claim by the association; and

(3) any other matters regarding the handling of claims that are not inconsistent with Subchapter L-1.

Section 2210.580(b) requires that all rules adopted under §2210.580 shall promote the fairness of the process, protect the rights of aggrieved policyholders, and ensure that policyholders may participate in the claims review process without the necessity of engaging legal counsel.

Section 2210.581 allows the commissioner, on a showing of good cause, to extend by rule deadline established under Subchapter L-1.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the department's powers and duties under the Insurance Code and other laws of the state.

CROSS-REFERENCE TO STATUTE. This proposal affects the following statutes: Insurance Code §§2210.008, 2210.010, 2210.571, 2210.574, 2210.575, and 2210.580 and Government Code Chapter 2155.

§5.4200. Definitions.

The following definitions apply to this division:

(1) Appraiser--A person who is qualified to be an appraiser under §5.4212 of this title (relating to Appraisal Process - Appraiser Qualifications and Conflicts of Interest) and is selected by the association or a claimant to participate in the appraisal process.

(2) Association--Texas Windstorm Insurance Association. "Association" includes any authorized representative of the Texas Windstorm Insurance Association.

(3) Claimant--A person who makes a claim under an association policy.

(4) Department--The Texas Department of Insurance.

(5) Mediator--A person who is qualified to be a mediator under §5.4232 of this title (relating to Mediation Process - Mediator Qualifications and Conflicts of Interest).

(6) Mediator roster--The roster of mediators maintained by the department.

(7) Mediator selection panel--A short list of potential mediators from the mediator roster from which the department will select a mediator.

(8) Party--The association or the claimant. "Party" includes employees and other representatives of a party.

(9) Umpire--A person who is qualified to be an umpire under §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest) and is selected by the appraisers or the department to participate in the appraisal process.

(10) Umpire roster--The roster of appraisal umpires maintained by the department.

(11) Umpire selection panel--A short list of potential umpires from the umpire roster from which the department will select an umpire.

§5.4211. Appraisal Process.

(a) Applicability. Sections 5.4211 - 5.4222 of this title are the appraisal process and apply when:

(1) the association has accepted coverage for a claim, in full or in part;

(2) the claimant disputes the amount of loss the association will pay for the accepted portion of the claim; and

(3) the claimant demands appraisal under the association policy within the time frame allowed by Insurance Code §2210.574.

(b) Appraisal explanation. No later than the seventh day after the date the claimant requests appraisal, the association must give the claimant a notice explaining the appraisal process. The explanation may accompany the association's notice accepting or denying coverage under Insurance Code §2210.573.

(c) Appraiser selection. The association and the claimant must each select an appraiser who is independent and qualified under §5.4212 of this title (relating to Appraisal Process - Appraiser Qualifications and Conflicts of Interest).

(d) Appraiser fee information. No later than five days after hiring an appraiser, each party must tell the other party the fees to be charged by the appraiser.

(e) Umpire selection.

(1) The appraisers must select an umpire who is independent and qualified under §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest).

(2) If the appraisers are unable to agree on an umpire, either appraiser may request the department to select an umpire. The appraiser must submit the request under §5.4251 of this title (relating to Requests and Submissions to the Department). The request must include the following information:

(A) the type of policy;

(B) a description of the claim and, if known, the claimed value of the covered loss;

(C) the association's claim acceptance letter, including the amount the association will pay for the loss; and

(D) any other information that the department requests.

(f) Umpire participation. The selected umpire must participate in the resolution of the dispute if the appraisers fail to agree on a decision.

(g) Decision. If the appraisers agree on the amount of loss, their decision is binding on the parties as to the amount of loss the association will pay for the claim. If the parties cannot agree, and the umpire participates, an itemized decision agreed to by any two of these three is binding on the parties as to the amount of loss the association will pay for the claim. The decision may only be challenged as permitted by Insurance Code §2210.574.

§5.4212. Appraisal Process - Appraiser Qualifications and Conflicts of Interest.

(a) Qualifications. To qualify as an appraiser, a person must be one of the following:

(1) an engineer or architect with experience and training in building construction, repair, estimating, or investigation of property damage;

(2) an adjuster or public adjuster with experience and training in estimating property damage; or

(3) a general contractor with experience and training in building construction, repair, or estimating property damage.

(b) Potential conflicts. A potential conflict of interest exists when an appraiser:

(1) is a current or former association or claimant employee;

(2) is a current or former association or claimant contractor or contractor's employee, except that it is not a potential conflict for the appraiser to be a contractor solely to work on the pending appraisal;

(3) is related within a degree of relationship described by Government Code §573.002 to:

(A) a current or former association employee;

(B) a current or former association contractor or contractor's employee;

(C) the claimant or a representative of the claimant;

(D) a current or former claimant employee; or

(E) a current or former claimant contractor or contractor's employee;

(4) is a current association policyholder;

(5) currently has an open claim or acts as a representative or public adjuster on an open claim with the association, or previously filed a claim with the association;

(6) is a current employee or contractor of an insurance company or public insurance adjusting company;

(7) currently is a party or represents a party to a lawsuit with the association, or was a party or represented a party to a lawsuit with the association within the previous five years;

(8) adjusted the loss or acted as a public adjuster on the loss involved in the claim;

(9) is related to the adjuster or public adjuster who adjusted the loss;

(10) is an employee of the adjusting company or public insurance adjusting company that adjusted the loss or represented the claimant on the loss; or

(11) has any other direct or indirect interest, financial or otherwise, of any nature that substantially conflicts with the appraiser's duties.

§5.4213. Appraisal Process - Appraiser Obligations.

(a) Conflicts. An appraiser must disclose to both parties any potential conflicts of interest no later than the fifth day after being hired, and before the appraiser begins work on the appraisal. Potential conflicts of interest are listed in §5.4212 of this title (relating to Appraisal Process - Appraiser Qualifications and Conflicts of Interest).

(b) Withdrawal prohibited. After an appraiser has accepted the responsibility for an appraisal, the appraiser may not withdraw or abandon the appraisal unless compelled to do so by unanticipated circumstances that would render it impossible or impractical to continue. The appraiser may not charge a fee for services if the appraiser withdraws or abandons the appraisal.

(c) Postponement. An appraiser must postpone the appraisal for a reasonable amount of time if a party shows good cause for a postponement.

(d) Duties. An appraiser must:

(1) consider all information provided by the parties and any other reasonably available evidence material to the claim;

(2) follow the association policy when making the appraisal decision;

(3) carefully decide all issues submitted for determination regarding the amount of loss; and

(4) give the parties and the other appraiser an itemized written appraisal.

(e) Fairness. An appraiser must conduct the appraisal process to advance the fair and efficient resolution of the matters submitted for decisions.

(f) Independence. An appraiser may not:

(1) permit outside pressure to affect the appraisal; or

(2) delegate the duty to decide to any other person.

(g) Prohibited communications. An appraiser may not communicate with an appraisal umpire without including the other party or the other party's appraiser, except as permitted under §5.4220 of this title (relating to Appraisal Process - Prohibited Communications).

§5.4214. Appraisal Process - Umpire Qualifications and Conflicts of Interest.

(a) Required qualifications. To qualify as an umpire, a person must:

(1) be one of the following:

(A) an engineer or architect with experience and training in building construction, repair, estimating, or investigation of property damage;

(B) an adjuster or public adjuster with experience and training in estimating property damage;

(C) a general contractor with experience and training in building construction, repair, or estimating property damage;

(D) a licensed attorney; or

(E) a current or former judge of any Texas court of record or the State Office of Administrative Hearings; and

(2) not have any disqualifying conflicts of interest listed in subsection (d) of this section.

(b) Preferred qualifications. The following qualifications are preferred:

(1) experience with the appraisal of property damage claims; and

(2) experience as an appraisal umpire on at least three property damage claims in the previous 12 months.

(c) Potential conflicts. A potential conflict of interest exists when an umpire:

(1) is a former association or claimant employee or contractor or contractor's employee;

(2) is related within a degree of relationship described by Government Code §573.002 to:

(A) a former association employee;

(B) a former association contractor or contractor's employee;

(C) a former claimant employee; or

(D) a former claimant contractor or contractor's employee;

(3) is a current association policyholder;

(4) previously filed a claim with the association;

(5) is a current employee or contractor of an insurance company or public insurance adjusting company; or

(6) was a party or represented a party to a lawsuit with the association within the previous five years.

(d) Disqualifying conflicts. A potential umpire has a disqualifying conflict of interest if the potential umpire:

(1) is a current association or claimant employee;

(2) is a current association or claimant contractor, or contractor's employee, except that it is not a conflict for the umpire to be a contractor solely to work on the pending appraisal;

(3) is related within a degree of relationship described by Government Code §573.002 to:

(A) a current association employee;

(B) a current association contractor or contractor's employee;

(C) the claimant or a representative of the claimant;

(D) a current claimant employee; or

(E) a current claimant contractor or contractor's employee;

(4) currently has an open claim, or acts as a representative or public adjuster on an open claim with the association;

(5) is a party to or represents a party to a current lawsuit with the association;

(6) adjusted the loss or acted as a public adjuster on the loss involved in the claim;

(7) is related to the adjuster or public adjuster who adjusted the loss;

(8) is an employee of the adjusting company or public insurance adjusting company that adjusted the loss or represented the claimant on the loss; or

(9) has any other direct or indirect interest, financial or otherwise, of any nature that substantially conflicts with the umpire's duties.

§5.4215. Appraisal Process - Umpire Roster.

(a) Eligibility. To be placed on the umpire roster, a person must register with the department and must meet the qualifications in §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest).

(b) Registration. The registration must include contact information and details about:

(1) the person's training and experience related to building construction, repair, estimating, or investigating property damage;

(2) any training and experience related to estimating property damage claims;

(3) whether the person's experience is with residential or commercial property damage;

(4) any relevant licenses or certifications;

(5) a general description of the approximate number, type of policies, and value and complexity of property damage claims on which the applicant worked over the previous three years;

(6) the counties in which the person is willing to work;

(7) the type of policies, and value and complexity of claims on which the person is willing to work;

(8) potential conflicts of interest, under §5.4214 of this title;

(9) any professional disciplinary actions or criminal convictions; and

(10) an up-to-date biography, resume, or curriculum vitae.

(c) Notice. A person is not on the umpire roster until the department sends written notice of placement on the roster.

(d) Limited number. The department may limit the number of umpires on the roster.

(e) Publication. The department will publish the umpire roster on the department's website. Published roster information will include an umpire's name, contact information, preferred types of claims, and preferred geographic areas.

(f) Disqualifying conflicts. The umpire must notify the department of a disqualifying conflict of interest under §5.4214 of this title within 10 days of learning about the conflict.

(g) Term. An umpire will be on the umpire roster for a term of three years, except as provided under §5.4216 of this title (relating to Appraisal Process - Removal of Umpire from Roster). To remain on the roster for additional terms, an umpire must submit a new registration to the department.

(h) Submissions. Notices and registrations sent to the department under this section must comply with §5.4251 of this title (relating to Requests and Submissions to the Department).

§5.4216. Appraisal Process - Removal of Umpire from Roster.

(a) Voluntary removal. An umpire may request removal from the roster at any time. The umpire must submit the request under §5.4251 of this title (relating to Requests and Submissions to the Department).

(b) Removal by department. The department may, in its sole discretion, remove an umpire from the umpire roster for:

(1) alleged dishonest, incompetent, fraudulent, or unethical behavior;

(2) alleged failure to respond promptly and completely to requests from the department and where the actions or failure to act are counter to the purpose of appraisal;

(3) a disciplinary action by any other agency or disciplinary authority against the umpire, regardless of whether the agency or disciplinary authority's regulation relates to appraisal;

(4) conviction of, or accepting deferred adjudication for, a crime under state or federal law;

(5) a disqualifying conflict of interest listed in §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest);

(6) failure to comply with any requirement of this title; or

(7) other factors relevant to the umpire's qualifications, conflicts of interest, or performance.

§5.4217. Appraisal Process - Umpire Selection by Department.

(a) Applicability. This section applies when the appraisers are unable to agree on an umpire and a party requests the department to select an umpire.

(b) Notice. The department will notify at least five umpires of possible inclusion on an umpire selection panel.

(c) Factors. When selecting an umpire for the umpire selection panel, the department may consider:

(1) the umpire's preferred geographic locations and types of claims;

(2) the proximity of the claimant and the umpire;

(3) the umpire's areas of training and expertise;

(4) the extent of the umpire's experience with appraisal and with property damage claims;

(5) the subject of the dispute;

(6) the type of policy;

(7) the value and complexity of the claim;

(8) any conflicts of interest;

(9) the umpire's fees; and

(10) other factors relevant to the dispute.

(d) Umpire's response. Each umpire notified under subsection (b) of this section must respond to the department no later than the fifth day after receiving the notice.

(1) The umpire's response must state whether the umpire will accept or reject selection as umpire for the appraisal; and

(2) provide:

(A) an up-to-date resume, curriculum vitae, or brief biographical sketch of the umpire;

(B) a statement of whether the umpire is insured by the association;

(C) a description of the nature and extent of any prior knowledge the umpire has of the dispute;

(D) a description of any contacts with either party--including association employees--within the previous three years;

(E) a description of other known potential conflicts of interest. Potential conflicts of interest are listed in §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest); and

(F) any new disqualifying conflicts of interest listed in §5.4214 of this title.

(e) Umpire selection panel. From the information provided, the department will determine which umpires will be on the umpire selection panel. The department will send the umpire selection panel to each party and each appraiser, along with the information the listed umpires provided.

(f) Selection by agreement. The appraisers may select an umpire from the umpire selection panel. If the appraisers agree on an umpire, the association must inform the department no later than the third day after the agreement.

(g) Selection if the appraisers fail to agree. If the appraisers are unable to agree on an umpire from the umpire selection panel:

(1) each appraiser or party may object to umpires on the umpire selection panel under §5.4252(a)(1)(A) and (2)(A) of this title (relating to Objections); and

(2) the department will select an umpire from the umpires on the umpire selection panel that neither appraiser has objected to.

(h) Notice. The department will notify the umpire selected under subsection (f) or (g) of this section and give the umpire the claim information provided under §5.4211 of this title (relating to Appraisal Process).

§5.4218. Appraisal Process - Umpire Obligations.

(a) Conflicts. An umpire must disclose to both parties any potential conflicts of interest. Conflicts of interest are listed in §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest). The umpire must disclose the conflicts of interest no later than the fifth day after being hired, and before the umpire begins work. A person may not serve as umpire in an appraisal for which the person has a disqualifying conflict of interest.

(b) Work. The umpire may begin work only if the association's appraiser and the claimant's appraiser fail to reach an agreement on the appraisal amount and tell the umpire in writing to begin work.

(c) Review information. The parties and appraisers may request the umpire to review any information related to the claim, including itemized estimates and supporting documents such as photographs and diagrams. The umpire must review in detail all information the appraisers and parties submit related to the dispute, including the itemized appraisals. At a party's request, the umpire may also consider any conflicts of interest or objections to appraisers. The umpire must allow each appraiser a fair opportunity to present evidence and argument. The umpire may ask questions, and request documents or other evidence, including expert reports.

(d) Limited scope. The umpire's work may only cover items about which the two appraisers disagree. The umpire must review the differences and seek agreement with one or both appraisers regarding the disputed items. The umpire may accept either appraiser's scope, quantities, values, or costs on items in dispute, or may develop an independent decision on an item. The umpire may not visit the claimant's property without agreement from both appraisers.

(e) Decision. An itemized decision agreed to by both appraisers or by one appraiser and the umpire is binding on the parties as to the amount of loss the association will pay for the claim. The umpire may enter into an itemized decision with one or both appraisers on a compromise basis. The umpire can issue a decision if agreement is reached on the final total, even if there is disagreement on some of the individual items. The umpire must promptly give the parties and the appraisers an itemized written decision.

(f) Ethics. After accepting the responsibility to be the umpire for an appraisal, the umpire:

(1) may not withdraw or abandon the appraisal unless compelled to do so by unanticipated circumstances that would render it impossible or impractical to continue;

(2) may not be present or participate in settlement discussions unless requested by both parties; and

(3) must decide all matters fairly, exercising independent judgment and utmost integrity. An umpire may not permit outside pressure to affect the appraisal, and may not delegate the umpire's decision under subsection (e) of this section to any other person.

(g) Fees. The umpire must disclose all fees and must state whether the umpire charges for a minimum number of hours. The umpire may specify different charges for different types or values of claims. The parties may not pay the umpire on a contingent fee basis, percentage of the decision, barter arrangement, gift, favor, or in-kind exchange. This subsection does not apply to department-selected umpires under §5.4217 of this title (relating to Appraisal Process - Umpire Selection by Department).

§5.4219. Appraisal Process - Additional Obligations for Department-Selected Umpires.

(a) Applicability. The following umpire obligations apply only when the department selects an umpire under §5.4217 of this title (relating to Appraisal Process - Umpire Selection by Department).

(b) Notices. No later than the seventh day after receiving notice of being selected for an appraisal, the umpire must send a notice to the parties and to the appraisers. This deadline may not be extended. The notice must:

(1) be in writing;

(2) inform the parties and appraisers that the umpire has been selected;

(3) state whether the umpire is insured by the association; and

(4) inform the parties of their right to object to the umpire under §5.4252 of this title (relating to Objections).

(c) Contract. Before the umpire begins work, the parties and the selected umpire must sign an appraisal contract. The contract must require:

(1) the parties and the umpire to comply with this division; and

(2) each party to pay one-half of all appraisal costs described in §5.4221 of this title (relating to Appraisal Process - Costs).

(d) Disposition. The umpire must notify the department when the appraisal process is complete and of the appraisal decision.

(e) Fees. The umpire must charge an hourly rate of $150 and may charge a two-hour minimum fee.

(1) The parties may not pay an umpire on a contingent fee basis, percentage of the decision, barter arrangement, gift, favor, or in-kind exchange.

(2) The umpire may charge for reasonable incurred travel costs, including mileage, meals, and lodging, according to the travel regulations adopted by the Texas Comptroller of Public Accounts under Government Code §660.021. The umpire must provide an estimate of travel costs as an addendum to the contract under subsection (c) of this section.

§5.4220. Appraisal Process - Prohibited Communications.

(a) Ex parte communications. After an umpire is selected and before the appraisal is completely resolved:

(1) The umpire may not communicate separately with either party or either party's appraiser regarding the pending appraisal unless the umpire notifies the other party and gives the other party the opportunity to participate.

(2) No party or appraiser may communicate with the umpire regarding the pending appraisal without including the other party or appraiser, except that:

(A) an appraiser may identify the parties' counsel or experts;

(B) an appraiser may discuss logistical matters such as setting the time and place of meetings or making other arrangements for the conduct of the proceedings. The appraiser initiating this contact with the umpire must promptly inform the other appraiser; or

(C) if an appraiser fails to attend a meeting or conference call after receiving notice, or if both parties agree in writing, the opposing appraiser may discuss the claim with the umpire who is present.

(b) Confidentiality. After an umpire is notified that the umpire may be on an umpire selection panel, the umpire may not at any time communicate any information about the appraisal with anyone besides the parties, the association, the appraisers, and the department. However, the umpire may communicate information about the appraisal with the written consent of the parties.

§5.4221. Appraisal Process - Costs.

(a) One-half per party. Each party must pay one-half of all reasonable and necessary costs incurred or charged in connection with the appraisal, including:

(1) appraisers' fees;

(2) umpire's fee; and

(3) umpire's travel costs.

(b) No umpire fee before work begins. If the parties settle before the umpire begins work, the umpire may not charge a fee.

(c) Department not responsible. The department is not responsible for any appraisal costs.

§5.4222. Appraisal Process - Extensions of Deadlines.

(a) Extensions. For good cause, the commissioner may extend any deadline in this division related to appraisal, except the deadline for the umpire to notify the parties that the umpire is insured by the association, under §5.4218 of this title (relating to Appraisal Process - Umpire Obligations).

(b) Request for extension. To request the commissioner to extend a deadline, a party, appraiser, or umpire must send the request in writing to the department, under §5.4251 of this title (relating to Requests and Submissions to the Department). The request must explain the good cause for the extension. Good cause includes military deployment of the claimant.

(c) Extension limit. Deadline extensions may not exceed an aggregate 120 days. This limit does not apply to extensions of the deadline to file an objection because an umpire is insured by the association.

§5.4231. Mediation Process.

(a) Applicability. Sections 5.4231 - 5.4241 of this title are the mediation process and apply when:

(1) the association has denied coverage for a claim, in full or in part;

(2) the claimant disputes the denial and gives the association a notice of intent to file suit; and

(3) the association has requested mediation under the association policy within the time frame allowed under Insurance Code §2210.575.

(b) Mediation explanation. At the same time as the association requests mediation, the association must give the claimant a notice explaining the mediation process.

(c) Mediator selection. The association and the claimant must select a mediator who is qualified under §5.4232 of this title (relating to Mediation Process - Mediator Qualifications and Conflicts of Interest). If the parties are unable to agree on a mediator, either party may request the department to select a mediator. The party must submit the request under §5.4251 of this title (relating to Requests and Submissions to the Department), and must include the following information:

(1) the type of policy;

(2) a description of the claim and, if known, the potential claim amount;

(3) the association's denial letter;

(4) the policyholder's notice of intention to file suit; and

(5) any other relevant information that the department requests.

(d) Representation. The parties may participate in the mediation without an attorney. Both parties must bring a person who is authorized to settle the case. An attorney representing the association may not attend the mediation unless an attorney representing the claimant participates.

(e) Review information. The parties may ask the mediator to review any information related to the claim, including itemized estimates and supporting documents such as photographs and diagrams.

(f) Rules of evidence. The rules of evidence do not apply to mediation.

(g) Confidentiality. Unless the parties agree otherwise, all information revealed in the mediation is part of confidential settlement negotiations in anticipation of litigation. This includes any documents presented or made during the mediation.

(1) No one may make audio or visual recordings of the mediation.

(2) Parties must give any notes, other than a signed agreement between the parties made during the mediation, to the mediator to be destroyed.

(3) This rule does not affect the discoverability or admissibility of documents that are otherwise discoverable or admissible.

(h) Agreement. If the parties reach an agreement in mediation, they must put the agreement in writing. Both parties must sign the agreement.

(1) The agreement may include parts of the claim for which the association accepts coverage.

(2) The agreement may be a partial agreement resolving some parts of the dispute but not others.

(3) A mediation agreement does not affect rights on claims for damages that were undetected at the time of the agreement.

§5.4232. Mediation Process - Mediator Qualifications and Conflicts of Interest.

(a) Required qualifications. To qualify as a mediator, a person must:

(1) have completed a 40-hour basic mediation course:

(A) conducted by an alternative dispute resolution system described in Texas Civil Practice and Remedies Code §154.021(a)(1); or

(B) that complies with the mediation training standards established by the Texas Mediation Trainers Roundtable; and

(2) not have any disqualifying conflicts of interest listed in subsection (d) of this section.

(b) Preferred qualifications. The following qualifications are preferred:

(1) conducted at least three mediations in the previous 12 months; and

(2) experience mediating property damage claims.

(c) Potential conflicts. A potential conflict of interest exists when a mediator:

(1) is a former association or claimant employee;

(2) is a former association or claimant contractor or contractor's employee;

(3) is related within a degree of relationship described by Government Code §573.002 to:

(A) a former association employee;

(B) a former association contractor or contractor's employee;

(C) a former claimant employee; or

(D) a former claimant contractor or contractor's employee;

(4) is a current association policyholder;

(5) previously filed a claim with the association;

(6) is a current employee or contractor of an insurance company or public insurance adjusting company; or

(7) was a party or represented a party to a lawsuit with the association within the previous five years.

(d) Disqualifying conflicts. A potential mediator has a disqualifying conflict of interest if the mediator:

(1) is a current association or claimant employee, contractor, or contractor's employee, except that it is not a conflict for the mediator to be a contractor solely to serve as mediator for the pending mediation;

(2) is related within a degree of relationship described by Government Code §573.002 to:

(A) a current association employee;

(B) a current association contractor or contractor's employee;

(C) the claimant or a representative of the claimant;

(D) a current claimant employee; or

(E) a current claimant contractor or contractor's employee;

(3) currently has an open claim, or acts as a representative or public adjuster on an open claim with the association;

(4) is a party to or represents a party to a current lawsuit with the association;

(5) adjusted the loss or acted as a public adjuster on the loss involved in the claim, is related to the adjuster or public adjuster who adjusted the loss, or is an employee of the adjusting company or public insurance adjusting company that adjusted the loss or represented the claimant on the loss; or

(6) has any other direct or indirect interest, financial or otherwise, of any nature that substantially conflicts with the mediator's duties.

§5.4233. Mediation Process - Mediator Roster.

(a) Eligibility. To be placed on the mediator roster, a mediator must register with the department and must meet the qualifications in §5.4232 of this title (relating to Mediation Process - Mediator Qualifications and Conflicts of Interest).

(b) Registration. The registration must include contact information and details about:

(1) the mediator's mediation training;

(2) any mediation certification;

(3) any other relevant licenses or certifications;

(4) any training or experience relating to property damage claims;

(5) a general description of the approximate number, value, complexity, and nature of disputes mediated over the previous three years;

(6) the counties in which the mediator is willing to mediate;

(7) the types of policies, and value and complexity of claims the mediator is willing to mediate;

(8) potential conflicts of interest, under §5.4232 of this title;

(9) any professional disciplinary actions or criminal convictions;

(10) whether the mediator is insured by the association; and

(11) an up-to-date biography, resume, or curriculum vitae.

(c) Notice. A person is not on the mediator roster until the department sends written notice of placement on the roster.

(d) Limited number. The department may limit the number of mediators on the roster.

(e) Publication. The department will publish the mediator roster on the department's website. Published roster information will include a mediator's name, contact information, preferred types of claims, and preferred geographic areas.

(f) Disqualifying conflicts. The mediator must notify the department of a disqualifying conflict of interest, under §5.4232 of this title.

(g) Term. A mediator will be on the mediator roster for a term of three years, except as provided under §5.4234 of this title (relating to Mediation Process - Removal of Mediator from Roster). To remain on the roster for additional terms, a mediator must submit a new registration to the department.

(h) Notices and registrations under this section must comply with §5.4251 of this title (relating to Requests and Submissions to the Department).

§5.4234. Mediation Process - Removal of Mediator from Roster.

(a) Voluntary removal. A mediator may request removal from the roster at any time. The mediator must submit the request under §5.4251 of this title (relating to Requests and Submissions to the Department).

(b) Removal by department. The department may, in its sole discretion, remove a mediator from the mediator roster for:

(1) alleged dishonest, incompetent, fraudulent, or unethical behavior;

(2) alleged failure to respond promptly and completely to requests from the department and where the actions or failure to act are counter to the purpose of mediation;

(3) a disciplinary action by any other agency or disciplinary authority against the mediator, regardless of whether the agency or disciplinary authority's regulation relates to mediation;

(4) conviction of, or accepting deferred adjudication for, a crime under state or federal law;

(5) a disqualifying conflict of interest listed in §5.4232 of this title (relating to Mediation Process - Mediator Qualifications and Conflicts of Interest);

(6) failure to comply with any requirement of this title; or

(7) other factors relevant to the mediator's qualifications, conflicts of interest, or performance.

§5.4235. Mediation Process - Mediator Selection by Department.

(a) Applicability. This section applies when the parties are unable to agree on a mediator and a party requests the department to select a mediator.

(b) Notice. The department will notify at least five mediators of possible inclusion on a mediator selection panel.

(c) Factors. When selecting a mediator for the mediator selection panel, the department may consider:

(1) the mediator's preferred geographic locations and types of claims;

(2) the proximity of the claimant and the mediator;

(3) the mediator's areas of training and expertise;

(4) the extent of the mediator's experience with mediation and with property damage claims;

(5) the subject of the dispute;

(6) the type of policy;

(7) the value and complexity of the claim;

(8) any conflicts of interest;

(9) the mediator's fees; and

(10) other factors relevant to the dispute.

(d) Mediator's response. Each mediator notified under subsection (b) of this section must respond to the department no later than the fifth day after receiving the notice. The mediator's response must state whether the mediator will accept or reject selection as mediator for the mediation; and must provide:

(1) an up-to-date resume, curriculum vitae, or brief biographical sketch of the mediator;

(2) a statement of whether the mediator is insured by the association;

(3) a description of the nature and extent of any prior knowledge the mediator has of the dispute;

(4) a description of any contacts with either party--including association employees--within the previous three years;

(5) a description of other known potential conflicts of interest. Potential conflicts of interest are listed in §5.4232 of this title (relating to Mediation Process - Mediator Qualifications and Conflicts of Interest); and

(6) any new disqualifying conflicts of interest listed in §5.4232 of this title.

(e) Mediator selection panel. From the information provided, the department will determine which mediators will be on the mediator selection panel. The department will send the mediator selection panel to each party, along with the information the listed mediators provided.

(f) Selection by agreement. The parties may select a mediator from the mediator selection panel. If the parties agree on a mediator, the association must inform the department no later than the third day after the agreement.

(g) Selection if the appraisers fail to agree. If the appraisers fail to agree on a mediator from the mediator selection panel:

(1) each party may object to mediators on the mediator selection panel under §5.4252(a)(1)(A) and (2)(A) of this title (relating to Objections); and

(2) the department will select a mediator from the mediators on the mediator selection panel that neither party has objected to.

(h) Notice. The department will notify the mediator selected under subsection (e) or (f) of this section and give the mediator the claim information provided under §5.4231 of this title (relating to Mediation Process).

§5.4236. Mediation Process - Mediator Obligations.

(a) Conflicts. A mediator must disclose to both parties any conflicts of interest. Conflicts of interest are listed in §5.4232 of this title (relating to Mediation Process - Mediator Qualifications and Conflicts of Interest). The mediator must disclose the conflicts of interest no later than the fifth day after being hired, and before the mediation begins. A mediator may not serve as mediator in a dispute for which the mediator has a disqualifying conflict of interest.

(b) Schedule mediation. The mediator must set the date, time, and place for the mediation. The mediator must work with the parties to set a time that is convenient for all. The mediator should set the length of the mediation based on the type of policy, and value and complexity of the dispute.

(c) Location. The mediator must hold the mediation in the county in which the property is located, or in another county to which the parties and mediator agree. The mediator must locate and arrange for a mediation facility.

(d) Notice to parties. The mediator must notify the parties in writing of the date, time, and place for the mediation as soon as possible, but no later than the 14th day before the mediation.

(e) Reschedule. The mediator must reschedule the mediation if either party asks, and the other party does not object. The mediator may reschedule for good cause, even if the other party objects. Good cause includes significant illness, injury, or other emergency that the parties could not control and, for the association, could not reasonably be remedied before the mediation by providing a replacement representative or otherwise.

(f) Review information. The mediator must review all information that the parties submit.

(g) Conduct mediation. The mediator should encourage and assist the parties in reaching a settlement, but may not compel or coerce them. The mediator must give the parties an opportunity to present their sides of the dispute. The mediator must inform the parties of the strengths and weaknesses of their positions. The mediator may meet with the parties separately.

(h) Termination. The mediator may terminate the mediation if either party fails to negotiate in good faith. The mediator may also terminate the mediation for other reasons.

(i) Confidentiality. The mediator may not disclose to either party information given in confidence unless the disclosing party expressly authorizes disclosure in writing. The mediator's activities are confidential and privileged. Unless required by other law, no one may call the mediator as a witness in any further proceedings regarding the claim.

(j) Agreement. If the parties agree to settle the dispute, the mediator must ensure that the parties sign a written agreement.

(k) Mediator ethics. A mediator must comply with the Ethical Guidelines for Mediators adopted by the Texas Supreme Court on June 13, 2005, in Miscellaneous Docket No. 05-9107, amended April 11, 2011, in Miscellaneous Docket 11-9062.

(l) Fees. The mediator must disclose all fees and must state whether the mediator charges for a minimum number of hours. The mediator may specify different charges for different types or values of claims. This subsection does not apply to department-selected mediators under §5.4235 of this title (relating to Mediation Process - Mediator Selection by Department).

§5.4237. Mediation Process - Additional Obligations for Department-Selected Mediators.

(a) Applicability. The following mediator obligations apply when the department selects a mediator, under §5.4235 of this title (relating to Mediation Process - Mediator Selection by Department).

(b) Notices. No later than the seventh day after receiving notice of selection to mediate a dispute, the mediator must send a notice to the parties. This deadline may not be extended. The notice must:

(1) be in writing;

(2) inform the parties that the mediator has been selected;

(3) state whether the mediator is insured by the association; and

(4) inform the parties of their right to object to the mediator under §5.4235 and §5.4252 of this title (relating to Objections).

(c) Disposition. The mediator must notify the department when the mediation is complete, whether or not the parties have reached an agreement.

(d) Contract. Before the mediation, the parties and the selected mediator must sign a mediation contract. The contract must require:

(1) the parties and the mediator to comply with this division; and

(2) each party to pay one-half of all costs of mediation described in §5.4240 of this title (relating to Mediation Process - Costs).

(e) Fees. The mediator must charge an hourly rate of $150 and may charge a four-hour minimum fee. The mediator may charge for reasonable incurred travel costs, including mileage, meals, and lodging, according to the travel regulations adopted by the Texas Comptroller of Public Accounts under Government Code §660.021. The mediator must provide an estimate of travel costs as an addendum to the contract under subsection (d) of this section.

§5.4238. Mediation Process - Association Obligations.

(a) Mediation explanation. At the same time the association requests mediation, the association must give the claimant a notice explaining the mediation process.

(b) Representative. The association must send an authorized representative to participate in the mediation. The association's representative must know the facts of the dispute and must be authorized to make an agreement to resolve the claim. The association must come prepared to present any relevant documents, such as insurance policies, payment receipts, adjuster reports, repair estimates, claim files, or other documents.

(c) Assistance. In addition to its primary representative, the association may bring other people to the mediation to help the primary representative. This may include contractors, adjusters, engineers, and interpreters.

(d) Association participants. No later than the seventh day before the mediation, the association must tell the claimant who will be attending the mediation for the association. The association may be represented by an attorney in the mediation only if the claimant is represented by an attorney.

(e) Rescheduling or canceling. No later than 24 hours before the scheduled mediation, the association must tell the mediator if the association wants to cancel or reschedule the mediation.

(f) Failure to appear.

(1) If the association has good cause for a failure to appear, the mediator may reschedule one time. Rescheduling does not relieve the association from the obligation to pay the rescheduling fee.

(2) The association will be deemed to have failed to appear if the association's representative lacks authority to settle the full amount of the claim or lacks the ability to disburse the settlement amount within a reasonable time following the mediation.

(g) Contract. If the department selects the mediator, then before mediation begins, the association must sign the mediation contract under §5.4237 of this title (relating to Mediation Process - Additional Obligations for Department-Selected Mediators).

(h) Good faith. The association must negotiate in good faith to attempt to resolve the dispute. However, there is no requirement that the dispute be resolved in mediation.

§5.4239. Mediation Process - Claimant Obligations and Privileges.

(a) Participation. The claimant must participate in the mediation. A claimant who participates in mediation must know the facts of the dispute and must be authorized to make an agreement to resolve the claim. The claimant must come prepared to present any relevant documents, such as insurance policies, payment receipts, adjuster reports, repair estimates, claim files, or other documents.

(b) Assistance. The claimant may bring other people to help in presenting the claim. This may include contractors, adjusters, engineers, and interpreters.

(c) Attorney. The claimant may, but is not required to, be represented by an attorney in the mediation.

(d) Claimant participants. No later than the seventh day before the mediation, the claimant must tell the association if the claimant's attorney will be participating in the mediation. At the same time, the claimant must also tell the association who else will be attending the mediation with the claimant.

(e) Rescheduling. No later than 24 hours before the scheduled mediation, the claimant must tell the mediator if the claimant wants to reschedule the mediation.

(f) Failure to appear. If the claimant fails to appear for a scheduled mediation for which the association appears, but the claimant has good cause for a failure to appear, the mediator may reschedule one time. Rescheduling does not relieve the claimant from the obligation to pay the rescheduling fee.

(g) Contract. If the department selects the mediator, then before mediation begins, the claimant must sign the mediation contract under §5.4237 of this title (relating to Mediation Process - Additional Obligations for Department-Selected Mediators).

(h) Good faith. The claimant must negotiate in good faith to attempt to resolve the dispute. However, there is no requirement that the dispute must be resolved in mediation.

(i) Rescission. The claimant has three days from the date of an agreement to rescind the mediation agreement if the claimant has not accepted payment from the association by:

(1) cashing or depositing any check or payment; or

(2) agreeing in writing to accept an electronic funds transfer.

(j) Release. If the claimant does not rescind the settlement, it acts as a release of the association's liability on the claim, limited to the specific issues presented at the mediation. If an attorney representing the claimant is present at the mediation and the attorney signs the agreement, the agreement is immediately effective and may not be rescinded.

§5.4240. Mediation Process - Costs.

(a) One-half per party. Each party must pay one-half of all reasonable and necessary costs incurred or charged in connection with the mediation, including:

(1) mediator's fee;

(2) mediator's travel costs;

(3) cost of renting space for the mediation; and

(4) food or beverages provided during the mediation.

(b) Mediator fee if pre-mediation settlement. If the parties settle before mediation, the mediator may charge a reasonable fee for time already spent on preparation.

(c) Rescheduling fee. A party must pay the mediator a $50 rescheduling fee if the party cancels or fails to attend the mediation with less than 24 hours notice to the mediator before the mediation. This is in addition to any fee for the actual mediation.

(d) Failure to appear. If the association fails to appear for a scheduled mediation for which the claimant appears, the association must pay the claimant for any actual costs incurred in attending the mediation plus the value of lost wages.

(e) Payment from proceeds of claim. If the claimant fails to pay any amount owed for the mediation, the association may pay out of any proceeds the association owes the claimant.

(f) Department not responsible. The department is not responsible for any mediation costs.

§5.4241. Mediation Process - Deadlines and Extensions.

(a) Deadline. Mediation must be completed by the 60th day after the association notifies the claimant that the association is requesting mediation, unless the deadline is extended. If the association does not ask the department to select a mediator before the 60-day deadline, or any extension of that deadline, the association waives its right to require mediation under Insurance Code §2210.575 and this division.

(b) Extensions.

(1) The association and the claimant may agree to extend the 60-day deadline for mediation in subsection (a) of this section.

(2) If the commissioner extends the 60-day deadline in subsection (a) of this section, the extension must comply with the 120-day limit in Insurance Code §2210.581(b).

(3) For good cause, the commissioner may extend any deadline in this division related to mediation, except the deadline for the mediator to notify the parties that the mediator is insured by the association, under §5.4236 of this title (relating to Mediation Process - Mediator Obligations), may not be extended.

(c) Lawsuit. If mediation is not complete by the 60-day deadline or an extension, the claimant may file suit.

(d) Request for extension. To request the commissioner to extend a deadline, a party or mediator must send the request in writing to the department, under §5.4251 of this title (relating to Requests and Submissions to the Department). The request must explain the good cause for the extension. Good cause includes military deployment of the claimant.

(e) Extension limit. Deadline extensions may not exceed an aggregate 120 days. This limit does not apply to extensions of the deadline to file an objection because a mediator is insured by the association.

§5.4251. Requests and Submissions to the Department.

(a) Items submitted under this section must be submitted in writing to the chief clerk, Texas Department of Insurance. They may be:

(1) hand delivered;

(2) mailed; or

(3) sent in a manner that is otherwise acceptable to the department.

(b) The date of the item will be the date the department receives the item.

(c) When a party submits a request to the commissioner or the department under this section, the party must provide a copy of the request to the other party at the same time.

§5.4252. Objections.

(a) Objections. A party or appraiser may object to an umpire or a mediator as follows:

(1) for good cause:

(A) no later than the third day after the party or appraiser receives the selection panel, based on the information provided with the selection panel, or based on other information not provided with the selection panel that is known to the party or the appraiser at the time the selection panel is received; and

(B) at any time no later than 30 days after the mediation or appraisal is complete based on other information not provided with the selection panel and discovered after the selection of the umpire; or

(2) because the umpire or mediator is insured by the association no later than the earlier of:

(A) the seventh day after receiving the selection panel and the information provided with it; or

(B) the seventh day before the mediator or umpire begins work.

(b) Details for objections for good cause. A party or appraiser may object for good cause based on information the department provides with a selection panel, or based on other information. Good cause for an objection includes:

(1) any conflict of interest listed in §§5.4212, 5.4214, or 5.4232 of this title (relating to Appraisal Process - Appraiser Qualifications and Conflicts of Interest, Appraisal Process - Umpire Qualifications and Conflicts of Interest, or Mediation Process - Mediator Qualifications and Conflicts of Interest, respectively);

(2) a mediator or an umpire who lacks independence or is unable to competently or promptly handle the duties of a mediator or an umpire; or

(3) other reasons that would reasonably be expected to impair the mediation or appraisal.

(c) How to submit objections. All objections must be sent to the department under §5.4251 of this title (relating to Requests and Submissions to the Department). An objection must include the following information:

(1) names of the parties involved in the dispute;

(2) name of the person submitting the objection;

(3) the association claim number;

(4) name of the mediator or umpire that the party or appraiser wants to object to;

(5) an explanation of the good cause for objecting to the mediator or umpire; and

(6) an explanation of any direct financial or personal interest that the mediator or umpire has in the outcome of the dispute.

(d) Replacement. If the commissioner determines that good cause exists to replace a mediator or an umpire who was selected for a dispute, the commissioner will select a replacement mediator or umpire.

§5.4253. Contract Administrator.

The department may contract with one or more entities to administer the umpire roster, the mediator roster, or any of the department's or the commissioner's functions in this division.

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 October 4, 2012.

TRD-201205211
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: November 18, 2012
For further information, please call: (512) 463-6327

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 19. OIL SPILL PREVENTION AND RESPONSE

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §§19.1, 19.2, 19.4

The General Land Office (GLO) proposes amendments to §§19.1, 19.2, and 19.4, concerning Oil Spill Prevention and Response, General Provisions. The amendments will enhance and clarify GLO procedures under the rules. Sections 19.1, 19.2, and 19.4 are also being amended to reflect editorial changes. These amendments are being proposed pursuant to the Oil Spill Prevention and Response Act of 1991 (OSPRA), §40.117.

BACKGROUND AND REASONED JUSTIFICATION

The proposed amendments to the text of §§19.1, 19.2, and 19.4 clarify provisions, update references and add definitions to the chapter. The proposed amendment to §19.1 deletes superfluous text as being duplicative. The proposed amendment to §19.2 also deletes superfluous text. The proposed amendment to §19.4 clarifies which individuals are subject to the waiver provision. The effect of these proposed amendments will be to make the subchapter more concise and clearer for public understanding.

FISCAL IMPACTS

Greg Pollock, Deputy Commissioner of the GLO's Oil Spill Prevention and Response Division, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for state government or local governments as a result of enforcing or administering the amended sections. This rule does not have any fiscal impact or affect on state or local governments because the costs of preparing and filing an application to lease highway right-of-way property or to pool property are borne by the applicant. The GLO processing of the applications is already accounted for in GLO budgeting.

PUBLIC BENEFIT

Deputy Commissioner Pollock has also determined that for each year of the first five years the proposed amendments are in effect, the proposed amendments will enable the agency to continue to provide services and products of a consistently high quality. Deputy Commissioner Pollock has determined that there may be minimal fiscal implications on small businesses, microbusinesses and individuals required to comply with the rule as the result of the proposed fee increases in this proposal.

EMPLOYMENT IMPACT

The GLO has determined that the proposed rulemaking will have no adverse local employment impact that requires an employment impact statement pursuant to the Government Code §2001.022.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed 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 exceed express requirements of state law and 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 the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed amendments 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.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM (CMP)

The proposed rulemaking is subject to the CMP, 31 TAC §505.11(a)(1) and §505.11(c), relating to the Actions and Rules Subject to the CMP. The GLO has reviewed this proposed action for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found

at 31 TAC §501.12 (relating to Goals); §501.16 (relating to Policies for Construction of Electric Generating and Transmission Facilities), §501.23 (relating to Policies for Development in Critical Areas); and §501.24 (relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands). Because all requests for the use of coastal public land must continue to meet the same criteria for GLO approval, the GLO has determined that the proposed action is consistent with applicable CMP goals and policies.

TAKINGS IMPACT ASSESSMENT

The 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. The GLO has determined that the proposed 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, Sections 17 and 19, of the Texas Constitution. Furthermore, the 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 amendments. The GLO has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests inasmuch as the property subject to the proposed amendments are owned by the state.

REQUEST FOR COMMENTS BY THE PUBLIC

To comment on the proposed amendments, please send a written comment to Mr. Walter Talley, the GLO Texas Register Liaison, at Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, facsimile number (512) 463-6311, or email to walter.talley@glo.state.tx.us.

STATUTORY AUTHORITY

The amended sections are proposed under OSPRA, Texas Natural Resources Code, Title 2, Chapter 40, Subchapter A, §40.007(a), which gives the commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA.

STATUTORY SECTIONS AFFECTED

OSPRA, Texas Natural Resources Code, Title 2, Chapter 40, Subchapter C, §§40.109 - 40.113 are affected by the proposed amendments.

§19.1. Purpose.

This subchapter establishes a final rule under the Oil Spill Prevention and Response Act of 1991 (OSPRA), Texas Natural Resources Code, Chapter 40, which became law March 28, 1991. OSPRA supports and complements the Oil Pollution Act of 1990 (OPA), Public Law 101-380, which became law on August 18, 1990. [~~This subchapter is intended to establish basic rules to provide for orderly and efficient administration of OSPRA until more comprehensive rule-making can occur in coordination with the rule-making process by federal agencies under OPA. The General Land Office intends to amend this subchapter in anticipation of and in response to federal rule-making, as well as when development of Texas' own oil spill prevention and response program so requires.~~]

§19.2. Definitions.

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

(1) - (15) (No change.)

(16) Unauthorized discharge--Discharges; excluding those authorized by and in compliance with a government permit, seepage from the earth solely from natural causes, and unavoidable, minute discharges of oil from a properly functioning engine, of a harmful quantity of oil [~~from a vessel or facility either~~]:

(A) - (B) (No change.)

(17) - (23) (No change.)

(b) (No change.)

§19.4. Waiver.

(a) Upon written request, the commissioner may waive a provision of this chapter if the commissioner determines that the application of the provision would be inconsistent with the fundamental intent and purpose of OSPRA. The commissioner may also waive any requirement of this chapter if the commissioner determines that other existing federal or state statutory or regulatory provisions provide requirements necessary to implement OSPRA.

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

(4) Requests for waivers from facility certification requirements will be evaluated by considering the following factors:

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

(D) The GLO's officers, employees, and agents, under the direction and control of the commissioner, will conduct a field investigation, if necessary, to determine whether to grant the request for waiver.

(b) (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 October 4, 2012.

TRD-201205216

Larry Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Earliest possible date of adoption: November 18, 2012

For further information, please call: (512) 475-1859

SUBCHAPTER B. SPILL PREVENTION AND PREPAREDNESS

31 TAC §19.14

The General Land Office (GLO) proposes an amendment to §19.14, concerning Oil Spill Prevention and Response, Spill Prevention and Preparedness. The amendment will enhance and clarify GLO procedures under the rules. Section 19.14 is being amended to reflect editorial changes. These amendments are being proposed pursuant to the Oil Spill Prevention and Response Act of 1991 (OSPRA), §40.117.

BACKGROUND AND REASONED JUSTIFICATION

The proposed amendment to §19.14 updates the text by correcting an outdated website. The effect of this change will be to enhance the public's ability to communicate with the GLO regarding annual updating of information.

FISCAL IMPACTS

Greg Pollock, Deputy Commissioner of the GLO's Oil Spill Prevention and Response Division, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for state government or local governments as a result of enforcing or administering the amended sections. This rule does not have any fiscal impact or affect on state or local governments because the costs of preparing and filing an application to lease highway right-of-way property or to pool property are borne by the applicant. The GLO processing of the applications is already accounted for in GLO budgeting.

PUBLIC BENEFIT

Deputy Commissioner Pollock has also determined that for each year of the first five years the proposed amendments are in effect, the proposed amendments will enable the agency to continue to provide services and products of a consistently high quality. Deputy Commissioner Pollock has determined that there may be minimal fiscal implications on small businesses, microbusinesses and individuals required to comply with the rule as the result of the proposed fee increases in this proposal.

EMPLOYMENT IMPACT

The GLO has determined that the proposed rulemaking will have no adverse local employment impact that requires an employment impact statement pursuant to the Government Code §2001.022.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed 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 exceed express requirements of state law and 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 the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed amendments 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.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM (CMP)

The proposed rulemaking is subject to the CMP, 31 TAC §505.11(a)(1) and §505.11(c), relating to the Actions and Rules Subject to the CMP. The GLO has reviewed this proposed action for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals); §501.16 (relating to Policies for Construction of Electric Generating and Transmission Facilities), §501.23 (relating to Policies for Development in Critical Areas); and §501.24 (relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands). Because all requests for the use of coastal public land must continue to meet the same criteria for GLO approval, the GLO has determined that the proposed action is consistent with applicable CMP goals and policies.

TAKINGS IMPACT ASSESSMENT

The 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. The GLO has determined that the proposed 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, Sections 17 and 19, of the Texas Constitution. Furthermore, the 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 amendments. The GLO has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests inasmuch as the property subject to the proposed amendments are owned by the state.

REQUEST FOR COMMENTS BY THE PUBLIC

To comment on the proposed amendment, please send a written comment to Mr. Walter Talley, the GLO Texas Register Liaison, at Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, facsimile number (512) 463-6311, or email to walter.talley@glo.state.tx.us.

STATUTORY AUTHORITY

The amended section is proposed under OSPRA, Texas Natural Resources Code, Title 2, Chapter 40, Subchapter A, §40.007(a), which gives the commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA.

STATUTORY SECTIONS AFFECTED

OSPRA, Texas Natural Resources Code, Title 2, Chapter 40, Subchapter C, §§40.109 - 40.113 are affected by the proposed amendment.

§19.14. Annual Updating of Application Information; Renewal and Suspension of Certificates.

(a) Annual review of application information. Facility operators are required to report annually any changes in the information submitted to the GLO in their applications for certificates. Changes must be reported by the anniversary of the date the certificate was issued, but operators are encouraged to update the information more frequently. Facility operators can update information on file with the GLO in the following ways:

(1) Internet. The GLO has established a link on its website (www.glo.texas.gov) [~~(www.glo.state.tx.us)~~] to allow facility operators to review and amend application information on file with the GLO. Facility operators can use the identification number, which is issued with the certificate, to access this interactive link. To minimize the GLO's administrative expense of updating information, the GLO encourages certificate holders to use the Internet to revise facility information on file with the GLO.

(2) (No change.)

(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 October 4, 2012.

TRD-201205217
Larry Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: November 18, 2012
For further information, please call: (512) 475-1859

SUBCHAPTER C. SPILL RESPONSE

31 TAC §§19.31 - 19.34, 19.37

The General Land Office (GLO) proposes amendments to §§19.31 - 19.34 and 19.37, concerning Oil Spill Prevention and Response, Spill Response. The amendments will enhance and clarify GLO procedures under the rules and reflect editorial changes. These amendments are being proposed pursuant to the Oil Spill Prevention and Response Act of 1991 (OSPRA), §40.117.

BACKGROUND AND REASONED JUSTIFICATION

The proposed amendments to the text of §§19.31, 19.32, 19.33, 19.34, and 19.37 clarify provisions, update references and add definitions to the chapter. The amendment to §19.31 clarifies the jurisdictional provision by specifying the type of discharge. The amendment to §19.32 clarifies the jurisdictional provision by specifying the type of discharge. The amendments to §19.33 and §19.34 clarify the location of discharges. The amendment to §19.37 clarifies wording and adds a time requirement. The effect of these changes is to clarify exactly what type of discharge is subject to the rules and where that spill must occur. This will aid the public's understanding of OSPRA and the administrative rules.

FISCAL IMPACTS

Greg Pollock, Deputy Commissioner of the GLO's Oil Spill Prevention and Response Division, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for state government or local governments as a result of enforcing or administering the amended sections. This rule does not have any fiscal impact or affect on state or local governments because the costs of preparing and filing an application to lease highway right-of-way property or to pool property are borne by the applicant. The GLO processing of the applications is already accounted for in GLO budgeting.

PUBLIC BENEFIT

Deputy Commissioner Pollock has also determined that for each year of the first five years the proposed amendments are in effect, the proposed amendments will enable the agency to continue to provide services and products of a consistently high quality. Deputy Commissioner Pollock has determined that there may be minimal fiscal implications on small businesses, microbusinesses and individuals required to comply with the rule as the result of the proposed fee increases in this proposal.

EMPLOYMENT IMPACT

The GLO has determined that the proposed rulemaking will have no adverse local employment impact that requires an employment impact statement pursuant to the Government Code §2001.022.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed 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 exceed express requirements of state law and 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 the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed amendments 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.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM (CMP)

The proposed rulemaking is subject to the CMP, 31 TAC §505.11(a)(1) and §505.11(c), relating to the Actions and Rules Subject to the CMP. The GLO has reviewed this proposed action for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals); §501.16 (relating to Policies for Construction of Electric Generating and Transmission Facilities), §501.23 (relating to Policies for Development in Critical Areas); and §501.24 (relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands). Because all requests for the use of coastal public land must continue to meet the same criteria for GLO approval, the GLO has determined that the proposed action is consistent with applicable CMP goals and policies.

TAKINGS IMPACT ASSESSMENT

The 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. The GLO has determined that the proposed 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, Sections 17 and 19, of the Texas Constitution. Furthermore, the 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 amendments. The GLO has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests inasmuch as the property subject to the proposed amendments are owned by the state.

REQUEST FOR COMMENTS BY THE PUBLIC

To comment on the proposed amendments, please send a written comment to Mr. Walter Talley, the GLO Texas Register Liaison, at Texas General Land Office, P.O. Box 12873, Austin, TX

78711-2873, facsimile number (512) 463-6311, or email to walter.talley@glo.state.tx.us.

STATUTORY AUTHORITY

The amended sections are proposed under OSPRA, Texas Natural Resources Code, Title 2, Chapter 40, Subchapter A, §40.007(a), which gives the commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA.

STATUTORY SECTIONS AFFECTED

OSPRA, Texas Natural Resources Code, Title 2, Chapter 40, Subchapter C, §§40.109 - 40.113 are affected by the proposed amendments.

§19.31. Jurisdiction.

The General Land Office (GLO) has jurisdiction over and will respond to any actual or threatened discharge of oil that enters or threatens to enter coastal waters.

§19.32. Reporting an Unauthorized Discharge.

(a) To report an actual or threatened unauthorized discharge of oil into Texas coastal waters, phone the General Land Office (GLO) at 1-800-832-8224. This line will be staffed at all times.

(b) - (h) (No change.)

§19.33. Response.

(a) When the General Land Office (GLO) receives notice of an actual or threatened unauthorized discharge of oil into Texas coastal waters, the GLO will determine whether state response action is required. If state response action is required, the GLO will assess the discharge and determine whether further response actions should be initiated or required. If assessments of the discharge indicate it involves predominantly a hazardous substance, the GLO shall coordinate all response actions until the Texas Commission on Environmental Quality can assume responsibility over hazardous substance discharge response operations. A substance is predominantly a hazardous substance when analytical testing of a representative sample indicates the presence of more than 50% of a substance that is not oil as defined by OSPRA, and that is a hazardous substance as defined by the Texas Commission on Environmental Quality or its successor agency. Pending results of analytical tests of the substance, the determination of its predominant characteristics shall be made by investigating the source of the discharge, its physical properties, and its behavior in the environment. The GLO will notify the trustees of the actual or threatened unauthorized discharge.

(b) - (e) (No change.)

§19.34. Duties of Responsible Person.

(a) In the event of an actual or threatened unauthorized discharge of oil into Texas coastal waters, it is the duty of the responsible person to immediately initiate response action, or to ensure that the person in charge will initiate response action. The responsible person is the owner or operator of a vessel or facility from which an unauthorized discharge of oil emanates or threatens to emanate. The person in charge is the person at the vessel or facility who is empowered by the responsible person to initiate response actions and to perform all actions necessary to prevent, abate, contain, and remove all pollution. The responsible person or the person in charge must inform the General Land Office (GLO) of the person's strategy for responding to the unauthorized discharge, including whether the facility's or vessel's discharge prevention and response plan will be adequate for abating, containing, and removing pollution or whether it appears that an adequate response to the discharge will require deviation from the plan. The response strategy and proposed deviations from the plan must be reported to the on-scene coordinator on a regular basis throughout response operations.

(b) - (g) (No change.)

§19.37. Completion of Response.

(a) (No change.)

(b) In addition to reporting an unauthorized discharge immediately after it occurs, the responsible person may be required to [must] file a written report with the GLO. If required, the [A] reporting form will be provided to the responsible person by the state on-scene coordinator. The report is due 60 days after being directed by the state on-scene coordinator to complete the report or 60 days after the response actions have been declared complete by the state on-scene coordinator, whichever date is earlier. The report must contain the following information:

(1) incident date and time the responsible person was first aware oil threatened to enter Texas coastal waters;

(2) - (7) (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 October 4, 2012.

TRD-201205218
Larry Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: November 18, 2012
For further information, please call: (512) 475-1859

SUBCHAPTER D. COMPENSATION AND LIABILITY

31 TAC §19.55

The General Land Office (GLO) proposes amendments to §19.55, concerning Oil Spill Prevention and Response, Compensation and Liability. The amendments will enhance and clarify GLO procedures under the rules and reflect editorial changes. These amendments are being proposed pursuant to the Oil Spill Prevention and Response Act of 1991 (OSPRA), §40.117.

BACKGROUND AND REASONED JUSTIFICATION

The proposed amendments to the text of §19.55 clarify provisions, update references and add definitions to the chapter. The amendments to §19.55 delete superfluous text, update agency names and clarify the requirements of the minimum response cost. The effect of this change is that the Response Cost section is current and is more understandable to the general public.

FISCAL IMPACTS

Greg Pollock, Deputy Commissioner of the GLO's Oil Spill Prevention and Response Division, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for state government or local governments as a result of enforcing or administering the amended sections. This rule does not have any fiscal impact or affect on state or local governments because the costs of

preparing and filing an application to lease highway right-of-way property or to pool property are borne by the applicant. The GLO processing of the applications is already accounted for in GLO budgeting.

PUBLIC BENEFIT

Deputy Commissioner Pollock has also determined that for each year of the first five years the proposed amendments are in effect, the proposed amendments will enable the agency to continue to provide services and products of a consistently high quality. Deputy Commissioner Pollock has determined that there may be minimal fiscal implications on small businesses, microbusinesses and individuals required to comply with the rule as the result of the proposed fee increases in this proposal.

EMPLOYMENT IMPACT

The GLO has determined that the proposed rulemaking will have no adverse local employment impact that requires an employment impact statement pursuant to the Government Code §2001.022.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed 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 exceed express requirements of state law and 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 the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed amendments 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.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM (CMP)

The proposed rulemaking is subject to the CMP, 31 TAC §505.11(a)(1) and §505.11(c), relating to the Actions and Rules Subject to the CMP. The GLO has reviewed this proposed action for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals); §501.16 (relating to Policies for Construction of Electric Generating and Transmission Facilities), §501.23 (relating to Policies for Development in Critical Areas); and §501.24 (relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands). Because all requests for the use of coastal public land must continue to meet the same criteria for GLO approval, the GLO has determined that the proposed action is consistent with applicable CMP goals and policies.

TAKINGS IMPACT ASSESSMENT

The 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. The GLO has determined that the proposed 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, Sections 17 and 19, of the Texas Constitution. Furthermore, the 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 amendments. The GLO has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests inasmuch as the property subject to the proposed amendments are owned by the state.

REQUEST FOR COMMENTS BY THE PUBLIC

To comment on the proposed amendments, please send a written comment to Mr. Walter Talley, the GLO Texas Register Liaison, at Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, facsimile number (512) 463-6311, or email to walter.talley@glo.state.tx.us.

STATUTORY AUTHORITY

The amended section is proposed under OSPRA, Texas Natural Resources Code, Title 2, Chapter 40, Subchapter A, §40.007(a), which gives the commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA.

STATUTORY SECTIONS AFFECTED

OSPRA, Texas Natural Resources Code, Title 2, Chapter 40, Subchapter C, §§40.109 - 40.113 are affected by the proposed amendment.

§19.55. Response Costs.

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

(d) The GLO will assess response costs when:

(1) oil enters coastal waters [~~and a cleanup response is required~~];

(2) (No change.)

(e) (No change.)

(f) The minimum response cost of $250 will be billed whenever GLO personnel are required to monitor prevention or response activities and the time spent at the spill scene, excluding travel time, is more than two hours and less than eight hours. In the event that [~~more than~~] eight or more hours of GLO response personnel time is required at the scene of the spill, the responsible party will be assessed the actual costs of response incurred by the GLO. Response costs will not be assessed where either the Railroad Commission of Texas or the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~] is the state on-scene coordinator, unless requested by the Railroad Commission of Texas or the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~] and approved by the commissioner.

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 October 4, 2012.

TRD-201205220

Larry Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: November 18, 2012
For further information, please call: (512) 475-1859

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SUBCHAPTER E. VESSELS

31 TAC §19.60, §19.61

The General Land Office (GLO) proposes amendments to §19.60 and §19.61, concerning Oil Spill Prevention and Response, Vessels. The amendments will enhance and clarify GLO procedures under the rules and reflect editorial changes. These amendments are being proposed pursuant to the Oil Spill Prevention and Response Act of 1991 (OSPRA), §40.117.

BACKGROUND AND REASONED JUSTIFICATION

The proposed amendments to the text of §19.60 and §19.61 clarify provisions and update references. The amendments to §19.60 delete superfluous text, update language and add a new email contact. The amendments to §19.61 delete superfluous text, clarify vessel type, clarify text and update the notification procedure. The effect of these amendments will be a clearer and more current version of the rules for public consumption.

FISCAL IMPACTS

Greg Pollock, Deputy Commissioner of the GLO's Oil Spill Prevention and Response Division, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for state government or local governments as a result of enforcing or administering the amended sections. This rule does not have any fiscal impact or affect on state or local governments because the costs of preparing and filing an application to lease highway right-of-way property or to pool property are borne by the applicant. The GLO processing of the applications is already accounted for in GLO budgeting.

PUBLIC BENEFIT

Deputy Commissioner Pollock has also determined that for each year of the first five years the proposed amendments are in effect, the proposed amendments will enable the agency to continue to provide services and products of a consistently high quality. Deputy Commissioner Pollock has determined that there may be minimal fiscal implications on small businesses, microbusinesses and individuals required to comply with the rule as the result of the proposed fee increases in this proposal.

EMPLOYMENT IMPACT

The GLO has determined that the proposed rulemaking will have no adverse local employment impact that requires an employment impact statement pursuant to the Government Code §2001.022.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed 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 exceed express requirements of state law and 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 the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed amendments 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.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM (CMP)

The proposed rulemaking is subject to the CMP, 31 TAC §505.11(a)(1) and §505.11(c), relating to the Actions and Rules Subject to the CMP. The GLO has reviewed this proposed action for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals); §501.16 (relating to Policies for Construction of Electric Generating and Transmission Facilities), §501.23 (relating to Policies for Development in Critical Areas); and §501.24 (relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands). Because all requests for the use of coastal public land must continue to meet the same criteria for GLO approval, the GLO has determined that the proposed action is consistent with applicable CMP goals and policies.

TAKINGS IMPACT ASSESSMENT

The 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. The GLO has determined that the proposed 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, Sections 17 and 19, of the Texas Constitution. Furthermore, the 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 amendments. The GLO has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests inasmuch as the property subject to the proposed amendments are owned by the state.

REQUEST FOR COMMENTS BY THE PUBLIC

To comment on the proposed amendments, please send a written comment to Mr. Walter Talley, the GLO Texas Register Liaison, at Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, facsimile number (512) 463-6311, or email to walter.talley@glo.state.tx.us.

STATUTORY AUTHORITY

The amended sections are proposed under OSPRA, Texas Natural Resources Code, Title 2, Chapter 40, Subchapter A, §40.007(a), which gives the commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA.

STATUTORY SECTIONS AFFECTED

OSPRA, Texas Natural Resources Code, Title 2, Chapter 40, Subchapter C, §§40.109 - 40.113 are affected by the proposed amendments.

§19.60. Applicability, Definitions, Exemptions.

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

(c) Exemptions.

(1) (No change.)

(2) A request for exemption must be made in writing and can be submitted in the following ways:

(A) Mailed to: Texas General Land Office, Oil Spill Prevention and Response Program, P.O. Box 12873, Austin, Texas 78711-2873. The written request can also be sent by facsimile to the GLO's Oil Spill Prevention and Response Program at (512) 475-1560;

(B) Sent by facsimile to the GLO's Oil Spill Prevention and Response Program at (512) 475-1560; or

(C) Via e-mail to oilspills@glo.texas.gov.

[(2) Depending on the exigency of the situation, a request for exemption can be made either in writing or by telephone.]

[(A) General exemption requests for non-emergency situations must be made in writing and mailed to: Texas General Land Office, Oil Spill Prevention and Response Program, P.O. Box 12873, Austin, Texas 78711-2873. The written request can also be sent by facsimile to the GLO's Oil Spill Prevention and Response Program at (512) 475-1560.]

[(B) In the event of an in extremis situation, where a written request for exemption is impractical, a request for an emergency exemption can be made by calling the GLO at 1-800-832-8224. A party making an emergency request by telephone must also send the GLO a written request by mail or facsimile as soon as possible.]

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

§19.61. Vessel Response Plans.

(a) Vessel Response Plan Requirements

(1) Owners and operators of vessels subject to this subchapter are required to prepare and maintain written, vessel-specific discharge prevention and response plans. A tank or nontank vessel response plan approved by the U.S. Coast Guard [or a shipboard oil pollution emergency plan (SOPEP) approved under Regulation 26 of MARPOL] satisfies the requirements of this section. A current copy of the plan must be maintained aboard each vessel. Owners and operators of unmanned vessels can satisfy the requirements of this section by maintaining the plan at a primary business location and maintaining the information in subparagraph [§19.61(a)(1)](G) of this paragraph aboard the unmanned vessel. The vessel-specific discharge prevention and response plan shall include, at a minimum, the following information:

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

(F) If applicable, a copy of the Coast Guard Vessel Response Plan approval letter [or SOPEP approval letter under Regulation 26 of Annex I of MARPOL].

(G) Spill prevention and response procedures, including:

(i) - (v) (No change.)

(vi) notifying the GLO at 1-800-832-8224 as well as other regulatory agencies, local officials, and private property owners impacted by an unauthorized discharge; and

(vii) (No change.)

(2) (No change.)

(b) Submission of Information to the GLO.

(1) Applicability. This section, which requires the submittal of limited information to the GLO, applies to owners and operators of any tank or nontank vessel over 400 gross tons required to maintain a federally approved response plan [vessel subject to regulation under Subchapter E if that vessel is: 1) required by the Oil Pollution Act, 33 U.S.C.A. §§2701-2761 ("OPA") to have a current vessel response plan aboard the vessel; or 2) in excess of 400 gross tons and required by the International Maritime Organization to have a current shipboard oil pollution emergency plan (SOPEP)] aboard the vessel.

(2) Owners or operators of vessels to which this subsection applies must submit the following information to the GLO:

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

(F) the names and official numbers of vessels subject to this section; [to be covered by the notification;]

(G) the gross tonnage of all vessels subject to this section; [to be covered by the notification;] and

(H) the total capacity for fuel and oil of each vessel subject to this section. [to be covered by the notification.]

(3) Submittal of information. The GLO has established a link on the GLO website (http://www.glo.texas.gov) [(http://www.glo.state.tx.us/oilspill)] for submittal of the information required in this section. [Owners and operators with the capability to use the Internet and access this website should link to "Vessel Response Plans."] An account login must be requested to initiate this process. To request this account be established contact the Director of Maritime Affairs by: [can then be established by following the instructions and ensuring that information submitted is accurate and complete. Owners and operators are strongly encouraged to submit information over the GLO's website. This is the quickest and easiest way to submit the information, and it eliminates the administrative burden of GLO staff who would otherwise have to load the information. Owners or operators of vessels without the capability of submitting this information by using the GLO's website may submit the required information on GLO Form OS-004. Completed Form OS-004 can be sent to the GLO by:]

(A) calling (512) 475-1575 during business hours;

[(A) mail sent to Texas General Land Office, Oil Spill Prevention and Response Program, P.O. Box 12873, Austin, Texas 78711-2873;]

(B) (No change.)

(C) electronic mail sent to oilspills@glo.texas.gov [Vessel.Plan@glo.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 October 4, 2012.

TRD-201205221
Larry Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: November 18, 2012
For further information, please call: (512) 475-1859

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SUBCHAPTER F. DERELICT VESSELS AND STRUCTURES

31 TAC §19.71, §19.73

The General Land Office (GLO) proposes amendments to §19.71 and §19.73, concerning Oil Spill Prevention and Response, Derelict Vessels and Structures. The amendments will enhance and clarify GLO procedures under the rules and reflect editorial changes. These amendments are being proposed pursuant to the Oil Spill Prevention and Response Act of 1991 (OSPRA), §40.117.

BACKGROUND AND REASONED JUSTIFICATION

The proposed amendments to the text of §19.71 and §19.73 clarify provisions, update references and add definitions to the chapter. The proposed amendment to §19.71 adds a new definition for "unnumbered vessel." The proposed amendment to §19.73 adds a new subsection (d) relating to unnumbered vessels. The effect of these changes is to allow for the immediate removal of vessels with registration numbers missing that are also either navigational hazards or threats to the public health.

FISCAL IMPACTS

Greg Pollock, Deputy Commissioner of the GLO's Oil Spill Prevention and Response Division, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for state government or local governments as a result of enforcing or administering the amended sections. This rule does not have any fiscal impact or affect on state or local governments because the costs of preparing and filing an application to lease highway right-of-way property or to pool property are borne by the applicant. The GLO processing of the applications is already accounted for in GLO budgeting.

PUBLIC BENEFIT

Deputy Commissioner Pollock has also determined that for each year of the first five years the proposed amendments are in effect, the proposed amendments will enable the agency to continue to provide services and products of a consistently high quality. Deputy Commissioner Pollock has determined that there may be minimal fiscal implications on small businesses, microbusinesses and individuals required to comply with the rule as the result of the proposed fee increases in this proposal.

EMPLOYMENT IMPACT

The GLO has determined that the proposed rulemaking will have no adverse local employment impact that requires an employment impact statement pursuant to the Government Code §2001.022.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed 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 exceed express requirements of state law and 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 the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed amendments 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.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM (CMP)

The proposed rulemaking is subject to the CMP, 31 TAC §505.11(a)(1) and §505.11(c), relating to the Actions and Rules Subject to the CMP. The GLO has reviewed this proposed action for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals); §501.16 (relating to Policies for Construction of Electric Generating and Transmission Facilities), §501.23 (relating to Policies for Development in Critical Areas); and §501.24 (relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands). Because all requests for the use of coastal public land must continue to meet the same criteria for GLO approval, the GLO has determined that the proposed action is consistent with applicable CMP goals and policies.

TAKINGS IMPACT ASSESSMENT

The 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. The GLO has determined that the proposed 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, Sections 17 and 19, of the Texas Constitution. Furthermore, the 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 amendments. The GLO has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests inasmuch as the property subject to the proposed amendments are owned by the state.

REQUEST FOR COMMENTS BY THE PUBLIC

To comment on the proposed amendments, please send a written comment to Mr. Walter Talley, the GLO Texas Register Liaison, at Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, facsimile number (512) 463-6311, or email to walter.talley@glo.state.tx.us.

STATUTORY AUTHORITY

The amended sections are proposed under OSPRA, Texas Natural Resources Code, Title 2, Chapter 40, Subchapter A, §40.007(a), which gives the commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA.

STATUTORY SECTIONS AFFECTED

OSPRA, Texas Natural Resources Code, Title 2, Chapter 40, Subchapter C, §§40.109 - 40.113 are affected by the proposed amendments.

§19.71. Definitions.

The following words, terms and phrases, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other terms are defined in §19.2 of this title (relating to Definitions).

(1) - (18) (No change.)

(19) Unnumbered Vessel--A vessel for which no certificate of number or other number as defined in paragraph (11) of this section is present.

(20) [~~(19)~~] VMS Site--A vessel management storage site used for the purpose of providing a means of dry-land access to vessels for removal from state waters, temporary storage, and disposal offsite after appropriate processing of the vessel.

(21) [~~(20)~~] Wrecked--A vessel that is fully or partially submerged, resting fully or partially on submerged land, or is in danger of sinking.

§19.73. Procedure for Removal or Disposal by an Authorized Public Entity.

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

(d) A derelict vessel or structure with absent registration numbers as defined in §19.71(11) of this title (relating to Definitions) may be subject to immediate removal by the commissioner if the commissioner determines in his sole discretion that the vessel is also:

(1) a navigational hazard as defined by §19.71(9) of this title; or

(2) a threat to public health, safety or welfare as defined by §19.71(18) of this title.

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

Filed with the Office of the Secretary of State on October 4, 2012.

TRD-201205222
Larry Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: November 18, 2012
For further information, please call: (512) 475-1859

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 146. REVOCATION OF PAROLE OR MANDATORY SUPERVISION

37 TAC §§146.3, 146.4, 146.6 - 146.12

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §§146.3, 146.4, and 146.6 - 146.12, concerning right to counsel, procedure after waiver of preliminary hearing, scheduling of preliminary hearing, preliminary hearing, scheduling of revocation hearings, revocation hearing, final board disposition, releasee's motion to reopen hearing or reinstate supervision, and procedure after motion to reopen is granted; time; rights of the releasee; final disposition. The amendments are proposed to clean up language, correct grammar/punctuation, update statutory references, replace "board panel" with "parole panel," and add "written" to clarify the type of request to be submitted.

Rissie Owens, Chair of the Board, has determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Ms. Owens 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 the amendments to these sections will be to bring the rules into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under §§508.0441, 508.045, 508.281, and 508.283, Government Code. Section 508.0441 vests the Board with the authority to determine the continuation, modification, and revocation of parole or mandatory supervision. Section 508.045 provides parole panels with the authority to grant, deny, revoke parole, or revoke mandatory supervision. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

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

§146.3. Right to Counsel.

The board administrator or the designee of the board administrator[~~,~~] shall weigh the following factors in determining whether the releasee is to be appointed an attorney:

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

§146.4. Procedure after Waiver of Preliminary Hearing.

(a) Following the waiver of the right to a preliminary hearing, the parole panel or a designee of the board may proceed to a revocation hearing after a finding of probable cause or reasonable belief that the releasee violated a condition of parole or mandatory supervision.

(b) The parole panel or designee of the board may accept a waiver of the preliminary hearing provided that a waiver of the preliminary hearing includes the following:

(1) information that releasee was served with the following:

(A) notice of the right to a preliminary hearing and that its purpose is to determine whether there is probable cause or reasonable belief to believe the releasee has committed a parole violation;

(B) - (H) (No change.)

(2) (No change.)

§146.6. Scheduling of Preliminary Hearing.

(a) Upon request, the board or the board's scheduling staff [~~hearings section~~] shall schedule a preliminary hearing unless:

(1) more than fourteen [~~seven~~] calendar days have elapsed from the time that the warrant is executed; or

(2) information has not been presented to the board or the board's scheduling staff [~~hearings section~~] that the releasee was served with the following:

(A) notice of the right to a preliminary hearing and that its purpose is to determine whether there is probable cause or reasonable belief to believe the releasee has committed a parole violation;

(B) - (H) (No change.)

(b) (No change.)

(c) If the board or the board's scheduling staff [~~hearings section~~] receives a request for a preliminary hearing later than the fourteenth [~~seventh~~] calendar day following the provisions described in subsection (a)(1) of this section, the board or the board's scheduling staff [~~hearings section~~] shall require the requestor to provide an [~~submit the scheduling request directly to the board administrator, along with a written~~] explanation of the delay.

(d) Subsection (a)(1) of this section does not apply when a releasee is:

(1) transferred under §508.284 [~~§508.281~~], Government Code, to a correctional facility operated by or under contract with the department; or

(2) (No change.)

(e) (No change.)

§146.7. Preliminary Hearing.

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

(c) If the decision of the parole panel or designee of the board is that there is probable cause or reasonable belief to proceed to a revocation hearing, the parole panel or designee of the board may schedule a revocation hearing.

(d) If the parole panel or the designee of the board finds that there is no probable cause or reasonable belief to proceed to a revocation hearing or does not schedule a revocation hearing, the parole panel or designee of the board shall collect, prepare, and forward to a parole panel, or to the TDCJ Parole Division Interstate Compact for Probation and Parole Supervision [~~board administrator~~], if the hearing was held pursuant to the Interstate Commission for Adult Offender Supervision rules [~~interstate Compact Agreement~~], the following information:

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

(3) the [~~tape~~] recording of the hearing

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

§146.8. Scheduling of Revocation Hearings.

(a) Upon request, the board or the board's scheduling staff [~~hearings section~~] shall schedule a revocation hearing unless information has not been presented to the board or the board's scheduling staff [~~hearings section~~] that the releasee was served with the following:

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

(b) If the releasee is not entitled to a preliminary hearing and requests a revocation hearing, the board or the board's scheduling staff [~~hearings section~~] shall schedule a revocation hearing unless:

(1) more than fourteen [~~seven~~] calendar days have elapsed from the time that the warrant is executed; or

(2) (No change.)

(c) If the board or the board's scheduling staff [~~hearings section~~] receives a request for a revocation hearing later than the fourteenth [~~seventh~~] calendar day following the provisions described in subsection (b)(1) of this section, the board or the board's scheduling staff [~~hearings section~~] shall require the requestor to provide an [~~submit the scheduling request directly to the board administrator, along with a written~~] explanation of the delay.

(d) Subsection (b)(1) of this section does not apply when a releasee is:

(1) transferred under §508.284 [~~§508.281~~], Government Code, to a correctional facility operated by or under contract with the department; or

(2) (No change.)

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

§146.9. Revocation Hearing.

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

(c) At the close of the hearing or within a reasonable time thereafter, the parole panel or designee of the board shall collect, prepare and forward to a parole panel [~~or to the board administrator if the hearing was held pursuant to the Interstate Compact Agreement~~]:

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

(3) the [~~tape~~] recording of the hearing

§146.10. Final Board Disposition.

(a) (No change.)

(b) If final board disposition is an order to revoke the parole or mandatory supervision, the releasee or attorney shall be notified in writing and provided with a copy of the report of the hearing officer and notice of the right to submit a motion [~~petition~~] to reopen the hearing.

§146.11. Releasee's Motion to [~~To~~] Reopen Hearing or Reinstate Supervision.

(a) The releasee or releasee's attorney shall have 60 days from the date of the parole [~~board~~] panel's revocation decision to submit a written request for [a] reopening a [~~of the~~] case for any substantial error in the revocation process or upon newly discovered information.

(b) A written request to reopen the revocation hearing or reinstate supervision submitted later than 60 days from the date of the parole [~~board~~] panel's revocation decision will not be considered unless under exceptional circumstances including but not limited to:

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

(c) (No change.)

(d) On transmittal, a parole [~~board~~] panel designated by the chair other than the original panel shall dispose of the motion by:

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

(e) The releasee and attorney, if any, shall be notified in writing of the parole [~~board~~] panel's decision.

(f) (No change.)

§146.12. Procedure after Motion to [~~To~~] Reopen is [~~Is~~] Granted; Time; Rights of the Releasee; Final Disposition.

(a) When the parole [~~board~~] panel disposes of a releasee's motion to reopen under §146.11 of this title (relating to Releasee's Motion to [~~To~~] Reopen Hearing or Reinstate Supervision) by granting said motion to reopen the hearing, the case shall be disposed of or referred to

a parole [~~board~~] panel or designee of the board for final disposition in accordance with this section and the previous disposition of the case made by the parole [~~board~~] panel under §146.10 of this title (relating to Final Board Disposition) shall be set aside and shall be of no force and effect.

(b) The purpose of the further proceedings before the parole [~~board~~] panel or designee of the board under this section shall be as specified by the parole [~~board~~] panel in its order granting the releasee's motion to reopen pursuant to §146.11(d)(1) of this title.

(c) When the parole [~~board~~] panel or designee of the board convenes the reopening of the hearing, it shall have before it the entire record previously compiled in the case, including:

(1) the record, report, and recommendation of the preliminary hearing pursuant to [~~or revocation hearing (~~]§146.7 of this title (relating to Preliminary Hearing) or revocation hearing pursuant to [~~and~~] §146.9 of this title (relating to Revocation Hearing)[~~)~~] collected or prepared by the designee of the board originally assigned to the case;

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

(4) any transmittal submitted to the parole [~~board~~] panel with recommendation from board staff. Any transmittal submitted to the parole [~~board~~] panel by the general counsel constitutes legal advice which is confidential under law, and shall not be released to the public as part of the hearing packet.

(d) At the conclusion of the proceedings before the parole [~~board~~] panel or designee of the board, or within a reasonable time thereafter, the parole [~~board~~] panel shall make final disposition of the case by taking one of the following actions in any manner warranted by the evidence:

(1) - (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 October 4, 2012.

TRD-201205213
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: November 18, 2012
For further information, please call: (512) 406-5388

CHAPTER 147. HEARINGS

SUBCHAPTER A. GENERAL RULES FOR HEARINGS

37 TAC §147.5, §147.6

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 147, §147.5 and §147.6, concerning witnesses and record. The amendments are to correct the reference title to §141.111 and correctly reference the TDCJ Parole Division.

Rissie Owens, Chair of the Board, has determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Ms. Owens 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 the amendments to these sections will be to bring the rules into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under §§508.036, 508.0441, 508.281, and 508.283, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

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

§147.5. Witnesses.

(a) The hearing officer may determine whether a witness may be excused under the rule that excludes witnesses from the hearing.

(1) In no event shall the hearing officer exclude from the hearing a party under the authority of this section. For these purposes, the term "party" means the definition in §141.111 of this title (relating to Definition of Terms [~~Definitions~~]) and includes:

(A) - (B) (No change.)

(C) no more than one representative of the TDCJ Parole Division [~~Pardons and Paroles Division~~] who has acted or served in the capacity of supervising, advising, or agent officer in the case.

(2) (No change.)

(b) - (c) (No change.)

§147.6. Record.

(a) The record in any case includes all pleadings, motions, and rulings; evidence received or considered; matters officially noticed; questions and offers of proof, objections, and rulings on them; all relevant TDCJ Parole Division [~~Pardons and Paroles Division~~] documents, staff memoranda or reports submitted to or considered by the hearing officer involved in making the decision, and any decision, opinion, or report by the hearing officer presiding at the hearing.

(b) (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 October 4, 2012.

TRD-201205215

Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: November 18, 2012
For further information, please call: (512) 406-5388

CHAPTER 149. MANDATORY SUPERVISION
SUBCHAPTER A. RULES AND CONDITIONS OF MANDATORY SUPERVISION

37 TAC §149.3

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 149, §149.3, concerning Texas mandatory supervision offenders supervised in other states. The amendments are proposed to update the Interstate Compact title and delete the Texas Government Code reference.

Rissie Owens, Chair of the Board, has determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens 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 the amendments to this section will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under §508.036 and §508.044, Government Code. Section 508.036 authorizes the board to promulgate rules relating to the board's decision-making processes, and §508.044 provides the board with the authority to adopt rules relating to the eligibility of an inmate for release on parole or mandatory supervision.

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

§149.3. Texas Mandatory Supervision Offenders Supervised in Other States.

Texas mandatory supervision offenders accepted for supervision in other states under the terms of the Interstate Parole Compact for Adult Offender Supervision [~~(§508.318, Government Code)~~] shall adhere to the conditions and rules of supervision for Texas and the receiving 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 October 4, 2012.

TRD-201205214
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: November 18, 2012
For further information, please call: (512) 406-5388

CHAPTER 150. MEMORANDUM OF UNDERSTANDING AND BOARD POLICY STATEMENTS
SUBCHAPTER A. PUBLISHED POLICIES OF THE BOARD

37 TAC §150.55

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 150, §150.55, concerning conflict of interest policy. The amendments are proposed to clarify the procedure and update the agency names.

Rissie Owens, Chair of the Board, has determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens 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 the amendments to this section will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Subtitle B, Ethics, Chapter 572 and §508.0441, Government Code. Subtitle B, Ethics, Chapter 572, is the ethics policy of this state for state officers or state employees. Section 508.0441 requires the board to implement a policy under which a board member or parole commissioner should disqualify himself or herself on parole or mandatory supervision decisions.

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

§150.55. Conflict of Interest Policy.

(a) Section 1--Policy.

(1) It is the policy of the board [~~Board of Pardons and Paroles (board)~~] that no board member or parole commissioner shall have any interest, financial or otherwise, direct or indirect; or engage in any business transaction or professional activity or incur any obligations of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. In implementing

this policy, there are provided the following standards of conduct, disclosure, and disqualification to be observed in the performance of their official duties.

(2) (No change.)

(b) Section 2--Disclosure.

(1) A board member or parole commissioner shall submit generally and on a case by case basis written notice to the presiding officer (chair) of any substantial interest held by the board member or parole commissioner in a business entity doing business with the Board of Criminal Justice of the TDCJ [Texas Department of Criminal Justice] or its component divisions and the board.

(2) A board member or parole commissioner having a personal or private interest in any measure, proposal, or decision pending before the board (including parole and administrative release decisions) shall immediately notify the chair in writing of such interest. The chair shall publicly disclose the board member's or parole commissioner's interest to the board in a meeting of the board. The board member or parole commissioner shall not vote or otherwise participate in the decision. The disclosure shall be entered into the minutes or official record of the meeting.

(3) (No change.)

(4) If a board member or parole commissioner is uncertain whether any part of the conflict of interest policy applies to him in a specific matter, he shall request the general counsel of the board [Board of Pardons and Paroles] to determine whether a disqualifying conflict of interest exists.

(c) (No change.)

(d) Section 4--Disqualification.

(1) Disqualification. A board member shall recuse himself or herself from voting on all clemency matters; and a [A] board member or parole commissioner shall recuse themselves from voting on all [clemency matters,] release on parole or mandatory supervision decisions, and decisions to continue, modify, or revoke parole or mandatory supervision when:

(A) (No change.)

(B) the board member or parole commissioner or his/her spouse is related by affinity or consanguinity within the third degree to a person who is the subject of the decision before them.

(2) Recusal. A board member shall disqualify himself or herself from voting on all clemency matters; and a [A] board member or parole commissioner shall disqualify [recuse] themselves from voting on all [clemency matters,] release on parole or mandatory supervision decisions, and decisions to continue, modify, or revoke parole or mandatory supervision when:

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

(3) (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 October 4, 2012.

TRD-201205219
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: November 18, 2012
For further information, please call: (512) 406-5388

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 12. COAL MINING REGULATIONS

The Railroad Commission of Texas (Commission) adopts amendments to §§12.100, 12.225, and 12.311, relating to Responsibilities; Commission Review of Outstanding Permits; and Terms and Conditions for Liability Insurance, without changes to the proposed text published in the August 3, 2012, issue of the *Texas Register* (37 TexReg 5696). The Commission adopts these amendments to update provisions of the Texas Coal Mining Regulatory and Abandoned Mine Land Programs. The federal Office of Surface Mining Reclamation and Enforcement (OSM) approved the amendments in the February 14, 2012, issue of the Federal Register (77 Fed. Reg. 8144).

In §12.100(a), the Commission adopts wording to substantively mirror the corresponding federal language; the adopted amendment will allow Texas permittees to continue operations under an existing permit without submitting a renewal application so long as the only ongoing activities being conducted within the permit area are those related to reclamation. The adopted amendment also clarifies that a permit, and the annual fees associated with the permit, continue until all surface coal mining and reclamation operations are completed.

In §12.225, the Commission adopts new subsection (a)(3) to clarify that the Commission will continue to conduct reviews of permits that, in accordance with the proposed amendment to §12.100(a), are not required to be renewed but under which the permittee must continue to perform reclamation activities within the permit area.

In §12.311, the Commission adopts amendments in subsection (b) to clarify the requirement that Texas permittees who are authorized in accordance with the proposed amendment to §12.100(a) to continue operations under an existing permit without submitting a renewal application are required to maintain public liability insurance for the duration of that operation.

The Commission received one comment from Luminant, a company which has been surface mining coal for more than 40 years in Texas. Luminant supports the proposed amendments, which will reduce workload, streamline Commission staff activities, and provide incentives for the industry to accomplish reclamation and achieve bond release effectively and efficiently. The Commission agrees and thanks Luminant for the comment.

SUBCHAPTER G. SURFACE COAL MINING AND RECLAMATION OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS

DIVISION 1. GENERAL REQUIREMENTS FOR PERMIT AND EXPLORATION PROCEDURE SYSTEMS UNDER REGULATORY PROGRAMS

16 TAC §12.100

The Commission adopts the amendments under Texas Natural Resources Code, §134.011 and §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory authority: Texas Natural Resources Code, §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code, §134.011 and §134.013.

Issued in Austin, Texas, on October 2, 2012.

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 October 2, 2012.

TRD-201205191
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Effective date: October 22, 2012
Proposal publication date: August 3, 2012
For further information, please call: (512) 475-1295

DIVISION 13. PERMIT REVIEWS, REVISIONS, AND RENEWALS, AND TRANSFERS, SALE, AND ASSIGNMENT OF RIGHTS GRANTED UNDER PERMITS

16 TAC §12.225

The Commission adopts the amendments under Texas Natural Resources Code, §134.011 and §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory authority: Texas Natural Resources Code, §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code, §134.011 and §134.013.

Issued in Austin, Texas, on October 2, 2012.

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 October 2, 2012.

TRD-201205190
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Effective date: October 22, 2012
Proposal publication date: August 3, 2012
For further information, please call: (512) 475-1295

SUBCHAPTER J. BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS DIVISION 3. FORM, CONDITIONS, AND TERMS OF PERFORMANCE BOND AND LIABILITY INSURANCE

16 TAC §12.311

The Commission adopts the amendments under Texas Natural Resources Code, §134.011 and §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory authority: Texas Natural Resources Code, §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code, §134.011 and §134.013.

Issued in Austin, Texas, on October 2, 2012.

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 October 2, 2012.

TRD-201205189
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Effective date: October 22, 2012
Proposal publication date: August 3, 2012
For further information, please call: (512) 475-1295

TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §§214.1 - 214.13

Introduction. The Texas Board of Nursing (Board) adopts amendments to Chapter 214, §§214.1 - 214.13, relating to Vocational Nursing Education. Section 214.2 and §214.3 are adopted with changes to the proposed text as published in the August 24, 2012, issue of the *Texas Register* (37 TexReg 6414). Section 214.1 and §§214.4 - 214.13 are adopted without changes and will not be republished.

Reasoned Justification. The Board proposed amendments to §§214.1 - 214.13 in the August 24, 2012, issue of the *Texas Register* (37 TexReg 6414). The Board has made changes to the proposed text as adopted in response to a written comment on the published proposal and as a result of Staff's review. The changes, however, do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

The Board has made changes to §§214.2(24), 214.3(b)(4), and 214.3(b)(5) in order to correct typographical and minor editorial errors. The Board received a written comment pointing out that the term "dietitian" was spelled incorrectly in §214.2(24) as proposed. The Board agrees and has corrected the spelling of this term in the adopted text. The other changes were identified by Board Staff during its review of the proposed rule text. First, Board Staff realized that the wrong guideline number, 3.1.2.a., was referenced in §214.3(b)(4) as proposed. The Board has corrected this error and has included the correct guideline number, 3.1.1.a., in the text as adopted. Second, Board Staff realized that the full name of the education guideline was omitted from §214.3(b)(5) as proposed. The Board has corrected this error and has included the full name of the educational guideline in §214.3(b)(5) as adopted.

Background

As part of its regular review of Board rules, Staff reviewed Chapter 214 and presented recommendations to the Board at its October, 2011, meeting. Following Staff's presentation, the Board issued a charge to the Advisory Committee on Education (Committee) to consider several potential rule amendments to Chapter 214. On March 7, 2012, the Committee met to discuss the Board's charge. Following its discussions, the Committee voted to recommend several rule amendments to the Board, including amendments related to the use of preceptors in nursing education; petitions for waiver of director and faculty qualifications; qualifications/requirements for program authors and directors; and requirements for extension sites/campuses and online instruction. The Board considered the Committee's recommendations at its July, 2012, meeting. In addition to the Committee's recommendations, Staff recommended the proposal of additional amendments to clarify portions of the chapter's existing requirements and to provide for additional oversight of high-risk programs. The Board approved all of the proposed amendments for publication in the *Texas Register*.

Adopted Amendments.

The amendments are adopted under the Occupations Code §§301.151, 301.155(a), 301.157, and 301.257 and are necessary to: (i) clarify existing requirements within the chapter; (ii) strengthen the qualifications/requirements for authors of new nursing education program proposals and proposed nursing education program directors; (iii) provide for additional oversight over the establishment of extension sites/campuses; (iv) provide for additional monitoring of programs that may be categorized as high-risk; and (v) eliminate outdated and redundant references

from the chapter. The following paragraphs provide a general overview of the adopted amendments.

The majority of the adopted amendments to §214.2 are editorial in nature and remove outdated/obsolete references and terminology from the section, correct grammatical errors within the section, and eliminate redundant phrasing and terminology. The adopted amendments also add three new definitions to the section, including definitions for the terms "CANEP", "declaratory order of eligibility", and "NEPIS". Overall, the adopted amendments to §214.2 result in clear, concise definitions for use within the chapter.

The Board is also amending §214.3. Many of the adopted amendments are editorial in nature and are intended to clarify, but not substantively alter, the existing requirements of the section. For example, the existing text of the rule refers to the Board's educational guidelines in several areas, and vocational nursing education programs are currently required to comply with these guidelines. However, in an effort to better clarify the applicability of the guidelines, the specific name and number of each education guideline has been identified and specified throughout the section.

The adopted amendments also contain a few changes that are more substantive in nature. First, adopted §214.3(a)(2)(D) requires the author of a nursing education program proposal to hold a current license or privilege to practice as a registered nurse in Texas and meet the criteria specified in §214.6(f) of the chapter. Section 214.6(f) requires an individual, among other things, to have been actively employed in nursing for the past five years, with a minimum of one year teaching experience in a nursing education program, or have advanced preparation in nursing, nursing education, or nursing administration, as well as prior relevant nursing employment experience. The adopted amendment is necessary to ensure that qualified individuals author new nursing education program proposals. The development of a successful nursing education program proposal is a complex and time consuming process. Even proposals that are well conceived and written by individuals with extensive experience in nursing administration and education often require several revisions in order to meet the Board's requirements for approval. The adopted amendments are intended to ensure that program authors are properly credentialed and qualified to produce quality nursing education program proposals that are capable of meeting Board requirements for approval.

Second, adopted §214.3(a)(2)(D)(ii) specifies that a qualified director or coordinator must be employed by the program early in the development of the program proposal and, in no event, later than six months prior to the submission of the program proposal to the Board. This adopted amendment is designed to facilitate successful program development and implementation. Directors/coordinators are responsible for the administration of the program. As such, these individuals must be involved in the development of the program proposal early enough to review the proposal, identify potential problems, elicit input from necessary parties, and make appropriate modifications. Further, direct involvement of the director/coordinator throughout the development of the program proposal promotes continuity of leadership and unity throughout the program, which supports program success.

Third, adopted §214.3(a)(2)(E) clarifies that at least one potential faculty member must be identified prior to the program's curriculum development. This adopted amendment is designed to facilitate faculty participation in developing the program of study. Program faculty are responsible for implementing the program curriculum. As such, faculty should be involved in the curriculum's development, review, and revision to ensure that the curriculum is well developed, current, accurate, appropriate, and conducive to student learning.

Finally, adopted §214.3(a)(2)(H) provides for the imposition of restrictions, conditions, and Board monitoring in certain situations. Under the existing requirements of the section, the Board may approve a new nursing education program proposal, defer action on the nursing education program proposal, or deny consideration of the nursing education program proposal. The adopted amendments further permit the Board to impose restrictions or conditions upon a newly approved program in order to ensure the success of the program. Further, the adopted amendments permit the Board to require specific monitoring of newly approved programs that may be considered high-risk. The adopted amendments also specify when a newly approved program may be considered high-risk and the types of activities that may be involved in monitoring a high-risk program. Such activities include the submission of quarterly reports of students' performance in courses and clinical learning experiences; remediation strategies and attrition rates; and additional survey visits by Board representatives. Further, the adopted amendments to §214.3(a)(2)(H) provide for the assessment of monitoring fee. The amount of the monitoring fee, however, is not addressed by the adopted amendments and will be addressed in a separate rule proposal at a later date.

The adopted amendments to §214.3(a)(2)(H) are authorized under the Occupations Code §301.155 and §301.157(b) and are necessary to facilitate the success of newly approved nursing education programs. Over the past five years, four vocational nursing education programs have experienced significant changes in their approval status, including three programs that were initially approved in 2007, and one program that was initially approved in 2009. Of these four programs, one program is currently on conditional status; one program is currently on full with warning status, with limited enrollment; one program is on initial with warning status; and one program has had its approval withdrawn. Further, there are currently five additional vocational nursing programs on initial approval status, awaiting their first full year of NCLEX-PN® pass rates. Board Staff is currently reviewing two new vocational nursing education program proposals, and five vocational nursing education programs have indicated that they will be filing new program proposals with the Board. The volume of new vocational nursing education program proposals has increased rapidly over the last few years. Since 2006, 15 vocational nursing education programs have been approved by the Board. Unfortunately, several of the approved programs have demonstrated significant deficiencies, which effects the quality of nursing education provided to the programs' students. The Board is committed to ensuring that all nursing education programs provide competent, consistent, quality nursing education. As such, the adopted amendments are designed to identify potential problems in newly approved nursing education programs early on in the approval process, to assist programs in the development of appropriate remediation plans, to monitor programs' progress, and to facilitate successful program administration.

The adopted amendments to §214.3(b) relate to nursing education programs desiring to establish extension sites/campuses. In particular, the adopted amendments to §214.3(b) require a nursing education program seeking to establish an extension site/campus to submit an application form to the Board, at least four months prior to the implementation of the extension

site/campus, evidencing a strong rationale for the establishment of the extension site in the community; availability of a qualified coordinator, if applicable, and qualified faculty; adequate educational resources; documentation of communication and collaboration with other programs within 25 miles of the extension site; signed commitments from clinical affiliating agencies to provide clinical practice settings for students; projected student enrollments for the first two years; plans for quality instruction; a planned schedule for class and clinical learning activities for one year; notification or approval from the governing entity and from other regulatory/accrediting agencies; and letters of support from clinical affiliating agencies. These adopted amendments are necessary to ensure that the community is able to appropriately support the extension site/campus, that adequate resources are available for the extension site/campus, and that the extension site/campus is capable of consistently meeting the Board's requirements and standards for providing quality nursing education to students.

Many of the adopted amendments to §214.4 are editorial in nature and are intended to clarify the existing requirements of the section, but not substantively alter the section's existing requirements. There are a few adopted amendments, however, that are more substantive in nature. The adopted amendments to §214.4(a)(1), (3), and (4) clarify that the Board may impose restrictions or conditions upon a program in order to ensure the continuing success of the program. The adopted amendments are intended to apply to programs that have either demonstrated high-risk behavior or have already experienced a change in approval status (i.e., from initial approval to initial with warning or full with warning to conditional). In such situations, it is important for the Board to be able to review and identify the deficiencies of the program, make recommendations for improving or resolving the deficiencies, and impose conditions and restrictions designed to ensure that the deficiencies are resolved in an appropriate and timely manner.

The adopted amendments to §214.4(b) are similar in nature to the adopted amendments to §214.4(a)(1), (3), and (4) and serve a similar purpose. The adopted amendments to §214.4(b) clarify that the Board may, in addition to imposing restrictions and conditions, require additional monitoring of a program when the program demonstrates non-compliance with Board requirements. Additional monitoring may include additional survey visits by a Board representative, submission of quarterly reports of students' performance in courses and clinical learning experiences, and remediation strategies. Further, like the adopted amendments to §214.3(a)(2)(H), the adopted amendments to §214.4(b) provide for the assessment of a monitoring fee. The amount of the monitoring fee, however, is not provided for in these adopted amendments and will be addressed in a separate rule proposal at a later date. The adopted amendments to §214.4(b) are authorized under the Occupations Code §301.155 and §301.157(b) and are necessary to ensure that programs with demonstrated deficiencies or high-risk behavior are able to identify their deficiencies, formulate a remediation plan, and successfully remediate their deficiencies in an appropriate and timely manner.

The adopted amendments add §214.4(c)(3)(E) and (F). These adopted amendments are necessary to clarify that the Board may change the approval status of a program on full approval with warning to full approval, to full approval with restrictions or conditions, or impose a monitoring plan, and that the Board may restrict the program's enrollment. Further, the adopted amendments clarify that the Board may change the approval status of a program on conditional approval to full approval, full approval with restrictions or conditions, full approval with warning, or impose a monitoring plan. Further, the Board may also restrict the program's enrollment. These adopted amendments are consistent with the existing provisions of the section, including §214.4(a), as well as the adopted amendments to §214.4(a)(1), (3), and (4) and §214.4(b), and provide additional clarity and guidance to programs regarding changes in approval status due to demonstrated deficiencies.

The remaining adopted amendments to §214.4 require accredited programs to demonstrate their accountability for compliance with national nursing accreditation standards and processes and provide the Board with copies of approval for substantive changes from the national nursing accreditation organizations after an accredited program has followed the approval process. These adopted amendments are necessary to ensure that accredited programs maintain their compliance with national nursing accreditation standards and keep the Board informed of all substantive changes.

The adopted amendments to §214.6 and §214.7 concern waivers for potential directors/coordinators and program faculty. The adopted amendments to §214.6(g)(4) eliminate the ability of a program to file a petition with the Board for a waiver of the rule's requirements and qualifications for a potential program director/coordinator. This adopted amendment serves an important purpose. Section 214.6 prescribes the minimum qualifications, credentials, and nursing expertise that a program director/coordinator must possess in order to be approved by the Board. Directors/coordinators are responsible for a program's operation, and as such, must be appropriately qualified and competent to administer the program. Individuals who possess the minimum qualifications prescribed by the rule are better prepared to administer the program successfully. As such, the adopted amendments prohibit a waiver of these minimum qualifications. However, in an effort to provide additional flexibility, the adopted amendments to §214.6(g)(4) permit fully approved programs to consider qualifications other than those required by the section, so long as there is supporting evidence that the particular individual possesses the competencies necessary to fulfill the responsibilities of the director/coordinator role. The Board, however, retains the ability to review the qualifications of the individual and ultimately approve the individual for the director/coordinator role.

The adopted amendments to §214.7(d) are similar in nature to the adopted amendments to §214.6 and serve a similar purpose. The adopted amendments to §214.7(d) permit the director/coordinator of a program to waive the Board's requirements/qualifications for a prospective faculty member, without Board approval, provided the program and prospective faculty member meet the specified requirements of §214.7(d). The adopted amendments are necessary to ensure that program faculty possess the knowledge, experience, and expertise necessary to provide meaningful instruction to nursing students. Further, the adopted amendments provide additional flexibility to program directors/coordinators to consider additional qualifications of potential faculty members and to waive the Board's prescribed faculty requirements for a period not to exceed one year, provided that the prospective faculty member meets the rules' specified criteria for such waiver.

The adopted amendments to §214.9 primarily relate to online instruction. Adopted §214.9(b) requires that the delivery of curriculum through distance education comply with all the require-

ments of the section, as well as the Board's requirements regarding clinical learning experiences located in §214.10. Further, adopted §214.9 requires faculty involved in distance education to possess documented competencies related to online education. These adopted amendments are necessary to ensure that students involved in distance education receive comparable curriculum, supervised clinical learning experiences, and formative and summative evaluations as their traditional counterparts. The remaining adopted amendments to this section clarify the section's existing requirements related to classroom instruction, laboratory activities/instruction, clinical practice learning experiences, and program content related to the nursing care of children, maternity nursing, nursing care of the aged, nursing care of adults, and nursing care of individuals with mental health problems.

The majority of the adopted amendments to §214.10 are editorial in nature and do not substantively alter the existing requirements of the section. However, adopted §214.10(i) is more substantive in nature. Under adopted §214.10(i)(6), clinical preceptors must hold a current license or privilege to practice as a licensed nurse in the State of Texas. This adopted amendment is necessary to ensure that clinical preceptors possess the necessary knowledge and expertise to provide appropriate instruction and guidance to nursing students regarding nursing practice.

The remaining adopted amendments to the chapter update outdated terminology and references and correct grammatical and typographical errors.

How the Sections Will Function.

Section 214.1 sets forth the Board's general requirements for vocational nursing education programs. The adopted amendments to §214.1 are editorial in nature and correct grammatical errors.

Section 214.2 sets forth definitions for the terms used throughout the chapter. In addition to editorial, typographical, and grammatical changes, the adopted amendments to §214.2 delete the definitions of "accredited nursing educational program", "clinical practice hours", "compliance audit", "controlling agency", and "proprietary school"; add definitions for the terms "CANEP", "declaratory order of eligibility", and "NEPIS"; and substantively modify the definitions of "classroom instruction", "clinical preceptor", "extension site", "faculty waiver", "objectives/outcomes", "observation experience", and "systematic approach".

Section 214.3 contains the Board's requirements related to program development, extension sites/campuses, transfer of administrative control, program closure, and clinical learning experiences for programs located outside of Texas. In addition to editorial, typographical, clarifying, and grammatical changes, the adopted amendments to §214.3 strengthen the requirements/qualification for the author of a new vocational education program proposal; require qualified directors/coordinators to be employed by the program early in the proposal development process; require at least one potential faculty member to assist in the program's curriculum development; identify examples of high-risk behavior that may require additional Board monitoring; clarify that the Board may impose restrictions and conditions to ensure newly approved programs' success; authorize a Board monitoring fee; inactivate program proposals after one year of inaction on the proposal; and require extension sites/campuses to submit an application to the Board containing specified information at least four months prior to implementation of the extension site/campus.

Section 214.4 contains the Board's requirements for program approval. In addition to editorial, typographical, clarifying, and grammatical changes, the adopted amendments to §214.4 clarify that the Board may impose reasonable and necessary restrictions or conditions on a program in order to ensure the continuing success of a program; identify behaviors that may result in the imposition of restrictions, conditions, or a monitoring plan; specify possible components of a monitoring plan; authorize a Board monitoring fee; clarify potential changes in approval status; clarify that the Board may restrict a program's enrollment; and require accredited programs to submit evidence of ongoing compliance with national nursing accreditation organizations.

Section 214.5 contains the Board's requirements related to a program's philosophy/mission and objectives/outcomes. The adopted amendments to §214.5 are editorial in nature and correct grammatical errors.

Section 214.6 contains the Board's requirements related to a program's administration and organization. In addition to editorial, typographical, clarifying, and grammatical changes, the adopted amendments to §214.6 eliminate the ability of a program to request a waiver of a potential director/coordinator's qualifications from the Board; permit additional qualifications to be considered to support the approval of a potential director/coordinator, provided there is supporting evidence that the individual possesses the necessary competencies to fulfill the responsibilities of the position; and require the director/coordinator to notify the Board when there is a change in contact information or the name of the program or the governing entity.

Section 214.7 contains the Board's requirements related to a program's faculty. In addition to editorial, typographical, clarifying, and grammatical changes, the adopted amendments to §214.7 permit a program's director/coordinator to waive the Board's requirements for a potential faculty member without Board approval, provided the director/coordinator meets the specified criteria in the section.

Section 214.8 contains the Board's requirements related to a program's students. In addition to editorial, typographical, clarifying, and grammatical changes, the adopted amendments to §214.8 require a program to maintain evidence of student receipt of the criteria for licensure eligibility that is provided to the students by the program.

Section 214.9 contains the Board's requirements related to the program of study, including online instruction. In addition to editorial, typographical, clarifying, and grammatical changes, the adopted amendments to §214.9 require the delivery of curriculum through distance education to meet the requirements of the section and §214.10; require faculty involved with distance education to have documented competencies specific to online education; require instruction to include nursing skills, laboratory instruction, and demonstration; permit laboratory activities/instruction in the nursing skills or simulation laboratory to be considered as either classroom instruction hours or clinical learning experience hours; require a minimum of 840 hours in clinical learning experiences; and prescribe in greater detail the required content related to nursing care of children, maternity nursing, nursing care of the aged, nursing care of adults, and nursing care of individuals with mental health problems.

Section 214.10 contains the Board's requirements related to clinical learning experiences. In addition to editorial, typographical, clarifying, and grammatical changes, the adopted amendments

to §214.10 require a clinical preceptor to hold a current license or privilege to practice as a licensed nurse in Texas.

Section 214.11 sets forth the Board's requirements for a program's facilities, resources, and services. The adopted amendments to §214.11 are editorial in nature.

Section 214.12 sets forth the Board's requirements related to a program's records and reports. The adopted amendments to §214.12 are editorial in nature and correct grammatical errors.

Section 214.13 sets forth the Board's requirements for total program evaluation. In addition to editorial changes, the adopted amendments to §214.13 require a program to periodically evaluate the program of study, curriculum, and instructional techniques, including online components of the program, if applicable.

Summary of Comments and Agency Response.

§214.2(24)

Comment: The Texas State Board of Examiners of Dietitians and the Texas Dietetic Association stated that the term "dietitian" was spelled incorrectly in §214.2(24) as proposed.

Agency Response: The Board agrees and has made the suggested change in the text as adopted.

Names of Those Commenting For and Against the Proposal.

For: None.

Against: None.

For, with changes: None.

Neither for nor against, with changes: The Texas State Board of Examiners of Dietitians and the Texas Dietetic Association.

Statutory Authority. The amendments are adopted under the Occupations Code §§301.151, 301.155(a), 301.157, and 301.257.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.155(a) provides that the Board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering the Occupations Code Chapter 301. Further, §301.155(a) provides that the Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

Section 301.157(a) states that the Board shall prescribe three programs of study to prepare a person to receive an initial license as a registered nurse under Chapter 301 as follows: (i) a baccalaureate degree program that is conducted by an educational unit in nursing that is a part of a senior college or university and that leads to a baccalaureate degree in nursing; (ii) an associate degree program that is conducted by an educational unit in nursing within the structure of a college or a university and that leads to an associate degree in nursing; and (iii) a diploma program that is conducted by a single-purpose school, usually under the control of a hospital, and that leads to a diploma in nursing.

Section 301.157(a-1) states that a diploma program of study in this state that leads to an initial license as a registered nurse under Chapter 301 and that is completed on or after December 31, 2014, must entitle a student to receive a degree on the student's successful completion of a degree program of a public or private institution of higher education accredited by an agency recognized by the Texas Higher Education Coordinating Board.

Section 301.157(b) states that the Board shall: (i) prescribe two programs of study to prepare a person to receive an initial vocational nurse license under Chapter 301 as follows: a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school and a program conducted by a hospital; (ii) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; (iii) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; (iv) approve schools of nursing and educational programs that meet the Board's requirements; (v) select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and (vi) deny or withdraw approval from a school of nursing or educational program that fails to meet the prescribed course of study or other standard under which it sought approval by the Board; fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under §301.157(b)(5) under which it was approved or sought approval by the Board; or fails to maintain the approval of the state Board of nursing of another state and the Board under which it was approved.

Section 301.157(b-1) provides that the Board may not require accreditation of the governing institution of a school of nursing. Further, the Board shall accept the requirements established by the Texas Higher Education Coordinating Board for accrediting the governing institution of a school of nursing. The governing institution of a professional nursing school, not including a diploma program, must be accredited by an agency recognized by the Texas Higher Education Coordinating Board or hold a certificate of authority from the Texas Higher Education Coordinating Board under provisions leading to accreditation of the institution in due course.

Section 301.157(c) states that a program approved to prepare registered nurses may not be less than two academic years or more than four calendar years.

Section 301.157(d) states that a person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of a school of nursing or educational program that: (i) is approved by the Board; (ii) is accredited by a national nursing accreditation agency determined by the Board to have acceptable standards; or (iii) is approved by a state Board of nursing of another state and the Board, subject to §301.157(d-4).

Section 301.157(d-1) states that a school of nursing or educational program is considered approved by the Board and, except as provided by §301.157(d-7), is exempt from Board rules that require ongoing approval if the school or program: (i) is accredited and maintains accreditation through a national nursing accrediting agency selected by the Board under §301.157(b)(5); and (ii) maintains an acceptable pass rate as determined by the Board on the applicable licensing examination under Chapter 301.

Section 301.157(d-2) states that a school of nursing or educational program that fails to meet or maintain an acceptable pass rate on applicable licensing examinations under Chapter 301 is subject to review by the Board. The Board may assist the school or program in its effort to achieve compliance with the Board's standards.

Section 301.157(d-3) provides that a school or program from which approval has been withdrawn under this section may reapply for approval.

Section 301.157(d-4) states that the Board may recognize and accept as approved under §301.157 a school of nursing or educational program operated in another state and approved by a state Board of nursing or other regulatory body of that state. Further, the Board shall develop policies to ensure that the other state's standards are substantially equivalent to the Board's standards.

Section 301.157(d-5) states that the Board shall streamline the process for initially approving a school of nursing or educational program under §301.157 by identifying and eliminating tasks performed by the Board that duplicate or overlap tasks performed by the Texas Higher Education Coordinating Board or the Texas Workforce Commission.

Section 301.157(d-6) states that the Board, in cooperation with the Texas Higher Education Coordinating Board and the Texas Workforce Commission, shall establish guidelines for the initial approval of schools of nursing or educational programs. The guidelines must: (i) identify the approval processes to be conducted by the Texas Higher Education Coordinating Board or the Texas Workforce Commission; (ii) require the approval process identified under §301.157(d-1) to precede the approval process conducted by the Board; and (iii) be made available on the Board's Internet website and in a written form.

Section 301.157(d-7) states that a school of nursing or educational program approved under §301.157(d-1) shall: (i) provide the Board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board; (ii) notify the Board of any change in accreditation status; and (iii) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

Section 301.157(d-8) states that, for purposes of §301.157(d-4), a nursing program is considered to meet standards substantially equivalent to the Board's standards if the program: (i) is part of an institution of higher education located outside this state that is approved by the appropriate regulatory authorities of that state; (ii) holds regional accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation; (iii) holds specialty accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation, including the National League for Nursing Accrediting Commission; (iv) requires program applicants to be a licensed practical or vocational nurse, a military service corpsman, or a paramedic, or to hold a college degree in a clinically oriented health care field with demonstrated experience providing direct patient care; and (v) graduates students who: (A) achieve faculty-determined program outcomes, including passing criterion-referenced examinations of nursing knowledge essential to beginning a registered nursing practice and transitioning to the role of registered nurse; (B) pass a criterion-referenced summative performance examination developed by faculty subject matter experts that measures clinical competencies essential to beginning a registered nursing practice and that meets nationally recognized standards for educational testing, including the educational testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and (C) pass the National Council Licensure Examination for Registered Nurses at a rate equivalent to the passage rate for students of approved in-state programs.

Section 301.157(d-9) states that a graduate of a clinical competency assessment program operated in another state and approved by a state Board of nursing or other regulatory body of another state is eligible to apply for an initial license under Chapter 301 if: (i) the Board allowed graduates of the program to apply for an initial license under Chapter 301 continuously during the 10-year period preceding January 1, 2007; (ii) the program does not make any substantial changes in the length or content of its clinical competency assessment without the Board's approval; (iii) the program remains in good standing with the state Board of nursing or other regulatory body in the other state; and (iv) the program participates in the research study under §105.008, Health and Safety Code.

Section 301.157(d-10) states that, in §301.157, the terms "clinical competency assessment program" and "supervised clinical learning experiences program" have the meanings assigned by the Health and Safety Code §105.008.

Section 301.157(d-11) states that §301.157(d-8), (d-9), (d-10), and (d-11) expire December 31, 2017. Further, as part of the first review conducted under §301.003 after September 1, 2009, the Sunset Advisory Commission shall: (i) recommend whether §301.157(d-8) and (d-9) should be extended; and (ii) recommend any changes to §301.157(d-8) and (d-9) relating to the eligibility for a license of graduates of a clinical competency assessment program operated in another state.

Section 301.157(e) states that the Board shall give each person, including an organization, affected by an order or decision of the Board under §301.157 reasonable notice of not less than 20 days and an opportunity to appear and be heard regarding the order or decision. The Board shall hear each protest or complaint from a person affected by a rule or decision regarding: (i) the inadequacy or unreasonableness of any rule or order the Board adopts; or (ii) the injustice of any order or decision of the Board.

Section 301.157(f) states that, not later than the 30th day after the date an order is entered and approved by the Board, a person is entitled to bring an action against the Board in a district court of Travis County to have the rule or order vacated or modified, if that person: (i) is affected by the order or decision; (ii) is dissatisfied with any rule or order of the Board; and (iii) sets forth in a petition the principal grounds of objection to the rule or order.

Section 301.157(g) states that an appeal under §301.157 shall be tried de novo as if it were an appeal from a justice court to a county court.

Section 301.157(h) states that the Board, in collaboration with the nursing educators, the Texas Higher Education Coordinating Board, and the Texas Health Care Policy Council, shall implement, monitor, and evaluate a plan for the creation of innovative nursing education models that promote increased enrollment in this state's nursing programs.

Section 301.257(a) states that a person may petition the Board for a declaratory order as to the person's eligibility for a license

under Chapter 301 if the person has reason to believe that the person is ineligible for the license and: (i) is enrolled or planning to enroll in an educational program that prepares a person for an initial license as a registered nurse or vocational nurse; or (ii) is an applicant for a license.

Section 301.257(b) states that the petition must state the basis for the person's potential ineligibility.

Section 301.257(c) states that the Board has the same powers to investigate the petition and the person's eligibility that it has to investigate a person applying for a license.

Section 301.257(d) states that the petitioner or the Board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.

Section 301.257(e) states that, if the Board determines that a ground for ineligibility does not exist, instead of issuing an order, the Board shall notify the petitioner in writing of the Board's determination on each ground of potential ineligibility. If the Board proposes to find that the petitioner is ineligible for a license, the petitioner is entitled to a hearing before the State Office of Administrative Hearings.

Section 301.257(f) states that the Board's order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling on the petition determines the person's eligibility with respect to the grounds for potential ineligibility set out in the written notice or order.

Section 301.257(g) provides that the Board may require an individual accepted for enrollment or enrolled in an educational program preparing a student for initial licensure as a registered nurse or vocational nurse to submit information to the Board to permit the Board to determine whether the person is aware of the conditions that may disqualify the person from licensure as a registered nurse or vocational nurse on graduation and of the person's right to petition the Board for a declaratory order under §301.257. Further, instead of requiring the person to submit the information, the Board may require the educational program to collect and submit the information on each person accepted for enrollment or enrolled in the program.

Section 301.257(h) states that the information required under §301.257(g) must be submitted in a form approved by the Board.

Section 301.257(i) states that, if, as a result of information provided under §301.257(g), the Board determines that a person may not be eligible for a license on graduation, the Board shall notify the educational program of its determination.

Cross Reference to Statute. The following statutes are affected by this adoption: Occupations Code §§301.151, 301.155(a), 301.157, and 301.257

§214.2. Definitions.

Words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) Affidavit of Graduation--an official Board form containing an approved vocational nursing education program's curriculum components and hours, and a statement verified by the nursing program director/coordinator attesting to an applicant's qualifications for vocational nurse licensure in Texas.

(2) Affiliating agency or clinical facility--a health care facility or agency providing clinical learning experiences for students.

(3) Alternative practice settings--settings providing opportunities for clinical learning experiences, although their primary function is not the delivery of health care.

(4) Approved vocational nursing education program--a vocational nursing education program approved by the Texas Board of Nursing.

(5) Articulation--a planned process between two (2) or more educational systems to assist students in making a smooth transition from one (1) level of education to another without duplication in learning.

(6) Board--the Texas Board of Nursing composed of members appointed by the Governor for the State of Texas.

(7) CANEP (Compliance Audit for Nursing Education Programs)--a document required by the Board to be submitted by the vocational nursing education program's director/coordinator that serves as verification of the program's adherence to the requirements of this chapter.

(8) Career school or college--an educational entity as defined in Title 3, Texas Education Code, §132.001(1) as a "career school or college".

(9) Classroom instruction hours--hours allocated to didactic instruction and testing in nursing and non-nursing Board-required courses and content.

(10) Clinical learning experiences--faculty-planned and guided learning activities designed to assist students to meet the stated program and course outcomes and to safely apply knowledge and skills when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. These experiences occur in actual patient care clinical learning situations and in associated clinical conferences; in nursing skills and computer laboratories; and in simulated clinical settings, including high-fidelity, where the activities involve using planned objectives in a realistic patient scenario guided by trained faculty and followed by a debriefing and evaluation of student performance. The clinical settings for faculty supervised hands-on patient care include a variety of affiliating agencies or clinical practice settings, including, but not limited to: acute care facilities, extended care facilities, clients' residences, and community agencies.

(11) Clinical preceptor--a licensed nurse who meets the requirements in §214.10(i)(6) of this chapter (relating to Clinical Learning Experiences), who is not employed as a faculty member by the governing entity, and who directly supervises clinical learning experiences for no more than two (2) students. A clinical preceptor assists in the evaluation of the student during the experiences and in acclimating the student to the role of nurse. A clinical preceptor facilitates student learning in a manner prescribed by a signed written agreement between the governing entity, preceptor, and affiliating agency (as applicable).

(12) Conceptual framework--theories or concepts giving structure to the curriculum and guiding faculty in making decisions about curriculum development, implementation, and evaluation.

(13) Correlated theory and clinical practice--didactic and clinical experiences that have a reciprocal relationship or mutually complement each other.

(14) Course--organized subject content and related activities, that may include didactic, laboratory, and/or clinical experiences, planned to achieve specific objectives within a given time period.

(15) Curriculum--course offerings which, in aggregate, make up the total learning activities in a program of study.

(16) Declaratory Order of Eligibility--an order issued by the Board pursuant to Texas Occupations Code §301.257, determining the eligibility of an individual for initial licensure as a vocational or registered nurse and setting forth both the basis for potential ineligibility and the Board's determination of the disclosed eligibility issues.

(17) Differentiated Essential Competencies (DECs)--the expected educational outcomes to be demonstrated by nursing students at the time of graduation, as published in the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), October 2010* (DECs).

(18) Director/coordinator--a registered nurse who is accountable for administering a pre-licensure vocational nursing education program, who meets the requirements as stated in §214.6(f) of this chapter (relating to Administration and Organization), and is approved by the Board.

(19) Examination year--the period beginning January 1 and ending December 31 used for the purpose of determining a vocational nursing education program's annual NCLEX-PN® examination pass rate.

(20) Extension site/campus--a location other than the program's main campus where a portion or all of the curriculum is provided.

(21) Faculty member--an individual employed to teach in the vocational nursing education program who meets the requirements as stated in §214.7 of this chapter (relating to Faculty).

(22) Faculty waiver--a waiver granted by a director or coordinator of a vocational nursing education program to an individual who meets the criteria specified in §214.7(d)(1) of this chapter.

(23) Governing entity--the body with administrative and operational authority over a Board-approved vocational nursing education program.

(24) Health care professional--an individual other than a licensed nurse who holds at least a bachelor's degree in the health care field, including, but not limited to: a respiratory therapist, physical therapist, occupational therapist, dietitian, pharmacist, physician, social worker, and psychologist.

(25) MEEP (Multiple Entry-Exit Program)--an exit option which is a part of a professional nursing education program designed for students to complete course work and apply to take the NCLEX-PN® examination after they have successfully met all requirements needed for the examination.

(26) Mobility--the ability to advance without educational barriers.

(27) NEPIS (Nursing Education Program Information Survey)--a document required by the Board to be submitted by the vocational nursing education program director/coordinator to provide annual workforce data.

(28) Non-nursing faculty--instructors who teach non-nursing content, such as pharmacology, pathophysiology, anatomy and physiology, growth and development, and nutrition, and who have educational preparation appropriate to the assigned teaching responsibilities.

(29) Objectives/Outcomes--expected student behaviors that are attainable and measurable.

(A) Program Objectives/Outcomes--broad statements describing student learning outcomes achieved upon graduation.

(B) Clinical Objectives/Outcomes--expected student behaviors for clinical learning experiences that provide evidence of progression of students' cognitive, affective, and psychomotor achievement in clinical practice across the curriculum.

(C) Course Objectives/Outcomes--expected student outcomes upon successful completion of specific course content serving as a mechanism for the evaluation of student progression.

(30) Observation experience--a clinical learning experience where a student is assigned to follow a health care professional in a facility or unit and to observe activities within the facility/unit and/or the role of nursing within the facility/unit, but where the student does not participate in patient/client care.

(31) Pass rate--the percentage of first-time candidates within one (1) examination year who pass the National Council Licensure Examination for Vocational Nurses (NCLEX-PN®).

(32) Philosophy/Mission--statement of concepts expressing fundamental values and beliefs as they apply to nursing education and practice and upon which the curriculum is based.

(33) Program of study--the courses and learning experiences that constitute the requirements for completion of a vocational nursing education program.

(34) Recommendation--a specific suggestion based upon program assessment indirectly related to the rules to which the program must respond but in a method of their choosing.

(35) Requirement--mandatory criterion based on program assessment directly related to the rules that must be addressed in the manner prescribed.

(36) Shall--denotes mandatory requirements.

(37) Simulation--activities that mimic the reality of a clinical environment and are designed to demonstrate procedures, decision-making, and critical thinking. A simulation may be very detailed and closely imitate reality, or it can be a grouping of components that are combined to provide some semblance of reality. Components of simulated clinical experiences include providing a scenario where the nursing student can engage in a realistic patient situation guided by trained faculty and followed by a debriefing and evaluation of student performance. Simulation provides a teaching strategy to prepare nursing students for safe, competent, hands-on practice, but it is not a substitute for faculty-supervised patient care.

(38) Staff--employees of the Texas Board of Nursing.

(39) Supervision--immediate availability of a faculty member or clinical preceptor to coordinate, direct, and observe first hand the practice of students.

(40) Survey visit--an on-site visit to a vocational nursing education program by a Board representative. The purpose of the visit is to evaluate the program of study by gathering data to determine whether the program is in compliance with Board requirements.

(41) Systematic approach--the organized nursing process approach that provides individualized, goal-directed nursing care whereby the licensed vocational nurse role engages in:

(A) collecting data and performing focused nursing assessments of the health status of an individual;

(B) participating in the planning of the nursing care needs of an individual;

(C) participating in the development and modification of the nursing care plan;

(D) participating in health teaching and counseling to promote, attain, and maintain the optimum health level of an individual; and

(E) assisting in the evaluation of an individual's response to a nursing intervention and the identification of an individual's needs.

(42) Texas Higher Education Coordinating Board (THECB)--the state agency described in Texas Education Code, Title 3, Subtitle B, Chapter 61.

(43) Texas Workforce Commission (TWC)--the state agency described in Texas Labor Code, Title 4, Subtitle B, Chapter 301.

(44) Vocational nursing education program--an educational unit within the structure of a school, including a college, university, or career school or college or a hospital or military setting that provides a program of nursing study preparing graduates who are competent to practice safely and who are eligible to take the NCLEX-PN® examination.

§214.3. Program Development, Expansion, and Closure.

(a) New Programs.

(1) New vocational nursing education programs must be approved by the Board in order to operate in the State of Texas. The Board has established guidelines for the initial approval of vocational nursing education programs.

(2) Proposal to establish a new vocational nursing education program.

(A) An educational unit in nursing within the structure of a school, including a college, university, or career school or college, or a hospital or military setting is eligible to submit a proposal to establish a vocational nursing education program.

(B) The new vocational nursing education program must be approved/licensed or deemed exempt by the appropriate Texas agency, the THECB or the TWC, as applicable, before approval can be granted by the Board for the program to be implemented. The proposal to establish a new vocational nursing education program may be submitted to the Board at the same time that an application is submitted to the THECB or the TWC, but the proposal cannot be approved by the Board until such time as the proposed program is approved by the THECB or the TWC.

(C) The process to establish a new vocational nursing education program shall be initiated with the Board office one (1) year prior to the anticipated start date of the program.

(D) The individual writing the proposal for a new vocational nursing education program should hold a current license or privilege to practice as a registered nurse in Texas and should meet the qualifications for the program director as specified in §214.6(f) of this chapter (relating to Administration and Organization).

(i) The name and credentials of the author of the proposal must be included in the document.

(ii) A qualified director or coordinator must be employed by the program early in the development of the proposal, and in no event shall the director or coordinator be hired later than six (6) months prior to the submission of the proposal to the Board.

(iii) The prospective program director must review/revise the proposal and agree with the components of the proposal as being representative of the proposed program that the individual will be responsible for administratively.

(E) At least one (1) potential faculty member shall be identified before the curriculum development to assist in planning the program of study.

(F) The proposal shall include information outlined in Board Education Guideline 3.1.1.a. Proposal to Establish a New Vocational Nursing Education Program.

(G) After the proposal is submitted and determined to be complete, a preliminary survey visit shall be conducted by Board Staff prior to presentation to the Board.

(H) The proposal shall be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal and grant initial approval to the new program, may defer action on the proposal, or may deny further consideration of the proposal. In order to ensure success of newly approved programs, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(i) In addition to imposing restrictions and conditions, the Board may also require specific monitoring of newly approved programs that are high-risk.

(ii) A program may be considered high-risk if it meets one or more of the following criteria, including, but not limited to: inexperience of the governing entity in nursing education; inexperience of the potential director or coordinator in directing a nursing program; potential for director or faculty turnover; or potential for a high attrition rate among students.

(iii) Board monitoring of a high-risk program may include the review and analysis of program reports; extended communication with program directors; and additional survey visits. A monitoring plan may require the submission of quarterly reports of students' performance in courses and clinical learning experiences; remediation strategies and attrition rates; and reports from an assigned mentor to the program director. Additional survey visits by a Board representative may be conducted at appropriate intervals to evaluate the status of the program. The Board may alter a monitoring plan as necessary to address the specific needs of a particular program. When the Board requires monitoring activities to evaluate and assist the program, monitoring fees will apply.

(I) The program shall not enroll students until the Board approves the proposal and grants initial approval.

(J) Prior to presentation of the proposal to the Board, evidence of approval from the appropriate regulatory agencies shall be provided.

(K) When the proposal is submitted, an initial approval fee shall be assessed per §223.1 of this title (relating to Fees).

(L) A proposal without action for one (1) calendar year shall be inactivated and a new proposal application and fee will be required.

(M) If the Board denies a proposal, the educational unit in nursing within the structure of a school, including a college, university, or career school or college, or a hospital or military setting must wait a minimum of twelve (12) calendar months from the date of the denial before submitting a new proposal to establish a vocational nursing education program.

(3) Survey visits shall be conducted, as necessary, by staff until full approval status is granted.

(b) Extension Site/Campus.

(1) Only vocational nursing education programs that have full approval with a current NCLEX-PN® examination pass rate of 80% or better are eligible to initiate or modify an extension site/campus.

(2) Instruction provided for the extension site/campus may include a variety of instructional methods, shall be consistent with the main campus program's current curriculum, and shall enable students to meet the goals, objectives, and competencies of the vocational nursing education program and requirements of the Board as stated in §§214.1 - 214.13 of this chapter (relating to Vocational Nursing Education).

(3) An approved vocational nursing education program desiring to establish an extension site/campus that is consistent with the main campus program's current curriculum and teaching resources shall:

(A) Complete and submit an application form for approval of the extension site to Board Staff at least four (4) months prior to implementation of the extension site/campus; and

(B) Provide information in the application form that evidences:

(i) a strong rationale for the establishment of the extension site in the community;

(ii) availability of a qualified coordinator, if applicable, and qualified faculty;

(iii) adequate educational resources (classrooms, labs, and equipment);

(iv) documentation of communication and collaboration with other programs within twenty-five (25) miles of the extension site;

(v) signed commitments from clinical affiliating agencies to provide clinical practice settings for students;

(vi) projected student enrollments for the first two (2) years;

(vii) plans for quality instruction;

(viii) a planned schedule for class and clinical learning activities for one (1) year;

(ix) notification or approval from the governing entity and from other regulatory/accrediting agencies, as required. This includes regional approval of out-of-service extension sites for community colleges; and

(x) letters of support from clinical affiliating agencies.

(4) When the curriculum of the extension site/campus deviates from the original program in any way, the proposed extension is viewed as a new program and Board Education Guideline 3.1.1.a. applies.

(5) Extension programs of vocational nursing education programs that have been closed may be reactivated by submitting notification of reactivation to the Board at least four (4) months prior to reactivation, using the Board Education Guideline 3.1.2.a. Initiating or Reactivating an Extension Nursing Education Program for initiating an extension program.

(6) A program intending to close an extension site/campus shall:

(A) Notify the Board office at least four (4) months prior to closure of the extension site/campus; and

(B) Submit required information according to Board Education Guideline 3.1.2.a., including:

(i) reason for closing the program;

(ii) date of intended closure;

(iii) academic provisions for students; and

(iv) provisions made for access to and storage of vital school records.

(7) Consolidation. When a governing entity oversees an extension site/campus or multiple extension sites/campuses with curricula consistent with the curriculum of the main campus, the governing entity and the program director/coordinator may request consolidation of the extension site(s)/campus(es) with the main program, utilizing one (1) NCLEX-PN® examination testing code thereafter.

(A) The request to consolidate the extension site(s)/campus(es) with the main campus shall be submitted in a formal letter to the Board office at least four (4) months prior to the effective date of consolidation and must meet Board Education Guideline 3.1.2.b. Consolidation of Vocational Nursing Education Programs.

(B) The notification of the consolidation will be presented, as information only, to the Board at a regularly scheduled Board meeting as Board approval is not required.

(C) The program will receive an official letter of acknowledgment following the Board meeting.

(D) After the effective date of consolidation, the NCLEX-PN® examination testing code(s) for the extension site(s) will be deactivated/closed.

(E) The NCLEX-PN® examination testing code assigned to the main campus will remain active.

(c) Transfer of Administrative Control by the Governing Entity. The authorities of the governing entity shall notify the Board office in writing of an intent to transfer the administrative authority of the program. This notification shall follow Board Education Guideline 3.1.3.a. Notification of Transfer of Administrative Control of a Vocational Nursing Education Program or a Professional Nursing Education Program by the Governing Entity.

(d) Closing a Program.

(1) When the decision to close a program has been made, the director/coordinator must notify the Board by submitting a written plan for closure which includes the following:

(A) reason for closing the program;

(B) date of intended closure;

(C) academic provisions for students to complete the vocational nursing education program and teach-out arrangements that have been approved by the appropriate Texas agency (i.e., the THECB, the TWC, or the Board);

(D) provisions made for access to and safe storage of vital school records, including transcripts of all graduates; and

(E) methods to be used to maintain requirements and standards until the program closes.

(2) The program shall continue within standards until all students enrolled in the vocational nursing education program at the time of the decision to close have graduated. In the event this is not possible, a plan shall be developed whereby students may transfer to other approved programs.

(3) A program is deemed closed when the program has not enrolled students for a period of two (2) years since the last graduating class or student enrollment has not occurred for a two (2) year period. Board-ordered enrollment suspensions may be an exception.

(e) Approval of a Vocational Nursing Education Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(1) The vocational nursing education program outside Texas' jurisdiction seeking approval to conduct clinical learning experiences in Texas should initiate the process with the Board at least four (4) months prior to the anticipated start date of the clinical learning experiences in Texas.

(2) A written request and the required supporting documentation shall be submitted to the Board office following Board Education Guideline 3.1.1.f. Process for Approval of a Nursing Education Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(3) Evidence that the program has been approved/licensed or deemed exempt from approval/licensure by the appropriate Texas agency (i.e., the THECB, the TWC), to conduct business in the State of Texas, must be obtained before approval can be granted by the Board for the program to conduct clinical learning experiences in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 1, 2012.

TRD-201205167
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Effective date: October 21, 2012
Proposal publication date: August 24, 2012
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CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §§215.1 - 215.13

Introduction. The Texas Board of Nursing (Board) adopts amendments to Chapter 215, §§215.1 - 215.13, relating to Professional Nursing Education. Sections 215.2 - 215.5 and 215.9 are adopted with changes to the proposed text as published in the August 24, 2012, issue of the *Texas Register.* Sections 215.1, 215.6 - 215.8, and 215.10 - 215.13 are adopted without changes and will not be republished.

Reasoned Justification. The Board proposed amendments to §§215.1 - 215.13 in the August 24, 2012, issue of the *Texas Register* (37 TexReg 6435). The Board has made changes to the proposed text as adopted in response to a written comment on the published proposal and as a result of Staff's review. These changes, however, do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

The Board has made changes to §§215.2(18) and (24), 215.3(a)(2)(F), 215.3(b)(4), 215.4(c)(1), 215.5(b), and 215.9(a)(7) and (c)(4) in order to correct typographical and minor editorial errors. The Board received a written comment pointing out that the term "dietitian" was spelled incorrectly in §215.2(24) as proposed. The Board agrees and has corrected the spelling of this term in the adopted text. The other changes were identified by Board Staff during its review of the proposed rule text. First, Board Staff realized that the term "Diploma/AND" was misspelled in §215.2(18) as proposed. The Board has corrected this typographical error in the adopted text. Second, Board Staff realized that the wrong guideline number, 3.1.1.a, was referenced in §215.3(a)(2)(F) as proposed. The Board has corrected this error and has included the correct guideline numbers, 3.1.1.b and 3.1.1.c, and corresponding guideline names in the text as adopted. Third, Board Staff realized that the wrong guideline number, 3.1.2.a, was referenced in §215.3(b)(4) as proposed. The Board has corrected this error and has included the correct guideline numbers, 3.1.1.b and 3.1.1.c in the text as adopted, as well as changed the word "applies" to "apply" for correct grammatical structure. Fourth, Board Staff realized that the term "CANEP" was misspelled in §215.4(c)(1) as proposed. The Board has corrected the spelling of this word in §215.4(c)(1) as adopted. Board Staff also realized that the term "Diploma/AND" was misspelled in §215.5(b) as proposed. The Board has corrected the spelling of this word in §215.5(b) as adopted. Board Staff also realized that the term "Diploma/AND" was misspelled in §215.9(a)(7) as proposed. The Board has corrected this typographical error in the adopted text. Finally, Board Staff realized that the term "contract" was included in the §215.9(c)(4) as proposed in error. The Board has corrected this error by eliminating the term "contract" from §215.9(c)(4) as adopted.

Background

As part of its regular review of Board rules, Staff reviewed Chapter 215 and presented recommendations to the Board at its October, 2011, meeting. Following Staff's presentation, the Board issued a charge to the Advisory Committee on Education (Committee) to consider several potential rule amendments to Chapter 215. On March 7, 2012, the Committee met to discuss the Board's charge. Following its discussions, the Committee voted to recommend several rule amendments to the Board, including amendments related to the use of preceptors in nursing education; petitions for waiver of dean/director and faculty qualifications; qualifications/requirements for program authors and deans/directors; articulation agreements between BSN and ADN programs; geriatric and end of life content; and requirements for extension sites/campuses and online instruction. The Board considered the Committee's recommendations at its July, 2012, meeting. In addition to the Committee's recommendations, Staff recommended the proposal of additional amendments to clarify portions of the chapter's existing requirements and to provide for additional oversight of high-risk programs. The Board approved all of the proposed amendments for publication in the *Texas Register.*

Adopted amendments. The amendments are adopted under the Occupations Code §§301.151, 301.155(a), 301.157, and 301.257 and are necessary to: (i) clarify existing requirements within the chapter; (ii) strengthen the qualifications/requirements for authors of new professional nursing education program pro-

posals and proposed professional nursing education program deans/directors; (iii) provide for additional oversight over the establishment of extension sites/campuses; (iv) provide for additional monitoring of professional nursing education programs that may be categorized as high-risk; (v) require ADN programs to establish articulation agreements with BSN programs; (vi) require professional nursing education programs to include geriatric and end of life care in their program content; and (vii) eliminate outdated and redundant references from the chapter. The following paragraphs provide a general overview of the adopted amendments.

The majority of the adopted amendments to §215.2 are editorial in nature and remove outdated/obsolete references and terminology from the section, correct grammatical errors within the section, and eliminate redundant phrasing and terminology. The adopted amendments also add three new definitions to the section, including definitions for the terms "CANEP", "declaratory order of eligibility", and "NEPIS". Overall, the adopted amendments to §215.2 result in clear, concise definitions for use within the chapter.

The Board is also amending §215.3. Many of the adopted changes to this section are editorial in nature and are intended to clarify, but not substantively alter, the existing requirements of the section. For example, the existing text of the rule refers to the Board's educational guidelines in several areas, and professional nursing education programs are currently required to comply with these guidelines. However, in an effort to better clarify the applicability of the guidelines, the specific name and number of each education guideline has been identified and specified throughout the section.

The adoption also contains a few changes that are more substantive in nature. First, the adopted amendment to §215.3(a)(2)(D) requires the author of a nursing education program proposal to hold a current license or privilege to practice as a registered nurse in Texas and to meet the criteria specified in §215.6(f) of the chapter. Section 215.6(f) requires an individual, among other things, to hold a master's degree or a doctoral degree in nursing; have a minimum of three years teaching experience in a professional nursing educational program; and have demonstrated knowledge, skills, and abilities in administration within a professional nursing education program. The adopted amendment is necessary to ensure that qualified individuals author new nursing education program proposals. The development of a successful nursing education program proposal is a complex and time consuming process. Even proposals that are well conceived and written by individuals with extensive experience in nursing administration and education often require several revisions in order to meet the Board's requirements for approval. The adopted amendments are intended to ensure that program authors are properly credentialed and qualified to produce quality nursing education program proposals that are capable of meeting Board requirements for approval.

Second, the adopted amendments to §215.3(a)(2)(D)(ii) specify that a qualified dean or director must be employed by the program early in the development of the program proposal and, in no event, later than six months prior to the submission of the program proposal to the Board. This adopted amendment is designed to facilitate successful program development and implementation. Directors/deans are responsible for the administration of the program. As such, these individuals must be involved in the development of the program proposal early enough to review the proposal, identify potential problems, elicit input from necessary parties, and make appropriate modifications. Further, direct involvement of the director/dean throughout the development of the program proposal promotes continuity of leadership and unity throughout the program, which supports program success.

Third, the adopted amendments to §215.3(a)(2)(E) clarify that at least one potential faculty member must be identified prior to the program's curriculum development. This adopted amendment is designed to facilitate faculty participation in developing the program of study. Program faculty are responsible for implementing the program curriculum. As such, faculty should be involved in the curriculum's development, review, and revision to ensure that the curriculum is well developed, current, accurate, appropriate, and conducive to student learning.

Finally, the adopted amendments to §215.3(a)(2)(I) provide for the imposition of restrictions, conditions, and Board monitoring in certain situations. Under the existing requirements of the section, the Board may approval a new nursing education program proposal, defer action on the nursing education program proposal, or deny consideration of the nursing education program proposal. The adopted amendments further permit the Board to impose restrictions or conditions upon a newly approved program in order to ensure the success of the program. Further, the adopted amendments permit the Board to require specific monitoring of newly approved programs that may be considered high-risk. The adopted amendments also specify when a newly approved program may be considered high-risk and the types of activities that may be involved in monitoring a high-risk program. Such activities include the submission of quarterly reports of students' performance in courses and clinical learning experiences; remediation strategies and attrition rates; and additional survey visits by Board representatives. Further, the adopted amendments to §215.3(a)(2)(I) provide for the assessment of monitoring fee. The amount of the monitoring fee, however, is not addressed by the adopted amendments and will be addressed in a separate rule proposal at a later date.

The adopted amendments to §215.3(a)(2)(I) are authorized under the Occupations Code §301.155 and §301.157(b) and are necessary to facilitate the success of newly approved nursing education programs. Over the past five years, three professional nursing education programs have experienced significant changes in their approval status, including one program that was initially approved in 2007, one program that was initially approved in 2008, and one program that was initially approved in 2009. Of these three programs, two programs are currently on conditional status and one program is currently on initial status, with limited enrollment. Further, there are currently 16 additional professional nursing programs on initial approval status, awaiting their first full year of NCLEX-RN® pass rates. Board Staff is currently reviewing ten new professional nursing education program proposals, and four professional nursing education programs have indicated that they will be filing new program proposals with the Board. The volume of new professional nursing education program proposals has increased rapidly over the last few years. Since 2006, 26 professional nursing education programs have been approved by the Board. Unfortunately, some of the approved programs have quickly demonstrated deficiencies following their initial approval, which could effect the quality of nursing education provided to the programs' students. The Board is committed to ensuring that all nursing education programs provide competent, consistent, quality nursing education. As such, the adopted amendments are designed to identify po-

tential problems in newly approved nursing education programs early on in the approval process, to assist programs in the development of appropriate remediation plans, to monitor programs' progress, and to facilitate successful program administration.

The adopted amendments to §215.3(b) relate to nursing education programs desiring to establish extension sites/campuses. In particular, the adopted amendments to §215.3(b) require a nursing education program seeking to establish an extension site/campus to submit an application form to the Board, at least four months prior to the implementation of the extension site/campus, evidencing a strong rationale for the establishment of the extension site in the community; availability of a qualified director or coordinator, if applicable, and qualified faculty; adequate educational resources; documentation of communication and collaboration with other programs within 25 miles of the extension site; signed commitments from clinical affiliating agencies to provide clinical practice settings for students; projected student enrollments for the first two years; plans for quality instruction; a planned schedule for class and clinical learning activities for one year; notification or approval from the governing entity and from other regulatory/accrediting agencies; and letters of support from clinical affiliating agencies. These adopted amendments are necessary to ensure that the community is able to appropriately support the extension site/campus, that adequate resources are available for the extension site/campus, and that the extension site/campus is capable of consistently meeting the Board's requirements and standards for providing quality nursing education to students.

Many of the adopted amendments to §215.4 are editorial in nature and are intended to clarify the existing requirements of the section, but not substantively alter the section's existing requirements. There are a few adopted amendments, however, that are more substantive in nature. The adopted amendments to §215.4(a)(1), (3), and (4) clarify that the Board may impose restrictions or conditions upon a program in order to ensure the continuing success of the program. The adopted amendments are intended to apply to programs that have either demonstrated high-risk behavior or have already experienced a change in approval status (i.e., from initial approval to initial with warning or full with warning to conditional). In such situations, it is important for the Board to be able to review and identify the deficiencies of the program, make recommendations for improving or resolving the deficiencies, and impose conditions and restrictions designed to ensure that the deficiencies are resolved in an appropriate and timely manner.

The adopted amendments to §215.4(b) are similar in nature to the adopted amendments to §215.4(a)(1), (3), and (4) and serve a similar purpose. The adopted amendments to §215.4(b) clarify that the Board may, in addition to imposing restrictions and conditions, require additional monitoring of a program when the program demonstrates non-compliance with Board requirements. Additional monitoring may include additional survey visits by a Board representative, submission of quarterly reports of students' performance in courses and clinical learning experiences, and remediation strategies. Further, like the adopted amendments to §215.3(a)(2)(I), the adopted amendments to §215.4(b) provide for the assessment of a monitoring fee. The amount of the monitoring fee, however, is not addressed by the adopted amendments and will be addressed in a separate rule proposal at a later date. The adopted amendments to §215.4(b) are authorized under the Occupations Code §301.155 and §301.157(b) and are necessary to ensure that programs with demonstrated deficiencies or high-risk behavior are able to identify their deficiencies, formulate a remediation plan, and successfully remediate their deficiencies in an appropriate and timely manner.

The adopted amendments add §215.4(c)(3)(E) and (F). These adopted amendments are necessary to clarify that the Board may change the approval status of a program on full approval with warning to full approval, to full approval with restrictions or conditions, or impose a monitoring plan, and that the Board may restrict the program's enrollment. Further, the adopted amendments clarify that the Board may change the approval status of a program on conditional approval to full approval, full approval with restrictions or conditions, full approval with warning, or impose a monitoring plan. Further, the Board may also restrict the program's enrollment. These adopted amendments are consistent with the existing provisions of the section, including §215.4(a), as well as the adopted amendments to §215.4(a)(1), (3), and (4) and §215.4(b), and provide additional clarity and guidance to programs regarding changes in approval status due to demonstrated deficiencies.

The remaining adopted amendments to §215.4 require accredited programs to demonstrate their accountability for compliance with national nursing accreditation standards and processes and provide the Board with copies of approval for substantive changes from the national nursing accreditation organizations after an accredited program has followed the approval process. This adopted amendment is necessary to ensure that accredited programs maintain their compliance with national nursing accreditation standards and keep the Board informed of all substantive changes.

The adopted amendments to §215.6 and §215.7 concern waivers for potential directors/deans and program faculty. The adopted amendments to §215.6(g)(4) eliminate the ability of a program to file a petition with the Board for a waiver of the rule's requirements and qualifications for a potential program director/dean. This adopted amendment serves an important purpose. Section 215.6 prescribes the minimum qualifications, credentials, and nursing expertise that a program director/dean must possess in order to be approved by the Board. Directors/deans are responsible for a program's operation, and as such, must be appropriately qualified and competent to administer the program. Individuals who possess the minimum qualifications prescribed by the rule are better prepared to administer the program successfully. As such, the adopted amendments prohibit a waiver of these minimum qualifications. However, in an effort to provide additional flexibility, the adopted amendments to §215.6(g)(4) permit fully approved programs to consider qualifications other than those required by the section, so long as there is supporting evidence that the particular individual possesses the competencies necessary to fulfill the responsibilities of the director/dean role. The Board, however, retains the ability to review the qualifications of the individual and ultimately approve the individual for the director/dean role.

The adopted amendments to §215.7(d) are similar in nature to the adopted amendments to §215.6 and serve a similar purpose. The adopted amendments to §215.7(d) permit the director/dean of a program to waive the Board's requirements/qualifications for a prospective faculty member, without Board approval, provided the program and prospective faculty member meet the specified requirements of §215.7(d). The adopted amendments are necessary to ensure that program faculty possess the knowledge, experience, and expertise necessary to provide meaningful instruction to nursing students. Further, the adopted amend-

ments provide additional flexibility to program directors/deans to consider additional qualifications of potential faculty members and to waive the Board's prescribed faculty requirements for a period not to exceed one year, provided that the prospective faculty member meets the rules' specified criteria for such waiver. Further, the adopted amendments allow a petition for emergency waiver to be submitted to Board Staff for approval when a vacancy occurs because a faculty member fails to report as planned due to a sudden illness, the death of a faculty member, or an unexpected resignation, etc.

The adopted amendments to §215.9 primarily relate to online instruction. Adopted §215.9(b) requires that the delivery of curriculum through distance education comply with all the requirements of the section, as well as the Board's requirements regarding clinical learning experiences located in §215.10. Further, adopted §215.9 requires faculty involved in distance education to possess documented competencies related to online education. These adopted amendments are necessary to ensure that students involved in distance education receive comparable curriculum, supervised clinical learning experiences, and formative and summative evaluations as their traditional counterparts. The remaining adopted amendments to this section clarify the section's existing requirements related to classroom instruction, and laboratory activities/instruction, clinical practice learning experiences. Further, the adopted amendments require an associate degree nursing education program to develop formal articulation agreements to allow graduates to earn a bachelor's degree in nursing in a timely manner. This adopted amendment is designed to provide students with a seamless transition into bachelor level nursing programs and to encourage nursing students to obtain four year nursing degrees. This goal is consistent with the 2010 Institute of Medicine Report's recommendation that more registered nurses hold BSN degrees in order to meet the evolving face of healthcare.

The majority of the adopted amendments to §215.10 are editorial in nature and do not substantively alter the existing requirements of the section. However, adopted §215.10(j) is more substantive in nature. Under adopted §215.10(j)(6), clinical preceptors must hold a current license or privilege to practice as a licensed nurse in the State of Texas. This adopted amendment is necessary to ensure that clinical preceptors possess the necessary knowledge and expertise to provide appropriate instruction and guidance to nursing students regarding nursing practice.

The remaining adopted amendments to the chapter update outdated terminology and references and correct grammatical and typographical errors.

How the Sections Will Function.

Section 215.1 sets forth the Board's general requirements for professional nursing education programs. The adopted amendments to §215.1 are editorial in nature and correct grammatical errors.

Section 215.2 sets forth definitions for the terms used throughout the chapter. In addition to editorial, typographical, and grammatical changes, the adopted amendments to §215.2 delete the definitions of "accredited nursing educational program", "compliance audit", "controlling agency", and "proprietary school"; add definitions for the terms "CANEP", "declaratory order of eligibility", and "NEPIS"; and substantively modify the definitions of "clinical preceptor", "extension site", "faculty waiver", "objectives/outcomes", "observation experience", "program of study", and "systematic approach".

Section 215.3 contains the Board's requirements related to program development, extension sites/campuses, transfer of administrative control, program closure, and clinical learning experiences for programs located outside of Texas. In addition to editorial, typographical, clarifying, and grammatical changes, the adopted amendments to §215.3 strengthen the requirements/qualification for the author of a new professional education program proposal; require qualified directors/deans to be employed by the program early in the proposal development process; require at least one potential faculty member to assist in the program's curriculum development; identify examples of high-risk behavior that may require additional Board monitoring; clarify that the Board may impose restrictions and conditions to ensure newly approved programs' success; authorize a Board monitoring fee; inactivate program proposals after one year of inaction on the proposal; and require extension sites/campuses to submit an application to the Board containing specified information at least four months prior to implementation of the extension site/campus.

Section 215.4 contains the Board's requirements for program approval. In addition to editorial, typographical, clarifying, and grammatical changes, the adopted amendments to §215.4 clarify that the Board may impose reasonable and necessary restrictions or conditions on a program in order to ensure the continuing success of a program; identify behaviors that may result in the imposition of restrictions, conditions, or a monitoring plan; specify possible components of a monitoring plan; authorize a Board monitoring fee; clarify potential changes in approval status; clarify that the Board may restrict a program's enrollment; and require accredited programs to submit evidence of ongoing compliance with national nursing accreditation organizations.

Section 215.5 contains the Board's requirements related to a program's philosophy/mission and objectives/outcomes. The adopted amendments to §215.5 are editorial in nature and correct grammatical errors.

Section 215.6 contains the Board's requirements related to a program's administration and organization. In addition to editorial, typographical, clarifying, and grammatical changes, the adopted amendments to §215.6 eliminate the ability of a program to request a waiver of a potential director/dean's qualifications from the Board; permit additional qualifications to be considered to support the approval of a potential director/dean, provided there is supporting evidence that the individual possesses the necessary competencies to fulfill the responsibilities of the position; and require the director/dean to notify the Board when there is a change in contact information or the name of the program or the governing entity.

Section 215.7 contains the Board's requirements related to a program's faculty. In addition to editorial, typographical, clarifying, and grammatical changes, the adopted amendments to §215.7 permit a program's director/dean to waive the Board's requirements for a potential faculty member without Board approval, provided the director/dean meets the specified criteria in the section and to be able to request an emergency waiver of from Board Staff if a vacancy occurs because of a faculty member's failure to report as planned, due to sudden illness, death, or unexpected resignation, etc.

Section 215.8 contains the Board's requirements related to a program's students. In addition to editorial, typographical, clarifying, and grammatical changes, the adopted amendments to §215.8 require a program to maintain evidence of student re-

ceipt of the criteria for licensure eligibility that is provided to the students by the program.

Section 215.9 contains the Board's requirements related to the program of study, including online instruction. In addition to editorial, typographical, clarifying, and grammatical changes, the adopted amendments to §215.9 require the delivery of curriculum through distance education to meet the requirements of the section and §215.10; require faculty involved with distance education to have documented competencies specific to online education; require instruction to include nursing skills, laboratory instruction, and demonstration; permit laboratory activities/instruction in the nursing skills or simulation laboratory to be considered as either classroom instruction hours or clinical learning experience hours; and require associated degree nursing education programs to develop formal articulation agreements to enable graduates to earn a bachelor's degree in nursing in a timely manner.

Section 215.10 contains the Board's requirements related to clinical learning experiences. In addition to editorial, typographical, clarifying, and grammatical changes, the adopted amendments to §215.10 require a clinical preceptor to hold a current license or privilege to practice as a licensed nurse in Texas.

Section 215.11 sets forth the Board's requirements for a program's facilities, resources, and services. The adopted amendments to §215.11 are editorial in nature.

Section 215.12 sets forth the Board's requirements related to a program's records and reports. The adopted amendments to §215.12 are editorial in nature and correct grammatical errors.

Section 215.13 sets forth the Board's requirements for total program evaluation. In addition to editorial changes, the adopted amendments to §215.13 require a program to periodically evaluate the program of study, curriculum, and instructional techniques, including online components of the program, if applicable.

Summary of Comments and Agency Response.

§215.2(24)

Comment: The Texas State Board of Examiners of Dietitians and the Texas Dietetic Association stated that the term "dietitian" was spelled incorrectly in §215.2(24) as proposed.

Agency Response: The Board agrees and has made the suggested change in the text as adopted.

Names of Those Commenting For and Against the Proposal.

For: None.

Against: None.

For, with changes: None.

Neither for nor against, with changes: The Texas State Board of Examiners of Dietitians and the Texas Dietetic Association.

Statutory Authority. The amendments are adopted under the Occupations Code §§301.151, 301.155(a), 301.157, and 301.257.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and professional nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or professional nursing.

Section 301.155(a) provides that the Board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering the Occupations Code Chapter 301. Further, §301.155(a) provides that the Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

Section 301.157(a) states that the Board shall prescribe three programs of study to prepare a person to receive an initial license as a registered nurse under Chapter 301 as follows: (i) a baccalaureate degree program that is conducted by an educational unit in nursing that is a part of a senior college or university and that leads to a baccalaureate degree in nursing; (ii) an associate degree program that is conducted by an educational unit in nursing within the structure of a college or a university and that leads to an associate degree in nursing; and (iii) a diploma program that is conducted by a single-purpose school, usually under the control of a hospital, and that leads to a diploma in nursing.

Section 301.157(a-1) states that a diploma program of study in this state that leads to an initial license as a registered nurse under Chapter 301 and that is completed on or after December 31, 2014, must entitle a student to receive a degree on the student's successful completion of a degree program of a public or private institution of higher education accredited by an agency recognized by the Texas Higher Education Coordinating Board.

Section 301.157(b) states that the Board shall: (i) prescribe two programs of study to prepare a person to receive an initial professional nurse license under Chapter 301 as follows: a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school and a program conducted by a hospital; (ii) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or professional nurses; (iii) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or professional nurses; (iv) approve schools of nursing and educational programs that meet the Board's requirements; (v) select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and (vi) deny or withdraw approval from a school of nursing or educational program that fails to meet the prescribed course of study or other standard under which it sought approval by the Board; fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under §301.157(b)(5) under which it was approved or sought approval by the Board; or fails to maintain the approval of the state Board of nursing of another state and the Board under which it was approved.

Section 301.157(b-1) provides that the Board may not require accreditation of the governing institution of a school of nursing. Further, the Board shall accept the requirements established by the Texas Higher Education Coordinating Board for accrediting the governing institution of a school of nursing. The governing institution of a professional nursing school, not including a diploma program, must be accredited by an agency recognized by the Texas Higher Education Coordinating Board or hold a certificate of authority from the Texas Higher Education Coordinating Board under provisions leading to accreditation of the institution in due course.

Section 301.157(c) states that a program approved to prepare registered nurses may not be less than two academic years or more than four calendar years.

Section 301.157(d) states that a person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of a school of nursing or educational program that: (i) is approved by the Board; (ii) is accredited by a national nursing accreditation agency determined by the Board to have acceptable standards; or (iii) is approved by a state Board of nursing of another state and the Board, subject to §301.157(d-4).

Section 301.157(d-1) states that a school of nursing or educational program is considered approved by the Board and, except as provided by §301.157(d-7), is exempt from Board rules that require ongoing approval if the school or program: (i) is accredited and maintains accreditation through a national nursing accrediting agency selected by the Board under §301.157(b)(5); and (ii) maintains an acceptable pass rate as determined by the Board on the applicable licensing examination under Chapter 301.

Section 301.157(d-2) states that a school of nursing or educational program that fails to meet or maintain an acceptable pass rate on applicable licensing examinations under Chapter 301 is subject to review by the Board. The Board may assist the school or program in its effort to achieve compliance with the Board's standards.

Section 301.157(d-3) provides that a school or program from which approval has been withdrawn under this section may reapply for approval.

Section 301.157(d-4) states that the Board may recognize and accept as approved under §301.157 a school of nursing or educational program operated in another state and approved by a state Board of nursing or other regulatory body of that state. Further, the Board shall develop policies to ensure that the other state's standards are substantially equivalent to the Board's standards.

Section 301.157(d-5) states that the Board shall streamline the process for initially approving a school of nursing or educational program under §301.157 by identifying and eliminating tasks performed by the Board that duplicate or overlap tasks performed by the Texas Higher Education Coordinating Board or the Texas Workforce Commission.

Section 301.157(d-6) states that the Board, in cooperation with the Texas Higher Education Coordinating Board and the Texas Workforce Commission, shall establish guidelines for the initial approval of schools of nursing or educational programs. The guidelines must: (i) identify the approval processes to be conducted by the Texas Higher Education Coordinating Board or the Texas Workforce Commission; (ii) require the approval process identified under §301.157(d-1) to precede the approval process conducted by the Board; and (iii) be made available on the Board's Internet website and in a written form.

Section 301.157(d-7) states that a school of nursing or educational program approved under §301.157 (d-1) shall: (i) provide the Board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board; (ii) notify the Board of any change in accreditation status; and (iii) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

Section 301.157(d-8) states that, for purposes of §301.157 (d-4), a nursing program is considered to meet standards substantially equivalent to the Board's standards if the program: (i) is part of an institution of higher education located outside this state that is approved by the appropriate regulatory authorities of that state; (ii) holds regional accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation; (iii) holds specialty accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation, including the National League for Nursing Accrediting Commission; (iv) requires program applicants to be a licensed practical or professional nurse, a military service corpsman, or a paramedic, or to hold a college degree in a clinically oriented health care field with demonstrated experience providing direct patient care; and (v) graduates students who: (A) achieve faculty-determined program outcomes, including passing criterion-referenced examinations of nursing knowledge essential to beginning a registered nursing practice and transitioning to the role of registered nurse; (B) pass a criterion-referenced summative performance examination developed by faculty subject matter experts that measures clinical competencies essential to beginning a registered nursing practice and that meets nationally recognized standards for educational testing, including the educational testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and (C) pass the National Council Licensure Examination for Registered Nurses at a rate equivalent to the passage rate for students of approved in-state programs.

Section 301.157(d-9) states that a graduate of a clinical competency assessment program operated in another state and approved by a state Board of nursing or other regulatory body of another state is eligible to apply for an initial license under Chapter 301 if: (i) the Board allowed graduates of the program to apply for an initial license under Chapter 301 continuously during the 10-year period preceding January 1, 2007; (ii) the program does not make any substantial changes in the length or content of its clinical competency assessment without the Board's approval; (iii) the program remains in good standing with the state Board of nursing or other regulatory body in the other state; and (iv) the program participates in the research study under Section 105.008, Health and Safety Code.

Section 301.157(d-10) states that, in §301.157, the terms "clinical competency assessment program" and "supervised clinical learning experiences program" have the meanings assigned by the Health and Safety Code §105.008.

Section 301.157(d-11) states that §301.157(d-8), (d-9), (d-10), and (d-11) expire December 31, 2017. Further, as part of the first review conducted under §301.003 after September 1, 2009, the Sunset Advisory Commission shall: (i) recommend whether §301.157(d-8) and (d-9) should be extended; and (ii) recommend any changes to§301.157(d-8) and (d-9) relating to the eligibility for a license of graduates of a clinical competency assessment program operated in another state.

Section 301.157(e) states that the Board shall give each person, including an organization, affected by an order or decision of the Board §301.157 reasonable notice of not less than 20 days and an opportunity to appear and be heard regarding the order or decision. The Board shall hear each protest or complaint

from a person affected by a rule or decision regarding: (i)the inadequacy or unreasonableness of any rule or order the Board adopts; or (ii) the injustice of any order or decision of the Board.

Section 301.157(f) states that, not later than the 30th day after the date an order is entered and approved by the Board, a person is entitled to bring an action against the Board in a district court of Travis County to have the rule or order vacated or modified, if that person: (i) is affected by the order or decision; (ii) is dissatisfied with any rule or order of the Board; and (iii) sets forth in a petition the principal grounds of objection to the rule or order.

Section 301.157(g) states that an appeal under §301.157 shall be tried de novo as if it were an appeal from a justice court to a county court.

Section 301.157(h) states that the Board, in collaboration with the nursing educators, the Texas Higher Education Coordinating Board, and the Texas Health Care Policy Council, shall implement, monitor, and evaluate a plan for the creation of innovative nursing education models that promote increased enrollment in this state's nursing programs.

Section 301.257(a) states that a person may petition the Board for a declaratory order as to the person's eligibility for a license under Chapter 301 if the person has reason to believe that the person is ineligible for the license and: (i) is enrolled or planning to enroll in an educational program that prepares a person for an initial license as a registered nurse or professional nurse; or (ii) is an applicant for a license.

Section 301.257(b) states that the petition must state the basis for the person's potential ineligibility.

Section 301.257(c) states that the Board has the same powers to investigate the petition and the person's eligibility that it has to investigate a person applying for a license.

Section 301.257(d) states that the petitioner or the Board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.

Section 301.257(e) states that, if the Board determines that a ground for ineligibility does not exist, instead of issuing an order, the Board shall notify the petitioner in writing of the Board's determination on each ground of potential ineligibility. If the Board proposes to find that the petitioner is ineligible for a license, the petitioner is entitled to a hearing before the State Office of Administrative Hearings.

Section 301.257(f) states that the Board's order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling on the petition determines the person's eligibility with respect to the grounds for potential ineligibility set out in the written notice or order.

Section 301.257(g) provides that the Board may require an individual accepted for enrollment or enrolled in an educational program preparing a student for initial licensure as a registered nurse or professional nurse to submit information to the Board to permit the Board to determine whether the person is aware of the conditions that may disqualify the person from licensure as a registered nurse or professional nurse on graduation and of the person's right to petition the Board for a declaratory order under §301.257. Further, instead of requiring the person to submit the information, the Board may require the educational program to collect and submit the information on each person accepted for enrollment or enrolled in the program.

Section 301.257(h) states that the information required under §301.257(g) must be submitted in a form approved by the Board.

Section 301.257(i) states that, if, as a result of information provided under §301.257(g), the Board determines that a person may not be eligible for a license on graduation, the Board shall notify the educational program of its determination.

§215.2. Definitions.

Words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) Affidavit of Graduation--an official Board form containing an approved professional nursing education program's curriculum components and hours, and a statement verified by the nursing program dean/director attesting to an applicant's qualifications for registered nurse licensure in Texas.

(2) Affiliating agency or clinical facility--a health care facility or agency providing clinical learning experiences for students.

(3) Alternative practice settings--settings providing opportunities for clinical learning experiences, although their primary function is not the delivery of health care.

(4) Approved professional nursing education program--a professional nursing education program approved by the Texas Board of Nursing.

(5) Articulation--a planned process between two (2) or more educational systems to assist students in making a smooth transition from one (1) level of education to another without duplication in learning.

(6) Board--the Texas Board of Nursing composed of members appointed by the Governor for the State of Texas.

(7) CANEP (Compliance Audit for Nursing Education Programs)--a document required by the Board to be submitted by the professional nursing education program's dean/director that serves as verification of the program's adherence to the requirements of this chapter.

(8) Career school or college--an educational entity as defined in Title 3, Texas Education Code, §132.001(1) as a "career school or college".

(9) Clinical learning experiences--faculty planned and guided learning activities designed to assist students to meet the stated program and course outcomes and to safely apply knowledge and skills when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. These experiences occur in actual patient care clinical learning situations and in associated clinical conferences; in nursing skills and computer laboratories; and in simulated clinical settings, including high-fidelity, where the activities involve using planned objectives in a realistic patient scenario guided by trained faculty and followed by a debriefing and evaluation of student performance. The clinical settings for faculty supervised, hands-on patient care include a variety of affiliating agencies or clinical practice settings, including, but not limited to: acute care facilities, extended care facilities, clients' residences, and community agencies.

(10) Clinical preceptor--a registered nurse who meets the requirements in §215.10(j)(6) of this chapter (relating to Clinical Learning Experiences), who is not employed as a faculty member by the governing entity, and who directly supervises clinical learning experiences for no more than two (2) students. A clinical preceptor

assists in the evaluation of the student during the experiences and in acclimating the student to the role of nurse. A clinical preceptor facilitates student learning in a manner prescribed by a signed written agreement between the governing entity, preceptor, and affiliating agency (as applicable).

(11) Clinical teaching assistant--a registered nurse licensed in Texas, who is employed to assist in the clinical area and work under the supervision of a Master's or Doctorally prepared nursing faculty member and who meets the requirements of §215.10(j)(8) of this chapter.

(12) Conceptual framework--theories or concepts giving structure to the curriculum and guiding faculty in making decisions about curriculum development, implementation, and evaluation.

(13) Correlated theory and clinical practice--didactic and clinical experiences that have a reciprocal relationship or mutually complement each other.

(14) Course--organized subject content and related activities, that may include didactic, laboratory, and/or clinical experiences, planned to achieve specific objectives within a given time period.

(15) Curriculum--course offerings, which in aggregate, make up the total learning activities in a program of study.

(16) Dean/director--a registered nurse who is accountable for administering a professional nursing education program, who meets the requirements as stated in §215.6(f) of this chapter (relating to Administration and Organization), and is approved by the Board.

(17) Declaratory Order of Eligibility--an order issued by the Board pursuant to Texas Occupations Code §301.257, determining the eligibility of an individual for initial licensure as a professional or registered nurse and setting forth both the basis for potential ineligibility and the Board's determination of the disclosed eligibility issues.

(18) Differentiated Essential Competencies (DECs)--the expected educational outcomes to be demonstrated by nursing students at the time of graduation, as published in the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Professional (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), October 2010* (DECs).

(19) Examination year--the period beginning October 1 and ending September 30 used for the purposes of determining a professional nursing education program's annual NCLEX-RN® examination pass rate.

(20) Extension site/campus a location other than the program's main campus where a portion or all of the curriculum is provided.

(21) Faculty member--an individual employed to teach in the professional nursing education program who meets the requirements as stated in §215.7 of this chapter (relating to Faculty).

(22) Faculty waiver--a waiver granted by a dean or director of a professional nursing education program to an individual who meets the criteria specified in §215.7(d)(1) of this chapter.

(23) Governing entity--the body with administrative and operational authority over a Board-approved professional nursing education program.

(24) Health care professional--an individual other than a registered nurse who holds at least a bachelor's degree in the health care field, including, but not limited to: a respiratory therapist, physical therapist, occupational therapist, dietitian, pharmacist, physician, social worker, and psychologist.

(25) MEEP (Multiple Entry-Exit Program)--an exit option which is a part of a professional nursing education program designed for students to complete course work and apply to take the NCLEX-PN® examination after they have successfully met all requirements needed for the examination.

(26) NEPIS (Nursing Education Program Information Survey)--a document required by the Board to be submitted by the professional nursing education program dean/director to provide annual workforce data.

(27) Non-nursing faculty--instructors who teach non-nursing content, such as pharmacology, pathophysiology, research, management and statistics, and who have educational preparation appropriate to the assigned teaching responsibilities.

(28) Objectives/Outcomes--expected student behaviors that are attainable and measurable.

(A) Program Objectives/Outcomes--broad statements describing student learning outcomes achieved upon graduation.

(B) Clinical Objectives/Outcomes--expected student behaviors for clinical learning experiences that provide evidence of progression of students' cognitive, affective, and psychomotor achievement in clinical practice across the curriculum.

(C) Course Objectives/Outcomes--expected student outcomes upon successful completion of specific course content, serving as a mechanism for the evaluation of student progression.

(29) Observation experience--a clinical learning experience where a student is assigned to follow a health care professional in a facility or unit and to observe activities within the facility/unit and/or the role of nursing within the facility/unit, but where the student does not participate in patient/client care.

(30) Pass rate--the percentage of first-time candidates within one (1) examination year who pass the National Council Licensure Examination for Registered Nurses (NCLEX-RN®).

(31) Philosophy/Mission--statement of concepts expressing fundamental values and beliefs as they apply to nursing education and practice and upon which the curriculum is based.

(32) Professional Nursing Education Program--an education unit that offers courses and learning experiences preparing graduates who are competent to practice nursing safely and who are eligible to take the NCLEX-RN® examination, often referred to as a pre-licensure nursing program. Types of pre-licensure professional nursing education programs:

(A) Associate degree nursing education program--a program leading to an associate degree in nursing conducted by an education unit in nursing within the structure of a public or private college or university authorized to grant associate degrees.

(B) Baccalaureate degree nursing education program--a program leading to a bachelor's degree in nursing conducted by an education unit in nursing which is a part of a public or private college or university authorized to grant baccalaureate degrees.

(C) Master's degree nursing education program--a program leading to a master's degree, which is an individual's first professional degree in nursing, and conducted by an education unit in nursing within the structure of a college or university authorized to grant graduate degrees.

(D) Diploma nursing education program--a program leading to a diploma in nursing conducted by a single purpose school, usually under the control of a hospital.

(33) Program of study--the courses and learning experiences that constitute the requirements for completion of a professional nursing education program.

(34) Recommendation--a specific suggestion based upon program assessment indirectly related to the rules to which the program must respond but in a method of their choosing.

(35) Requirement--mandatory criterion based upon program assessment directly related to the rules that must be addressed in the manner prescribed.

(36) Shall--denotes mandatory requirements.

(37) Simulation--activities that mimic the reality of a clinical environment and are designed to demonstrate procedures, decision-making, and critical thinking. A simulation may be very detailed and closely imitate reality, or it can be a grouping of components that are combined to provide some semblance of reality. Components of simulated clinical experiences include providing a scenario where the nursing student can engage in a realistic patient situation guided by trained faculty and followed by a debriefing and evaluation of student performance. Simulation provides a teaching strategy to prepare nursing students for safe, competent, hands-on practice, but it is not a substitute for faculty-supervised patient care.

(38) Staff--employees of the Texas Board of Nursing.

(39) Supervision--immediate availability of a faculty member, clinical preceptor, or clinical teaching assistant to coordinate, direct, and observe first hand the practice of students.

(40) Survey visit--an on-site visit to a professional nursing education program by a Board representative. The purpose of the visit is to evaluate the program of study by gathering data to determine whether the program is in compliance with Board requirements.

(41) Systematic approach--the organized nursing process approach that provides individualized, goal-directed nursing care whereby the registered nurse engages in:

(A) performing comprehensive nursing assessments regarding the health status of the client;

(B) making nursing diagnoses that serve as the basis for the strategy of care;

(C) developing a plan of care based on the assessment and nursing diagnosis;

(D) implementing nursing care; and

(E) evaluating the client's responses to nursing interventions.

(42) Texas Higher Education Coordinating Board (THECB) the state agency described in Texas Education Code, Title 3, Subtitle B, Chapter 61.

(43) Texas Workforce Commission (TWC)--the state agency described in Texas Labor Code, Title 4, Subtitle B, Chapter 301.

§215.3. Program Development, Expansion and Closure.

(a) New Programs.

(1) New professional nursing education programs must be approved by the Board in order to operate in the State of Texas. The Board has established guidelines for the initial approval of professional nursing education programs.

(2) Proposal to establish a new professional nursing education program.

(A) The proposal to establish a professional nursing education program may be submitted by:

(i) a college or university accredited by an agency recognized by the THECB or holding a certificate of authority from the THECB under provisions leading to accreditation of the institution; or

(ii) a single-purpose school, such as a hospital, proposing a new diploma program.

(B) The new professional nursing education program must be approved/licensed or deemed exempt by the appropriate Texas agency, the THECB, or the TWC, as applicable, before approval can be granted by the Board for the program to be implemented. The proposal to establish a new professional nursing education program may be submitted to the Board at the same time that an application is submitted to the THECB or the TWC, but the proposal cannot be approved by the Board until such time as the proposed program is approved by the THECB or the TWC.

(C) The process to establish a new professional nursing education program shall be initiated with the Board office one (1) year prior to the anticipated start date of the program.

(D) The individual writing the proposal for a new professional nursing education program should hold a current license or privilege to practice as a registered nurse in Texas and should meet the qualifications for the program director as specified in §215.6 of this chapter (relating to Administration and Organization).

(i) The name and credentials of the author of the proposal must be included in the document.

(ii) A qualified dean or director must be employed by the program early in the development of the proposal, and in no event shall the dean or director be hired later than six (6) months prior to the submission of the proposal to the Board.

(iii) The prospective dean/program director must review/revise the proposal and agree with the components of the proposal as being representative of the proposed program that the individual will be responsible for administratively.

(E) At least one (1) potential faculty member shall be identified before the curriculum development to assist in planning the program of study.

(F) The proposal shall include information outlined in Board Education Guidelines 3.1.1.b. Proposal to Establish a New Diploma Nursing Education Program and 3.1.1.c. Proposal to Establish a New Pre-Licensure Associate, Baccalaureate, or Entry-Level Master's Degree Nursing Education Program.

(G) A proposal for a new diploma nursing education program must include a written plan addressing the legislative mandate that all nursing diploma programs in Texas must have a process in place by 2015 to ensure that their graduates are entitled to receive a degree from a public or private institution of higher education accredited by an agency recognized by the THECB or the TWC, as applicable, and, at a minimum, entitle a graduate of the diploma program to receive an associate degree in nursing.

(H) After the proposal is submitted and determined to be complete, a preliminary survey visit shall be conducted by Board Staff prior to presentation to the Board.

(I) The proposal shall be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal and grant initial approval to the new program, may defer action on the proposal, or may deny further consideration of the proposal. In order to ensure success of newly approved programs, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(i) In addition to imposing restrictions and conditions, the Board may also require specific monitoring of newly approved programs that are high-risk.

(ii) A program may be considered high-risk if it meets one or more of the following criteria, including, but not limited to: inexperience of the governing entity in nursing education; inexperience of the potential dean or director in directing a nursing program; potential for director or faculty turnover; or potential for a high attrition rate among students.

(iii) Board monitoring of a high-risk program may include the review and analysis of program reports; extended communication with program deans and directors; and additional survey visits. A monitoring plan may require the submission of quarterly reports of students' performance in courses and clinical learning experiences; remediation strategies and attrition rates; and reports from an assigned mentor to the program director. Additional survey visits by a Board representative may be conducted at appropriate intervals to evaluate the status of the program. The Board may alter a monitoring plan as necessary to address the specific needs of a particular program. When the Board requires monitoring activities to evaluate and assist the program, monitoring fees will apply.

(J) The program shall not enroll students until the Board approves the proposal and grants initial approval.

(K) Prior to presentation of the proposal to the Board, evidence of approval from the appropriate regulatory agencies shall be provided.

(L) When the proposal is submitted, an initial approval fee shall be assessed per §223.1 of this title (relating to Fees).

(M) A proposal without action for one (1) calendar year shall be inactivated and a new proposal application and fee will be required.

(N) If the Board denies a proposal, the educational unit in nursing within the structure of a school, including a college, university, or career school or college, or a hospital must wait a minimum of twelve (12) calendar months from the date of the denial before submitting a new proposal to establish a professional nursing education program.

(3) Survey visits shall be conducted, as necessary, by staff until full approval status is granted.

(b) Extension Site/Campus.

(1) Only professional nursing education programs that have full approval with a current NCLEX-RN® examination pass rate of 80% or better are eligible to initiate or modify an extension site/campus.

(2) Instruction provided for the extension site/campus may include a variety of instructional methods, shall be consistent with the main campus program's current curriculum, and shall enable students to meet the goals, objectives, and competencies of the professional nursing education program and requirements of the Board as stated in §§215.1 - 215.13 of this chapter (relating to Professional Nursing Education).

(3) An approved professional nursing education program desiring to establish an extension site/campus that is consistent with the main campus program's current curriculum and teaching resources shall:

(A) Complete and submit an application form for approval of the extension site to Board Staff at least four (4) months prior to implementation of the extension site/campus; and

(B) Provide information in the application form that evidences:

(i) a strong rationale for the establishment of the extension site in the community;

(ii) availability of a qualified director or coordinator, if applicable, and qualified faculty;

(iii) adequate educational resources (classrooms, labs, and equipment);

(iv) documentation of communication and collaboration with other programs within twenty-five (25) miles of the extension site;

(v) signed commitments from clinical affiliating agencies to provide clinical practice settings for students;

(vi) projected student enrollments for the first two (2) years;

(vii) plans for quality instruction;

(viii) a planned schedule for class and clinical learning activities for one (1) year;

(ix) notification or approval from the governing entity and from other regulatory/accrediting agencies, as required. This includes regional approval for out-of-service extension sites for public colleges; and

(x) letters of support from clinical affiliating agencies.

(4) When the curriculum of the extension site/campus deviates from the original program in any way, the proposed extension is viewed as a new program and Board Education Guidelines 3.1.1.b and 3.1.1.c apply.

(5) Extension programs of professional nursing education programs which have been closed may be reactivated by submitting notification of reactivation to the Board at least four (4) months prior to reactivation, using the Board Education Guideline 3.1.2.a. for initiating an extension program.

(6) A program intending to close an extension site/campus shall:

(A) Notify the Board office at least four (4) months prior to closure of the extension site/campus; and

(B) Submit required information according to Board Education Guideline 3.1.2.a., including:

(i) reason for closing the program;

(ii) date of intended closure;

(iii) academic provisions for students; and

(iv) provisions made for access to and storage of vital school records.

(c) Transfer of Administrative Control by Governing Entity. The authorities of the governing entity shall notify the Board office in

writing of an intent to transfer the administrative authority of the program. This notification shall follow Board Education Guideline 3.1.3.a. Notification of Transfer of Administrative Control of a Professional Nursing Education Program or a Professional Nursing Education Program by the Governing Entity.

(d) Closing a Program.

(1) When the decision to close a program has been made, the dean or director must notify the Board by submitting a written plan for closure which includes the following:

(A) reason for closing the program;

(B) date of intended closure;

(C) academic provisions for students to complete the professional nursing education program and teach-out arrangements that have been approved by the appropriate Texas agency (i.e., the THECB, the TWC, or the Board);

(D) provisions made for access to and safe storage of vital school records, including transcripts of all graduates; and

(E) methods to be used to maintain requirements and standards until the program closes.

(2) The program shall continue within standards until all students enrolled in the professional nursing education program at the time of the decision to close have graduated. In the event this is not possible, a plan shall be developed whereby students may transfer to other approved programs.

(3) A program is deemed closed when the program has not enrolled students for a period of two (2) years since the last graduating class or student enrollment has not occurred for a two (2) year period. Board-ordered enrollment suspensions may be an exception.

(e) Approval of a Professional Nursing Education Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(1) The professional nursing education program outside Texas' jurisdiction seeking approval to conduct clinical learning experiences in Texas should initiate the process with the Board at least four (4) months prior to the anticipated start date of the clinical learning experiences in Texas.

(2) A written request and the required supporting documentation shall be submitted to the Board office following Board Education Guideline 3.1.1.f. Process for Approval of a Nursing Education Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(3) Evidence that the program has been approved/licensed or deemed exempt from approval/licensure by the appropriate Texas agency, (i.e., the THECB, the TWC) to conduct business in the State of Texas, must be obtained before approval can be granted by the Board for the program to conduct clinical learning experiences in Texas.

§215.4. Approval.

(a) The progressive designation of approval status is not implied by the order of the following listing. Approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. Change from one status to another is based on NCLEX-RN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section. Types of approval include:

(1) Initial Approval.

(A) Initial approval is written authorization by the Board for a new program to enroll students, is granted if the program meets the requirements and addresses the recommendations issued by the Board, and begins with the date of the first student enrollment.

(B) The number of students to be enrolled while the program is on initial approval is determined by the Board and the requirements are included in the Board's initial approval letter.

(C) Change from initial approval status to full approval status cannot occur until the program has met requirements and responded to all recommendations issued by the Board and the NCLEX-RN® examination pass rate is 80% after a full examination year. In order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(2) Full Approval.

(A) Full approval is granted by the Board to a professional nursing education program that is in compliance with all Board requirements and has responded to all Board recommendations.

(B) Only programs with full approval status may initiate extension programs and grant faculty waivers.

(3) Full or initial approval with warning is issued by the Board to a professional nursing education program that is not meeting the Board's requirements.

(A) A program issued a warning will receive written notification from the Board of the warning and a survey visit will be conducted.

(B) Following the survey visit, the program will be given a list of identified deficiencies and a specified time in which to correct the deficiencies. Further, in order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(4) Conditional Approval. Conditional approval is issued by the Board for a specified time to provide the program the opportunity to correct deficiencies.

(A) The program shall not enroll students while on conditional status.

(B) The Board may establish specific criteria to be met in order for the program's conditional approval status to be changed.

(C) Depending upon the degree to which the Board's requirements are currently being or have been met, the Board may change the approval status from conditional approval to full approval or to full approval with warning, or may withdraw approval. In order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(5) Withdrawal of Approval. The Board may withdraw approval from a program which fails to meet the Board's requirements within the specified time. The program shall be removed from the list of Board-approved professional nursing education programs.

(6) A diploma program of study in Texas that leads to an initial license as a registered nurse under this chapter must have a process in place by 2015 to ensure that their graduates are entitled to receive a degree from a public or private institution of higher education accredited by an agency recognized by the THECB or the TWC, as applicable. At a minimum, a graduate of a diploma program will be entitled to receive an associate degree in nursing.

(b) Factors Jeopardizing Program Approval Status.

(1) When a program demonstrates non-compliance with Board requirements, approval may be changed to full with warning or conditional status, may be withdrawn, or the Board, in its discretion, may impose restrictions or conditions it deems appropriate and necessary. In addition to imposing restrictions or conditions, the Board may also require additional monitoring of the program. Board monitoring may include the review and analysis of program reports; extended communication with program directors; and additional survey visits. A monitoring plan may require the submission of quarterly reports of students' performance in courses and clinical learning experiences; remediation strategies and attrition rates; and reports from an assigned mentor to the program director. Additional survey visits by a Board representative may be conducted at appropriate intervals to evaluate the status of the program. The Board may alter a monitoring plan as necessary to address the specific needs of a particular program. When the Board requires monitoring activities to evaluate and assist the program, monitoring fees will apply.

(2) A change in approval status, requirements for restrictions or conditions, or a monitoring plan may be issued by the Board for any of the following reasons:

(A) deficiencies in compliance with the rule;

(B) utilization of students to meet staffing needs in health care facilities;

(C) noncompliance with school's stated philosophy/mission, program design, objectives/outcomes, and/or policies;

(D) failure to submit records and reports to the Board office within designated time frames;

(E) failure to provide sufficient variety and number of clinical learning opportunities for students to achieve stated objectives/outcomes;

(F) failure to comply with Board requirements or to respond to Board recommendations within the specified time;

(G) student enrollments without resources to support the program, including sufficient qualified faculty, adequate educational facilities, and appropriate clinical affiliating agencies;

(H) failure to maintain an 80% passing rate on the licensing examination by first-time candidates;

(I) failure of program director/dean to verify the currency of faculty licenses; or

(J) other activities or situations that demonstrate to the Board that a program is not meeting Board requirements.

(c) Ongoing Approval Procedures. Ongoing approval status is determined biennially by the Board on the basis of information reported or provided in the program's NEPIS and CANEP, NCLEX-RN® examination pass rates, and other pertinent data.

(1) Compliance Audit. Each approved professional nursing education program shall submit a biennial CANEP regarding its compliance with the Board's requirements.

(2) NCLEX-RN® Pass Rates. The annual NCLEX examination pass rate for each professional nursing education program is determined by the percentage of first time test-takers who pass the examination during the examination year.

(A) Eighty percent (80%) of first-time NCLEX-RN® candidates are required to achieve a passing score on the NCLEX-RN® examination during the examination year.

(B) When the passing score of first-time NCLEX-RN® candidates is less than 80% on the examination during the examination year, the nursing program shall submit a Self-Study Report that evaluates factors that may have contributed to the graduates' performance on the NCLEX-RN® examination and a description of the corrective measures to be implemented. The report shall comply with Board Education Guideline 3.2.1.a. Writing a Self-Study Report on Evaluation of Factors that Contributed to the Graduates' Performance on the NCLEX-PN® or NCLEX-RN® Examination.

(3) Change in Approval Status. The progressive designation of a change in approval status is not implied by the order of the following listing. A change in approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. A change from one approval status to another may be determined by NCLEX-RN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section.

(A) A warning may be issued to a program when:

(i) the pass rate of first-time NCLEX-RN® candidates, as described in paragraph (2)(A) of this subsection, is less than 80% for two (2) consecutive examination years; and

(ii) the program has been in violation of Board requirements.

(B) A program may be placed on conditional approval status if:

(i) the pass rate of first-time candidates, as described in paragraph (2)(A) of this subsection, is less than 80% for three (3) consecutive examination years;

(ii) the faculty fails to implement appropriate corrective measures identified in the Self-Study Report or survey visit;

(iii) the program has continued to engage in activities or situations that demonstrate to the Board that the program is not meeting Board requirements and standards; or

(iv) the program persists despite the existence of multiple deficiencies mentioned in subsection (b) of this section.

(C) Approval may be withdrawn if:

(i) the performance of first-time NCLEX-RN® candidates fails to be at least 80% during the examination year following the date the program is placed on conditional approval;

(ii) the program is consistently unable to meet requirements of the Board; or

(iii) the program persists in engaging in activities or situations that demonstrate to the Board that the program is not meeting Board requirements and standards.

(D) A program issued a warning or placed on conditional approval status may request a review of the program's approval status by the Board at a regularly scheduled meeting following the end of the examination year if:

(i) the program's pass rate for first-time NCLEX-RN® candidates during the examination year is at least 80%; and

(ii) the program has met all Board requirements.

(E) The Board may, in its discretion, change the approval status of a program on full approval with warning to full approval, to full approval with restrictions or conditions, or impose a monitoring plan. The Board may restrict enrollments.

(F) The Board may change the approval status of a program on conditional approval to full approval, full approval with restrictions or conditions, full approval with warning, or impose a monitoring plan. The Board may restrict enrollments.

(4) Survey Visit. Each professional nursing education program shall be visited at least every six (6) years after full approval has been granted, unless accredited by a Board-recognized national nursing accrediting agency.

(A) Board Staff may conduct a survey visit at any time based upon Board Education Guideline 3.2.3.a. Criteria for Conducting Survey Visits.

(B) After a program is fully approved by the Board, a report from a Board-recognized national nursing accrediting agency regarding a program's accreditation status may be accepted in lieu of a Board survey visit.

(C) A written report of the survey visit, information from the program's NEPIS and CANEP, and NCLEX-RN® examination pass rates shall be reviewed by the Board at a regularly scheduled meeting.

(5) The Board will select one (1) or more national nursing accrediting agencies, recognized by the United States Department of Education, and determined by the Board to have standards equivalent to the Board's ongoing approval standards. Identified areas that are not equivalent to the Board's ongoing approval standards will be monitored by the Board on an ongoing basis.

(6) The Board will periodically review the standards of the national nursing accrediting agencies following revisions of accreditation standards or revisions in Board requirements for validation of continuing equivalency.

(7) The Board will deny or withdraw approval from a professional nursing education program that fails to:

(A) meet the prescribed program of study or other Board requirement;

(B) maintain voluntary accreditation with the national nursing accrediting agency selected by the Board; or

(C) maintain the approval of the state board of nursing of another state that the Board has determined has standards that are substantially equivalent to the Board's standards under which it was approved.

(8) A professional nursing education program is considered approved by the Board and exempt from Board rules that require ongoing approval as described in Board Education Guideline 3.2.4.a. Nursing Education Programs Accredited by the National League for Nursing Accrediting Commission and/or the Commission on Collegiate Nursing Education - Specific Exemptions from Education Rule Requirements if the program:

(A) is accredited and maintains voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards; and

(B) maintains an acceptable NCLEX-RN® pass rate, as determined by the Board, on the NCLEX-RN® examination.

(9) A professional nursing education program that fails to meet or maintain an acceptable NCLEX-RN® pass rate, as determined by the Board, on NCLEX-RN® examinations is subject to review by the Board.

(10) A professional nursing education program that qualified for exemption pursuant to paragraph (8) of this subsection, but does not maintain voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards, is subject to review by the Board.

(11) The Board may assist the program in its effort to achieve compliance with the Board's requirements and standards.

(12) A program from which approval has been withdrawn may reapply for approval. A new proposal may not be submitted to the Board until after at least twelve (12) calendar months from the date of withdrawal of approval have elapsed.

(13) A professional nursing education program accredited by a national nursing accrediting agency recognized by the Board shall:

(A) provide the Board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board within three (3) months of receipt of any official reports;

(B) demonstrate accountability of compliance with national nursing accreditation standards and processes and provide copies of approvals for substantive changes from the national nursing accreditation organizations after the program has followed the approval process;

(C) notify the Board of any change in accreditation status within two (2) weeks following receipt of an official notification letter; and

(D) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

(d) Notice of a program's approval status shall be sent to the dean or director and others as determined by the Board. The chief administrative officer of the governing entity shall be notified when there is a change of approval status of the program.

§215.5. Philosophy/Mission and Objectives/Outcomes.

(a) The philosophy/mission and objectives/outcomes of the professional nursing education program shall be consistent with the philosophy/mission of the governing entity. They shall reflect the diversity of the community served and shall be consistent with professional, educational, and ethical standards of nursing.

(b) Program objectives/outcomes derived from the philosophy/mission shall reflect the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Professional (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), October 2010* (DECs).

(c) Clinical objective/outcomes shall be stated in behavioral terms and shall serve as a mechanism for evaluating student progression.

(d) The conceptual framework shall provide the organization of major concepts from the philosophy/mission of the program that provides the underlying structure or theme of the curriculum and facilitates the achievement of the program objectives/outcomes.

(e) The dean/director and the faculty shall periodically review the philosophy/mission and objectives/outcomes and shall make appropriate revisions to maintain currency.

§215.9. Program of Study.

(a) The program of study shall include both didactic and clinical learning experiences and shall be:

(1) at least the equivalent of two (2) academic years and shall not exceed four (4) calendar years;

(2) planned, implemented, and evaluated by the faculty;

(3) based on the philosophy/mission and objectives/outcomes;

(4) organized logically, sequenced appropriately;

(5) based on sound educational principles;

(6) designed to prepare graduates to practice according to the Standards of Nursing Practice as set forth in the Board's Rules and Regulations;

(7) designed and implemented to prepare students to demonstrate the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Professional (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), October 2010* (DECs); and

(8) designed to teach students to use a systematic approach to clinical decision making and safe patient care.

(b) The faculty shall be responsible for the development, implementation, and evaluation of the curriculum based upon the following guidelines:

(1) There shall be a reasonable balance between non-nursing courses and nursing courses that are clearly appropriate for collegiate study and are offered in a supportive sequence based upon the rationale for the curriculum.

(2) Instruction shall be provided in nursing roles; biological, physical, social, behavioral, and nursing sciences, including body structure and function, microbiology, pharmacology, nutrition, signs of emotional health, human growth and development; and nursing skills.

(3) Delivery of the curriculum through distance education shall comply with the requirements of this section and §215.10 of this chapter (relating to Clinical Learning Experiences) to ensure that students receive comparable curriculum, supervised clinical learning experiences, and formative and summative evaluations. Faculty must have documented competencies specific to online education.

(c) Instruction shall include, but not be limited to: organized student/faculty interactive learning activities, formal lecture, audiovisual presentations, nursing skills laboratory instruction and demonstration, simulated laboratory instruction, and faculty-supervised, hands-on patient care clinical learning experiences.

(1) Classroom instruction hours shall include actual hours of classroom instruction in nursing and non-nursing Board-required courses/content.

(2) Laboratory activities/instruction in the nursing skills or simulation laboratory may be considered as either classroom instruction hours or clinical learning experience hours.

(3) Clinical learning experiences shall include actual hours of practice in nursing skills and computer laboratories; simulated clinical experiences; faculty supervised hands-on clinical care; clinical conferences; and observation experiences. Observation experiences provide supplemental learning experiences to meet specific learning objectives.

(4) Hours in clinical learning experiences shall be sufficient to meet program of study requirements. There shall be a rationale for the ratio of contact hours assigned to classroom and clinical learning experiences. The suggested ratio is one (1) contact hour of didactic to three (3) contact hours of related clinical learning experiences (1:3).

(d) Associate degree nursing education programs shall develop formal articulation agreements to enable graduates to earn a bachelor's degree in nursing in a timely manner.

(e) The program of study shall include, but not be limited to, the following areas:

(1) non-nursing courses, clearly appropriate for collegiate study, offered in a supportive sequence.

(2) nursing courses which include didactic and clinical learning experiences in the four (4) content areas, medical-surgical, maternal/child health, pediatrics, and mental health nursing that teach students to use a systematic approach to clinical decision-making and prepare students to safely practice professional nursing through the promotion, prevention, rehabilitation, maintenance, restoration of health, and palliative and end-of-life care for individuals of all ages across the lifespan.

(A) Course content shall be appropriate to the role expectations of the graduate.

(B) Professional values including ethics, safety, diversity, and confidentiality shall be addressed.

(C) The Nursing Practice Act, Standards of Nursing Practice, Unprofessional Conduct Rules, Delegation Rules, and other laws and regulations which pertain to various practice settings shall be addressed.

(3) Nursing courses shall prepare students to recognize and analyze health care needs, select and apply relevant knowledge and appropriate methods for meeting the heath care needs of individuals and families, and evaluate the effectiveness of the nursing care.

(4) Baccalaureate and entry-level master's degree programs in nursing shall include learning activities in basic research and management/leadership, and didactic and clinical learning experiences in community health nursing.

(f) The selection and organization of the learning experiences in the curriculum shall provide continuity, sequence, and integration of learning.

(g) The curriculum plan and course content shall be appropriate to the role expectations of the graduate and shall be kept current and available to faculty and Board representatives.

(h) Faculty shall develop and implement evaluation methods and tools to measure progression of students' cognitive, affective, and psychomotor achievements in course/clinical objectives, according to Board Education Guideline 3.7.3.a. Student Evaluation Methods and Tools.

(i) Curriculum changes shall be developed by the faculty according to Board standards and shall include information outlined in the Board Education Guideline 3.7.1.a. Proposals for Curriculum Changes. The two (2) types of curriculum changes are:

(1) Minor curriculum changes not requiring prior Board Staff approval include:

(A) Editorial updates of philosophy/mission and objectives/outcomes; or

(B) Redistribution of course content or course hours; and

(2) Major curriculum changes requiring Board staff approval prior to implementation include:

(A) Changes in program philosophy/mission and objectives/outcomes which result in a reorganization or re-conceptualization of the entire curriculum including, but not limited to, changing from a block to an integrated curriculum;

(B) The addition of transition course(s), tracks/alternative programs of study, including MEEP, that provide educational mobility; or

(C) Mobility programs desiring to establish a generic program are treated as a new program and the appropriate proposal should be developed.

(j) Documentation of governing entity approval and appropriate approval from either the TWC or the THECB, if approved/licensed by the TWC or the THECB, must be provided to the Board prior to implementation of changes, as appropriate.

(k) Professional nursing education programs that have full approval status and are undergoing major curriculum changes shall submit an abbreviated proposal, as outlined in Board Education Guideline 3.7.1.a, to the Board office for approval at least four (4) months prior to implementation. The abbreviated proposal shall contain at least the following:

(1) new and old philosophy/mission, major concepts, program objectives/outcomes, course objectives/outcomes;

(2) new and old curriculum plans;

(3) rationale for the curriculum changes;

(4) clinical evaluation tools for each clinical course; and

(5) additional information, as requested, in order to provide clarity for Board Staff.

(l) Professional nursing education programs not having full approval status, but proposing a major curriculum change, shall submit a full curriculum change proposal, as outlined in Board Education Guideline 3.7.1.a, to the Board office and meet the requirements as outlined in subsection (i) of this section.

(m) All professional nursing education programs implementing any curriculum change shall submit to Board Staff an evaluation of the outcomes of the implemented curriculum change through the first graduating class under the new curriculum.

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 October 3, 2012.

TRD-201205207
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: October 23, 2012
Proposal publication date: August 24, 2012
For further information, please call: (512) 305-6822

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 98. TEXAS HIV MEDICATION PROGRAM

SUBCHAPTER C. TEXAS HIV MEDICATION PROGRAM

DIVISION 2. ADVISORY COMMITTEE

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §98.121 and new §98.121 concerning the Texas HIV Medication Advisory Committee (THMAC) without changes to the proposed text as published in the April 20, 2012, issue of the *Texas Register* (37 TexReg 2864) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The THMAC advises the department's Texas HIV Medication Program, which helps provide medications for the treatment of HIV and its related complications for low-income Texans.

The repeal and new rule comply with House Bill (HB) 2229, 82nd Texas Legislature, Regular Session, 2011, which now mandates the existence of the THMAC in Health and Safety Code, Chapter 85. The statute largely mirrors the language in the existing rule and, therefore, much of the existing rule is duplicative and unnecessary. The department has deleted existing rule language in the section and replaced it with much shorter language that reflects necessary content that is not contained in the statute itself. This new language ensures compliance with requirements in the Government Code, §2110.005 and §2110.008, which require the department to publish rules that specify the THMAC's purpose and tasks, the manner in which the THMAC reports to the department, and the expiration date of the THMAC. The repeal and new rule language comply with the statutory requirements cited herein.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 98.121 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed to comply with statutory requirements.

SECTION-BY-SECTION SUMMARY

The existing §98.121 is repealed, since most of the existing language in this rule is duplicative of new legislation in HB 2229. New §98.121 is consistent with these new statutory requirements in Health and Safety Code, Chapter 85, and aligns the section with requirements in Government Code, §2110.005 and §2110.008. New language for §98.121(a) identifies the committee and the enabling statutory provisions in the Health and Safety Code, Chapter 85, Subchapter K, and states the committee's purpose of advising the executive commissioner and the department in the development of procedures and guidelines for the Texas HIV Medication Program. New language for §98.121(b) identifies the tasks the committee would carry out, consistent with the statutory provisions cited herein. The tasks described include reviewing the aims and goals of the program, evaluating program efforts, recommending goals and objectives for medication needs, recommending medications for addition or deletion from the program's formulary and any other tasks given to the committee by the executive commissioner. New language for §98.121(c) establishes the committee abolishment

date as August 1, 2016 (if not extended by a subsequent rule amendment), consistent with Government Code, §2110.008. New language for §98.121(d) establishes the terms of office for members, as these were not fully specified in HB 2229. This section will also provide direction in the event of positions being left vacant before terms expire. New language for §98.121(e) provides details about how the meetings must be held. New language for §98.121(f) clarifies attendance requirements for members and spells out the grounds for removal of members for reasons of illness, disability or absence.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §98.121

STATUTORY AUTHORITY

The repeal is adopted under Health and Safety Code, Chapters 81 and 85; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

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 October 8, 2012.

TRD-201205228
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: October 28, 2012
Proposal publication date: April 20, 2012
For further information, please call: (512) 776-6972

25 TAC §98.121

STATUTORY AUTHORITY

The new rule is adopted under Health and Safety Code, Chapters 81 and 85; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

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 October 8, 2012.

TRD-201205229
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: October 28, 2012
Proposal publication date: April 20, 2012
For further information, please call: (512) 776-6972

CHAPTER 405. PATIENT CARE--MENTAL HEALTH SERVICES
SUBCHAPTER C. LIFE-SUSTAINING TREATMENT

25 TAC §§405.51 - 405.63

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §§405.51 - 405.63, concerning life-sustaining treatment in state hospitals, without changes to the proposal as published in the April 6, 2012, issue of the *Texas Register* (37 TexReg 2342) and will not be republished.

BACKGROUND AND PURPOSE

The rules address the Resuscitative Status Policy, the Natural Death Act, Out-of-Hospital Do-Not-Resuscitate Orders, and a Durable Power of Attorney for Health Care for patients in state hospitals. The rules were formerly under the Texas Department of Mental Health and Mental Retardation and were transferred and consolidated with the department on September 1, 2004. The rules are no longer necessary because the requirements for resuscitative treatment of patients are covered sufficiently and comprehensively in Health and Safety Code, Chapter 166, other rules, and policies. Health and Safety Code Chapter 166, includes specific directions about directives to physicians, Out-of-Hospital Do-Not-Resuscitate Orders, and a medical power of attorney.

The repeal is necessary to better conform advanced directives in state hospitals (Austin State Hospital, Big Spring State Hospital, El Paso Psychiatric Center, Kerrville State Hospital, North Texas State Hospital, Rusk State Hospital, San Antonio State Hospital, Terrell State Hospital, Rio Grande State Center, and Waco Center for Youth) to state law.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 405.51 - 405.63 have been reviewed and the department has determined that reasons for adopting the sections no longer exist because rules are no longer needed.

SECTION-BY-SECTION SUMMARY

The repeal of §§405.51 - 405.63 will eliminate unnecessary rules and bring the department into compliance with state law.

COMMENTS

An Extension of the Public Comment Period notice was published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3459). The deadline for submission of comments was extended

for 30 days from the original comment period to accept additional stakeholder comments. A stakeholder meeting was held on June 5, 2012.

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed repeals during the comment period, which the commission has reviewed and accepts. The comments were from the Texas Right to Life Organization and were not in favor of the rule repeals. The Texas Right to Life Organization requested clarification of how the rules contradicted state law. The department provided clarification about the conflicts with state law. The department provided an explanation of the rule repeal and indicated it would proceed with the development of an advance directive policy and procedure for the state hospital system. The comments suggested recommendations for inclusion into a state hospital policy and procedure that will comply with state law. The comments suggested that the state hospital policy and procedure be more patient-centered, to afford a more thorough and considerate process to patients, and be more protective of the patient's/surrogate's right to direct his own health care decisions while complying with state law.

Comment: Concerning the Resuscitative Status Policy in §405.54, one commenter stated that the policy was patient centered and should be retained.

Response: The department agrees because the policy in §405.54 does not conflict with Health and Safety Code, Chapter 166. Resuscitative Status Policy language will be incorporated into the state hospital policy and procedure. No change was made as a result of this comment.

Comment: Concerning the Ethics Committee in §405.60, one commenter stated that the Ethics Committee should not include individuals representing family members of individuals with mental illness or an outside attorney.

Response: The department disagrees because the Ethics Committee in §405.60 has a larger function in state hospital operation than end of life decisions. No change was made as a result of this comment.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the repeals, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, Chapter 166, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to life-sustaining treatment and advanced directives; and by 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 review of the rules implements Government Code, §2001.039.

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 October 8, 2012.

TRD-201205227
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: October 28, 2012
Proposal publication date: April 6, 2012
For further information, please call: (512) 776-6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION

SUBCHAPTER E. NOTICE OF TOLL-FREE TELEPHONE NUMBERS AND PROCEDURES FOR OBTAINING INFORMATION AND FILING COMPLAINTS

28 TAC §1.603

The Texas Department of Insurance adopts new 28 TAC §1.603, concerning complaint information available through the department's toll-free telephone number. This section is adopted with changes to the proposed text published in the May 25, 2012, issue of the *Texas Register* (37 TexReg 3778).

REASONED JUSTIFICATION. The new section is necessary to: (i) notify the public that, pursuant to the Insurance Code §521.052, complaint information available through the department's toll-free telephone number includes information collected or maintained by the department relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid; (ii) equate the term "confirmed," for the Consumer Protection Section's use in its complaint handling process, with the statutory term "justified"; and (iii) describe the criteria the department uses to classify a complaint as "confirmed."

The proposal and adoption of §1.603 followed a project to address stakeholder questions and requests for clarification regarding the process and the terminology used by the department's Consumer Protection Section in classifying consumer complaints.

The Insurance Code §521.052 requires the department to provide to the public through its toll-free telephone number information the department collects or maintains relating to the number and disposition of complaints received against an insurer that are "justified, verified as accurate, and documented as valid." The Insurance Code §521.052 does not specify what constitutes a "justified," "verified as accurate," or "documented as valid" complaint. Therefore, the department has interpreted the Insurance Code §521.052 as requiring the department to collect, maintain, and provide to consumers information on complaints that need an action.

In the past, the Consumer Protection Section has referred to a complaint as "justified" after it verified that the complaint presented a reasonable basis for the need for an action, regardless of whether that action was resolving a communication problem or

referring a potential violation of law to the Enforcement Section. The Consumer Protection Section has used the term "justified" because of the use of the term in the Insurance Code §521.052. However, use of the term "justified" in communicating with consumers has resulted in a concern by some consumers that the department might judge complaints to be right or wrong and treat complaints differently based on that judgment. The department does not take this approach in addressing complaints.

To avoid an appearance that the department gives more attention to some complaints than others, the Consumer Protection Section is taking steps to change the language it uses to address complaints when working with consumers. It has begun using the term "confirmed" in lieu of "justified." Section 1.603 complements the steps taken by the Consumer Protection Section by equating the new term "confirmed" with the statutory term "justified" in rule and setting out in rule the factors it uses to determine when a complaint is "confirmed."

In response to a comment, the department has revised §1.603(a) as adopted to state, "The Texas Department of Insurance (department) will provide to the public through its toll-free telephone number the information specified by the Insurance Code §521.052, including information collected or maintained by the department relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid expressed as a percentage of the total number of insurance policies written by the insurer and in force on December 31 of the preceding year." The department has revised this subsection to clarify that under §1.603 the department will provide the information required by the Insurance Code §521.052.

HOW THE SECTION WILL FUNCTION. New §1.603 addresses complaint information available through the department's toll-free telephone number. Section 1.603(a) says that the department will provide to the public, through its toll-free telephone number, the information specified by the Insurance Code §521.052, including information the department collects or maintains relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid. Section 1.603(b) states that the department considers a complaint justified if the complaint is a confirmed complaint. Section 1.603(c) provides the definition of what constitutes a confirmed complaint.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

General Comments.

Comment: Two commenters express support for the proposed section.

One commenter says that the proposed rule reflects the statutory language found in the Insurance Code §521.052 and asks that it be adopted as proposed.

The other commenter expresses support for the intent of the rule to label complaints as confirmed or unconfirmed as opposed to justified and unjustified. The commenter says that consumers are often frustrated to find their complaint deemed unjustified by the department when they feel that they have a valid complaint, and the commenter says that changing the language to use "unconfirmed" with help alleviate that frustration and would be more accurate in some cases.

The commenter says that retaining proposed §1.603(c)(2) or something like it is critical, because many practices that are bad customer service are not against the law or in violation of the contract, and the department should maintain the ability to deem a complaint as confirmed if the complainant had a valid concern.

Agency Response: The department appreciates the supportive comments. The department agrees that it is important for §1.603 to allow for consideration of complaints based on issues other than just violations of law or contract. The purpose of the section is to clarify the department's process for addressing and providing to the public information concerning consumer complaints, which do not always relate solely to violations of the law.

Comment: Three commenters say that it is not clear why proposed §1.603 is necessary.

One commenter says that there is no legal reason to define the statutory term "justify" by rule, and that there is no need to use the term "confirmed" in defining "justify." The commenter adds that even if there was a need to add a definition, the proposed definition fails to provide any objective basis on how the department will determine if a particular complaint is justified.

The commenter notes that the statute requiring the department to provide complaint information was originally adopted in 1991 and that the department has been providing information pursuant to these statutory requirements for over twenty years without the need for a rule of the type proposed in this section.

A second commenter says it is not clear why it is necessary for §1.603(b) to define a "justified" complaint as a "confirmed" complaint or whether the proposed definition provides clarity. The commenter references the definition for complaint currently available on the department's website, and says that the proposed language unnecessarily expands the scope and adds confusion to the concept of a justified complaint.

The second commenter notes that, in discussing this issue, a stakeholder group considered the National Association of Insurance Commissioners (NAIC) Complaint Database System definition that includes the term "confirmed complaint" but not "justified complaint." The commenter says that the Insurance Code §521.052(1) requires the department to provide to the public information based on justified complaints, and that it does not reference "confirmed" or defer to NAIC concepts for qualifying complaints. The commenter says that attempts to merge the NAIC concept of "confirmed complaint" into the current department standard and the statutory language is inconsistent and unnecessary.

A third commenter asks why the department does not just rely on the commonly accepted meaning of "justified," noting that Webster's dictionary defines "justified" as "to show to be right or valid."

Agency Response: As noted in the proposal for §1.603 and the reasoned justification of this adoption order, the new section is necessary to: (i) notify the public that, pursuant to the Insurance Code §521.052, complaint information available through the department's toll-free telephone number includes information collected or maintained by the department relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid; (ii) equate the term "confirmed," for the Consumer Protection Section's use in its complaint handling process, with the statutory term "justified"; and (iii) describe the criteria the department uses to classify a complaint as "confirmed."

Essentially, §1.603 addresses the department's classification of information in regard to tracking complaint data and making that

complaint data available to the public through its toll-free telephone number pursuant to the Insurance Code §521.052.

The proposal and adoption of §1.603 follow a project to address stakeholder questions and requests for clarification regarding the process and the terminology used by the Consumer Protection Section in classifying consumer complaints.

A consumer complaint can arise due to a variety of issues--a complaint could result from a violation of law or department rule that has harmed a consumer, or a complaint could be the result of a consumer's poor customer service experience with an insurer, such as a long wait on the phone to talk to someone or a bad experience when talking to an insurer's customer service representative. The Consumer Protection Section takes action to appropriately and effectively resolve all complaints it receives.

As examples, the Consumer Protection Section refers possible violations of law to the Enforcement Section for investigation, it attempts to find a better contact phone number if a consumer is having difficulty reaching the consumer's company, and it notifies a company of the possible need for internal review if a company's representative exercises poor customer-service skills when working with consumers.

In the past, the Consumer Protection Section has referred to a complaint as "justified" after it verified that the complainant provided a reasonable basis for an action, regardless of whether that action was resolving communication problems or referring a potential violation of law to the Enforcement Section. The Consumer Protection Section has used the term "justified" because of the use of the term in the Insurance Code §521.052.

The Insurance Code §521.052 requires the department to provide to the public through its toll-free telephone number information the department collects or maintains relating to the number and disposition of complaints received against an insurer that are "justified, verified as accurate, and documented as valid." The Insurance Code §521.052 does not specify what constitutes a "justified," "verified as accurate," or "documented as valid" complaint. Therefore, the department has interpreted the Insurance Code §521.052 as requiring the department to collect, maintain, and provide to consumers information on complaints that show a reasonable basis for a need for an action.

However, use of the term "justified" in communicating with consumers has resulted in a concern by some consumers that the department might judge complaints to be right or wrong and treat complaints differently based on that judgment. The department does not take this approach in addressing complaints.

To avoid an appearance that the department gives more attention to some complaints than others, the Consumer Protection Section is taking steps to change the language it uses to address complaints when working with consumers. It has begun using the term "confirmed" in lieu of "justified." Section 1.603 complements the steps taken by the Consumer Protection Section by equating the new term "confirmed" with the statutory term "justified" in rule and setting out in rule the factors the Consumer Protection Section uses to determine when a complaint is confirmed.

In addressing consumer confusion regarding use of the term "justified," the department determined that the NAIC's term, "confirmed" complaint, and its approach to determine what constitutes a "confirmed" complaint, accurately reflect the approach taken by the department in interpreting and applying the Insurance Code §521.052. The department declines to adopt the Webster dictionary definition of "justified" as "right or valid" because the definition would not address the factors the department takes into consideration in determining if a complaint is justified.

Comment: A commenter notes that the proposed rule just says that the department will provide confirmed or justified complaints through its toll-free number. The commenter says that it is important that full complaint information is available to consumers and asks that the department clarify how consumers and consumer advocates can easily get all complaint information, including unjustified or unconfirmed complaints.

Agency Response: The purpose of §1.603 is to address the department's classification of information in regard to tracking complaint data and making that complaint data available to the public through its toll-free telephone number pursuant to the Insurance Code §521.052. What the commenter requests goes beyond the scope of what should be within this rule.

There are already other sources of information and data available from the department. Complaint information and data displays can be accessed by the public on the department's website, and the public is able to request public information from the department pursuant to the Public Information Act, which is located in the Government Code Chapter 552.

Comment: A commenter notes that, in the stakeholder meetings that led to the proposal of §1.603, the department described a pilot program to quickly resolve consumer complaints through three-way phone calls with department staff, insurers, and consumers. The commenter states appreciation for a process that produces quicker resolutions, but expresses concern that grievances resolved through the process may not be logged and tracked as justified or confirmed complaints.

The commenter says that a quick resolution does not negate the issue that led to the call, and asks that the department ensure that grievances resolved over the phone are tracked and reported the same as any other complaint, either through a revision to §1.603 or a change in internal policy.

Agency Response: The pilot program referenced by the commenter is geared more toward providing information or facilitating communication between a consumer and an insurer, rather than resolving complaints. As such, most of the issues addressed over the phone would not constitute the type of information to be included as data the department makes available to the public through its toll-free telephone number pursuant to the Insurance Code §521.052.

If an issue arises during a phone call that the department cannot resolve by providing information or connecting a consumer to an insurer, and which instead should be addressed as a formal complaint, the department asks the consumer to file a complaint in writing. If this happens, the complaint follows the regular complaint process and will be included in the complaint information the department makes available to the public through its toll-free telephone number pursuant to the Insurance Code §521.052 to the same extent as other complaints.

Comment: A commenter requests that the department continue to improve how complaint information is displayed so that consumers can better understand and use it. The commenter says that the numeric complaint index is not intuitive and should be replaced by a more useful and understandable graphic. The commenter says that consumers lack an easy way to compare complaint data when shopping for health insurance and asks that

the department continue to work on making complaint data more useful for the public.

Agency Response: The department appreciates the input provided by the commenter. The suggestions made by the commenter go beyond the scope of this rule, but the department will continue to work with all stakeholders, including consumers, to improve the ways it makes complaint information available to the public.

Comment: A commenter suggests that the department consider including language in the rule to clarify the type and nature of notification provided to insurers regarding justified complaints. The commenter says that while the department provides insurers notification of a complaint being investigated or closed, the commenter is concerned that the department does not notify insurers when it determines a complaint to be justified or give insurers an opportunity to clarify or contest the department's determination.

The commenter says that, given the broad scope and vague nature of the proposed language, an opportunity to respond to the department's determination that a complaint is justified or confirmed is critical to avoid unjust determinations. The commenter concludes by saying that the proposed rule needs clarification and simplification to properly apply the statutory language and provide clarity in determinations on complaint information.

Agency Response: The department disagrees with the commenter and declines to make a change. Section 1.603 only addresses the department's classification of information in regard to tracking complaint data and making that complaint data available to the public through its toll-free telephone number pursuant to the Insurance Code §521.052 and does not result in a final finding of fact against a party.

Additionally, complaint data is available online and through request to the department. Anyone, including an insurer, can notify the Consumer Protection Section if they perceive an error or mistake in the data the Consumer Protection Section has compiled.

Section 1.603(c).

Comment: A commenter says that the proposed definition for "confirmed complaint" in §1.603 is inappropriate for complaints filed against workers' compensation insurers and may be inappropriate for other lines of insurance as well. The commenter says that the Texas Workers' Compensation Act and the rules of the Division of Workers' Compensation provide an elaborate process for processing, investigating, and adjudicating allegations that the workers' compensation insurer violated an insurance law or regulation, and the commenter references the Labor Code §402.0231, the Labor Code Chapters 414 and 415, and the Division of Workers' Compensation rules in 28 TAC Chapter 180.

The commenter says that, under the statutes and rules applicable to a workers' compensation insurer, the department cannot independently determine a complaint to be either "justified" or "confirmed," and that instead the department must issue a notice of violation and provide the workers' compensation insurer with an opportunity to respond to the notice and request a contested case hearing before the State Office of Administrative Hearings. The commenter says that a complaint can only be deemed "justified" or "confirmed" if the workers' compensation insurer admits to a violation or there is a final adjudicated finding.

The commenter recommends that §1.603(c) either be deleted in its entirety or revised to say, "A 'confirmed complaint' is a complaint for which the department receives information indicating that: (1) an insurer committed any violation of: (A) an applicable state insurance law or regulation; (B) a federal requirement the department has authority to enforce; or (C) the term or condition of an insurance policy or certificate; and (2) the violation is confirmed by either the insurer's response to the complaint or a final adjudicated finding of violation."

Agency Response: The department disagrees with the commenter and declines to make the suggested change because §1.603 does not establish a process for making findings of facts or adjudicating disputes and does not supplant processes that are already in place, such as the Labor Code provisions and Division of Workers' Compensation regulations referenced by the commenter. Section 1.603 addresses the department's classification of information in regard to tracking complaint data and making that complaint data available to the public through its toll-free telephone number pursuant to the Insurance Code §521.052.

Additionally, the commenter's suggested revision is too narrow to serve the purpose addressed by §1.603. Even if a violation of law has not occurred, there might be a valid basis for a complaint, such as a customer service issue that needs to be brought to the attention of and addressed internally by an insurer. In these instances, adjudication may not be necessary or appropriate. If, in working with a consumer complaint, the Consumer Protection Section learns of a possible violation of rule or law by a person or entity regulated by the department, the Consumer Protection Section refers the matter to the appropriate area of the department for investigation and adjudication in accordance with the relevant provisions of the Insurance Code, the Labor Code, and the Administrative Code.

Comment: Two commenters note that a definition of "justified complaint" is currently provided on the department's website that states, "A complaint is justified if there is an apparent violation of a policy provision, contract provision, rule, or statute, or there is a valid concern that a prudent layperson would regard as a practice or service that is below customary business or medical practice."

One of the commenters notes that the definition on the website does not require the department to consider an insurer's response and hopes that the proposed definition does not set a standard that gives less protection to consumers. The commenter asks that if the new language changes how the department evaluates complaints, the department revisit it to ensure that valid complaints are deemed confirmed regardless of an insurer's response.

The second commenter states a preference for the definition on the department's website over the definition in proposed §1.603.

Agency Response: The definition of "justified complaint" identified by the commenters is contained in a "glossary of common insurance terms" available on the department's website. This glossary is made available for informational purposes only to assist consumers in understanding their insurance policies.

The terms defined in the online glossary have not necessarily been adopted by rule or statute and are not binding. They are not applicable to the department's role in tracking complaint data or making that complaint data available to the public through its toll-free telephone number pursuant to the Insurance Code §521.052, and adoption of §1.603 does not change how the department categorizes complaints.

The definition for "justified complaint" identified by the two commenters is too narrow for the purposes of §1.603 because it would not encompass the range of issues the Consumer Protection Section addresses in assisting consumers. The department declines to incorporate this definition into §1.603 in lieu of the proposed definition.

Section 1.603(c)(1).

Comment: In regard to §1.603(c)(1), two commenters say that the provision is vague in regard to what laws the department will determine are applicable, especially in regard to federal requirements the department has authority to enforce.

One of the commenter asks the following specific questions: What are the current federal "requirements" the department enforces? What happens if this changes in the future? How can an insurer dispute if a particular complaint is classified as justified or confirmed under this?

Agency Response: Applicability of insurance laws is generally addressed within specific Insurance Code chapters. For example, the Insurance Code §541.082, concerning Advertising and Internet Websites, lists the entities included as insurers for purposes of the section.

In regard to the specific questions asked by one of the commenters, the department responds:

What are the current federal "requirements" the department enforces? Current federal requirements the department enforces include any federal requirements incorporated into the Insurance Code, such as those incorporated into the Insurance Code Chapter 1501, concerning the Health Insurance Portability and Availability Act.

What happens if this changes in the future? The department regulates insurance in Texas pursuant to the Insurance Code. When the state legislature amends or revises the Insurance Code, the department updates its procedures to be consistent with the amended or updated Insurance Code. Additionally, in specific instances legislation may direct the department to adopt rules to implement new state or federal law. The department adopts rules as necessary to comply with these requirements.

How can an insurer dispute if a particular complaint is classified as justified or confirmed under this? The classification of complaints pursuant to §1.603 is made for purposes of department tracking and reporting of complaint data. Anyone, including an insurer, can notify the Consumer Protection Section if they perceive an error or mistake in the data the Consumer Protection Section has compiled. The Consumer Protection Section can be reached by email at ConsumerProtection@tdi.state.tx.us or by phone at 1-800-252-3439.

Comment: A commenter says that §1.603(c)(1) refers to information "indicating a violation," but does not clarify whether the department must determine if an actual violation of law has occurred or what standard of proof is applied to such a determination.

The commenter says that the vagueness of the rule gives the department a great deal of discretion and creates the possibility that invalid complaints will be weighed against an insurer. The commenter notes that the language in §1.603(c)(1) is from the NAIC definition for "confirmed complaint." The commenter says this is an attempt to add to the term "justified complaint" using a definition that is not Texas specific.

Agency Response: A consumer complaint could result from a violation of law or a department rule that has harmed a consumer, but the Consumer Protection Section is not the area of the department that investigates or adjudicates possible legal violations. The Consumer Protection Section refers all possible violations of law to the appropriate area of the department for investigation and adjudication in accordance with the relevant provisions of the Insurance Code, the Labor Code, and the Administrative Code.

Section 1.603 does not apply to investigation or adjudication of violations of the law. The section only relates to the department's classification of information in regard to tracking complaint data and making that complaint data available to the public through its toll-free telephone number pursuant to the Insurance Code §521.052. Whether the department classifies a complaint as "confirmed" for the limited purposes of tracking complaint data and providing information will not add weight to or otherwise impact an investigation or legal proceeding.

The department disagrees that the language in §1.603(c)(1) adds anything not Texas-specific to the term "justified complaint." The department equated the term "confirmed complaint" with "justified complaint" in §1.603 to avoid consumer confusion regarding use and meaning of the term "justified." Some consumers have mistakenly thought that the department's past use of the term "justified" meant the department would judge complaints to be right or wrong and treat complaints differently based on that judgment.

In addressing this consumer confusion regarding use of the term "justified," the department determined that the NAIC's term "confirmed complaint" and its approach to determine what constitutes a "confirmed complaint" accurately reflect the approach taken by the department in categorizing and providing information regarding consumer complaints.

Section 1.603(c)(2).

Comment: Two commenters say that proposed §1.603(c)(2) is vague.

One commenter says that proposed §1.603(c)(2) fails to provide an objective basis for confirming a complaint and should be deleted from the rule. That commenter, along with a second commenter, says that allowing a complaint to be confirmed if the situation as a whole "suggests" an insurer is in error or a complaint is valid would make it difficult, if not impossible for an insurer to understand what has been done wrong, unfairly, or in violation of Texas law. The second commenter asks the following questions: What is an error? Is an error the same as a violation of law? What if there is a factual error? How will the reason for a complaint be determined?

Both commenters say that §1.603(c)(2) could lead to inconsistent rulings between different decision makers. The commenters acknowledge that a regulator needs some discretion to make decisions regarding the conduct of an insurer, but one of the commenters says that there should be an objective standard for such decisions, as set out in §1.603(c)(1), and the other commenter says that a regulator's discretion is normally exercised through enforcement actions after staff has determined a complaint is justified and enforcement is necessary.

Agency Response: The department disagrees with the commenters and declines to make a change.

The department disagrees with the assertion that allowing a complaint to be "confirmed" if the situation as a whole suggests

an insurer is in error or a complaint is valid would make it difficult or impossible for an insurer to understand what has been done wrong, unfairly, or in violation of Texas law.

First, classification of a complaint as "confirmed" pursuant to §1.603(c)(2) simply means, as stated in the rule, that the information gained from the consumer and the insurer indicates the insurer was in error or that the consumer otherwise had a valid reason for the complaint.

Second, §1.603(c)(2) provides for communication between the department and an insurer when the department is processing a complaint it has received. If an insurer does not understand the basis for the complaint, the insurer can address this when the department contacts the insurer.

In regard to the specific questions from the second commenter, the department responds:

What is an error? An error could be anything an insurer inappropriately, under the circumstances, does or fails to do that leads a consumer to make a complaint to the department.

Is an error the same as a violation of law? An error is not always a violation of law. For example, if an insurer's customer service representative ends a telephone call from an insured before resolving the reason for the call, it might not rise to the level of a violation of law, but might still form a reasonable basis for a complaint by an insured. If information indicates that an insurer has violated a law or regulation, the Consumer Protection Section refers the matter to the appropriate area of the department for investigation and adjudication in accordance with the relevant provisions of the Insurance Code, the Labor Code, and the Administrative Code.

How will the reason for a complaint be determined? If the reason for a complaint is not clear, the department asks consumers to clarify the reason for their complaints.

The department disagrees with the commenters' assertions that §1.603(c)(2) could lead to inconsistent rulings between different decision makers, because application of §1.603 does not result in a ruling against an insurer. Section 1.603 merely outlines the process for classification of complaint data received by the department for use in compliance with the Insurance Code §521.052.

If information the department gains from a consumer's complaint indicates that an insurer may have violated a law or regulation, the Consumer Protection Section refers the matter to the appropriate area of the department for investigation and resolution under the rules and statutes that apply to the entity that is the subject of the complaint. In these instances, insurers have every opportunity available under the law to respond to allegations and defend themselves.

Comment: A commenter says that the Texas Insurance Code requires the department to provide to the public through the department's toll-free number "the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid, expressed as a percentage of the total number of insurance policies written by the insurer and in force on December 31 of the preceding year."

The commenter notes that proposed §1.603(a) requires the department to provide information on complaints in a different format than what is required by statute, and that it does not mention the statutory requirement that complaints that are justified, verified as accurate, and documented as valid be expressed as a percentage of policies.

Agency Response: The department disagrees with the commenter, in that neither the Insurance Code §521.052 nor §1.603(a) specify a format for information the department will provide to the public through its toll-free telephone number. The Insurance Code §521.052 lists the types of information the department must provide to the public through its toll-free telephone number, and §1.603(a) provides that the department will provide to the public through its toll-free telephone number the information specified by the Insurance Code §521.052, including information collected or maintained by the department relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid.

However, the department agrees to make a change to the rule text as proposed for clarity. The Insurance Code §521.052(1) specifies that the department must provide through its toll-free telephone number "information collected or maintained by the department relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid, *expressed as a percentage of the total number of insurance policies written by the insurer and in force on December 31 of the preceding year."* (Emphasis added.) As proposed, §1.603(a) only makes reference to "information collected or maintained by the department relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid."

To clarify that the department will provide the information required by the Insurance Code §521.052, the department revises §1.603(a) as adopted to state, "The Texas Department of Insurance (department) will provide to the public through its toll-free telephone number the information specified by the Insurance Code §521.052, including information collected or maintained by the department relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid expressed as a percentage of the total number of insurance policies written by the insurer and in force on December 31 of the preceding year."

Comment: A commenter says that §1.603(c)(2) is vague and ambiguous. The commenter notes that, under §1.603(c)(2), a complaint is confirmed and presumably justified if the complaint and insurer's response "suggest that the insurer was in error" or the "complainant had a valid reason for the complaint." However, says the commenter, it is not clear what is meant by "the insurer was in error." The commenter says this implies any error could result in a confirmed or justified complaint, but that the statute does not reference errors and that this unnecessarily broadens its scope.

The commenter asks if insurers will be required to use "magic words" to avoid the suggestion of an error or if it will be up to the department's discretion to determine what response suggests an error. The commenter concludes by saying that the proposed language will result in inaccurate determinations regarding justified complaints as well as inaccurate or misleading information being provided by the department to consumers regarding complaints against insurers.

Agency Response: Whether an insurer is in error depends on the complaint made by the consumer and the insurer's response. There are no "magic words" that will prevent the department from classifying a complaint as confirmed. Upon receiving a com-

plaint based on an action or inaction by an insurer, the department will verify the information from the consumer with the insurer and work to resolve the complaint.

The department disagrees that §1.603(c)(2) will result in inaccurate determinations or inaccurate or misleading information. Section §1.603 does not establish a process for making determinations of fact. It outlines a process for classification of complaint data. If someone points out an error in how data is classified, the department will correct it.

Comment: A commenter says that the definition in §1.603(c)(2) is inconsistent with the statutory requirement that a complaint be justified, verified as accurate, and documented as valid. The commenter also expresses concern that the language of the proposed rule could lead to complaints regarding issues outside of the department's authority qualifying as "justified" or "confirmed" complaints. To address these concerns, the commenter recommends that the department delete subsection (b) and rely on the statutory language.

Agency Response: The department disagrees that §1.603(c)(2) is inconsistent with the statutory requirement that a complaint be justified, verified as accurate, and documented as valid. The Insurance Code §521.052 requires the department to provide to the public through its toll-free telephone number information the department collects or maintains relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid. The section does not state what constitutes a "justified" complaint, so the department must determine what "justified" means to be able to comply with the Insurance Code §521.052.

The department has explored what "justified" means for purposes of its duty under the Insurance Code §521.052, and determined that the NAIC's approach to determine what constitutes a "confirmed complaint" accurately reflects the approach taken by the department in interpreting and applying the Insurance Code §521.052.

The department does not agree that the language of the proposed rule would lead to complaints regarding issues outside of the department's authority qualifying as "justified" or "confirmed" complaints. The provisions under §1.603(c)(1) clearly relate to instances where the department has authority to act, and the provisions in §1.603(c)(2) make it clear the department will be acting on information from both the consumer and the insurer, so the insurer would be able to inform the department if the complaint does not relate to a matter regulated by the department. Further, §1.603(c)(2) does not result in a legal finding, but rather outlines the process for classification of complaint data. If someone points out an error in how data is classified, the department will correct it.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: Office of Public Insurance Counsel.

For with changes: Property Casualty Insurers Association of America, Insurance Council of Texas, Texas Association of Health Plans, Texas Farm Bureau Insurance, Center for Public Policy Priorities.

Against: Texas Association of Life and Health Insurers.

STATUTORY AUTHORITY. The new section is adopted pursuant to the Insurance Code §§521.051, 521.052, and 36.001.

Section 521.051 requires the department to maintain a toll-free telephone number to provide the information described by the Insurance Code §521.052 and receive and aid in resolving complaints against insurers.

Section 521.052 requires the department to provide to the public through its toll-free telephone number information specified by the section, including information the department collects or maintains relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§1.603. Complaint Information Available through the Texas Department of Insurance's Toll-Free Telephone Number.

(a) The Texas Department of Insurance (department) will provide to the public through its toll-free telephone number the information specified by the Insurance Code §521.052, including information collected or maintained by the department relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid, expressed as a percentage of the total number of insurance policies written by the insurer and in force on December 31 of the preceding year.

(b) The department considers a complaint justified if the complaint is a confirmed complaint.

(c) A "confirmed complaint" is a complaint for which the department receives information indicating that:

(1) an insurer committed any violation of:

(A) an applicable state insurance law or regulation;

(B) a federal requirement the department has authority to enforce; or

(C) the term or condition of an insurance policy or certificate; or

(2) the complaint and insurer's response, considered together, suggest that the insurer was in error or that the complainant had a valid reason for 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 October 2, 2012.

TRD-201205194
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: October 22, 2012
Proposal publication date: May 25, 2012
For further information, please call: (512) 463-6327

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

28 TAC §5.4608

The Texas Department of Insurance adopts new 28 TAC §5.4608, concerning appointment of engineers as qualified inspectors. This section is adopted with changes to the proposed text published in the July 13, 2012, issue of the *Texas Register* (37 TexReg 5192).

REASONED JUSTIFICATION. The new section implements Insurance Code §2210.254, which was amended by House Bill 3, 82nd Legislature, First Called Session, effective September 28, 2011. As amended by HB 3, §2210.254 requires a licensed professional engineer to be on the roster of engineers (roster) maintained by the Texas Board of Professional Engineers (TBPE) under Occupations Code §1001.652 in order for the commissioner to appoint that engineer as a qualified inspector (appointed engineer) to inspect structures for insurability through the Texas Windstorm Insurance Association.

The section requires appointed engineers to inform the department that they are on the roster no later than December 31, 2012. An engineer who is not on the roster may not act as an appointed engineer on or after January 1, 2013, and must apply or reapply for appointment.

Appointed engineers are integral to determining whether a structure is eligible for association windstorm and hail insurance coverage. The appointed engineer is responsible for the design and inspection of both new construction and repairs to existing structures. Disruption in the availability of appointed engineers to provide these services would be detrimental to the legislative purpose of Insurance Code Chapter 2210.

House Bill 3 did not establish a date by which an engineer must be on the roster in order to be appointed as a qualified inspector or any provisions excepting current appointed engineers from the roster requirement. House Bill 3 only directed the TBPE to adopt rules implementing the roster no later than December 1, 2011. Thus, as of September 28, 2011, the effective date of HB 3, no engineer did or could comply with Insurance Code §2210.254. Because compliance was impossible and enforcement would have disrupted the inspection process for policyholders and applicants for association insurance, the department determined that the legislature intended the roster requirement in Insurance Code §2210.254 to be implemented in an orderly manner, after the TBPE's implementation of the roster.

The TBPE timely adopted its rules and has fully implemented its processes for placing engineers on the roster. Because engineers can now be placed on the roster, the department implements, by adopting this rule, the roster requirement in Insurance Code §2210.254. To provide for an orderly transition, after December 31, 2012, only those engineers on the roster will be authorized to act as appointed engineers. Appointed engineers who inform the department that they are on the TBPE roster on or before December 31, 2012, may act as appointed engineers without reapplying for appointment. Appointed engineers who do not inform the department that they are on the TBPE roster on or before December 31, 2012, may reapply for an appointment after they have been placed on the roster. Engineers must provide confirmation that they are on the TBPE roster with their inspector application to be appointed as a qualified inspector on and after December 31, 2012. These requirements will fully implement Insurance Code §2210.254 as of January 1, 2013.

HOW THE SECTION WILL FUNCTION. Section 5.4608(a) states that §5.4608 adds to the appointment requirements in §5.4604 (relating to Appointment of Engineers as Qualified Inspectors) and provides that in the event of a conflict, §5.4608 shall control.

Section 5.4608(b) requires engineers appointed as a qualified inspector to be on the roster of engineers maintained by the TBPE under Occupations Code §1001.652. On or after January 1, 2013, an engineer who is not on the roster may not act as an appointed engineer. This prohibition is without regard to whether the engineer has an existing appointment.

Section 5.4608(c) describes how engineers may continue an existing appointment after December 31, 2012. Appointed engineers must submit to the department Form ENG-2, affirming that they are on the TBPE roster on or before December 31, 2012, or the department will cancel their appointments. Engineers whose appointments are canceled for failure to submit a Form ENG-2 on or before December 31, 2012, will need to reapply for appointment as qualified inspectors.

Section 5.4608(d) states that engineers applying for appointment as qualified inspectors must submit to the department Form ENG-2 affirming that they are on the TBPE roster. This requirement for new appointment applicants takes effect on the effective date of §5.4608.

Section 5.4608(e) states that after December 31, 2012, the department will not accept windstorm applications, certifications, or verifications from engineers who are not on the TBPE roster.

Section 5.4608(f) adopts Form ENG-2 by reference.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: A commenter writes that §5.4608 adds complication and is therein restrictive.

Agency Response: The department disagrees with the comment. Insurance Code §2210.254 limits the appointment of engineers as qualified inspectors to those engineers who qualify for the TBPE roster. Section 5.4608 establishes the procedure and time frame for engineers to demonstrate to the department that they meet the statutory requirement. Providing Form ENG-2 to TDI stating that the engineer is on the roster is neither complicated nor restrictive to an engineer that meets the statutory requirement.

Comment: A commenter writes that §5.4608 adds an unnecessary additional requirement that would impose superfluous regulatory constraints on experienced professional engineers.

Agency Response: The department disagrees with the comment. Occupations Code §1001.652 establishes the TBPE roster requirement. Insurance Code §2210.254 requires engineers who desire to perform windstorm building code inspections as qualified inspectors on structures seeking association insurance coverage to be on the TBPE roster. Section 5.4608 establishes the procedure and time frame for engineers to demonstrate to the department that they meet the statutory requirement. Section 5.4608 is necessary because it provides the commissioner with an affirmative statement that the engineer applying for appointment is on the TBPE roster.

Comment: A commenter writes that §5.4608 does not provide notice to each engineer with a qualified inspector appointment.

Agency Response: The commenter is correct, but personal notice of the section is not required. The commissioner adopts

§5.4608 after providing the notice and opportunity for comment required by Government Code Chapter 2001. Further, TBPE sent electronic notice of the proposal to licensed engineers.

Additionally, the rule itself provides notice to appointed inspectors and engineers interested in applying for appointment that they must inform the department that they are on the TBPE roster. Insurance Code §2210.254(a)(2), effective since September 28, 2011, establishes the roster requirement. The statute does not require the department to individually notify each appointed inspector. Appointed engineers and prospective inspector applicants are presumed to know and comply with the law.

Comment: A commenter writes that the department has no legislative authority to adopt §5.4608.

Agency Response: The department disagrees with the comment. Insurance Code §2210.255 authorizes the commissioner to adopt rules establishing the information to be considered in appointing engineers as qualified inspectors. Insurance Code §2210.254 defines a qualified inspector to include a professional engineer who is on the TBPE roster described in Occupations Code §1001.652 and who meets the requirements specified by commissioner rule to conduct windstorm inspections. Section 5.4608 establishes the procedure and time frame for engineers to demonstrate to the department that they meet the statutory requirement.

Comment: A commenter writes that the proposal seems to convey that engineers may not be placed on the roster after December 31, 2012.

Agency Response: The department disagrees with the comment. TBPE maintains the roster and the department is not aware of any restriction that TBPE has placed on engineers being placed on the roster after December 31, 2012. Section 5.4608(e) provides that engineers applying to be qualified inspectors after December 31, 2012, must be on the roster. The department presumes that those applicants will include engineers placed on the roster after December 31, 2012.

Comment: A commenter writes that the rule implies that windstorm design is limited only to those engineers on the roster appointed by the commissioner as qualified inspectors.

Agency Response: The department disagrees with the comment. Section 5.4608 applies only to construction and repairs that the association will insure, or that may otherwise require a certificate of compliance (WPI-8) from the department. The section does not apply to the design of structures that will not be insured by TWIA or otherwise require a certificate of compliance from the department.

Insurance Code §2210.258 requires all new construction, alteration, remodeling, enlargement, and repair of, or in addition to, any structure that is begun on or after June 19, 2009, to be inspected and determined to be in compliance with the windstorm building codes adopted in the association's plan of operation before the construction or repair may be issued a certificate of compliance and be eligible for association insurance coverage. Insurance Code §2210.254(b) provides that a windstorm inspection may be performed only by a commissioner appointed qualified inspector.

Comment: A commenter expresses concern that TDI is requiring the TBPE to keep a list of professional engineers. The commenter writes that a professional engineer is already on the TBPE roster.

Agency Response: The department disagrees with the comment. House Bill 3 added §1001.652 to the Occupations Code, requiring the TBPE to establish criteria for determining whether an engineer is qualified to provide engineering design services related to compliance with applicable windstorm certification standards under Insurance Code Chapter 2210. Occupations Code §1001.652(b) requires the TBPE to prepare and publish a roster of engineers who satisfy these criteria. Thus, the TBPE's roster will include only those professional engineers who have applied to be on the roster and who have met the TBPE's requirements.

Comment: A commenter expresses concern at the practice of referring to professional engineers as inspectors.

Agency Response: The reference is based on statute. Insurance Code §2210.254 and §2210.255 refer to engineers appointed to conduct windstorm inspections as "qualified inspectors."

Comment: Two commenters expressed concerns that it is redundant for the TBPE to maintain a roster and for the department to maintain its own list of appointed engineers.

Agency Response: The department disagrees that the TBPE's Roster and the list of appointed engineers will be redundant. The TBPE's roster will include those persons that seek to establish that they meet the TBPE's requirements to be on the roster. Not all of these engineers will seek appointment as qualified inspectors.

Under Insurance Code §2210.2551(a), the department has exclusive authority over all matters relating to the appointment of qualified inspectors and the physical inspection of structures for the purposes of Chapter 2210. Insurance Code §2210.2551(b) states that the commissioner by rule must establish criteria to ensure that an engineer seeking appointment as a qualified inspector has the knowledge and competence necessary to perform windstorm inspections. Placement on the TBPE roster does not guarantee that the commissioner will appoint an engineer as a qualified inspector.

PERSONS COMMENTING ON THE PROPOSAL.

Against: four individuals. No associations or groups commented on the published proposal.

STATUTORY AUTHORITY. New §5.4608 is adopted under Insurance Code §§2210.008, 2210.254, and 36.001.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules to implement Chapter 2210. Section 2210.254(a)(2) states that a qualified inspector includes a licensed professional engineer who is on the roster described by Occupations Code §1001.652 and authorizes the commissioner to adopt rules specifying the requirements for appointment to conduct windstorm inspections.

Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the department's powers and duties under the Insurance Code and other laws of the state.

§5.4608. Texas Board of Professional Engineers Roster.

(a) The requirements in this section are in addition to the appointment requirements set forth in §5.4604 of this title (relating to Appointment of Engineers as Qualified Inspectors). This section shall control over any conflicting provision in §5.4604 of this title.

(b) Each engineer appointed as a qualified inspector must be on the roster of engineers maintained by the Texas Board of Professional Engineers under Occupations Code §1001.652. An engineer who is not on the roster may not act as an appointed engineer on or after January 1, 2013.

(c) To continue an existing appointment after December 31, 2012, each appointed engineer must submit to the department Form ENG-2 no later than December 31, 2012, affirming that the engineer is on the roster of engineers maintained by the Texas Board of Professional Engineers under Occupations Code §1001.652. The department will cancel the appointment of each appointed engineer who does not submit the Form ENG-2 on or before December 31, 2012. An engineer whose appointment is canceled under this section may reapply for appointment as a qualified inspector.

(d) Each engineer applying for appointment as a qualified inspector must submit to the department Form ENG-2, affirming that the engineer is on the roster of engineers maintained by the Texas Board of Professional Engineers under Occupations Code §1001.652.

(e) After December 31, 2012, the department will not accept windstorm applications, certifications, or verifications from engineers who are not on the roster maintained by the Texas Board of Professional Engineers under Occupations Code §1001.652.

(f) Form ENG-2 is adopted by reference. The form may be obtained at www.tdi.texas.gov/forms/form13windstorm.html.

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 October 2, 2012.

TRD-201205196
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: October 22, 2012
Proposal publication date: July 13, 2012
For further information, please call: (512) 463-6327

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.18

The Texas Department of Insurance adopts amendments to 28 TAC §7.18, concerning the National Association of Insurance Commissioners Accounting Practices and Procedures Manual. These amendments are adopted with changes to the proposal published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4806) and will be republished. These amendments primarily adopt by reference the March 2012 version of *The Accounting Practices and Procedures Manual,* published and issued by the NAIC. Additionally, the amendments make conforming changes to §7.18 to reflect the adoption of this version.

In accord with Government Code §2001.033(a)(1), the department's reasoned justification for these rules is set out in this order, which includes the preamble and rules. The preamble contains a summary of the factual basis of the rules, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were in support of or in opposition to adoption of the rules, the reasons why the department agrees or disagrees with some of the comments and recommendations, and all other department responses to the comments.

The public comment period for the proposed amendments to §7.18 of this title closed on July 30, 2012. The department received one public comment.

REASONED JUSTIFICATION. *The Accounting Practices and Procedures Manual* (Manual), published and issued by the NAIC, incorporates the statements of statutory accounting principles (SSAPs) adopted by the NAIC. SSAPs provide a national standard for insurers and health maintenance organizations (collectively referred to as "carriers" in this order) on how to properly record business transactions for the purpose of statutory reporting. The NAIC adopts these SSAPs through its maintenance of statutory accounting principles process, which includes a series of open meetings that offer the public the opportunity to comment on proposed SSAPs, and the NAIC annually updates the Manual to reflect any changes to the SSAPs made through this process or other changes to the Manual.

The department uses the Manual as its source of statutory accounting principles when analyzing financial reports and for conducting statutory examinations and rehabilitations of carriers licensed in Texas unless a department rule or other state law provides otherwise. The department periodically adopts the Manual by reference, with certain modifications and exceptions, in §7.18 of this title to codify this usage. These adopted amendments update §7.18 of this title to adopt by reference the March 2012 version of the Manual, which substantively revises the March 2010 version of the Manual in several ways.

First, the March 2012 version of the Manual adds SSAP No. 94R, which the NAIC finalized on December 7, 2011. SSAP No. 94R revises SSAP No. 94 to allow entities to treat non-transferable state tax credits as admitted assets if specific criteria are met. The substantive revisions in SSAP No. 94R are effective for reporting periods ending on or after December 31, 2011.

Second, the March 2012 version of the Manual adds SSAP No. 101, which the NAIC finalized on August 30, 2011. SSAP No. 101 replaces SSAP No. 10R and SSAP No. 10 and provides revised statutory accounting principles for current and deferred federal and foreign income taxes and current state income taxes. SSAP No. 101 is effective for reporting periods ending on or after January 1, 2012. The March 2012 version of the Manual also makes five substantive placement revisions, which the NAIC finalized on August 30, 2011.

In addition, the adopted amendments to §7.18 of this title make conforming changes to the section, fully described below, that reflect the adoption of the March 2012 Manual. The adopted amendments also make nonsubstantive changes to §7.18 of this title that are necessary for the section to conform to current nomenclature, for reformatting, consistency, clarity, or editorial reasons, and to correct typographical and grammatical errors.

The department adopts these amendments to §7.18 of this title with changes from the amendments formally proposed on June 29, 2012. The department has replaced "making a determination on" to "determining" and "that preempts" to "preempting" in subsection (a). These changes are nonsubstantive and made for editorial reasons.

The department has also, in response to comment, amended subsection (c)(1) to provide that intercompany balances shall be settled within 90 days of the period for which the "amounts" rather than "services" are being billed. The change is necessary to clarify that the exception to SSAP No. 25 provided in subsection (c)(1) applies to all intercompany transactions addressed by SSAP No. 25, not only receivables resulting from services.

The department has also deleted the phrase "currently located in Appendix H" after "SSAP No. 25" in subsection (c)(1) and inserted the phrase "located in Appendix H" after "SSAP No. 96" in the same paragraph. This change is nonsubstantive and corrects a typographical error in the June 29, 2012, proposal.

The department has also, in response to comment, deleted subsection (c)(2), which provided "Retrospective premiums must be billed within 60 days of computation and audit premiums must be billed within 60 days of the completion of the audit in determining the beginning date from which the 90-day period is calculated to determine admissibility of uncollected premium balances under SSAP No. 6." The department has deleted this exception to the Manual because it is no longer necessary, and it can be burdensome for carriers for the reasons stated by the commenter. The department has also made conforming codification changes to subsection (c)(3) - (5) because of this change.

The department has also changed "Deputy Commissioner" to "deputy commissioner" in subsection (e). This change is nonsubstantive and corrects a formatting error in the June 29, 2012, proposal.

The department has also added "a" to subsection (e) between "use" and "deviated." This change is nonsubstantive and corrects a typographical error in the existing rule.

HOW THIS SECTION WILL FUNCTION. The adopted amendments to §7.18(a) and (b) update the reference to the Manual to refer to the March 2012 version of the Manual.

The adopted amendments to subsections (b) and (c) delete references to various SSAPs and to Issue Paper No. 99 because these SSAPs and issue paper are now included in the adopted March 2012 version of the Manual.

The adopted amendments to §7.18(c) redesignate the subdivisions of subsection (c) to reflect the deletion of paragraph (1). The adopted amendments to §7.18(c) also reflect that the NAIC moved guidance in SSAP No. 96, located in Appendix H of the Manual, to SSAP No. 25. The NAIC did this through adoption of a placement revision (Reference No. 2011-13). The adopted amendments also, in response to comment, amend paragraph (1) to provide intercompany balances shall be settled within 90 days of the period for which the "amounts" rather than "services" are being billed. The change is necessary to clarify that the exception to SSAP No. 25 provided in subsection (c)(1) applies to all intercompany transactions addressed by SSAP No. 25, not only receivables resulting from services. The department has also made conforming codification changes to subsection (c)(3) - (5) because the department has deleted subsection (c)(2).

The adopted amendments to §7.18(e) also reflect structural reorganization within the department. They change "Senior Associate Commissioner" to "deputy commissioner" and change "Financial Program" to "Financial Regulation Division."

SUMMARY OF COMMENTS AND AGENCY RESPONSES.

§7.18(c)

COMMENT: One commenter requests that the department review its proposed modifications and exceptions to the NAIC AP&P Manual. The commenter states that these accounting differences increase operating expenses for insurers that must maintain dual accounting records to comply with department rules and the NAIC AP&P Manual. The commenter notes that the proposal provides no justification for these modifications and that these exceptions and modifications conflict with the Consistency Concept in paragraph 31 of the AP&P Manual preamble, which Texas has also adopted.

AGENCY RESPONSE: The department declines to make a change based on the commenter's concerns. To clarify, the department did not justify its modifications and exceptions in its proposal to amend §7.18 of this title because the department did not propose any substantive amendments to these modifications or exceptions. Additionally, while the department acknowledges that carriers operating in multiple states may incur additional expenses based on the varying accounting requirements of different states, these expenses inevitably result from operating in multiple states and not from the adopted amendments of §7.18 of this title. The department disagrees that its adopted amendments to §7.18 of this title conflict with preamble to the Manual because the Manual's preamble expressly states that the Manual is not intended to preempt states' legislative and regulatory authority.

§7.18(c)(1)

COMMENT: One commenter requests that the department adopt SSAP No. 25, regarding the settlement of intercompany balances, without exception. The commenter states that §7.18(c)(1) modifies SSAP No. 25 to require settlement of uncollected balances within 90 days of the period for which the services are being billed instead of within 90 days of the written agreement due date as required by SSAP No. 25. The commenter disagrees with this modification because it requires dual accounting records for companies and could cause receivables to become nonadmitted before their written agreement due date. The commenter further states that §7.18(c)(1) requires commissioner approval of the written agreement underlying the transaction, and thus the commenter does not understand why the 90-day limit for settlement of uncollected balances is necessary in light of the commissioner approved due date in the written agreement. The commenter states there are often reasons for establishing a due date greater than 90 days from the service date.

AGENCY RESPONSE: The department disagrees and declines to make a change. The department did not propose any substantive change to the §7.18(c)(1) of this title, which has not substantively changed since 2007, so the commenter's concerns largely exceed the scope of this adoption order. The Manual does not preempt state regulatory authority, and the department generally has the authority under the Insurance Code, including Chapters 401, 404, 441, 843, and 36, to adopt this exception. This exception is one of many factors necessary to help ensure that, pursuant to Insurance Code §823.101, insurers benefit from fair and equitable transactions with affiliates and that the agreements do not provide for excessively distant due dates that would be unlikely to be agreed to with third parties.

COMMENT: One commenter asks if the term "services" in §7.18(c)(1) includes intercompany transactions such as the sale of property or loans to affiliates. The commenter further asks if loans are included as "services" what would be the billed date for a loan?

AGENCY RESPONSE: The department clarifies that the term "services" in the exception to SSAP No. 25 provided in subsection (c)(1) applies to all intercompany transactions addressed by SSAP No. 25, not only receivables resulting from services, and the department has changed "services" in subsection (c)(1) to "amounts" to reflect this clarification. The department further clarifies that the aging for the balances start from the last day of the period subject to the billing, not the billed date.

§7.18(c)(2)

COMMENT: One commenter urges the department to remove the §7.18(c)(2) exception to SSAP No. 6, regarding the admissibility criteria for retrospective and audit premiums in Texas. The commenter states that this removal would reduce burdens and costs for companies operating in multiple states. The commenter further states that under the Manual the time period for billing is established by the underlying policy or contract, rather than the prescribed 60-day limit of §7.18(c)(2), and the department already reviews those policies and contracts. The commenter believes the policy or contract time period should already be reasonable in light of this review. The commenter notes that the §7.18(c)(2) exception also differs from calculation requirements under paragraph 9 of SSAP No. 66 and SSAP and paragraph 12 of SSAP No. 53, regarding the admissibility of retrospective premiums and the admissibility of audit premiums, respectively.

AGENCY RESPONSE: The department agrees generally that this exception to the Manual is no longer necessary, and it has deleted the exception the from the rule.

NAMES OF THOSE COMMENTING FOR AND AGAINST THESE SECTIONS.

For: None.

Against: Insurance Council of Texas.

STATUTORY AUTHORITY. The amendments are adopted under the Insurance Code Chapters 32, 401, 404, 421, 425, 426, 441, 802, 823, 841, 843, 861, and 862, and §36.001. Sections 401.051 and 401.056 mandate that the department examine the financial condition of each carrier organized under the laws of Texas or authorized to transact the business of insurance in Texas and adopt by rule procedures for the filing and adoption of examination reports. Section 404.005(a)(2) authorizes the commissioner to establish standards for evaluating the financial condition of an insurer. Section 421.001(c) requires the commissioner to adopt each current formula recommended by the NAIC for establishing reserves for each line of insurance. Section 425.162 authorizes the commissioner to adopt rules, minimum standards, or limitations that are fair and reasonable as appropriate to supplement and implement the Insurance Code Chapter 425, Subchapter C. Section 426.002 provides that reserves required by §426.001 must be computed in accordance with any rules adopted by the commissioner to adequately protect insureds, secure the solvency of the workers' compensation insurance company, and prevent unreasonably large reserves. Section 441.005 authorizes the commissioner to adopt reasonable rules as necessary to implement and supplement Chapter 441 of the Insurance Code (Supervision and Conservatorship). Section 32.041 requires the department to furnish to the companies the required financial statement forms. Section 802.001 authorizes the commissioner to change the form of any annual statement required to be filed by any kind of insurance company, as necessary, to obtain an accurate indication of the company's condition and method of transacting business. Section 823.012 authorizes the commissioner to issue rules and orders necessary to implement the provisions of Chapter 823 of the Insurance Code (Insurance Holding Company Systems). Section 843.151 authorizes the commissioner to promulgate rules that are necessary and proper to implement the provisions of Chapter 843 of the Insurance Code (Health Maintenance Organizations). Section 843.155 requires HMOs to file annual reports with the commissioner, which include a financial statement of the HMO, certified by an independent public accountant. Sections 841.004(b), 861.255(b), and 862.001(c) authorize the commissioner to adopt rules defining electronic machines and systems, office equipment, furniture, machines, and labor saving devices, and the maximum period for which each such class may be amortized. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§7.18. National Association of Insurance Commissioners Accounting Practices and Procedures Manual.

(a) The purpose of this section is to adopt statutory accounting principles, which will provide insurers and health maintenance organizations, including accountants employed or retained by these entities, guidance as how to properly record business transactions for the purpose of accurate statutory reporting. The March 2012 version of the *Accounting Practices and Procedures Manual* (Manual) published by the National Association of Insurance Commissioners (NAIC), with the exceptions and modifications set forth in subsections (c) and (d) of this section, will be utilized as the guideline for statutory accounting principles in Texas to the extent the Manual does not conflict with provisions of the Insurance Code or rules of the department. The commissioner reserves all authority and discretion to resolve any accounting issues in Texas. When determining the proper accounting treatment for an insurance or health plan transaction, the commissioner will refer to the sources in paragraphs (1) - (6) of this subsection in the respective order of priority listed. The sources in paragraphs (1) - (3) of this subsection preempt any contrary provisions in the Manual. The department rules preempting any contrary provisions in the Manual, include, but are not limited to: §§3.1501 - 3.1505, 3.1601 - 3.1608, 3.4505(f), 3.6101, 3.6102, 3.7001 - 3.7009, 3.9101 - 3.9106, 3.9401 - 3.9404, 7.7, 7.85, and 11.803 of this title (relating to Annuity Mortality Tables; Actuarial Opinion and Memorandum Regulation; General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves; Policy Reserves; Claims Reserves; Minimum Reserve Standards for Individual and Group Accident and Health Insurance; the 2001 CSO Mortality Table; Preferred Mortality Tables; Subordinated Indebtedness, Surplus Debentures, Surplus Notes, Premium Income Notes, Bonds, or Debentures, and Other Contingent Evidences of Indebtedness; Audited Financial Reports; and Investments, Loans, and Other Assets).

(1) Texas statutes;

(2) department rules;

(3) directives, instructions, and orders of the commissioner;

(4) the Manual;

(5) other NAIC handbooks, manuals, and instructions, adopted by the department; and

(6) Generally Accepted Accounting Practices.

(b) The commissioner adopts by reference the March 2012 version of the Manual, with the exceptions and modifications set forth in subsections (c) and (d) of this section, as the source of accounting principles for the department when analyzing financial reports and for

conducting statutory examinations and rehabilitations of insurers and health maintenance organizations licensed in Texas, except where otherwise provided by law. This Manual that is adopted by reference with the exceptions and modifications specified in subsections (c) and (d) of this section will be applied to examinations conducted as of December 31, 2011, and thereafter, and also must be used to prepare all financial statements filed with the department for reporting periods beginning on or after December 31, 2011.

(c) The commissioner adopts the following exceptions and modifications to the Manual:

(1) Settlement requirements for intercompany transactions are subject to the accounting treatment in Statement of Statutory Accounting Principles (SSAP) No. 25 (previously SSAP No. 96 located in Appendix H), except that amounts owed to the reporting entity shall be settled by the due date in accordance with the written agreement and the requirements of §7.204 of this title (relating to Commissioner's Approval Required). Intercompany balances shall be settled within 90 days of the period for which the amounts are being billed; otherwise the balances shall be nonadmitted.

(2) Electronic machines, constituting a data processing system or systems and operating systems software used in connection with the business of an insurance company acquired after December 31, 2000, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and shall be amortized as provided by the Manual. Property acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be amortized in full over a period not to exceed ten years.

(3) Furniture, labor-saving devices, machines, and all other office equipment may be admitted as an asset as permitted by the Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and, for property acquired after December 31, 2000, depreciated in full over a period not to exceed five years. Property acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be depreciated in full over a period not to exceed ten years.

(4) All certificates of deposit, of any maturity, may be classified as cash and are subject to the accounting treatment contained in SSAP No. 2, notwithstanding the provisions of SSAP No. 26.

(d) A farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association that has less than $6 million in annual direct written premiums need not comply with the Manual.

(e) In the event a domestic insurer desires to deviate from the accounting guidance in a Texas statute or any applicable regulation, the insurer must file a written request for a permitted accounting practice and obtain approval prior to using the accounting deviation in a financial statement. The filing must be made with the deputy commissioner of the Financial Regulation Division, Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104 at least 30 days before filing the financial statement that is proposed to be affected by the deviated accounting practice. Insurers must not use a deviated accounting practice without the department's prior approval.

(f) This section shall not be construed to either broaden or restrict the authority provided under the Insurance Code to insurers, including health maintenance organizations.

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 October 2, 2012.

TRD-201205195
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: October 22, 2012
Proposal publication date: June 29, 2012
For further information, please call: (512) 463-6327

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 72. MEMORANDUM OF UNDERSTANDING WITH OTHER STATE AGENCIES

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §72.102, concerning a memorandum of understanding (MOU) with regard to the long-term care state plan for the elderly; §72.104, concerning a relocation pilot program; Subchapter D, Memorandum of Understanding for Family Planning Programs, containing §72.401, concerning an MOU with regard to statewide coordinated family planning programs; Subchapter E, Memorandum of Understanding Concerning the Capacity Assessment of Persons Who Are Elderly and Persons with an Intellectual Disability and/or Developmental Disabilities, containing §72.501, concerning an MOU with regard to a uniform assessment tool for assessing decision-making capacity; Subchapter F, Memorandum of Understanding for Releasing Physically Handicapped Inmates, containing §72.601, concerning an MOU with regard to releasing physically handicapped inmates; Subchapter G, Memorandum of Understanding Concerning Elderly Inmates, containing §72.801, concerning an MOU with regard to continuity of care for elderly inmates; Subchapter H, Memorandum of Understanding on Transition Planning for Students Enrolled in Special Education, containing §72.1001, concerning an MOU on transition planning for students enrolled in special education; Subchapter I, Memorandum of Agreement Concerning the Texas Department on Aging Options for Independent Living Program, containing §72.2001, concerning a memorandum of agreement with the Texas Department on Aging; and Subchapter M, MOU--Continuity of Care System for Offenders with an Intellectual Disability, containing §72.5002, concerning an MOU with regard to a continuity of care system for offenders with mental impairments, in Chapter 72, Memorandum of Understanding with Other State Agencies, without changes to the proposal as published in the July 6, 2012, issue of the *Texas Register* (37 TexReg 5103).

The repeal is adopted to delete unnecessary rules concerning MOUs in which the former Texas Department of Human Services, the former Texas Department of Mental Health and Mental Retardation, or both, were parties. The rules are unnecessary because the statute requiring an MOU has been repealed or amended so DADS is not a required party to the MOU; the rule contains an obsolete version of an MOU; the rule relates to

a pilot program that has ended; or the rule duplicates another rule section.

DADS received no comments regarding adoption of the repeal.

SUBCHAPTER A. MEMORANDA OF UNDERSTANDING FOR LONG-TERM CARE

40 TAC §72.102, §72.104

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 October 2, 2012.

TRD-201205177
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 22, 2012
Proposal publication date: July 6, 2012
For further information, please call: (512) 438-4162

SUBCHAPTER D. MEMORANDUM OF UNDERSTANDING FOR FAMILY PLANNING PROGRAMS

40 TAC §72.401

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 October 2, 2012.

TRD-201205178
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 22, 2012
Proposal publication date: July 6, 2012
For further information, please call: (512) 438-4162

SUBCHAPTER E. MEMORANDUM OF UNDERSTANDING CONCERNING THE CAPACITY ASSESSMENT OF PERSONS WHO ARE ELDERLY AND PERSONS WITH AN INTELLECTUAL DISABILITY AND/OR DEVELOPMENTAL DISABILITIES

40 TAC §72.501

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 October 2, 2012.

TRD-201205179
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 22, 2012
Proposal publication date: July 6, 2012
For further information, please call: (512) 438-4162

SUBCHAPTER F. MEMORANDUM OF UNDERSTANDING FOR RELEASING PHYSICALLY HANDICAPPED INMATES

40 TAC §72.601

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 October 2, 2012.

TRD-201205180

Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 22, 2012
Proposal publication date: July 6, 2012
For further information, please call: (512) 438-4162

SUBCHAPTER G. MEMORANDUM OF UNDERSTANDING CONCERNING ELDERLY INMATES

40 TAC §72.801

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 October 2, 2012.

TRD-201205181
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 22, 2012
Proposal publication date: July 6, 2012
For further information, please call: (512) 438-4162

SUBCHAPTER H. MEMORANDUM OF UNDERSTANDING ON TRANSITION PLANNING FOR STUDENTS ENROLLED IN SPECIAL EDUCATION

40 TAC §72.1001

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 October 2, 2012.

TRD-201205182
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 22, 2012
Proposal publication date: July 6, 2012
For further information, please call: (512) 438-4162

SUBCHAPTER I. MEMORANDUM OF AGREEMENT CONCERNING THE TEXAS DEPARTMENT ON AGING OPTIONS FOR INDEPENDENT LIVING PROGRAM

40 TAC §72.2001

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 October 2, 2012.

TRD-201205183
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 22, 2012
Proposal publication date: July 6, 2012
For further information, please call: (512) 438-4162

SUBCHAPTER M. MOU--CONTINUITY OF CARE SYSTEM FOR OFFENDERS WITH AN INTELLECTUAL DISABILITY

40 TAC §72.5002

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 October 2, 2012.

TRD-201205184
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 22, 2012
Proposal publication date: July 6, 2012
For further information, please call: (512) 438-4162

CHAPTER 100. MISCELLANEOUS
SUBCHAPTER B. INTERAGENCY AGREEMENTS

40 TAC §§100.51 - 100.55, 100.57, 100.58, 100.64, 100.75

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of Subchapter B, Interagency Agreements, consisting of §100.51, concerning purpose; §100.52, concerning application; §100.53, concerning definitions; §100.54, concerning a memorandum of understanding (MOU) regarding provision, regulation, and funding of services in hospitals and long-term care facilities; §100.55, concerning an MOU regarding coordination of services to disabled persons; §100.57, concerning an MOU regarding coordination of delivery of mental health and intellectual disability services to hearing-impaired or deaf persons; §100.58, concerning an MOU regarding coordination of exchange and distribution of public awareness information; §100.64, concerning an MOU regarding the relocation pilot program; and §100.75, concerning distribution, in Chapter 100, Miscellaneous, without changes to the proposal as published in the July 6, 2012, issue of the *Texas Register* (37 TexReg 5107).

The repeal is adopted to delete unnecessary rules concerning MOUs to which the former Texas Department of Mental Health and Mental Retardation was a party. The rules are unnecessary because they adopt by reference a rule containing an MOU found elsewhere in DADS rules, adopt by reference a rule that has been repealed, or relate to a pilot program that has ended.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 October 2, 2012.

TRD-201205185
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 22, 2012
Proposal publication date: July 6, 2012
For further information, please call: (512) 438-4162

Review Of Agency Rules

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plans

Texas Public Finance Authority

Title 34, Part 10

TRD-201205265
Filed: October 9, 2012

Proposed Rule Reviews

Texas Board of Pardons and Paroles

Title 37, Part 5

Under the 1997 General Appropriations Act, Article IX, §167, Review of Agency Rules, the Texas Board of Pardons and Paroles files this notice of intent to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 37, Part 5, Chapter 146, concerning Revocation of Parole or Mandatory Supervision; Chapter 147, concerning Hearings; Chapter 149, concerning Mandatory Supervision; and Chapter 150, concerning Memorandum of Understanding and Board Policy Statements.

The Board undertakes its review pursuant to Government Code, §2001.039. The Board will accept comments for 30 days following the publication of this notice in the *Texas Register* and will assess whether the reasons for adopting the sections under review continue to exist. Proposed changes to the rule 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 Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Any questions or written comments pertaining to this notice of intention to review should for the next 30-day comment period be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to bettie.wells@tdcj.state.tx.us.

TRD-201205212
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Filed: October 4, 2012

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of a Texas Water Code and Texas Health and Safety Code Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: Harris County, Texas and the State of Texas acting by and through the Texas Commission on Environmental Quality v. PMSV River Oaks LP, et al., Cause No. 2011-52524-A, in the 215th Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendants PMSV River Oaks, LP, SF Properties, LLC, Redonda Properties, Inc., and Seven BC Company are past or current owners and operators of a closed dry cleaning facility located on San Felipe Road, Houston, Texas, referred to as the Hallmark Facility. Historical discharges of dry cleaning solvents had contaminated the soil and groundwater under the facility.

Proposed Agreed Judgment: The Agreed Final Judgment assesses a civil penalty of $1,961,625.00 against Defendant Redonda Properties; $90,000.00 jointly against Defendants PMSV River Oaks, LP and SF Properties, LLC; and $35,000.00 against Defendant Seven BC Company, all of which are to be divided equally between Harris County and the State of Texas. In addition, the State of Texas will recover attorney's fees of $10,000.00 against Defendant Redonda Properties; $10,000.00 against Defendants PMSV River Oaks, LP and SF Properties, LLC; and $5,000.00 against Defendant Seven BC Company.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201205251
Katherine Cary
General Counsel
Office of the Attorney General
Filed: October 9, 2012

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Comptroller of Public Accounts

Notice of Intent to Amend Contract

Pursuant to Chapter 403 and Chapter 2254, Subchapter B, Texas Government Code, and Chapter 54, Texas Education Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces this notice of intent to extend an existing major consulting services contract with AKF Consulting LLC, located at 186 Riverside Drive, Suite 600, New York, NY 10024.

The contract was awarded under Request for Proposals (RFP #198a), published in the May 14, 2010, issue of *Texas Register* (35 TexReg 3877), for the provision of consulting and technical advice and assistance to the Comptroller and the Board in the ongoing administration of the Texas Guaranteed Tuition Plan, the Texas Tuition Promise Fund®, the Texas College Savings Plan®, and the LoanStar 529 Plan®.

The total maximum amount of the contract, $100,000.00, will not change with this amendment. The original term of the contract, from December 10, 2010 through December 31, 2012, will be extended to December 31, 2013. There will be one (1) option to renew for one (1) additional one (1) year term.

TRD-201205266
Jennifer W. Sloan
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: October 10, 2012

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/15/12 - 10/21/12 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 10/15/12 - 10/21/12 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-201205252
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 9, 2012

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Texas Board of Professional Engineers

Advisory Opinion Regarding Designated Engineering Representatives

The Texas Board of Professional Engineers (Board) is given authority to issue advisory opinions under Chapter 1001, Subchapter M of the

Occupations Code (Texas Engineering Practice Act). The Board is required to issue an advisory opinion about interpretations of the Texas Engineering Practice Act in regard to a specific existing or hypothetical factual situation if requested by a person and to respond to that request within 180 days.

The Board issued an Advisory Opinion regarding whether a federally designated engineering representative (DER) was also required to hold a Texas professional engineering license to perform services in Texas as a DER. The Board approved an Office of the Attorney General Opinion, GA-0955, regarding the matter at its regularly scheduled Board meeting on August 16, 2012. This opinion may be viewed at: https://www.oag.state.tx.us/opinions/opinions/50abbott/op/2012/pdf/ga0955.pdf.

TRD-201205234
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: October 8, 2012

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is November 19, 2012. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on November 19, 2012. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: Amit Haldar dba Flagship Truck Stop; DOCKET NUMBER: 2012-1121-PST-E; IDENTIFIER: RN102028156; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $1,925; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: ANNETTE GOODRUM, INCORPORATED dba Kicks Club an Association of Persons; DOCKET NUMBER: 2012-1456-PWS-E; IDENTIFIER: RN101194892; LOCATION: Angleton, Brazoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(c), by failing to submit complete and accurate engineering plans and specifications to the executive director and obtain approval of the plans and specifications prior to the construction of a new public water system; PENALTY: $110; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Brushy Creek Water Supply Corporation; DOCKET NUMBER: 2012-0953-PWS-E; IDENTIFIER: RN101205474; LOCATION: Montalba, Anderson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of Well Number 2; 30 TAC §290.45(b)(1)(D)(iii) and Texas Health and Safety Code, §341.0315(c), by failing to provide two or more service pumps that have a total capacity of at least 2.0 gallons per minute per connection at each pump station or pressure plane; and 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to the customers of the facility within 24 hours of a water outage using the prescribed format in 30 TAC §290.47(e); PENALTY: $1,410; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Caney Creek Municipal Utility District of Matagorda County and Caney Creek Municipal Utility District; DOCKET NUMBER: 2012-1145-PWS-E; IDENTIFIER: RN101260586 (Live Oak Bend Facility) and RN101384717 (Matagorda County Facility); LOCATION: Sargent, Matagorda County; TYPE OF FACILITY: public water supplies; 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; PENALTY: $855; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: City of Amarillo; DOCKET NUMBER: 2012-1264-PST-E; IDENTIFIER: RN102518438 (Facility 1) and RN100237551 (Facility 2); LOCATION: Amarillo, Potter County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tank systems; PENALTY: $6,875; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: City of Brownsville; DOCKET NUMBER: 2012-1150-AIR-E; IDENTIFIER: RN102830585; LOCATION: Brownsville, Cameron County; TYPE OF FACILITY: incinerator; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization to dispose of medical waste; Permit by Rule (PBR) Registration Number 91676, 30 TAC §106.491(a) and (c)(1)(A), and THSC, §382.085(b), by failing to comply with the PBR conditions for dual-chamber incinerators; PBR Registration Number 91676, 30 TAC §106.491(c)(4), and THSC, §382.085(b), by failing to have the manufacturer's recommended operating instructions posted at

the incinerator; and PBR Registration Number 91676, 30 TAC §106.8(c)(2)(B) and §106.491(d)(5), and THSC, §382.085(b), by failing to maintain complete records of the type of waste burned and the hours of operation; PENALTY: $2,988; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: City of Rusk; DOCKET NUMBER: 2012-1801-WQ-E; IDENTIFIER: RN103000766; LOCATION: Rusk, Cherokee County; TYPE OF FACILITY: municipal services; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: Columbia Medical Center of McKinney Subsidiary, L.P.; DOCKET NUMBER: 2012-1515-PST-E; IDENTIFIER: RN102275781 (Facility 1) and RN101571933 (Facility 2); LOCATION: McKinney, Collin County; TYPE OF FACILITY: hospitals that have backup diesel generators and underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii), (5)(A)(i) and (B)(ii), and Texas Health and Safety Code, §26.3467(a), 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 also by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST system; PENALTY: $2,626; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: ConocoPhillips Specialty Products, Incorporated; DOCKET NUMBER: 2012-1802-WQ-E; IDENTIFIER: RN103121216; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (817) 588-5800.

(10) COMPANY: Crockett County Consolidated Independent School District; DOCKET NUMBER: 2012-1200-PST-E; IDENTIFIER: RN101785673; LOCATION: Ozona, Crockett County; TYPE OF FACILITY: refueling facility; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.49(c)(2)(C) and (4) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, and also by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 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: $7,751; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(11) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2012-0861-AIR-E; IDENTIFIER: RN100216035; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Air Permit Number 4351, Special Conditions Number 1, Federal Operating Permit Number O1961, General Terms and Conditions and Special Terms and Conditions Number 13, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions. Since this event could have been avoided by better maintenance and/or operational practices, the respondent is precluded from asserting an affirmative defense under 30 TAC §101.222; PENALTY: $7,500; Supplemental Environmental Project offset amount of $3,000 applied to Southeast Texas Regional Planning Commission - Southeast Texas Regional Air Monitoring Network Ambient Air Monitoring Station; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: Federal Aviation Administration; DOCKET NUMBER: 2012-0678-PST-E; IDENTIFIER: RN105513006; LOCATION: Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) for an emergency back up generator; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii), (5)(A)(i) and (B)(ii), and Texas Health and Safety Code, §26.3467(a), 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 also by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST system; 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(b) and (c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and also by failing to provide release detection for the suction piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for review upon request by agency personnel; PENALTY: $8,500; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: FOREST GLEN, INCORPORATED; DOCKET NUMBER: 2012-1224-MWD-E; IDENTIFIER: RN103015376; LOCATION: Houston, 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 (TPDES) Permit Number WQ0011844001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0011844001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2011, by September 1, 2011; PENALTY: $10,500; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Gary L. Broadus dba Broadway Express; DOCKET NUMBER: 2012-1340-PST-E; IDENTIFIER: RN101999852; LOCATION: Granbury, Hood 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 also by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $2,942; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: J. & A. GROCERY, INCORPORATED dba Meyer's Kwik Stop; DOCKET NUMBER: 2012-1208-PST-E; IDENTIFIER: RN102839248; LOCATION: Tolar, Hood 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 also 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 making them immediately available for inspection upon request by agency personnel; PENALTY: $9,129; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: JAMIL ENTERPRISES, INCORPORATED dba Quick & Easy 2; DOCKET NUMBER: 2012-1387-PST-E; IDENTIFIER: RN101810687; LOCATION: Wharton, Wharton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii), (5)(A)(i) and (B)(ii), and Texas Health and Safety Code, §26.3467(a), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date and also by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST system; and 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: $4,443; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Jetta Operating Company, Incorporated; DOCKET NUMBER: 2012-0951-AIR-E; IDENTIFIER: RN106214273; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.085(b) and §382.0518(a), by failing to obtain authorization to construct and operate a source of air emissions; and 30 TAC §122.121 and §122.130(b) and THSC, §382.054 and §382.085(b), by failing to obtain a Federal Operating Permit; PENALTY: $16,075; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Katherine S. Reiser dba Vivid Landscaping; DOCKET NUMBER: 2012-1072-LII-E; IDENTIFIER: RN106347511; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: landscaping; RULE VIOLATED: 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing oneself to the public as a holder of a license or registration unless in possession of a current license or registration or unless employing an individual who holds a current license; PENALTY: $237; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Luminant Big Brown Mining Company LLC and Luminant Mining Company LLC; DOCKET NUMBER: 2012-1321-IWD-E; IDENTIFIER: RN103013892; LOCATION: Fairfield, Freestone County; TYPE OF FACILITY: lignite mines; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number WQ0002700000, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, for Outfall Numbers 001 and 201, by failing to comply with permitted effluent limitations; PENALTY: $5,558; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(20) COMPANY: M & M Skillman, LLC; DOCKET NUMBER: 2012-0995-PST-E; IDENTIFIER: RN101553162; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3) and §334.8(c)(4)(C), by failing to notify the agency of any change or additional information regarding the underground storage tank (UST) within 30 days of the occurrence of the change or addition and also by failing to renew a delivery certificate by submitting a properly completed UST registration and new certification within 30 days of the ownership change; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 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 UST; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) and also by failing to provide proper release detection for the pressurized piping associated with the UST system; PENALTY: $6,037; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Martin-Tomlinson Roofing Company, Incorporated; DOCKET NUMBER: 2012-1031-PST-E; IDENTIFIER: RN101552099; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: fleet refueling; 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 also by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: $2,635; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: MRV Corporation dba Tiger Stop 2; DOCKET NUMBER: 2012-0485-PST-E; IDENTIFIER: RN101781094; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii), (5)(A)(i) and (B)(ii), and Texas Health and Safety Code, §26.3467(a), by failing to timely 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 prior to the certificate expiration date and also 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 §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the UST system; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank identification number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the UST system within 30 days from the date of occurrence of the change or addition, PENALTY: $7,652; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(23) COMPANY: P & H Mining Equipment, Incorporated; DOCKET NUMBER: 2012-1821-WQ-E; IDENTIFIER: RN105415947; LOCATION: Kilgore, Gregg County; TYPE OF FACILITY: mining; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(24) COMPANY: Panhandle Northern Railroad LLC; DOCKET NUMBER: 2012-1827-WQ-E; IDENTIFIER: RN100556315; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: transportation; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(25) COMPANY: Pasadena Refining System, Incorporated; DOCKET NUMBER: 2010-2073-AIR-E; IDENTIFIER: RN100716661; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: petroleum refining plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Federal Operating Permit (FOP) Number O1544, Special Terms and Conditions (STC) Number 17, Air Permit Number 76192, Special Conditions (SC) Number 6, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the required minimum level of pH in the Sorbent Regeneration System Caustic Scrubber (Unit ID VTLSG001) scrubbing solution; 30 TAC §116.115(c) and §122.143(4), FOP Number O1544, STC Number 17, Air Permit Number 22039, SC Number 6, and THSC, §382.085(b), by failing to operate Boiler 6 (Unit ID BLRHT006) within the required carbon monoxide limit of 50 parts per million (ppm) for a total of 685 hours; 30 TAC §116.115(c) and §122.143(4), FOP Number O1544, STC Numbers 1A and 17, Air Permit Number 6059, SC Number 12, 40 Code of Federal Regulations (CFR) §60.104(a)(2)(i), and THSC, §382.085, by failing to limit the in-stack hourly average for sulfur dioxide in the Sulfur Recovery Unit (SRU) Tail Gas Incinerator (Unit ID SRUIN001) to 250 ppm; 30 TAC §116.115(c) and §122.143(4), FOP Number O1544, STC Number 17, Air Permit Number 6059, SC Number 4, and THSC, §382.085(b), by failing to maintain the SRU Tail Gas Incinerator (Unit ID SRUIN001) at or above the minimum temperature of 1,250 degrees Fahrenheit and at the required oxygen level of 3%; 30 TAC §§115.725(l), 115.764(a)(3), 116.115(c) and 122.143(4), FOP Number O1544, STC Number 1A, Air Permit Number 56389, SC Number 6E, and THSC, §382.085(b), by failing to operate the Highly Reactive Volatile Organic Compounds analyzers for the East and West Flares (Unit IDs FLRFNEAST and FLRFNWEST) and for the Complex Cooling Tower (Unit ID FUCTWCPX), at least 95% of the operational time averaged over a calendar year; 30 TAC §116.115(c) and §122.143(4), FOP Number O1544, STC Number 17, Air Permit Number 6059, SC Number 5, and THSC, §382.085(b), by failing to maintain the required minimum flame zone temperature of 2,300 degrees Fahrenheit for the SRU and the Thermal Reactor; 30 TAC §116.115(c) and §122.143(4), FOP Number O1544, STC Number 17, Air Permit Number 56389, SC Number 1, and THSC, §382.085(b), by failing to comply with the annual allowable emissions rate; 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O1544, STC Number 2F, and THSC, §382.085(b), by failing to report an emissions event (Number 2008-224); 30 TAC §116.115(c) and §122.143(4), FOP Number O1544, STC Number 17, Air Permit Numbers 20246 and 56389, SC Numbers 4 and 14, and THSC, §382.085(b), by failing to demonstrate compliance with the hourly fill rate for Volatile Organic Compound Storage Tank Numbers 118, 330, and 820 from October 1, 2008 - September 30, 2009; and 30 TAC §116.115(c) and §122.143(4), FOP Number O1544, STC Numbers 1A and 17, Air Permit Numbers 5953, 20246, and 22039, SC Numbers 1, 4, and 12, CFR §60.104(a)(1), and THSC, §382.085, by failing to limit the amount of hydrogen sulfide in fuel gas streams to 160 ppm; PENALTY: $757,153; Supplemental Environmental Project offset amount of $378,576 applied to Houston - Galveston Area Emission Reduction Credit Organization's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Richards Independent School District; DOCKET NUMBER: 2012-1257-MWD-E; IDENTIFIER: RN101513489; LOCATION: Grimes 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 WQ0013527001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limits for total suspended solids; PENALTY: $2,237; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(27) COMPANY: Ridu Corporation dba 1st Choice Food Mart; DOCKET NUMBER: 2012-1061-PST-E; IDENTIFIER: RN102447828; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,250; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Schultz, Juan; DOCKET NUMBER: 2012-1803-WOC-E; IDENTIFIER: RN106463615; LOCATION: Kingwood, Harris County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: The Original Adventure Camp, Incorporated; DOCKET NUMBER: 2011-2174-PWS-E; IDENTIFIER: RN101194561; LOCATION: Kerr County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(1)(A) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level for fecal coliform and escherichia coli for the month of October 2010; and 30 TAC §290.116(b)(2) and §290.122(b), by failing to complete corrective action or be in compliance with an approved corrective action plan and schedule within 120 days of receiving notification from a laboratory of fecal indicator-positive raw groundwater source samples and by failing to provide notification to the customers of the facility regarding the failure to complete corrective action; PENALTY: $1,536; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(30) COMPANY: Travis County Water Control and Improvement District Number 20; DOCKET NUMBER: 2012-1144-PWS-E; IDENTIFIER: RN102677705; LOCATION: Austin, Travis 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 0.08 milligrams per liter for total trihalomethanes based on a running annual average; PENALTY: $165; ENFORCEMENT COORDINATOR:

Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-1808, (512) 339-2929.

TRD-201205249
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 9, 2012

Notice of Availability of the Draft 2012 Clean Water Act, §305(b) and §303(d) Integrated Report

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the Draft 2012 Clean Water Act (CWA), §305(b) and §303(d) Integrated Report. The Report is an overview of the status of surface waters in the state. Factors considered in evaluating the status of water bodies include concerns for public health, fitness for use by aquatic species and other wildlife, and specific pollutants and their possible sources. The Report includes a draft summary of water bodies that do not support beneficial uses or water quality criteria and those water bodies that demonstrate cause for concern. The Report is used by the TCEQ to support water quality management activities including monitoring; water quality standards revisions; total maximum daily loads; watershed protection plans; and best management practices to control pollution sources.

The report will be available October 19, 2012 on the TCEQ Web site at: *http://www.tceq.texas.gov/compliance/monitoring/water/quality/data/12twqi/public_comment.html.* Information regarding the public comment period may also be found on this Web site. Review and comment on individual water bodies and the summaries, as described on this Web site, are encouraged through the end of the comment period on November 19, 2012.

After the public comment period, the TCEQ will evaluate all additional data or information received. Changes made in response to any additional data or information submitted will be reflected in the Draft 2012 Integrated Report which will be submitted to the United States Environmental Protection Agency (EPA) for approval.

The TCEQ will consider and respond to comments received during the comment period, in a "Response to Comments" document. The Response to Comments and the Draft 2012 Integrated Report will be posted on the Web site when the TCEQ sends the draft to the EPA. Comments must be received by 5:00 p.m. on November 19, 2012. Information must be submitted in writing via e-mail, post, fax, or special delivery, and cannot be accepted by phone. *(http://www.tceq.texas.gov/compliance/monitoring/water/quality/data/12twqi/public_comment.html.)*

Individuals unable to access documents on the TCEQ Web site may contact Andrew Sullivan, Texas Commission on Environmental Quality, Water Quality Planning Division, MC 234, P.O. Box 13087, Austin, Texas 78711-3087 or (512) 239-4587.

TRD-201205242
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 9, 2012

Notice of Correction - Order to Terminate Agreed Order TPDES Permit Number WQ0010353002 with the City of Lubbock

In the October 5, 2012, issue of the *Texas Register* (37 TexReg 8071), the Texas Commission on Environmental Quality published a notice entitled "TCEQ Docket No. 2012-1903; Notice to Terminate Agreed Order TPDES Permit Number WQ0010353002 with the City of Lubbock" (TRD-201205090).

Under Findings of Fact Number 1, the following two sentences have been removed: "The City purchased two sections of land in 1988 (now known as the 'Hancock Land Application Site' or 'HLAS') that were added to the Gray Farm, providing additional acreage for land application of treated effluent. The City's Facilities contain elevated levels of nitrates."

One new sentence was added to Findings of Fact Number 1: "The City's Facility contains elevated levels of nitrates."

For questions concerning this error, please contact Kari L. Gilbreth at (512) 239-1320.

TRD-201205241
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 9, 2012

Notice of Correction to Agreed Order Number 14

In the September 21, 2012, issue of the *Texas Register* (37 TexReg 7507), the Texas Commission on Environmental Quality published a notice of Agreed Orders. Agreed Order Number 14, concerning Invista S.a.r.l, which appeared on page 7509, has been revised. The Supplemental Environmental Project should be Harris County - Ambient Air Pollutants Monitoring Study instead of Houston Regional Monitoring Corporation - Houston Area Air Monitoring.

For questions concerning this error, please contact Debra Barber at (512) 239-0412.

TRD-201205248
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 9, 2012

Notice of District Petition

Notices issued October 4, 2012.

TCEQ Internal Control No. D-02022012-002; South Rains Water Supply Corporation (the "Petitioner") filed a resolution with the Texas Commission on Environmental Quality (TCEQ) to convert South Rains Water Supply Corporation to South Rains Special Utility District of Rains County. The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapters 291 and 293; and the procedural rules of the TCEQ. The nature and purpose of the petition are for the conversion of South Rains Water Supply Corporation and the organization, creation and establishment of South Rains Special Utility District of Rains County under the provisions of Article XVI, Section 59, Texas Constitution, and Chapter 65 of the Texas Water Code, as amended. The District shall have the purposes and powers in Chapters 49 and 65 of the Texas Water Code to provide water, and Certificate of Convenience and Necessity No. 10487 shall be transferred as provided in Chapter 13, of the Texas Water Code, as amended. The nature of the services presently performed by South Rains Water Supply Corporation are

to supply water for municipal uses, domestic uses, power and commercial purposes, and other beneficial uses or controls. The nature of the services proposed to be provided by South Rains Special Utility District of Rains County are supply water for municipal uses, domestic uses, power and commercial purposes, and other beneficial uses or controls. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers.

TCEQ Internal Control No. D-07242012-022; Lookout Partners, L.P. and Key-Deer Holdings, L.P. (collectively, "Petitioner") filed a petition for creation of Travis County Municipal Utility District No. 19 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is an only one lienholder, Prosperity Bank, on the property to be included in the proposed District and the before mentioned entity has consented to the petition; (3) the proposed District will contain wholly approximately 624.20 acres located in Travis County, Texas; and (4) the proposed District is within the corporate boundaries of the City of Leander, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 12-035-00, effective July 5, 2012, the City of Leander, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016 and authorized the Petitioner to initiate proceedings to create this political subdivision within its jurisdiction. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend maintain and operate a waterworks and sanitary sewer system for domestic and commercial purposes; (2) purchase, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition; (4) construct, acquire, improve, maintain, and operate such additional facilities, systems, plants, and enterprises as shall be consistent with the purposes for which the District is created; (5) finance one or more facilities designed or utilized to perform fire fighting services; and (6) purchase, construct, acquire, improve, extend, maintain, operate, improvements, facilities, and equipment for the purpose of providing parks and recreational facilities to the extent authorized and permitted under state law and construct, acquire, or improve certain road facilities. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioner, from the information available at this time, that the cost of said project will be approximately $65,882,000.

TCEQ Internal Control No. D-07242012-023; Lookout Partners, L.P. and Key-Deer Holdings, L.P. (collectively, "Petitioner") filed a petition for creation of Travis County Municipal Utility District No. 20 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is an only one lienholder, Prosperity Bank, on the property to be included in the proposed District and the before mentioned entity has consented to the petition; (3) the proposed District will contain approximately 754.55 acres located in Travis County, Texas; and (4) the proposed District is wholly within the corporate boundaries of the City of Leander, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 12-036-00, effective July 5, 2012, the City of Leander, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016 and authorized the Petitioner to initiate proceedings to create this political subdivision within its jurisdiction. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend, maintain, and operate a waterworks and sanitary sewer system for domestic and commercial purposes; (2) purchase, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition; (4) construct, acquire, improve, maintain, and operate such additional facilities, systems, plants, and enterprises as shall be consistent with the purposes for which the District is created; (5) finance one or more facilities designed or utilized to perform fire fighting services; (6) purchase, construct, acquire, improve, extend, maintain, and operate improvements, facilities, and equipment for the purpose of providing recreational facilities to the extent authorized and permitted under state law; and (7) construct, acquire, or improve certain road facilities. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioner, from the information available at this time, that the cost of said project will be approximately $63,924,000.

TCEQ Internal Control No. D-07242012-024; Lookout Partners, L.P. and Key-Deer Holdings, L.P. (collectively, "Petitioner") filed a petition for creation of Travis County Municipal Utility District No. 21 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is an only one lienholder, Prosperity Bank, on the property to be included in the proposed District and the before mentioned entity has consented to the petition; (3) the proposed District will contain approximately 739.85 acres located in Travis County, Texas; and (4) the proposed District is wholly within the corporate boundaries of the City of Leander, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 12-034-00, effective July 5, 2012, the City of Leander, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016 and authorized the Petitioner to initiate proceedings to create this political subdivision within its jurisdiction. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend, maintain, and operate a waterworks and sanitary sewer system for domestic and commercial purposes; (2) purchase, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition; (4) construct, acquire, improve, maintain, and operate such additional facilities, systems, plants, and enterprises as shall be consistent with the purposes for which the District is created; (5) finance one or more facilities designed or utilized to perform fire fighting services; (6) purchase, construct, acquire, improve, extend, maintain, and operate improvements, facilities, and equipment for the purpose of providing

recreational facilities to the extent authorized and permitted under state law; and (7) construct, acquire, or improve certain road facilities. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioner, from the information available at this time, that the cost of said project will be approximately $56,717,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-201205269
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 10, 2012

Notice of Water Quality Applications

The following notices were issued on September 28, 2012 through October 5, 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

TEXAS DEPARTMENT OF TRANSPORTATION, operates the Texas Department of Transportation-Beaumont District Municipal Separate Storm Sewer System (MS4), has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004644000 to authorize storm water point source discharges to surface water in the state from the Texas Department of Transportation-Beaumont District MS4. The MS4 is located within the corporate boundary of the City of Beaumont, in Jefferson County, Texas 77701-77710, 77713, 77720, 77725, and 77726.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495078, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 8,000,000 gallons per day. The facility is located at 2450 Rankin Road, south of and adjacent to Rankin Road and approximately 3,000 feet east of the Aldine-Westfield and Rankin Road intersection in the City of Houston in Harris County, Texas 77032.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 119 has applied for a renewal of TPDES Permit No. WQ0011024001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 995,000 gallons per day. The facility is located approximately 2,000 feet south of Spring Cypress Road and 5,000 feet east of the intersection of Louetta Road and Spring Cypress Road in Harris County, Texas 77379.

TRINITY RIVER AUTHORITY OF TEXAS has applied for a renewal of TPDES Permit No. WQ0011310001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located at 21 Wolf Creek Park Road, approximately 0.3 mile from Farm-to-Market Road 224 at a point approximately 2.7 miles southeast of the intersection of State Highway 156 and Farm-to-Market Road 224 in San Jacinto County, Texas 77331.

NATIONAL OILWELL VARCO LP an oilfield pipe inspection service, has applied for a renewal of TPDES Permit No. WQ0012386001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day. The facility is located at 10222 Sheldon Road, Houston, Texas, approximately 1/4 mile south of the intersection of Old Beaumont Highway and Sheldon Road, on the east side of Sheldon Road in Harris County, Texas 77049.

JM TEXAS LAND FUND NO 4 LP has applied for a renewal of TPDES Permit No. WQ0014799001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility will be located approximately 5,000 feet south and 1,700 feet east of the intersection of Betka Road and U.S. Highway 290 in Harris County, Texas 77447.

CITY OF PENITAS has applied for a renewal of TPDES Permit No. WQ0014884001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located at 2300 Chihuahua Road approximately 2,000 feet east of the intersection of 19th Street and Military Road (1427) in Hidalgo County, Texas 78576.

LOCHINVAR GOLF CLUB has applied for a renewal of TPDES Permit No. WQ0014891001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located at 2000 Farrell Road, approximately 2,100 feet east-southeast of the intersection of Hardy Road and Farrell Road and 2.3 miles east-northeast of the intersection of Interstate Highway 45 and Kuykendahl Road in Harris County, Texas 77073.

TRINITY @ WINDFERN LLC has applied for a new permit, proposed TPDES Permit No. WQ0015040001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0013509001 which expired on March 1, 2012. The facility is located at 9401 Windfern Road approximately 300 feet

south of Zaka Road and approximately 3 miles north of the intersection of Windfern Road and U.S. Highway 290 in Harris County, Texas 77064.

SOUTH CENTRAL WATER COMPANY has applied for a new permit, proposed TPDES Permit No. WQ0015046001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility will be located 2000 feet southwest of the intersection of Ranch Road 869 and County Road 133 in Reeves County, Texas 79772.

If you need more information about these permit applications or the permitting process, please call the Texas Commission on Environmental Quality (TCEQ) Public Education Program, toll free, at 1-800-687-4040. General information about the TCEQ can be found on our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201205268
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 10, 2012

Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5780.

Deadline: Semiannual Report due January 17, 2012, for Candidates and Officeholders

Randall Dale Parker, 6440 N. Central Expy., Ste. 205, Dallas, Texas 75206-4123

Deadline: Semiannual Report due July 16, 2012, for Candidates and Officeholders

Delicia Herrera, P.O. Box 37238, San Antonio, Texas 78237

Deadline: Semiannual Report due July 16, 2012, for Committees

Alejandro Martinez, 4600 Mueller Blvd. #1028, Austin, Texas 78723-3191

Deadline: Lobby Activities Report due January 10, 2012

Ben Campbell, P.O. Box 91294, Austin, Texas 78709-1294

Deadline: Personal Financial Statement due December 9, 2010

Cheryl D. Patterson, 1795 Laubach Rd., Seguin, Texas 78155

Deadline: Personal Financial Statement due November 3, 2011

Joshua Daniel Baker, 215 Fieldstone Place, College Station, Texas 77845-5763

TRD-201205208
David Reisman
Executive Director
Texas Ethics Commission
Filed: October 3, 2012

Texas Facilities Commission

Request for Proposals #303-3-20356

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), the Department of Family and Protective Services (DFPS), and the Department of Aging and Disability Services (DADS), announces the issuance of Request for Proposals (RFP) #303-3-20356. TFC seeks a five (5) or ten (10) year lease of approximately 8,357 square feet of office space in Carrizo Springs, Dimmit County, Texas.

The deadline for questions is November 5, 2012, and the deadline for proposals is November 13, 2012, at 3:00 p.m. The award date is January 16, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=102814.*

TRD-201205273
Kay Molina
General Counsel
Texas Facilities Commission
Filed: October 9, 2012

Department of State Health Services

Amendment to the Schedules of Controlled Substances

The one hundred twelfth United States Congress passed and the President signed the Food and Drug Administration Safety and Innovation Act (FDASIA) effective July 9, 2012. Subtitle D of FDASIA, entitled "Synthetic Drug Abuse Act" placed multiple new hallucinogenic and cannabimimetic agents into Schedule I of the Federal Controlled Substances Act.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced action was signed; and David L. Lakey, M.D., in the capacity as Commissioner of the Texas Department of State Health Services, hereby orders that the substances listed below be added to Schedule I, effective October 3, 2012.

2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent.

3-(1-naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent.

3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent.

1-(1-naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent.

3-phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent.

5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (Other names: CP-47,497);

5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (Other names: cannabicyclohexanol or CP-47,497 C8 homolog);

1-pentyl-3-(1-naphthoyl)indole (Other names: JWH-018 and AM678);

1-butyl-3-(1-naphthoyl)indole (Other names: JWH-073);

1-hexyl-3-(1-naphthoyl)indole (JWH-019);

1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (Other names: JWH-200);

1-pentyl-3-(2-methoxyphenylacetyl)indole (Other names: JWH-250);

1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (Other names: JWH-081);

1-pentyl-3-(4-methyl-1-naphthoyl)indole (Other names: JWH-122);

1-pentyl-3-(4-chloro-1-naphthoyl)indole (Other names: JWH-398);

1-(5-fluoropentyl)-3-(1-naphthoyl)indole (Other names: AM2201);

1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (Other names: AM694);

1-pentyl-3-[(4-methoxy)-benzoyl]indole (Other names: SR-19 and RCS-4);

1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (Other names: SR-18 and RCS-8); and,

1-pentyl-3-(2-chlorophenylacetyl)indole (Other names: JWH-203).

Any substances that are named above shall be deleted from the section entitled Schedule I Temporarily Scheduled substances if there is a duplicate entry.

SCHEDULES

Nomenclature: Controlled substances listed in these schedules are included by whatever official, common, usual, chemical, or trade name they may be designated.

SCHEDULE I

Schedule I consists of:

Schedule I opiates

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Schedule I opium derivatives

***

Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

(1) Alpha-ethyltryptamine (some trade or other names: etryptamine; Monase; alpha ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; AET);

(2) alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers;

(3) 4-bromo-2,5-dimethoxyamphetamine (some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA);

(4) 4-bromo-2,5-dimethoxyphenethylamine (some trade or other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB);

(5) 2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA);

(6) 2,5-dimethoxy-4-ethylamphetamine (some trade or other names: DOET);

(7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers;

(8) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers;

(9) 5-methoxy-3,4-methylenedioxy-amphetamine;

(10) 4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

(11) 1-methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (MPTP);

(12) 4-methyl-2,5-dimethoxyamphetamine (some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methyl-phenethylamine; "DOM"; and "STP");

(13) 3,4-methylenedioxy-amphetamine;

(14) 3,4-methylenedioxy-methamphetamine (MDMA, MDM);

(15) 3,4-methylenedioxy-N-ethylamphetamine (some trade or other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA);

(16) 3,4,5-trimethoxy amphetamine;

(17) N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

(18) 5-methoxy-N,N-dimethyltryptamine (Some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT;

(19) Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine);

(20) Diethyltryptamine (some trade and other names: N,N-Diethyltryptamine; DET);

(21) Dimethyltryptamine (some trade and other names: DMT);

(22) Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)-ethylamine; cyclohexamine; PCE);

(23) Ibogaine (some trade or other names: 7-Ethyl-6,6-beta, 7,8,9,10,12,13-octhydro-2-methoxy-6,9-methano-5H-pyrido[1',2':1,2] azepino [5,4-b] indole; taber-nanthe iboga);

(24) Lysergic acid diethylamide;

(25) Marihuana;

(26) Mescaline;

(27) N-benzylpiperazine (some other names: BZP; 1-benzylpiperazine), its optical isomers, salts and salts of isomers;

(28) N-ethyl-3-piperidyl benzilate;

(29) N-methyl-3-piperidyl benzilate;

(30) Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl);

(31) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora,* whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(32) Psilocybin;

(33) Psilocin;

(34) Pyrrolidine analog of phencyclidine (some trade or other names: 1-(1-phenyl-cyclohexyl)-pyrrolidine, PCPy, PHP);

(35) Tetrahydrocannabinols;

meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers;

6 cis or trans tetrahydrocannabinol, and their optical isomers; and

3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.);

(36) Thiophene analog of phencyclidine (some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-thienyl analog of phencyclidine; TPCP);

(37) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (some trade or other names: TCPy);

*(38) 4-methylmethcathinone (Other names: 4-methyl-N-methylcathinone; mephedrone);

*(39) 3,4-methylenedioxypyrovalerone (MDPV);

*(40) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (Other names: 2C-E);

*(41) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (Other names: 2C-D);

*(42) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (Other names: 2C-C);

*(43) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (Other names: 2C-I);

*(44) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (Other names: 2C-T-2);

*(45) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (Other names: 2C-T-4);

*(46) 2-(2,5-Dimethoxyphenyl)ethanamine (Other names: 2C-H);

*(47) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (Other names: 2C-N); and

*(48)2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (Other names: 2C-P).

Schedule I stimulants

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Schedule I depressants

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*Schedule I Cannabimimetic agents

Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) The term 'cannabimimetic agents' means any substance that is a cannabinoid receptor type 1 (CB1 receptor) agonist as demonstrated by binding studies and functional assays within any of the following structural classes:

(1-1) 2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent.

(1-2) 3-(1-naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent.

(1-3) 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent.

(1-4) 1-(1-naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent.

(1-5) 3-phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent.

(2) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (Other names: CP-47,497);

(3) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (Other names: cannabicyclohexanol or CP-47,497 C8 homolog);

(4) 1-pentyl-3-(1-naphthoyl)indole (Other names: JWH-018 and AM678);

(5) 1-mutyl-3-(1-naphthoyl)indole (Other names: JWH-073);

(6) 1-hexyl-3-(1-naphthoyl)indole (JWH-019);

(7) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (Other names: JWH-200);

(8) 1-pentyl-3-(2-methoxyphenylacetyl)indole (Other names: JWH-250);

(9) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (Other names: JWH-081);

(10) 1-pentyl-3-(4-methyl-1-naphthoyl)indole (Other names: JWH-122);

(11) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (Other names: JWH-398);

(12) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (Other names: AM2201);

(13) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (Other names: AM694);

(14) 1-pentyl-3-[(4-methoxy)-benzoyl]indole (Other names: SR-19 and RCS-4);

(15) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (Other names: SR-18 and RCS-8); and

(16) 1-pentyl-3-(2-chlorophenylacetyl)indole (Other names: JWH-203).

*Schedule I temporarily listed substances subject to emergency scheduling

Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) 3,4-methylenedioxy-N-methylcathinone (methylone), its salts, isomers.

Note: Schedule changes are noted with a single asterisk.

TRD-201205240
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: October 9, 2012

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	Advanced Corrosion Technologies and Training, L.L.C. dba Acct - Advanced Corrosion Technologies and Training, L.L.C.	L06508	Angleton	00	09/20/12

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Alvin	Ascend Performance Materials Operations, L.L.C.	L06271	Alvin	03	09/26/12
Andrews	Lotus, L.L.C.	L05147	Andrews	23	09/24/12
Arlington	GE Healthcare	L05693	Arlington	14	09/18/12
Arlington	Irfan Shah, M.D.	L06109	Arlington	02	09/24/12
Arlington	LML Engineering, Inc.	L06173	Arlington	04	09/26/12
Austin	St. David's Healthcare Partnership, L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	114	09/26/12
Beaumont	Advanced Cardiovascular Specialists, L.L.P.	L05512	Beaumont	17	09/26/12
Beaumont	Cray Valley USA, L.L.C.	L05937	Beaumont	06	09/24/12
Benbrook	Weatherford International, Inc.	L04286	Benbrook	91	09/17/12
Brownwood	3M Company	L00918	Brownwood	45	09/26/12
College Station	Energy Laboratories, Inc.	L06171	College Station	04	09/27/12
Conroe	CHCA Conroe, L.P. dba Conroe Regional Medical Center	L01769	Conroe	90	09/27/12
Dallas	Tenet Hospitals Limited a Texas Ltd. Partnership dba Doctors Hospital at White Rock Lake	L01366	Dallas	52	09/19/12
Dallas	Cardinal Health	L02048	Dallas	142	09/18/12
Dallas	Cardiology Consultants of Texas	L04997	Dallas	42	09/26/12
Dallas	Triad Isotopes, Inc.	L06334	Dallas	02	09/17/12
Fort Worth	Cook Childrens Medical Center	L04518	Fort Worth	20	09/28/12
Fort Worth	Heartplace, P.A.	L05883	Fort Worth	09	09/26/12
Fort Worth	Weaver Boos Consultants, L.L.C.	L06395	Fort Worth	04	09/27/12
Houston	Halliburton Energy Services, Inc.	L02113	Houston	121	09/24/12
Houston	METCO	L03018	Houston	214	09/19/12
Houston	Paradigm Consultants, Inc.	L04875	Houston	09	09/25/12
Houston	Geoscience Engineering and Testing, Inc.	L05180	Houston	11	09/26/12
Houston	Leachman Cardiology Associates, P.A.	L05229	Houston	11	09/27/12
Houston	Comprehensive Heart Care, P.A.	L05710	Houston	09	09/21/12
Houston	University General Hospital, L.P.	L06018	Houston	10	09/28/12
Lewisville	Texas Oncology, P.A. dba Lake Vista Cancer Center	L05526	Lewisville	23	09/25/12
Luling	Luling Perforators, Inc.	L05870	Luling	03	09/20/12
Mont Belvieu	Sonic Surveys, Ltd.	L02622	Mont Belvieu	26	09/26/12
Nacogdoches	TH Healthcare, Ltd. A Limited Texas Partnership dba Nacogdoches Medical Center	L02853	Nacogdoches	47	09/18/12
Odessa	Golder CAT Scan and MRI Center	L04770	Odessa	09	09/26/12
Orange	Tin, Inc. dba International Paper	L01029	Orange	63	09/24/12
Pasadena	Chevron Phillips Chemical Company, L.P.	L00230	Pasadena	85	09/26/12

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Pasadena	Equistar Chemicals, L.P.	L01854	Pasadena	43	09/25/12
Round Rock	Calibration Solutions, L.L.C.	L06447	Round Rock	01	09/20/12
San Angelo	San Angelo Hospital, L.P. dba San Angelo Community Medical Center	L02487	San Angelo	50	09/20/12
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	138	09/20/12
San Antonio	VHS San Antonio Imaging Partners, L.P. dba Baptist M&S Imaging Centers	L04506	San Antonio	82	09/28/12
San Antonio	AECOM Technical Services, Inc.	L05449	San Antonio	10	09/19/12
San Antonio	Schnitzler Cardiovascular Consultants	L05792	San Antonio	12	09/26/12
Sugar Land	Schlumberger Technology Corporation	L01833	Sugar Land	169	09/25/12
Texas City	Marathon Petroleum Company, L.L.C.	L04431	Texas City	31	09/27/12
Throughout TX	Nondestructive & Visual Inspection, L.L.C.	L06162	Carthage	07	09/19/12
Throughout TX	National Inspection Services, L.L.C.	L05930	Crowley	33	09/25/12

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
L05954	East Texas Medical Center Mt. Vernon	L05954	Mt. Vernon	07	09/21/12

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201205254
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: October 9, 2012

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Texas Department of Housing and Community Affairs

Announcement of Public Comment Period and Public Hearing Schedule for Comment

The Texas Department of Housing and Community Affairs (TDHCA) announces the opening of the public comment period for the *2013 HOME, Housing Tax Credit and Housing Trust Fund Regional Allocation Formula (RAF) Methodology.* The public comment period begins Monday, October 15, 2012, and ends Monday October 29, 2012, at 5:00 p.m.

Pursuant to Texas Government Code, §2306.1115 and §2306.111(d), the Department is required to use an RAF to allocate its HOME, Housing Tax Credit, and Housing Trust Fund funding. The RAF uses appropriate statistical data to measure affordable housing needs and available resources in 13 State Service Regions used for planning purposes. The RAF is revised annually to reflect current data, respond to public comment, and better assess regional housing needs and available resources.

In response to public comments for the 2012 draft RAF, the 2013 draft RAF has undergone substantial changes. New information has become available since the RAF began in 2000, and, after careful and thorough analysis, staff recommends a series of changes to increase accuracy and transparency. The proposed changes to the RAF were outlined in a Position Paper and were discussed via online forum from August 10 to September 10, 2012. As a result of the online forum, additional models of the RAF were developed and presented to the public at a Roundtable for the Housing Tax Credit (HTC) RAF on September 26, 2012. As a result of the Roundtable, an addendum to the Position Paper was created on September 28, 2012, and posted online with the Position Paper. The Position Paper, materials discussed at the Roundtable and the First Addendum are all available online at http://www.tdhca.state.tx.us/housing-center/pubs.htm.

The public hearing for the RAF will be held on:

October 24, 2012 (Wednesday)

1:00 p.m.

Stephen F. Austin Building

Room 172

1700 North Congress Avenue

Austin, Texas 78701

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at least two (2) days before the scheduled hearing, at (512) 475-3943 or Relay Texas at 1-800-735-2989, so that appropriate arrangements can be made.

The RAF Methodology will be available on the Department's website at http://www.tdhca.state.tx.us/housing-center/pubs.htm. A hard copy of RAF Methodology can be requested by contacting the Housing Resource Center via mail at TDHCA, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, or phone at (512) 475-3800, or email at info@tdhca.state.tx.us.

Public comment on the RAF Methodology may be provided in writing via mail at Elizabeth Yevich, TDHCA, P.O. Box 13941, Austin, Texas 78711-3941, or fax at (512) 475-1672, or email at elizabeth.yevich@tdhca.state.tx.us.

TRD-201205209
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 3, 2012

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Texas Department of Insurance, Division of Workers' Compensation

Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation proposed new 28 TAC §126.17, concerning General Provisions Applicable to All Benefits, in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7868).

Two errors occur in the rule preamble. The errors and the corrected text follow.

Page 7868, second column, second to last paragraph, first sentence.

The phrase "maximum medical impairment" should be "maximum medical improvement". The corrected sentence reads as follows:

"Proposed new §126.17 sets forth guidelines prescribing the circumstances under which an examination by a treating doctor or referral doctor to determine any issue under Labor Code §408.0041(a), other than maximum medical improvement and impairment rating, may be appropriate."

Page 7869, first column, last paragraph, first sentence.

The closing parenthesis should follow the word "Reimbursement" instead of the word "examination". The corrected sentence reads as follows:

"Proposed new §126.17(c) provides that the insurance carrier shall reimburse the injured employee reasonable travel expenses as specified in Chapter 134, Subchapter B of this title (relating to Miscellaneous Reimbursement) incurred in attending an appropriate medical examination."

TRD-201205256

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Texas Department of Licensing and Regulation

Vacancy on Licensed Breeders Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces a vacancy on the Licensed Breeders Advisory Committee (Committee) established by Texas Occupations Code, Chapter 802. The purpose of the Committee is to advise the Texas Commission of Licensing and Regulation (Commission) and the Department on: matters related to the administration and enforcement of Texas Occupations Code, Chapter 802, including licensing fees and standards adopted under Subchapter E.

The Committee is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Committee consists of the following members: two members who are licensed breeders; two members who are veterinarians; two members who represent animal welfare organizations each of which has an office based in this state; two members who represent the public; and one member who is an animal control officer as defined in §829.001, Texas Health and Safety Code. Members of the Committee serve staggered four-year terms. The terms of four or five members expire on February 1 of each odd-numbered year. This announcement is for the position of a veterinarian.

Interested persons should submit an application on the Department's website at: https://www.license.state.tx.us/AdvisoryBoard/login.aspx. You may also download an application from: http://www.license.state.tx.us/applications/BRE%20Application.pdf. Applicant's can also request an application from the Texas Department of Licensing and Regulation by telephone: (800) 803-9202; FAX: (512) 475-2874; or e-mail: advisory.boards@license.state.tx.us.

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201205279
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: October 10, 2012

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Vacancy on Water Well Drillers Advisory Council

The Texas Department of Licensing and Regulation (Department) announces a vacancy on the Water Well Drillers Advisory Council (Council) established by the Texas Occupations Code, Chapter 1901. The pertinent rules may be found in 16 TAC §76.650. The purpose of the Council is to advise the Texas Commission of Licensing and Regulation (Commission) on the contents of the licensing examination, the evaluation and recommendation of standards for continuing education programs, and rules for adoption by the Commission relating to the regulation of drillers registered under this chapter.

The Council is composed of nine members appointed by the presiding officer of the Commission, with the approval of the Commission. The Council consists of six licensed drillers who are residents of this state. One driller shall be selected from the state at large and one of each of the remaining five drillers shall be selected from the Gulf Coast, Trans-Pecos, Central Texas, Northeast Texas, and the Panhandle-South Plains areas. Three members must be representatives of the public. A person is not eligible for public membership if the person or the person's spouse is licensed by an occupational regulatory agency in the field of well drilling, or is employed by, participates in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization related to the field of well drilling. Members serve

staggered six-year terms expiring September 15. This announcement is for a public member.

Interested persons should submit an application on the Department's website at: https://www.license.state.tx.us/AdvisoryBoard/login.aspx. You may also download an application from: http://www.license.state.tx.us/applications/BRE%20Application.pdf. Applicant's can also request an application from the Texas Department of Licensing and Regulation by telephone: (800) 803-9202; FAX: (512) 475-2874; or e-mail: advisory.boards@license.state.tx.us.

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201205278
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: October 10, 2012

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Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

PerkinElmer (TLLRWDCC #1-0018-00)

549 Albany Street

Boston, Massachusetts 02118

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by November 5, 2012. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

3616 Far West Blvd., Suite 117 #294

Austin, Texas 78731

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201205236
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: October 8, 2012

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Public Utility Commission of Texas

Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On October 9, 2012, Cedar Valley Communications and Cedar Valley Communications, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend their service provider certificates of operating authority (SPCOA) Numbers 60766 and 60239. The Applicants represent that both companies went bankrupt in 2004 and have not operated since.

The Application: Application of Cedar Valley Communications and Cedar Valley Communications, Inc. to Relinquish Service Provider Certificates of Operating Authority, Docket Number 40825.

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 telephone at (512) 936-7120 or toll-free at (888) 782-8477 no later than October 26, 2012. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 40825.

TRD-201205267
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 10, 2012

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Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to P.U.C. Substantive Rule §26.208(h).

Docket Title and Number: Application of Southwestern Bell Telephone Company d/b/a AT&T Texas to Withdraw ComCall for Residence Customers, Docket Number 40767.

The Application: On September 20, 2012, pursuant to P.U.C. Substantive Rule §26.208(h), Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T Texas) filed an application to withdraw ComCall for residential customers. AT&T Texas proposes to discontinue the service effective December 31, 2012. AT&T Texas stated that the service has been grandfathered for many years and only has 64 customers subscribing to the service. As an alternative to ComCall, many traditional telephone sets have intercom functionality. Additionally, customers can use a wireless phone to call or text in order to accomplish the same purpose as ComCall was intended to provide. The proceedings were docketed and suspended on September 21, 2012, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at (800) 735-2989. All inquiries should reference Docket Number 40767.

TRD-201205264
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 9, 2012

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Rio Grande Council of Governments

Request for Proposals

The Rio Grande Council of Governments, Dispute Resolution Center is requesting proposals from qualified training instructor/instructors to perform a total of three (3) 40-Hour Basic Mediation training courses throughout Fiscal Year 2013.

Proposals will be received at its office located at 8037 Lockheed, Suite 100, El Paso, Texas 79925 on October 15, 2012 by no later than 5:00 p.m. MDT. Proposal packets may be obtained at www.riocog.org or by calling (915) 533-0998.

TRD-201205224
Stella Rodriguez
Executive Administrative Assistant
Rio Grande Council of Governments
Filed: October 5, 2012

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Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

The City of Bryan, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the City of Bryan Coulter Field during the course of the next five years through multiple grants.

Current Project: City of Bryan Coulter Field. TxDOT CSJ No.: 1317BRYAN.

Scope of Work: Engineering/design services to construct electrical vault and associated switch gear, install PAPI-2 Runway 14-32, Runway shoulder grading, and replace MIRLs at City of Bryan Coulter Field.

There is no DBE goal for the current project. The TxDOT Project Manager is Ed Mayle.

Future scope work items for engineering/design services within the next five years may include the following:

1. Construct parallel and stub Taxiways
2. Construct Hangar access road and gate off Wallis Road
3. Reconstruct apron and hangar access Taxiways
4. Reconstruct North Taxiway B
5. Rehabilitate Taxiway A
6. Rehabilitate apron, apron access Taxiway, and Hangar access Taxiways
7. Rehabilitate and mark parallel Taxiway
8. Rehabilitate T-hangar access Taxiways
9. Rehabilitate and mark Runway 15-33
10. Overlay and mark Taxiway B
11. Regrade shoulders and ditches along Parallel Taxiway B
12. Regrade Terminal area for drainage
13. Pave 3 grass islands to improve drainage
14. Pave Taxiway shoulder at Taxiway B to improve drainage
15. Install vertical moisture barrier
16. Fencing improvements
17. Update Airport Layout Plan

The City of Bryan reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation, the criteria, a 5010 drawing, and the most recent Airport Layout Plan are available online at http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Coulter Field." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/inside-txdot/division/aviation/projects.html. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

SIX completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **November 13, 2012, 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of **Beverly Longfellow, Grant Manager.**

The consultant selection committee will be composed of Aviation Division staff members and one local Sponsor member. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at http://www.txdot.gov/inside-txdot/division/aviation/projects.html. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager, x4516. For technical questions, please contact Ed Mayle, Project Manager, x4528.

TRD-201205275
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 10, 2012

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Notice of Intent - US 290/SH 71 West from SL 1 (Mopac) to RM 1826 Environmental Impact Statement, Travis County, Texas

Pursuant to 43 TAC §2.103(a), the Texas Department of Transportation (department), in cooperation with the Federal Highway Administration and the Central Texas Regional Mobility Authority, is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed transportation project. The EIS for the proposed project, U.S. Highway 290 (US 290)/State Highway (SH) 71 West from State Loop 1 (SL 1 (Mopac)) to Ranch-to-Market Road (RM) 1826 project in Travis County, Texas, will evaluate the proposed improvement of US 290 from SL 1 to RM 1826, a distance of approximately 3.6 miles. The EIS will also evaluate improvements to SH 71 from Silvermine Drive to US 290, a distance of approximately 1.2 miles.

The EIS will evaluate potential impacts from construction and operation of the project, including, but not limited to, the following: impacts or potential displacements to residents and businesses; detours; air and noise impacts from construction equipment, and operation of the project; water quality impacts from the construction area and from roadway storm water runoff; impacts to waters of the United States; impacts to historic and archeological resources; impacts to floodplains and irrigation canals; impacts to socio-economic resources (including environmental justice and limited English proficiency populations); indirect impacts; cumulative impacts; land use; vegetation; wildlife; and aesthetic and visual resources. The EIS will address the water quality of the Edwards Aquifer, potential changes to Williamson Creek and state and federally-listed species including the Barton Springs salamander.

The department will consider several alternatives intended to satisfy the identified purpose and need. The alternatives will include the no-build alternative, Transportation System Management/Transportation Demand Management, mass transit, and roadway build alternatives. The roadway build alternatives may range from a two-lane road to a six-lane road, may include limited access and non-limited access (arterial) designs, and toll and non-toll lanes. Alternative designs and funding alternatives will include tolling options or new managed lanes. In addition, environmental stewardship and sustainability strategies will be developed to address those problems that are not transportation related and may include improved service quality and quality of access to goods and services, safety, improved air quality, noise reduction, improved water quality, protection of habitat and open space, historic preservation, reduced carbon emissions, increased social equity, economic development, and a satisfying quality of life, plus local goals consistent with the overall project purpose and need.

The project may require the following approvals by the federal government: a Section 404 Permit from the U.S. Army Corps of Engineers for dredge and placement of fill within waters of the U.S. and approval from the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act for impacts to federally-listed threatened or endangered species. The actual approvals required may change after the department completes field surveys and selects the alignment for the project.

A scoping meeting is an opportunity for participating agencies, cooperating agencies, and the public to be involved in defining the purpose and need for the proposed project, to assist in determining the range of alternatives for consideration in the draft EIS, and to comment on methodologies to evaluate alternatives. A scoping meeting has been scheduled for Thursday, November 15, 2012 from 6:00 - 8:00 p.m. at Clint Small Jr. Middle School, 4801 Monterey Oaks Boulevard, Austin, Texas 78749. The department will publish notice in newspapers of general circulation in the project area at least 30 days prior to the meeting, and again approximately 10 days prior to the meeting.

The department will complete the procedures for public participation and coordination with other agencies as described in one or both the National Environmental Policy Act and state law. In addition to any scoping meetings, the department will hold a series of meetings to solicit public comment during the environmental review process. They will be held during appropriate phases of the project development process. Public notices will be given stating the date, time, and location of the meeting or hearing and will be published in English. Provisions will be made for those with special communication needs, including translation if requested. The department will also send correspondence to federal, state, and local agencies, and to organizations and individuals who have previously expressed or are known to have an interest in the project, which will describe the proposed project and solicit comments. The department invites comments and suggestions from all interested parties to ensure that the full range of issues related to the proposed project are identified and addressed. Comments or questions should be directed to the department at the address set forth below.

The department currently anticipates that the draft EIS will be completed in December, 2014, and the EIS will be approved in December, 2015.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be sent to Mr. Carlos Swonke, P.E., Director, Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483; (512) 416-3001.

TRD-201205274
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 10, 2012

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Notice of Request for Proposal

The Texas Department of Transportation (department) announces a Request for Proposal (RFP) for:

1. State Planning Assistance - 49 U.S.C. §5304, 43 Texas Administrative Code (TAC) §31.22

2. Rural Transportation Assistance - 49 U.S.C. §5311(b)(3), 43 TAC §31.37

3. Intercity Bus - 49 U.S.C. §5311(f), 43 TAC §31.36

4. Rural Discretionary - 49 U.S.C. §5311 - Discretionary Program, 43 TAC §31.36

These public transportation projects will be funded through the Federal Transit Administration (FTA) §§5304, 5311(b)(3), 5311(f), and 5311 - Discretionary program. It is anticipated that multiple projects from multiple funding programs will be selected for State Fiscal Year 2014. Project selection will be administered by the Public Transportation Division (PTN). Selected projects will be awarded in the form of grants, with payments made for allowable reimbursable expenses or for defined deliverables. The proposer will become a sub-recipient of the department.

Purpose: The RFP invites proposals for services to develop, promote, coordinate, or support public transportation. The objectives for these proposals are to support the non-urbanized and small urban areas of Texas, to support services to meet the intercity travel needs of residents, or to support the infrastructure of the public transportation network through planning, marketing assistance, local match assistance,

and vehicle capital and facility investment. In the process of meeting these objectives, projects are also to support and promote the coordination of public transportation services across geographies, jurisdictions, and program areas. Coordination between non-urbanized and urbanized areas and between client transportation services and other types of public transportation are particular objectives.

Eligible Projects: Eligible types of projects have been defined by the department in accordance with FTA guidelines, other laws and regulations, and in consultation with members of the public transportation and the intercity bus industries. Projects include funding for vehicle capital, planning, marketing, facilities, training, technical and operating assistance, and research.

Eligible Proposers: Proposers shall be required to enter into a grant agreement as a sub-recipient of the department. Eligible sub-recipients include state agencies, local public bodies and agencies thereof, private-nonprofit organizations, operators of public transportation services, state transit associations, transit districts, and private for-profit operators. Eligible applicants are defined in 43 TAC Chapter 31.

Availability of Funds: In accordance with Transportation Code, Chapter 455, the department currently provides funding for public transportation projects, funded through FTA §5304 - State Planning Assistance, §5311(b)(3) - Rural Transportation Assistance, §5311(f) - Intercity Bus program, §5311 - Rural Discretionary programs. The department will also consider offering transportation development credits to assist with some local match needs for capital projects.

Review and Award Criteria: Proposals will be evaluated against a matrix of criteria and then prioritized. Subject to available funding, the department is placing no precondition on the number or on the types of projects to be selected for funding. The department reserves the right to conduct negotiations pertaining to a proposer's initial responses including but not limited to specifications and prices. An approximate balance in funding awarded to the types of projects, or an approximate geographic balance to selected projects, may be seen as appropriate, depending on the proposals that are received. The department may consider these additional criteria when recommending prioritized projects to the Texas Transportation Commission.

Key Dates and Deadlines:

November 7, 2012: Pre-Proposal Video Teleconference. Beginning at 1:00 p.m., Central Time, at most department district offices. Please notify the appropriate department district three (3) days prior to the event if you plan to attend.

December 3, 2012: Written questions for the proposal are due to PTN.

December 10, 2012: Written responses to questions posted on PTN website and mailed to all firms who submitted questions.

January 2, 2013: Deadline for receipt of proposals.

March 4, 2013: Target date for the department to complete the evaluation, prioritization, and negotiation of proposals.

April 25, 2013: Target date for presentation of project selection recommendations to the Texas Transportation Commission for action.

September 1, 2013: Target date for most project grant agreements to be executed, with approved scopes of work and calendars of work.

To Obtain a Copy of the RFP: The RFP will be posted on the Public Transportation Division website at http://www.txdot.gov/business/governments/grants/public_transportation.htm.

Proposers with questions relating to the RFP should email PTN_ProgramMgmt@txdot.gov or by phone at (512) 374-5230.

TRD-201205230
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 8, 2012

Public Hearing Notice - Unified Transportation Program

The Texas Department of Transportation (department) will hold a public hearing on Monday, November 5, 2012, at 10:00 a.m. at 200 East Riverside Drive, Room 1A-1, in Austin, Texas, to receive public comments on the proposed updates to the 2013 Unified Transportation Program (UTP).

The UTP is a 10-year program that guides the development and authorizes construction of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. The Texas Transportation Commission has adopted rules located in Texas Administrative Code, Title 43, Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to adoption of the UTP and approval of any updates to the program.

Information regarding the proposed updates to the 2013 UTP will be available at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5043, and on the department's website at: http://www.txdot.gov/public_involvement/utp.htm.

Persons wishing to speak at the hearing may register in advance by notifying David Plutowski, Transportation Planning and Programming Division, at (512) 486-5043 not later than Friday, November 2, 2012, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the updates to the 2013 UTP to Marc D. Williams, Director of Planning, P.O. Box 149217, Austin, Texas 78714-9217. Interested parties may also submit comments regarding the updates to the 2013 UTP by phone at 1-800-687-8108. In order to be considered, all comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, November 19, 2012.

TRD-201205231
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 8, 2012

Texas State University System

Notice of Intent - Outside Consultant

In accordance with Texas Professional Services Procurement Act, Government Code, Chapter 2254, Subchapter A, the Texas State University System (TSUS) Office of Audits and Analysis (OAA) invites consultants experienced in performing quality assessment review services to assist the OAA in evaluating its conformance with the Definition of Internal Auditing, the Code of Ethics, and the International Standards for the Professional Practice of Internal Auditing as promulgated by the Institute of Internal Auditors (IIA). Any firm interested in responding to this notice should obtain Request for Proposal (RFP) No. 758-13-00018 and follow the instructions for responding contained therein. A copy of the RFP may be downloaded from the Electronic State Business Daily website at: http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=102757/.

The deadline for proposals is October 26, 2012, 5:00 p.m. (C.D.T). The announcement/award date will be no later than November 30, 2012. TSUS reserves the right to accept or reject any or all proposals submitted. TSUS is under no legal or other obligation to execute a contract or agreement on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TSUS to pay for any costs incurred prior to the award of a contract or agreement.

TRD-201205226
Kelly Wylie
Director of Administration
Texas State University System
Filed: October 8, 2012

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Texas Water Development Board

Applications for October 2012

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73647, a request from the City of Breckenridge, 105 N. Rose Avenue, Breckenridge, Texas 76424, received July 2, 2012, for financial assistance in the amount of $1,193,461, consisting of $840,000 loan and $353,461 in loan forgiveness from the Clean Water State Revolving Fund to finance wastewater system improvements, utilizing the pre-design funding option.

Project ID #73650, a request from the San Antonio Water System, P.O. Box 2449, San Antonio, Texas 78298-2449, received July 3, 2012, for financial assistance in the amount of $3,170,841 consisting of a loan in the amount of $2,975,000 and $195,841 in loan forgiveness from the Clean Water State Revolving Fund to finance planning and design relating to wastewater system improvements.

Project ID #62527, a request from the City of Emory, P.O. Box 100, Emory, Texas 75440-0100, received June 25, 2012, for financial assistance in the amount of $1,423,521, consisting of $720,000 in loan and $703,521 in loan forgiveness from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design commitment option.

Project ID #62531, a request from the City of Honey Grove, 633 N. 6th Street, Honey Grove, Texas 75446, received June 25, 2012, for financial assistance in the amount of $283,700, consisting of $200,000 in loan and $83,700 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning and design costs for water system improvements.

Project ID #62535, a request from the Lake Palo Pinto Area Water Supply Corporation, P.O. Box 410, Gordon, Texas 76453-4817, received July 23, 2012, for a loan in the amount of $130,000 from the Drinking Water State Revolving Fund to finance planning, acquisition and design costs for water system improvements.

Project ID #62528, a request from the City of Moran, P.O. Box 97, Moran, Texas 76464-0097, received June 25, 2012, for financial assistance in the amount of $512,325, consisting of $180,000 in loan and $332,325 in loan forgiveness from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design commitment option.

Project ID #62532, a request from the Springs Hill Water Supply Corporation, P.O. Box 29, Seguin, Texas 78156-0029, received June 27, 2012, for financial assistance in the amount of $1,290,350 consisting of $1,100,000 in loan and $190,350 in loan forgiveness from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design commitment option.

Project ID #21718, a request from the Salado Water Supply Corporation, P.O. Box 128, Salado, Texas 76571-0128, received July 2, 2012, for a loan in the amount of $900,000 from the Rural Water Assistance Fund to finance water system improvements, utilizing the pre-design funding option.

Project ID #21719, a request from the Smith County Municipal Utility District No. 1, 11928 Constantine Avenue, Tyler, Texas 75708, received July 9, 2012, for a loan in the amount of $1,500,000 from the Texas Water Development Fund to finance water system improvements, utilizing the pre-design funding option.

Project ID #21642, a request from the San Antonio Water System on behalf of the City of San Antonio, P.O. Box 2449, San Antonio, Texas 78298-2449, received July 30, 2012, for a loan in the amount of $50,000,000 from the Water Infrastructure Fund to finance a water supply project utilizing the pre-design funding option.

Project ID #10433, a request from the City of Turkey, P.O. Box 415, Turkey, Texas 79261-0415, received April 26, 2012, for financial assistance in the amount of a $291,000 grant from the Economically Distressed Areas Program to finance planning costs related to water system improvements, utilizing the pre-design funding option.

TRD-201205253
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: October 9, 2012

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704..950 *(P)*