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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER C. EMERGENCY SHELTER GRANTS PROGRAM (ESGP)

10 TAC §§5.301 - 5.311

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 5, Subchapter C, Emergency Shelter Grants Program, §§5.301 - 5.311, concerning the Emergency Shelter Grants Program (ESGP). The purpose of the proposed repeal is to reflect the conclusion of the ESGP program in Texas.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal will be in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of the repeal will be to effectively close out the ESGP and eliminate rules that are no longer necessary. There will not be any economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to cadrulecomments@tdhca.state.tx.us, or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. SEPTEMBER 16, 2013.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules, and §2306.094, which specifically authorizes the Department to adopt rules to govern the administration of the ESGP.

The proposed repeal affects no other code, article, or statute.

§5.301. Background.
§5.302. Purpose and Goals.
§5.303. Distribution of ESGP Funds.
§5.304. Use of Funds.
§5.305. Limitations on Use of Funds.
§5.306. Eligible Entities.
§5.307. Application Requirements.
§5.308. Application Awards.
§5.309. Application Process.
§5.310. Application Review Process.
§5.311. Reports.

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

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

TRD-201303135
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 475-3916

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SUBCHAPTER D. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

10 TAC §§5.403, 5.407, 5.423, 5.424

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 5, Community Affairs Programs, Subchapter D, §§5.403, 5.407, 5.423, and 5.424, concerning the Comprehensive Energy Assistance Program. The purpose of the amendments is to ensure full utilization of CEAP funds, make rule text consistent with requirements in other Community Affairs subchapters, and to allow greater flexibility for Subrecipients within program rules when purchasing portable heating and cooling units and when determining a household's energy consumption history.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of the

amendment of the sections will be greater and more efficient use of funds and greater flexibility for Subrecipients within program rules. There will not be any economic cost to any individuals required to comply with the sections as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to cadrulecomments@tdhca.state.tx.us or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. SEPTEMBER 16, 2013.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which generally authorizes the Department to adopt rules, and more specifically Texas Government Code, §2306.092, which authorizes the Department to promulgate rules regarding its community affairs and community development programs.

The proposed amendments affect no other code, article, or statute.

§5.403. Distribution of CEAP Funds.

(a) The Department distributes funds to Subrecipients by an allocation formula.

(b) The formula allocates funds based on the number of Low Income [~~low-income~~] Households in a service area and takes into account the special needs of individual service areas. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse population density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly [~~elderly~~] are given priority by giving greater weight to this population. The five factors used in the formula are calculated as:

(1) County Non-elderly Poverty Household Factor (weight of 40%)--Defined [~~is defined~~] by the Department as the number of Non-elderly Poverty Households in the county [~~County~~] divided by the number of Non-elderly Poverty Households in the State [~~state~~];

(2) County Elderly Poverty Household Factor (weight of 40%)--Defined [~~is defined~~] by the Department as the number of Elderly Poverty Households in the county [~~County~~] divided by the number of Elderly Poverty Households] in the State [~~state~~]; and

(3) County Inverse Poverty Household Density Factor (weight of 5%)--Defined [~~is defined~~] by the Department as:

(A) The number of square miles [~~Square Miles~~] of the county [~~County~~] divided by the number of poverty [~~Poverty~~] Households of the county [~~County~~] (equals the Inverse Poverty Household Density of the county [~~County~~]); and

(B) Inverse Poverty Household Density of the county [~~County~~] divided by the sum [~~Sum~~] of Inverse Household Densities.

(4) County Median Income Variance Factor (weight of 5%)--Defined [~~is defined~~] by the Department as:

(A) State Median Income minus the County Median Income (equals county variance [~~County Variance~~]); and

(B) County Variance divided by sum of the State County Variances.

(5) County Weather Factor (weight of 10%)--Defined [~~is defined~~] by the Department as:

(A) County heating degree days [~~Heating Degree Days~~] plus the county cooling degree days [~~County Cooling Degree Days~~], multiplied by the poverty [~~Poverty~~] Households, divided by the sum of county heating degree days and county cooling degree days of counties [~~County Heating & Cooling Degree Days of Counties~~] (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

(C) All demographic factors are based on the decennial U.S. Census.

(D) Total sum of paragraphs (1) - (5) of this subsection multiplied by total funds allocation equals the county's [~~County's~~] allocation of funds. The sum of the county allocations within each Subrecipient service area equals the Subrecipient's total allocation of funds.

(c) To the extent balances remain in Subrecipient contracts that the Subrecipient appears to be unable to utilize or should additional funds become available, those funds will be allocated using the formula set out in this section or other method deemed appropriate by the Department to ensure full utilization of funds within a limited timeframe.

§5.407. Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.

(a) Subrecipients shall set the client income eligibility level at or below 125% of the federal poverty level in effect at the time the client makes an application for services.

(b) Subrecipients [~~Subrecipient~~] shall determine client income. Income inclusions and exclusions to be used to determine total Household income are those noted in §5.19 of this chapter (relating to Client Income Guidelines).

~~[(c) Subrecipients shall base annualized eligibility determinations on Household income from the thirty (30) day period prior to the date of application for assistance. Each Subrecipient shall document and retain proof of income from all sources for all Household members eighteen (18) years and older for the entire thirty (30) day period prior to the date of application and multiply by twelve (12) to annualize income.]~~

~~[(d) In the case of migrant, or seasonal workers, or similarly situated workers, a longer period than thirty (30) days may be used for annualizing income.]~~

~~[(e) If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS). In order to use the DIS form, each Subrecipient shall develop and implement a written policy and procedure on the use of the DIS form. The DIS must be notarized. In developing the policy and procedure, Subrecipients shall limit the use of the DIS form to cases where there are serious extenuating circumstances that justify the use of the form. Such circumstances might include crisis situations such as applicants that are affected by natural disaster which prevents the applicant from obtaining income documentation, applicants that flee a home due to physical abuse, applicants who are unable to locate income documentation of a recently deceased spouse, or whose work is migratory or seasonal in nature. To ensure limited use, the Department will review the written policy and its use, as well as client-provided descriptions of the circumstances requiring use of the form, during on-site monitoring visits.]~~

(c) ~~[(f)]~~ Social security numbers are not required for applicants for CEAP.

(d) [~~(g)~~] Subrecipients shall establish priority criteria to serve persons in Households who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption. [~~elderly, persons with disabilities, families with young children, high residential energy users, and Households with high energy burden. High residential energy users and Households with high energy burden are defined as:~~]

[~~(1) Households with Energy Burden which exceeds the median energy burden of income-eligible Households characterized by the Department as experiencing high energy burden. The Department calculates energy burden by dividing home energy costs by the Household's gross income.~~]

[~~(2) Households with annual energy expenditures which exceed the median home expenditures for income-eligible Households are characterized by the Department as high residential energy users.~~]

[~~(h) Homeowners and renters will be treated equitably under all programs funded in whole or in part from LIHEAP funds. For those renters who pay heating and/or cooling bills as part of their rent, the Subrecipient shall make special efforts to determine the portion of the rent that constitutes the fuel heating and/or cooling payment. If "sub metering" is not available, the Subrecipient shall exercise care when negotiating with the landlords so the cost of utilities quoted is in line with the consumption for similar residents of the community. If the Subrecipient pays the landlord, then the landlord shall furnish evidence that he/she has paid the bill and the amount of assistance must be deducted from the rent, if the utility payment is not stated separately from the rent. An agreement stating the terms of the payment negotiations must be signed by the landlord.~~]

(e) [~~(i)~~] A Household unit cannot be served if the meter is utilized by another Household.

§5.423. Household Crisis Component.

(a) A bona fide Household crisis exists when extraordinary events or situations resulting from extreme weather conditions and/or fuel supply shortages or a terrorist attack have depleted or will deplete Household financial resources and/or have created problems in meeting basic Household expenses, particularly bills for energy so as to constitute a threat to the well-being of the Household, particularly the Elderly, Persons with Disabilities, [~~elderly, the disabled,~~] or children age 5 and younger.

(b) A utility disconnection notice may constitute a Household crisis. Assistance provided to Households based on a utility disconnection notice is limited to two (2) payments per year. Weather criterion [~~criteria~~] is not required to provide assistance due to a disconnection notice. The notice of disconnection must have been provided to the Subrecipient within the effective contract term and the notice of disconnection must not be dated more than sixty (60) days from receipt at the Subrecipient.

(c) Crisis assistance for one Household cannot exceed the maximum allowable benefit level in one year. Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis. If the client's crisis requires more than the Household limit to resolve, it exceeds the scope of this program. If the crisis exceeds the Household limit, Subrecipient may pay up to the Household limit but the rest of the bill will have to be paid from other funds to resolve the crisis. Payments may not exceed client's actual utility bill. The assistance must result in resolution of the crisis.

(d) Where necessary to prevent undue hardships from a qualified crisis, Subrecipients may directly issue vouchers to provide:

(1) Temporary shelter not to exceed the annual Household expenditure limit for the duration of the contract period in the limited instances that supply of power to the dwelling is disrupted--causing temporary evacuation;

(2) Emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing;

(3) Service and repair of existing heating and cooling units not to exceed $2,500 during the contract period when Subrecipient has met local weather crisis criteria. If any component of the central system cannot be repaired using parts, the Subrecipient can replace the component in order to repair the central system. Documentation of service/repair and related warranty must be included in the client file;

(4) Portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort) may be purchased for Households [~~households~~] that include at least one member that is Elderly, a Person with Disability, [~~elderly, the disabled,~~] or a child age 5 or younger, when Subrecipient has met local weather crisis criteria;

(5) Purchase of more than two portable heating/cooling units per Household requires prior written approval from the Department;

(6) Purchase of portable heating/cooling units which voltage exceeds 110 volt requires prior written approval from the Department;

(7) Replacement of central systems and combustion heating units is not an approved use of crisis funds; and

(8) Portable heating/cooling units must be Energy Star® and compliant with the International Residential Code (IRC). In cases where the type of unit is not rated by Energy Star®, or if Energy Star® units are not available due to supply shortages, Subrecipient may purchase the highest rated unit available.

(e) Crisis funds, whether for emergency fuel deliveries, repair of existing heating and cooling units, purchase of portable heating/cooling units, or temporary shelter, shall be considered part of the total maximum Household allowable assistance.

(f) When natural disasters result in energy supply shortages or other energy-related emergencies, LIHEAP will allow home energy related expenditures for:

(1) Costs to temporarily shelter or house individuals in hotels, apartments or other living situations in which homes have been destroyed or damaged, i.e., placing people in settings to preserve health and safety and to move them away from the crisis situation;

(2) Costs for transportation (such as cars, shuttles, buses) to move individuals away from the crisis area to shelters, when health and safety is endangered by loss of access to heating or cooling;

(3) Utility reconnection costs;

(4) Blankets, as tangible benefits to keep individuals warm;

(5) Crisis payments for utilities and utility deposits; and

(6) Purchase of fans, air conditioners and generators. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.

(g) Time Limits for Assistance--Subrecipients shall ensure that for clients who have already lost service or are in immediate danger of losing service, some form of assistance to resolve the crisis shall be provided within a 48-hour time limit (18 hours in life-threat-

ening situations). The time limit commences upon completion of the application process. The application process is considered to be complete when an agency representative accepts an application and completes the eligibility process.

(h) Subrecipients [~~Subrecipient~~] must maintain written documentation in client files showing crises resolved within appropriate timeframes. Subrecipients must maintain documentation in client files showing that a utility bill used as evidence of a crisis was received by the Subrecipient during the effective contract term. The Department may disallow improperly documented expenditures.

§5.424. Utility Assistance Component.

(a) Subrecipients may use home energy payments to assist Low Income Households [~~low-income households~~] to reduce their home energy costs. Subrecipients shall combine home energy payments with energy conservation tips, participation by utilities, and coordination with other services in order to assist Low Income Households [~~low-income households~~] to reduce their home energy needs.

(b) Subrecipients must make payments directly to vendors and/or landlords on behalf of eligible Households [~~households~~].

(c) Subrecipients may make utility payments on behalf of Households [~~households~~] based on the previous twelve (12) month's home energy consumption history, including allowances for cost inflation. If a twelve (12) month's home energy consumption history is unavailable, Subrecipient may base payments on current program year's bill or utilize a Department-approved alternative method. Subrecipients will note such exceptions in client files. Benefit amounts exceeding the actual bill shall be treated as a credit for the client with the utility company.

(d) Households that include at least one member that is Elderly, a Person with Disability [~~elderly, disabled~~] or a child age 5 or younger may receive benefits to cover up to 100% of the eight highest remaining bills within the contract year as long as the cost does not exceed the maximum annual benefit. First payment may include 100% of utility bill including arrears. [~~Elderly households include at least one member age sixty (60) or above. Disabled households include at least one member living with a disability.~~]

(e) Households that do not contain at least one member that is Elderly, a Person with Disability [~~elderly, disabled~~], or a child age 5 or younger may receive benefits to cover up to 100% of the 6 highest remaining bills within the contract year as long as the cost does not exceed the maximum annual benefit. First payment may include 100% of utility bill including arrears.

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

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

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

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SUBCHAPTER E. WEATHERIZATION ASSISTANCE PROGRAM GENERAL

10 TAC §§5.502, 5.503, 5.507, 5.524

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 5, Subchapter E, §§5.502, 5.503, 5.507, and 5.524, concerning the Weatherization Assistance Program General. The purpose of the amendments is to move eligibility requirements to Subchapter A, General Provisions, clarify revisions to leveraging and lead safe work requirements, and ensure full utilization of funds.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be to clarify revisions to leveraging and clarify lead safe work requirements and to ensure full utilization of funds. There will not be any economic cost to any individuals required to comply with the sections as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to cadrulecomments@tdhca.state.tx.us, or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. SEPTEMBER 16, 2013.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which generally authorizes the Department to adopt rules, and more specifically Texas Government Code, §2306.092, which authorizes the Department to promulgate rules regarding its community affairs and community development programs.

The proposed amendments affect no other code, article, or statute.

§5.502. Purpose and Goals.

(a) DOE-WAP and LIHEAP-WAP offers grants to Community Action Agencies, nonprofits, and Public Organizations with targeted beneficiaries being Households [~~households~~] with Low Incomes [~~low incomes~~], with priority given to the Elderly; Persons with Disabilities; Families with Young Children; Households with the highest energy costs or needs in relation to income; and Households with High Energy Consumption. In addition to meeting the income-eligibility criteria, the weatherization measures to be installed must meet specific energy-savings goals.

(b) The programs fund the installation of weatherization materials and provide energy conservation education. The programs help control energy costs to ensure a healthy and safe living environment.

(c) The Department shall administer and implement the DOE-WAP program in accordance with DOE rules (10 CFR Part 440). The Department shall administer and implement the LIHEAP-WAP program in accordance with a combination of LIHEAP law (42 U.S.C. §§6861, et seq.) and DOE rules. LIHEAP weatherization measures may be leveraged with DOE weatherization measures in which case[~~. If Subrecipient leverages with any DOE weatherization funds,~~] all DOE rules and requirements will apply.

(d) If Subrecipient leverages DOE weatherization funds with any other weatherization funds, all DOE rules and requirements will apply.

§5.503. Distribution of WAP Funds.

(a) The Department distributes funds to Subrecipients by an allocation formula.

(b) The allocation formula allocates funds based on the number of Low Income Households [~~low-income households~~] in a service area and takes into account the special needs of individual service areas. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse population density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly are given priority by giving greater weight to this population. The five factors used in the formula are calculated as follows:

(1) County Non-Elderly Poverty Household Factor--The [~~is defined as the~~] number of Non-Elderly Poverty Households in the County divided by the number of Non-Elderly Poverty Households in the State [~~state~~];

(2) County Elderly Poverty Household Factor--The [~~is defined as the~~] number of Elderly Poverty Households in the county [~~County~~] divided by the number of Elderly Poverty Households in the State [~~state~~];

(3) County Inverse Poverty Household Density Factor-- [~~is defined as~~]:

(A) The number of square miles [~~Square Miles~~] of the county [~~County~~] divided by the number of poverty [~~Poverty~~] Households of the county [~~County~~] (equals the inverse poverty Household density [~~Inverse Poverty Household Density~~] of the county [~~County~~]); and

(B) Inverse poverty Household density [~~Poverty Household Density~~] of the county [~~County~~] divided by the sum of inverse household densities [~~Sum of Inverse Household Densities~~].

(4) County Median Income Variance Factor-- [~~is defined as~~]:

(A) State median income [~~Median Income~~] minus the county median income [~~County Median Income~~] (equals county variance [~~County Variance~~]); and

(B) County variance [~~Variance~~] divided by sum of the State county variances [~~County Variances~~];

(5) County Weather Factor-- [~~is defined as~~]:

(A) County heating degree days [~~Heating Degree Days~~] plus the county cooling degree days [~~County Cooling Degree Days~~], multiplied by the poverty [~~Poverty~~] Households, divided by the sum of county heating and cooling degree days of counties [~~County Heating & Cooling Degree Days of Counties~~] (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

(C) The five factors carry the following weights in the allocation formula: number of Non-Elderly poverty Households [~~households~~] (40%), number of poverty Households [~~households~~] with at least one member who is sixty-five (65) years of age or older (40%), Household [~~household~~] density as an inverse ratio (5%), the median income of the county (5%), and a weather factor based on heating degree days and cooling degree days [~~Heating Degree Days and Cooling Degree Days~~] (10%). All demographic factors are based on the most current decennial U.S. Census. The formula is as follows:

(i) County Non-Elderly Poverty Household Factor (0.40) plus;

(ii) County Elderly Poverty Household Factor (0.40) plus;

(iii) County Inverse Poverty Household Density Factor (0.05) plus;

(iv) County Median Income Variance Factor (0.05) plus;

(v) County Weather Factor (0.10);

(vi) Total sum of clauses (i) - (v) of this subparagraph multiplied by total funds allocation equals the county's [~~County's~~] allocation of funds.

(vii) The sum of the county allocation within each Subrecipient service area equals the Subrecipient's total allocation of funds.

(c) To the extent balances remain in Subrecipient contracts that the Subrecipients appear to be unable to utilize, or should additional funds become available, those funds will be allocated using this formula or other method deemed appropriate by the Department to ensure full utilization of funds within a limited timeframe, including possible allocation of WAP funds to Subrecipients in varying populations from each funding source (DOE and LIHEAP), based on availability of the source.

(d) To the extent federal funding awarded to Texas is limited from one of the two WAP funding sources, possible allocations of funds to Subrecipients may be made in varying proportions from each source to maximize efficient program administration.

§5.507. Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.

(a) Subrecipients shall establish eligibility and priorities criteria to increase the energy efficiency of dwellings owned or occupied by Low Income [~~low-income~~] persons who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption.

(b) Subrecipients shall follow the Department rules and established state and federal guidelines for determining eligibility for Multifamily Dwelling Units as referenced in §5.525 of this chapter (relating to Eligibility for Multifamily Dwelling Units).

(c) To determine income eligibility for program services, Subrecipients must base annualized eligibility determinations on Household income from thirty (30) days prior to the date of application for assistance. Subrecipients must document income from all sources for all Household members for the entire thirty (30) day period prior to the date of application and multiply by twelve (12) to annualize income. Income documentation must be collected from all income sources for all Household members eighteen (18) years and older for the entire thirty (30) day period.

~~[(d) In the case of migrant, seasonal, part-time, temporary, or self-employed workers a longer period than thirty (30) days may be used for annualizing income. However, the same method must be used for all similarly situated workers.]~~

~~[(e) If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS). In order to use the DIS form, Subrecipients shall develop and implement a~~

~~written policy and procedure on the use of the DIS form. The DIS form must be notarized. In developing the policy and procedure, Subrecipients shall limit the use of the DIS form to cases where there are serious extenuating circumstances that justify the use of the form. Such circumstances might include crisis situations such as applicants that are affected by natural disaster which prevents the applicant from obtaining income documentation, applicants that flee a home due to physical abuse, applicants who are unable to locate income documentation of a recently deceased spouse, or whose work is migratory or seasonal in nature. To ensure limited use, the Department will review the written policy and its use, as well as client-provided descriptions of the circumstances requiring use of the form, during on-site monitoring visits.]~~

(d) [~~(f)~~] Subrecipient shall determine applicant income in compliance with §5.19 of this chapter (relating to Client Income Guidelines).

(e) [~~(g)~~] Social Security numbers are not required for applicants.

§5.524. Lead Safe [~~Work~~] Practices.

(a) Subrecipients are required to document that their weatherization staff as well as Subcontractors follow the Environmental Protection Agency's Renovation, Repair and Painting Program (RRP) Final Rule, 40 CFR Part 745 and Response to Children with Environmental Intervention Blood Levels. [~~rule and~~]

(b) Subrecipients are required to document that their weatherization staff as well as Subcontractors have received Lead Safe Weatherization (LSW) training, an LSW Manual, and an LSW Jobsite Handbook prior to commencement of weatherization work. Subrecipients must obtain a signed Worker Verification of LSW Training form from the Subcontractor indicating that the Subcontractor received the LSW training, manual, and jobsite handbook. Subcontractors must follow LSW Work Practices as outlined by the U.S. Department of Energy.

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

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

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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SUBCHAPTER F. WEATHERIZATION ASSISTANCE PROGRAM DEPARTMENT OF ENERGY

10 TAC §5.602, §5.603

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 5, Subchapter F, §5.602 and §5.603, concerning Weatherization Assistance Program Department of Energy. The purpose of the amendments is to remove references to the Texas Open Meetings Act, which do not apply to the Weatherization Assistance Program Policy Advisory Council, and to clarify allowable expenditures per dwelling unit weatherized.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed amendments are in effect, enforcing or administering the proposed amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amended rules will be in effect, the public benefit anticipated as a result of the amendment of the rules will be to clarify the applicability of the Texas Open Meetings Act, which does not apply to the Weatherization Assistance Program Policy Advisory Council, and to clarify allowable expenditures per dwelling unit weatherized. There will not be any economic cost to any individuals required to comply with the rules as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to cadrulecomments@tdhca.state.tx.us, or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. SEPTEMBER 16, 2013.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which generally authorizes the Department to adopt rules, and more specifically Texas Government Code, §2306.092, which authorizes the Department to promulgate rules regarding its community affairs and community development programs.

The proposed amendments affect no other code, article, or statute.

§5.602. WAP Policy Advisory Council (WAP PAC).

(a) In accordance with Texas Government Code, §2110.005, the Department shall establish a state policy advisory council, in accordance with 10 CFR §440.17 and Texas Government Code, Chapter 2110, prior to the expenditure of any grant funds.

(b) The Weatherization Assistance Program Policy Advisory Council (WAP PAC) shall meet at least once a year to review the program plan and provide advice to the Department and meet as needed throughout the year to provide advice when it is requested.

(1) The WAP PAC may also meet as necessary in person, by telephone, or via electronic means to provide the Governing Board or Department guidance and advice with respect to the development and implementation of the weatherization assistance program and its activities; and

(2) The WAP PAC will cause minutes of any meetings or telephone conferences to be taken and forwarded to the Department or Governing Board.

~~[(c) All meetings shall be held in accordance with Texas Government Code, Chapter 551.]~~

§5.603. Adjusted Average Expenditure Per Dwelling Unit.

Expenditures of financial assistance provided under DOE-WAP funding for the weatherization services for labor, weatherization materials, and program support [~~related matters~~] shall not exceed the DOE adjusted average expenditure limit for the current program year per dwelling unit as provided by DOE, without special agreement via an approved waiver from the Department.

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

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

TRD-201303141
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 475-3916

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SUBCHAPTER G. WEATHERIZATION ASSISTANCE PROGRAM LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM

10 TAC §5.701

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 5, Subchapter G, §5.701, concerning Low-Income Home Energy Assistance Program. The purpose of the proposed amendment is to remove a specific dollar amount that may change from year to year and add reference to the current program year contract.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed amendment will be in effect, enforcing or administering the proposed amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendment will be in effect, the public benefit anticipated as a result of the amendment of the rule will be to remove a specific dollar amount that may change from year to year and add reference to the current program year contract, thus eliminating the need to revise the section each program year. There will not be any economic cost to any individuals required to comply with the rule as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to cadrulecomments@tdhca.state.tx.us or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. SEPTEMBER 16, 2013.

STATUTORY AUTHORITY. The amendment is proposed pursuant to Texas Government Code, §2306.053, which generally authorizes the Department to adopt rules, and more specifically Texas Government Code, §2306.092, which authorizes the Department to promulgate rules regarding its community affairs and community development programs.

The proposed amendment affect no other code, article, or statute.

§5.701. Allowable Expenditure per Dwelling Unit.

Expenditures of financial assistance provided under LIHEAP-WAP funding for the weatherization services for labor, weatherization materials, and program support [~~related matters~~] shall not exceed the allowable figure as set forth in the current contract term, without prior written approval from the Department. The cumulative cost per unit (materials, labor and program support), shall not exceed the maximum allowable by the end of the contract term. [~~annual LIHEAP State Plan. The current allowable amount is set at $5,000 per dwelling unit.~~]

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

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

TRD-201303138
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 475-3916

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING
SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.6

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §33.6, relating to Renewal of Licenses and Permits after Expiration, to conform it to the requirements of Senate Bill 1035, 83rd Legislature, Regular Session.

Senate Bill 1035 streamlines the licensing process by requiring license applications to be filed directly with the commission instead of with the county. This proposed amendment accordingly deletes a portion of the current rule that requires certain fees to be paid to the county tax assessor-collector.

Section 33.6 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The commission has determined that the need for the rule continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no fiscal impact on state or local government attributable to the amendment. Section 7 of Senate Bill 1035 requires the commission to transmit five percent of the license fee to the assessor and collector of taxes of the county in which the applicant's business is located.

The proposed amendment will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the agency's rules will conform to statutory requirements.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendment on August 28, 2013, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to ensure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or Relay Texas at 1-800-735-2989 (TTY/TDD), at least three days prior to the meeting so that the appropriate arrangements can be made.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

The proposed amendment affects Alcoholic Beverage Code §5.31 and §6.04 and Government Code §2001.039.

§33.6. Renewal of Licenses and Permits after Expiration.

(a) This rule relates to §6.04 of the Alcoholic Beverage Code.

(b) In addition to the requirements of [~~the~~] Alcoholic Beverage Code[~~,~~] §61.48 and §5.50, [~~license and permit renewals which are to be filed under §6.04, must also meet the following requirements:~~]

[~~(1)~~] each applicant who files a license or permit renewal under [~~the~~] Alcoholic Beverage Code[~~,~~] §6.04 and §61.48, must, prior to the close of business of the thirtieth calendar day after expiration, submit a fee of $100.

[~~(2) this fee is to be handled by the tax assessor collector's office, in accordance with the Alcoholic Beverage Code, §61.48 and §61.49, and any other applicable provisions of the code and rules of the commission.~~]

(c) In addition to the requirements [~~requirement~~] of [~~the~~] Alcoholic Beverage Code[~~,~~] §§11.32, 11.35, and 5.50, and any pertinent rule or procedure of the commission, license and permit renewals which are filed under the Alcoholic Beverage Code, §6.04, must also meet the following requirements:

(1) mixed beverage permits, private club registration permits, private club exemption certificate permits, subordinate permits and any license or permit renewal required to be presented to any of this agency's offices which are filed after expiration must be presented prior to close of business on the thirtieth calendar day after expiration and must be complete in form, accompanied by all state fees and surcharges as well as the $100 fee required by [~~the~~] Alcoholic Beverage Code[~~,~~] §6.04.

(2) license and permit renewals which are required to be submitted directly to the licensing division in Austin must be postmarked no later than thirty calendar days after expiration or received by the commission no later than thirty calendar days after expiration. The application must be complete in form and accompanied by all state fees, surcharges, and late fees.

(d) Failure to submit any requested information, corrections or forms within fourteen days of demand will constitute non-compliance with [~~the~~] Alcoholic Beverage Code[~~,~~] §6.04, and this rule, resulting in the expiration of the license or permit due to the insufficiency of the application.

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

Filed with the Office of the Secretary of State on August 2, 2013.

TRD-201303181
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 206-3489

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16 TAC §33.9

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §33.9, relating to Service Fees for On-Line Transaction and Credit Card Fees.

The proposed amendment revises the fees related to on-line licensing transactions. The fees in the current rule were based on a quote from a prospective service provider who was never utilized. The fees set in the proposed amendment are those set for the use of Texas.gov. The section is also retitled (Fees for On-Line Transaction) in recognition of the fact that there is a new charge for transactions paid by ACH or electronic check.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no fiscal impact on state or local government.

There will be a fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission who choose to use electronic means to apply for a permit or license. The amount of the impact is set forth in the text of the proposed amendment. The fee is authorized by Alcoholic Beverage Code §5.55. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the fees will enable the commission to expedite the processing of applications for permits and licenses.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendment on August 28, 2013, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to ensure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or Relay Texas at 1-800-735-2989 (TTY/TDD), at least three days prior to the meeting so that the appropriate arrangements can be made.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Alcoholic Beverage Code §5.55, which authorizes the commission to charge a reasonable service fee to applicants who choose to use electronic means to apply for licenses and permits.

The proposed amendment affects Alcoholic Beverage Code §5.31 and §5.55.

§33.9. [~~Service~~] Fees for On-Line Transaction [~~and Credit Card Fees~~].

(a) This rule relates to §5.55 of the Alcoholic Beverage Code.

(b) A service fee of $0.25 [~~$0.50~~] shall be assessed for each on-line transaction.

(c) An additional fee of 2.75% [~~2.25%~~] of the total transaction amount shall be assessed for transactions paid by credit card.

(d) An additional fee of 0.5% of the total transaction amount shall be assessed for transactions paid by ACH or electronic check.

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

Filed with the Office of the Secretary of State on August 2, 2013.

TRD-201303178
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 206-3489

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SUBCHAPTER B. LICENSE AND PERMIT SURCHARGES

16 TAC §33.23

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §33.23, relating to Alcoholic Beverage Permit, License and Certificate Surcharges. The amendment sets surcharges for two new permits and a new license created by the legislature in the 83rd Regular Session.

Alcoholic Beverage Code (Code) §5.50 requires the commission to have a rule assessing surcharges on all applicants for an original or renewal certificate, permit or license, in addition to the application fees prescribed in the Code.

Senate Bill 516 created a new Brewer's Self-Distribution Permit by adding new Chapter 12A to the Code. Senate Bill 517 created a new Manufacturer's Self-Distribution License by adding a new Chapter 62A to the Code. Senate Bill 828 created a new Distiller's Agent Permit by adding new Chapter 15 to the Code.

Shelby Eskew, Director of the Business Services Division, has determined that for each year of the first five years the proposed amendment will be in effect, the surcharges will generate revenue related to the tasks and services performed by the commission in carrying out those provisions of the Code that established these new permits and license. There will be no impact on local government.

The amendment will have an adverse economic effect on persons required to comply with the rule, including micro-businesses and small businesses. The amount of the impact on each business is set forth in the rule itself. The initial surcharges are set at an amount similar to those for comparable permits and licenses. The surcharges for the self-distribution permit and license are set at an amount that is half of the state fee set by the Code. The surcharge for the agent's permit is set at the same amount as the surcharge for the other agent's permits in the Code.

There is no anticipated negative impact on local employment.

Ms. Eskew has determined that for each year of the first five years the proposed amendment will be in effect, the public will benefit because revenue will be generated to offset costs incurred by the commission incidental to the licensing and administration of the new permits and license.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission at (512) 206-3480. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on August 28, 2013 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or Relay Texas at 1-800-735-2989 (TTY/TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §5.50, which requires the commission to have a rule assessing surcharges on all ap-

plicants for an original or renewal certificate, permit or license, in addition to the application fees prescribed in the Code.

The proposed amendment affects Alcoholic Beverage Code §§5.31, 5.50, 12A.02, 15.01 and 62A.02.

§33.23. Alcoholic Beverage Permit, License and Certificate Surcharges.

(a) This section relates to Alcoholic Beverage Code §5.50.

(b) A biennial surcharge on original or renewal permit, license and certificate fees is levied against permit, license and certificate holders as follows:
Figure: 16 TAC §33.23(b)

(c) A surcharge on temporary permit and license fees is levied against permit and license holders as follows:
Figure: 16 TAC §33.23(c) (No change.)

(d) An organization that holds a private club exemption certificate permit under Alcoholic Beverage Code §32.11 is exempt from the requirement to pay a surcharge.

(e) Each surcharge imposed by this section is for the term of the original or renewal permit, license or certificate to which the surcharge applies.

(f) The permit, license or certificate surcharge is due and payable at the same time and in the same place and manner as the original or renewal permit, license or certificate fee to which the surcharge applies.

(g) Failure or refusal to timely pay the permit, license, or certificate surcharge is considered the same as failure to timely pay the original or renewal permit, license or certificate fee, and the same penalties apply.

(h) The fees and surcharges for a permit or license may not be prorated or refunded.

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

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

TRD-201303183
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 206-3489

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16 TAC §33.27

The Texas Alcoholic Beverage Commission (commission) proposes new §33.27, relating to Bonds for Alternating Brewery Proprietorships and Contract Brewing Arrangements, to implement the requirements of House Bill 3307, 83rd Legislature, Regular Session.

House Bill 3307 defines alternating brewery proprietorship and contract brewing arrangements and allows brewers, non-resident brewers, manufacturers and non-resident manufacturers to engage in those activities. It also mandates that the commission require a bond of at least $30,000 for an entity engaged in those activities that does not own a fee interest in a brewing or manufacturing facility.

The proposed new rule implements the bond requirements of House Bill 3307. The bond must be maintained as long as the entity does not own a fee interest in a brewing or manufacturing facility and is in an alternating brewery proprietorship or contract brewing arrangement. The bond would be forfeited if the underlying permit or license is revoked by the commission. The bond can be released if the permittee or licensee acquires a fee interest in a brewing or manufacturing facility or ceases to be involved in an alternating brewery proprietorship or contract brewing arrangement.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed new rule will be in effect, there will be no fiscal impact on state or local government.

The proposed new rule will have no fiscal or regulatory impact (beyond the impact of House Bill 3307, 83rd Legislature, Regular Session) on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed new rule will be in effect, the public will benefit because the agency's rules will conform to statutory requirements.

Comments on the proposed new rule may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed new rule on August 28, 2013, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to ensure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or Relay Texas at 1-800-735-2989 (TTY/TDD), at least three days prior to the meeting so that the appropriate arrangements can be made.

The proposed new rule is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by House Bill 3307, 83rd Legislature, Regular Session, which requires the commission to impose a minimum bond for a permittee or licensee who is involved in an alternating brewery proprietorship or contract brewing arrangement but does not own a fee interest in a brewing or manufacturing facility.

The proposed new rule affects Alcoholic Beverage Code §§5.31, 11.71, 12.01, 13.04, 61.41 and 62.01.

§33.27. Bonds for Alternating Brewery Proprietorships and Contract Brewing Arrangements.

(a) This section relates to Alcoholic Beverage Code §§11.71, 12.01(a)(6), 13.04(c), 61.41(d) and 62.01(a)(5).

(b) A bond in the amount of $30,000 must be posted with the commission by each applicant for or holder of a brewer's permit or nonresident brewer's permit that:

(1) is a party to an alternating brewery proprietorship or a contract brewing arrangement; and

(2) does not own a fee interest in a brewing facility.

(c) A bond in the amount of $30,000 must be posted with the commission by each applicant for or holder of a manufacturer's license or nonresident manufacturer's license that:

(1) is a party to an alternating brewery proprietorship or a contract brewing arrangement; and

(2) does not own a fee interest in a manufacturing facility.

(d) A bond required by subsection (b) or (c) of this section must:

(1) be made payable to the state;

(2) be executed only on a form prescribed by the commission, with the permittee or licensee as principal and a qualified surety company doing business in the state as surety;

(3) be payable in Travis County;

(4) cover the permit or license period; and

(5) state on the face of the bond that the holder of the permit or license agrees that the amount of the bond shall be paid to the state if the permit or license is revoked.

(e) A separate bond, when required by subsection (b) or (c) of this section, must be posted with the commission for each permit or license. The bond must be maintained until:

(1) it is released or forfeited under this section; or

(2) it is terminated by the surety pursuant to Alcoholic Beverage Code §11.71, if it is a bond that is required by subsection (b) of this section.

(f) To qualify to provide bonds under this section, a surety company must be licensed by this state and be in good standing with the State Board of Insurance, Comptroller of Public Accounts, Secretary of State, and any other regulatory agencies with jurisdiction over its affairs.

(g) If a bond is required by subsection (b) or (c) of this section, an applicant for an original or renewal permit or license must submit the bond at the time of its application for the permit or license. Failure to submit the bond in proper form will result in denial of the application.

(h) A permittee or licensee who was not subject to the bond requirements of subsection (b) or (c) of this section at the time of application must post the required bond at the time it becomes subject to those requirements.

(i) Forfeiture of Bond.

(1) When a permit or license is revoked, the commission shall notify the permittee or licensee in writing of its intent to seek forfeiture of the bond.

(2) The permittee or licensee may, within 30 days of the notice specified in paragraph (1) of this subsection, request a hearing on the question of whether the criteria established by this section for forfeiture of a bond have been satisfied. The hearing shall be conducted in accordance with Chapter 2001 of the Government Code.

(3) Upon entry of a final order against the permittee or licensee in the hearing described in paragraph (2) of this subsection, or upon waiver of hearing by the permittee or licensee, the commission shall notify the surety company to remit to the state the full amount of the surety required within ten days after notification.

(j) Release of Surety.

(1) A permit or license holder may request release and return of the surety required by subsection (b) or (c) of this section upon:

(A) expiration of the permit or license;

(B) voluntary cancellation of the permit or license;

(C) verification that the applicant or permit or license holder has acquired fee interest in a brewing or manufacturing facility (as appropriate in reference to subsections (b) and (c) of this section); or

(D) verification that the permit or license holder no longer is a party to an alternating brewery proprietorship or contract brewing arrangement.

(2) The release of this surety will not be unreasonably withheld, but the surety company is not released from its obligation until it receives written notice of the release from the commission.

(k) The administrator may not cancel a bond until the surety company has paid and discharged in full all of its liabilities to the state on the bond as of the date of cancellation.

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

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

TRD-201303193
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 206-3489

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CHAPTER 41. AUDITING
SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.56

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §41.56, relating to Out-of-State Winery Direct Shipper's Permits, to reduce the reporting requirement for small out-of-state winery direct shippers, to adjust the reporting periods for larger out-of-state winery direct shippers, and to clarify excise tax payment arrangements.

The proposed amendment allows an out-of-state winery direct shipper that shipped less than 4,000 gallons annually to consumers in Texas during the previous calendar year to file its required reports to the commission once a year. Other out-of-state winery direct shippers must continue to report quarterly, but the reporting period is being changed from fiscal year quarters to calendar year quarters.

The amendment also provides that the excise tax payment accompanying the reports should be made payable to the commission instead of the Comptroller of Public Accounts.

Section 41.56 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the rule continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no fiscal impact on state or local government attributable to the amendment. However, commission resources currently devoted to processing small shippers reports and taxes will be available for more efficient processing of other reports and payments.

The proposed amendment will have some positive but unquantifiable fiscal or regulatory impact on certain micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the regulatory burden on small shippers and on the commission's resources will be reduced.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendment on August 28, 2013, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to ensure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or 1-800-735-2989 (TTY/TDD), at least three days prior to the meeting so that the appropriate arrangements can be made.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

The proposed amendment affects Alcoholic Beverage Code §5.31 and Government Code §2001.039.

§41.56. Out-Of-State Winery Direct Shipper's Permits.

(a) This rule relates to Chapter 54 of the Alcoholic Beverage Code.

(b) Each holder of an out-of-state winery direct shipper's permit shall make [~~fiscal year quarterly~~] reports (Direct Shipper's Report) to the commission on forms prescribed by the administrator.

(c) The report shall be made and filed by the permittee with the commission at its offices in Austin, Texas, on or before the 15th day of the month following the end of the [~~quarterly~~] reporting period for which the report is made and shall show:

(1) the reporting period [~~fiscal quarter~~] and year for which the report is made, the permit number and the name and address of the winery;

(2) invoice date, invoice number, customer name, city, total wine gallons per invoice, and carrier making delivery[~~, and freight bill number~~] for each sale and delivery.

(d) Holders of out-of-state winery direct shipper's permits must pay the excise tax on the total gallons of wine shipped into the state, not later than the 15th day of the month following the [~~quarterly~~] reporting period the wine was shipped into the state. Remittance of the tax due on wine, less 2.0% of the amount due when submitted within the required time, shall accompany the [~~quarterly~~] report hereinbefore provided and shall be made by check, United States money order, or other acceptable methods of payment payable to the Texas Alcoholic Beverage Commission [~~Comptroller of Public Accounts~~].

(e) As long as an out-of-state winery direct shipper's permit remains active, the report required herein must be filed even though no sales or shipments have been made.

(f) Holders of out-of-state winery direct shipper's permits that shipped 4,000 gallons annually or more to consumers in Texas during the previous calendar year, must file a quarterly report. Quarterly Reporting Periods: January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. [~~September 1, through November 30; December 1, through February 28 or 29; March 1, through May 31; and June 1, through August 31.~~]

(g) Holders of out-of-state winery direct shipper's permits that shipped less than 4,000 gallons annually to consumers in Texas during the previous calendar year, may file a yearly report. Yearly Reporting Period: January 1 through December 31.

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

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

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Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 206-3489

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SUBCHAPTER E. IDENTIFICATION STAMPS

16 TAC §41.71

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §41.71, relating to Local Distributor's Permittees.

The proposed amendment retitles the section (Identification Stamps and Local Distributor's Records) and incorporates provisions of §41.72, relating to Invalidation of Stamps. The

commission intends to repeal §41.72 if this proposed amendment to §41.71 is adopted.

The proposed amendment also imposes new obligations on local distributors regarding invoicing and recordkeeping that the commission believes are necessary to protect the integrity of the tax identification stamp system, which is integral to the taxing and regulatory regime for distilled spirits.

Finally, the proposed amendment implements the requirement in House Bill 2460, 83rd Legislature, Regular Session, that a mixed beverage permittee or private club registration permittee may not possess an identification stamp unless it is affixed to a bottle.

Section 41.71 was also reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The commission has determined that the need for the rule continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no fiscal impact on state or local government.

The proposed amendment could have some fiscal or regulatory impact on certain micro-businesses and small businesses or persons regulated by the commission. The commission cannot quantify such impacts but invites comments on them during the comment period after publication in the *Texas Register.* There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the integrity of the tax identification stamp system, which is integral to the taxing and regulatory regime for distilled spirits, will be enhanced.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendment on August 28, 2013, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to ensure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or 1-800-735-2989 (TTY/TDD), at least three days prior to the meeting so that the appropriate arrangements can be made.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and by Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

The proposed amendment affects Alcoholic Beverage Code §§5.31, 28.151 and 32.201 and Government Code §2001.039.

§41.71. Identification Stamps and Local Distributor's Records [~~Permittees~~].

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

(1) Identification stamp--The identification stamp mentioned in §28.15 and §32.20 [~~§202.11~~] of the Alcoholic Beverage Code.

(2) Invoice--An instrument issued by the seller of alcoholic beverages to a permittee.

(3) Mutilate--To scratch, cut, tear, or abrade in a manner which inflicts obvious and substantial damage to the stamp but does not totally remove or obliterate the stamp.

(4) Retail permittee--The holder of a mixed beverage permit, a private club registration permit, or private club exemption certificate permit.

(b) [~~Records.~~] The holder of a local distributor's permit shall keep any record required by any rule of the commission or by the Alcoholic Beverage Code for a period of two years on his licensed premises and shall make any such record available to a representative of the commission upon request within a reasonable time.

(c) [~~Identification stamps.~~] Identification stamps shall be affixed only by the holder of a local distributor's permit to whom such stamps have been issued by the commission. When affixing identification stamps, the holder of a local distributor's permit shall affix each identification stamp near the top of the brand label of the bottle of distilled spirits in such a manner that some portion of the identification stamp covers and is attached to some portion of the brand label, but does not cover any information on the brand label. "Brand label" means the principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(d) Transaction records.

(1) Each holder of a local distributor's permit shall prepare a record making an entry thereon on each date there occurs any of the following transactions involving identification stamps and showing the following:

(A) quantity of identification stamps received;

(B) quantity and serial numbers of identification stamps affixed, and also showing the invoice date, invoice number, retailer trade name, and retailer permit number;

(C) quantity of identification stamps on hand after each receipt or affixing of such stamps;

(D) when the holder of a local distributor's permit affixes identification stamps prior to the sale of such stamped merchandise, he shall also record the date the merchandise is stamped showing the number of stamps used per brand and size. Stamped merchandise shall be stored separately from all other merchandise on hand. Stamps issued from pre-stamped stock must be listed individually per invoice line item on sales invoices prepared for retail sales.

(E) The serial number of each stamp issued, lost, stolen, voided, destroyed, or issued as a replacement stamp must be recorded.

(2) Full title and ownership of all identification stamps shall remain vested in the commission. Upon termination of any local distributor's permit, all unaffixed identification stamps on hand shall be surrendered to the commission along with distribution records of stamps issued by the local distributor permittee.

(e) [~~Invoices.~~] An invoice shall be issued in original and one copy in consecutive numbered order, showing the date of the sale or distribution, the name and permit number of the seller and the purchaser, and the purchaser's complete address, [~~the purchaser and his address~~] the serial numbers of all identification stamps affixed to the merchandise, the quantity, brand and class of alcoholic beverages sold and the total price of each brand and class shown thereon. Such invoices or a copy thereof shall be delivered to the permittee and a copy of such invoices shall be kept by the seller making same. The seller's copy of the invoice must be signed by the purchaser.

(f) A local distributor may elect to maintain identification stamp records required by subsection (d) of this section in an electronic format using an automated stamp record system. If this election is made, the automated system must provide the information required by subsection (d) of this section, and the automated system must be inspected and have prior approval from the Commission.

(g) The invalidation of identification stamps required by §28.09 of the Alcoholic Beverage Code shall be done by mutilating the stamp. The marking of a stamp with ink, dye, or other material is not authorized as a method for invalidating the stamp.

(h) No retail permittee shall possess or permit any person to possess on the permittee's licensed premises any distilled spirits in any container bearing an identification stamp which has been mutilated or otherwise damaged or marked to a substantial degree.

(i) No retail permittee shall possess or permit any person to possess on the permittee's licensed premise, any blank or serially number TABC identification stamp that is not properly attached to a distilled spirits container that has been properly invoiced to the retail permittee by a local distributor.

(j) All provisions of §§28.08, 28.09, and 28.15 of the Alcoholic Beverage Code applicable to a mixed beverage permittee shall apply to holders of private club registration permits, and private club exemption certificate permits.

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

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

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Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3489

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CHAPTER 45. MARKETING PRACTICES SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.105

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.105, relating to Advertising, to conform the rule to the requirements of House Bill 1917, 83rd Legislature, Regular Session, regarding advertising on public transportation passenger vehicles and vehicles for hire.

House Bill 1917, 83rd Legislature, Regular Session, generally allows outdoor advertising of an alcoholic beverage, or of a business that sells, distributes, or manufactures alcoholic beverages, to be placed on the outside of a public transportation passenger vehicle or a vehicle for hire. Currently, §45.105(e) forbids such advertising. The proposed amendment deletes that subsection.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no fiscal impact on state or local government.

There will be no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission, beyond that attributable to House Bill 1917, 83rd Legislature, Regular Session. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the commission's rules will not be in conflict with the requirements of House Bill 1917, 83rd Legislature, Regular Session.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendment on August 28, 2013, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to ensure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or Relay Texas at 1-800-735-2989 (TTY/TDD), at least three days prior to the meeting so that the appropriate arrangements can be made.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendment affects Alcoholic Beverage Code §5.31 and §108.52.

§45.105. Advertising.

(a) Mixed Beverage Establishments.

(1) This subsection relates to Alcoholic Beverage Code §108.07.

(2) Except as provided in this paragraph, the holder of any permit allowing the sale or service of mixed beverages may not adver-

tise any price for an alcoholic beverage on any sign, billboard, marquee, or other display located on the licensed premises in such a manner that the price may be read by persons outside of the premises. It is an exception to the restriction in this paragraph if the holder of a food and beverage certificate places a menu on the exterior wall of the premises so that it can be read outside of the premises only by a pedestrian in close proximity to the menu. In order to qualify for the exception granted in this paragraph, the menu visible outside of the premises must be of the same size and in the same sized font as the menu presented to the establishment's customers, and must show both food and beverage prices.

(b) Private Clubs.

(1) This subsection relates to Alcoholic Beverage Code §§32.01(b), 108.51, 108.52 and 108.56.

(2) The holder of a private club registration permit or a private club exemption certificate must, in any advertising either directly or indirectly advertising the service of alcoholic beverages, whether or not by any specific brand name, state that the service of alcoholic beverages is only for persons who are members of the club.

(3) The holder of a private club registration permit or a private club exemption certificate may advertise any class of alcoholic beverages in an area where the sale of that class of alcoholic beverages is legal for on-premises consumption, provided no other provisions of the Alcoholic Beverage Code are violated.

(c) Mobile Advertising.

(1) This subsection relates to Alcoholic Beverage Code §§108.51, 108.52 and 108.54.

(2) Mobile advertising on vehicles is not permitted unless it meets the definition of an "electric sign" in Alcoholic Beverage Code §108.51(3).

(3) Mobile advertising that meets the definition of an "electric sign" in Alcoholic Beverage Code §105.51(3) and that is funded directly or indirectly by upper-tier members may not be parked within 200 feet of a retail location for more than one hour, in order to prevent benefit to the retailer by drawing consumer traffic to the location.

(4) Mobile advertising that meets the definition of an "electric sign" in Alcoholic Beverage Code §108.51(3) may not be parked, maintained in, or driven through an area or zone where the sale of alcoholic beverages is prohibited.

(d) Internet Advertising.

(1) This subsection relates to Alcoholic Beverage Code §§102.07, 102.15 and 108.07.

(2) Retailers may advertise on the internet via their website or through third party advertising, unless the advertising is funded directly or indirectly by an upper-tier member.

(3) All retailer advertising on the internet must conform with the on-premises promotion restrictions of §45.103 of this subchapter, coupon and inducement restrictions of §45.101 of this subchapter, and sweepstakes and giveaway restrictions of §45.106 of this subchapter.

~~[(e) Public Vehicle Conveyance for Hire.]~~

~~[(1) This subsection relates to Alcoholic Beverage Code §108.51.]~~

~~[(2) For purposes of this subsection, "public vehicle conveyance for hire" includes taxi cabs, public transportation, pedicabs, rickshaws, and any other means of transportation available to the public for which a charge is made.]~~

~~[(3) No member of the alcoholic beverage industry may advertise alcoholic beverages or the sale thereof on the outside of a public vehicle conveyance for hire.]~~

~~[(4) Advertising of alcoholic beverages on the inside of a public vehicle conveyance for hire must not be displayed in such a manner that it may be read by persons outside of the vehicle.]~~

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

Filed with the Office of the Secretary of State on August 2, 2013.

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Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3489

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16 TAC §45.120

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.120, relating to Co-packaging of Liquor, to conform the rule to the requirements of Senate Bill 1090, 83rd Legislature, Regular Session, regarding co-packaging of alcoholic beverages.

Senate Bill 1090, 83rd Legislature, Regular Session, allows brewers and manufacturers to package alcoholic beverages in combination with other items under certain conditions that mirror those already applicable to distillers, wholesalers and wineries. The proposed amendment adds manufacturers to the current rule.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no fiscal impact on state or local government.

There will be no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission, beyond that attributable to Senate Bill 1090, 83rd Legislature, Regular Session. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the commission's rules will conform to the requirements of Senate Bill 1090, 83rd Legislature, Regular Session.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendment on August 28, 2013, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas. Staff will not respond to comments at the public hearing. The commission's response to comments received at

the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to ensure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or Relay Texas at 1-800-735-2989 (TTY/TDD), at least three days prior to the meeting so that the appropriate arrangements can be made.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendment affects Alcoholic Beverage Code §5.31 and §108.035.

§45.120. Co-packaging of Liquor.

(a) This section relates to Alcoholic Beverage Code §102.07(a)(5) and §108.035.

(b) As used in this section:

(1) "Co-pack" means a package:

(A) originally bundled and supplied by a manufacturer, distiller, brewer, rectifier, wholesaler, class B wholesaler, winery or wine bottler (or an agent, employee or servant of such);

(B) containing an alcoholic beverage and another item;

(C) where the package is designed to be delivered intact to the ultimate consumer; and

(D) where the additional items have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales.

(2) "Naked bottle" means an alcoholic beverage sold by a wholesaler that is similar in all regards to the alcoholic beverage contained in a co-pack sold by that wholesaler, except that it is not packaged with any other item.

(c) If any alcoholic beverage is sold to a retailer [~~by a wholesaler~~] as a "co-pack", the [~~no~~] retailer may not separate the other packaged item and sell it by any [~~other~~] means other than the way it was originally packaged when received.

(d) In order to demonstrate that a non-alcoholic beverage item in a co-pack has no unlawful value or benefit to the retailer, a retailer must price and sell a co-pack at a cost/price differential not to exceed the cost/price differential at which the retailer prices and sells a naked bottle received from the same wholesaler.

(e) Nothing in this section shall preclude a supplier from differentiating in the price of a naked bottle and co-pack during the packaging phase of a co-pack by adding cost to the co-pack and increasing the baseline price of the co-pack [~~offered to wholesalers~~].

(f) A retailer may not be forced, induced or persuaded to purchase a prescribed number of co-packs in order to purchase naked bottles, nor may a retailer be forced, induced or persuaded to purchase a prescribed number of naked bottles in order to purchase co-packs.

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

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Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3489

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SUBCHAPTER E. REGULATION OF CREDIT TRANSACTIONS
DIVISION 1. DELINQUENT LIST

16 TAC §45.121

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.121, relating to Credit Restrictions and Delinquent List for Liquor, to conform the rule to the requirements of House Bill 2806, 83rd Legislature, Regular Session, regarding credit law, and to the requirements of Senate Bill 652, 83rd Legislature, Regular Session, regarding industrial permittees.

House Bill 2806, 83rd Legislature, Regular Session, creates a new statutory grace period by declaring that a payment is not delinquent if it is received by the fourth business day after the statutory due date (which it does not change). The proposed amendment revises delinquent list reporting requirements to comply with the requirements of House Bill 2806.

Senate Bill 652, 83rd Legislature, Regular Session, provides that an industrial permittee making a bulk purchase of liquor from a wholesaler is treated under the credit law in the same manner as a retailer. The proposed amendment adds industrial permittees making such purchases to those subject to credit law requirements, including the delinquent list.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no fiscal impact on state or local government.

There will be no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission, beyond that attributable to House Bill 2806, 83rd Legislature, Regular Session and Senate Bill 652, 83rd Legislature, Regular Session. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the commission's rules will conform to the requirements of the Alcoholic Beverage Code.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendment on August 28, 2013, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas. Staff will not respond to comments at the public

hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to ensure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or Relay Texas at 1-800-735-2989 (TTY/TDD), at least three days prior to the meeting so that the appropriate arrangements can be made.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendment affects Alcoholic Beverage Code §§5.31, 102.32 and 109.64.

§45.121. Credit Restrictions and Delinquent List for Liquor.

(a) Purpose. This section implements §§102.32, 11.61(b)(2), [~~and~~] 11.66, and 109.64 of the Texas Alcoholic Beverage Code (Code).

(b) Definitions. For purposes of this section, the following terms have the definitions given in this subsection.

(1) Alcoholic beverage--As used in this section includes only liquor, as that term is defined in §1.04 of the Code.

(2) Cash equivalent--A financial transaction or instrument that is not conditioned on the availability of funds upon presentment, including, money order, cashier's check, certified check or completed electronic funds transfer.

(3) Delinquent payment--A financial transaction or instrument that fails to provide payment in full or is returned to the Seller as unpaid for any reason, on or before the fourth business day after the date that payment is due under [~~it is required to be paid by~~] §102.32(c) of the Code. A delinquent payment also occurs in the event the retailer fails to submit payment on or before the fourth business day after the date that payment is due under §102.32(c) of the Code.

(4) Event--A financial transaction or instrument that fails to provide payment to a Retailer and results in a Retailer making one or more delinquent payments to one or more Sellers.

(5) Incident--A single delinquent payment. Failure to submit payment also constitutes an incident.

(6) Retailer--A package store permittee, wine only package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer, and their agents, servants and employees. For purposes of this section, the holder of a winery permit issued under Chapter 16 of the Code is a retailer when the winery permit holder purchases wine from the holder of a wholesaler's permit issued under Chapter 19 of the Code for resale to ultimate consumers in unbroken packages. For purposes of this section and pursuant to Code §109.64, the holder of an industrial permit under Chapter 38 of the Code is treated in the same manner as a retailer when the industrial permit holder makes a bulk purchase of liquor from the holder of a wholesaler's permit issued under Chapter 19 of the Code.

(7) Seller--A wholesaler, class B wholesaler, winery, wine bottler, or local distributor permittee, and their agents, servants and employees.

(c) Invoices. A delivery of alcoholic beverages by a Seller, to a Retailer, must be accompanied by an invoice of sale showing the name and permit number of the Seller and the Retailer, a full description of the alcoholic beverages, the price and terms of sale, and the place and date of delivery.

(1) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of alcoholic beverages and accuracy of invoice.

(2) The Seller and Retailer must retain invoices in compliance with the requirements of §206.01 of the Code.

(3) Invoices may be created, signed and retained in an electronic or internet based inventory system, and may be retained on or off the licensed premise.

(d) Delinquent Payment Violation. A Retailer who makes a delinquent payment to a Seller for the delivery of alcoholic beverages violates this section unless an exception applies.

(1) A Retailer who violates this section must pay a delinquent amount, and a Seller may accept payment, only in cash or cash equivalent financial transaction or instrument.

(2) A Retailer whose permit or license expires or is cancelled for cause, voluntarily cancelled, suspended or placed in suspension while on the delinquent list will be disqualified from applying for or being issued an original or renewal permit or license until all delinquent payments are satisfied. For purposes of this section, the Retailer includes all persons who were owners, officers, directors and shareholders of the Retailer at the time the delinquency occurred.

(e) Reporting Violation and Payment; Failure to Report.

(1) A report of a violation or payment must be submitted electronically to the commission on the commission's web based reporting system at www.tabc.state.tx.us.

(2) A Seller who cannot access the commission's web based reporting system must either:

(A) submit a request for exception to submit reports by paper; or

(B) contract with another seller or service provider to make electronic reports on behalf of the Seller.

(3) All reports of violations or payment under this subsection must be made to the commission [~~on or~~] before the date the delinquent list is published.

(4) A Seller who fails to report a violation or a payment as required by this subsection is in violation of this section.

(f) Prohibited Sales and Delivery.

(1) Sellers are prohibited from selling or delivering alcoholic beverages to any licensed location of a Retailer who appears on the commission's Delinquent List from the date the violation appears on the Delinquent List until the Release Date on the Delinquent List, or until the Retailer no longer appears on the Delinquent List.

(2) A sale or delivery of alcoholic beverages prohibited by this section is a violation of this section.

(g) Prohibited Purchase or Acceptance.

(1) A Retailer who violates subsection (d) of this section is prohibited from purchasing or accepting delivery of alcoholic beverages from any source at any of Retailer's licensed locations from the date any violation occurs until all delinquent payment are paid in full.

(2) A prohibited purchase or acceptance of a delivery of alcoholic beverages is a violation of this section.

(h) Exception. A Retailer who wishes to dispute a violation of this section or inclusion on the commission's Delinquent List based on a good faith dispute between the Retailer and the Seller may submit a detailed electronic or paper written statement with the commission with an electronic or paper copy to the Seller explaining the basis of the dispute.

(1) The written statement must be submitted with documents and/or other records tending to support the Retailer's dispute, which may include:

(A) a copy of the front and back of the cancelled check of Retailer showing endorsement and deposit by Seller;

(B) bank statement or records of bank showing funds were available in the account of Retailer on the date the check was delivered to Seller; and

(C) bank statement or records showing:

(i) bank error or circumstances beyond the control of Retailer caused the check to be returned to Seller unpaid; or

(ii) the check cleared Retailer's account and funds were withdrawn from Retailer's account in the amount of the check.

(2) A disputed delinquent payment will not be removed from the delinquent list until documents and/or other records tending to support the Retailer's dispute are submitted to the commission.

(3) The Retailer must immediately submit an electronic notice of resolution of a dispute to the commission under this subsection.

(i) Penalty for Violation. An action to cancel or suspend a permit or license may be initiated under §11.61(b)(2) of the Code for one or more violations of this section. The commission may consider whether a violation is the result of an event or incident when initiating an action under this subsection.

(j) Delinquent List.

(1) The Delinquent List is published bi-monthly on the commission's public web site at http://www.tabc.state.tx.us. An interested person may receive the Delinquent List by electronic mail each date the Delinquent List is published by registering for this service online.

(2) Except as otherwise specified in subsection (k) of this section, the Delinquent List will be published on the fifth [~~fourth~~] business day after the 25th day of the month for purchases made from the 1st to the 15th day of that month and for which payment was not received by the fourth business day after [~~made on or before~~] the 25th day of that month. Except as otherwise specified in subsection (k) of this section, the Delinquent List will be published on the fifth [~~fourth~~] business day after the 10th day of the next month for purchases made between the 16th and the last day of the preceding month and for which payment was not received by the fourth business day after [~~made on or before~~] the 10th day of the next month.

(3) The Delinquent List is effective at 12:01 A.M. on the date of publication.

(4) The Delinquent List is updated hourly to reflect reports of payments submitted.

(k) Calculation of Time. A due date under this section or §102.32(c) of the Code or the publication date of the Delinquent List that would otherwise fall on a Saturday, a Sunday, a state or federal holiday (unless the commission is required to be open for business), or a standard Federal Reserve bank holiday (as published at http://www.frbservices.org/holidayschedules/ index.html) will be the next regular business day. For purposes of this section, a business day means a day which is not a Saturday, a Sunday, a state or federal holiday (unless the commission is required to be open for business), or a standard Federal Reserve bank holiday (as published at http://www.frbservices.org/holidayschedules/index.html). [~~A payment sent by U.S. postal service or other mail delivery service is deemed made on the date postmarked or proof of date delivered to the mail delivery service.~~] A payment hand delivered to an individual authorized to accept payment on behalf of the Seller is deemed received [~~made~~] when the authorized individual takes possession of the payment.

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

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

TRD-201303195
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 206-3489

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DIVISION 2. CASH LAW

16 TAC §45.131

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.131, relating to Payment Regulations for Malt Beverages, to conform the rule to the requirements of Senate Bill 515, 83rd Legislature, Regular Session, regarding manufacturer's self-distribution license, and to the requirements of Senate Bill 517, 83rd Legislature, Regular Session, authorizing brewpub licensees to sell their malt beverages to retailers.

Senate Bill 515 creates a new license available to certain manufacturers that would authorize them to distribute their product to retailers. When engaging in the activities authorized by this new self-distribution license, they are subject to the same regulatory requirements as distributors. This places them under the cash law requirements of Alcoholic Beverage Code §102.31. The proposed amendment classifies holders of self-distribution licenses as sellers for purposes of the rule, in compliance with Senate Bill 515.

The proposed amendment also applies the language of Alcoholic Beverage Code §102.31 to the holder of a brewpub license selling its product pursuant to Senate Bill 517 to retailers in certain situations.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no fiscal impact on state or local government.

There will be no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission, beyond that attributable to Senate Bill 515, 83rd Legislature, Regular Session and Senate Bill 517, 83rd Legislature, Regular Session. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the commission's rules will conform to the requirements of the Alcoholic Beverage Code.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendment on August 28, 2013, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to ensure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or Relay Texas at 1-800-735-2989 (TTY/TDD), at least three days prior to the meeting so that the appropriate arrangements can be made.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendment affects Alcoholic Beverage Code §5.31 and §74.08.

§45.131. Payment Regulations for Certain Malt Beverages.

(a) Purpose. This rule implements §102.31 [~~§§102.31, 11.61(b)(2), 11.66, 61.72 and 61.73~~] of the Texas Alcoholic Beverage Code (Code).

(b) Definitions. For purposes of this section, the following terms have the meaning given in this subsection.

(1) Cash equivalent--A financial transaction or instrument that is not conditioned on the availability of funds upon presentment, including, money order, cashier's check, certified check or completed electronic funds transfer.

(2) Cash payment--United States Currency and coins, or a cash equivalent financial transaction or instrument.

(3) Event--A financial transaction or instrument that fails to provide payment to a Retailer and results in one or more incidents to one or more Sellers.

(4) Incident--One financial transaction or instrument made by a Retailer that fails to provide payment in full for malt beverages delivered by a Seller to the Retailer. Failure to submit payment also constitutes an incident.

(5) Malt beverages--Ale or malt liquor containing more than four percent of alcohol by weight and beer containing one-half of one percent or more of alcohol by volume and not more than four percent alcohol by weight.

(6) Retailer--A license or permit holder and their agents, servants and employees, authorized to sell malt beverages for on or off premise consumption to an ultimate consumer.

(7) Seller--The holder of a [~~A~~] general, local or branch distributor's license [~~holder~~], the holder of a manufacturer's self distribution license, and the holder of either [~~or~~] a local distributor's permit, or a brewpub license when selling malt beverages to a mixed beverage or daily temporary mixed beverage permittee, [~~holder~~] and their agents, servants, employees, or a subsidiary or affiliate, authorized to sell malt beverages to a retailer.

(c) Invoices. A delivery of malt beverages by a Seller, to a Retailer, must be accompanied by an invoice of sale showing the name and permit number of the Seller and the Retailer, a full description of the malt beverages, the price, the place and date of delivery.

(1) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of malt beverages and accuracy of invoice and by the Seller to acknowledge payment was received on or before the delivery.

(2) The Seller and Retailer must retain invoices for four years from the date of delivery.

(3) Invoices may be created, signed and retained in an electronic or internet based inventory system, and may be retained on or off the licensed premise, as long as the records can be accessed from the licensed premise and made available to the commission during normal business hours.

(d) Cash Payment Violation. A Retailer who fails to make a cash payment to a Seller for the delivery of malt beverages violates this section unless an exception applies.

(1) A Retailer who violates this section must pay the amount due, and a Seller may accept payment, only in cash or cash equivalent financial transaction or instrument.

(2) For purposes of this section, the Retailer includes all persons who are or were owners, officers, directors, managers or shareholders of the Retailer at the time a cash payment violation occurs.

(e) Reporting Violation and Payment; Failure to Report.

(1) A report of a violation must be submitted electronically on the forms provided on the commission's web based reporting system at www.tabc.state.tx.us.

(2) A Seller who cannot access the commission's web based reporting system must either:

(A) submit a request for exception to submit reports by paper; or

(B) contract with another seller or service provider to make electronic reports on behalf of the Seller.

(3) All reports of violations under this subsection must be made to the commission within two business days from the date the violation is discovered by the Seller.

(4) A Seller who fails to report a violation as required by this subsection is in violation of this section.

(f) Exception. A Retailer who wishes to dispute a violation of this section, based on a good faith dispute between the Retailer and the Seller may submit supporting documents and a detailed written statement to the commission with a copy to the Seller explaining the basis of the dispute.

(1) The written statement must be submitted with documents and/or other records tending to support the Retailer's dispute, which may include:

(A) a copy of the front and back of the cancelled check of Retailer showing endorsement and deposit by Seller;

(B) bank statement or records of bank showing funds were available in the account of Retailer on the date the check was delivered to Seller; and

(C) bank statement or records showing:

(i) bank error or circumstances beyond the control of Retailer caused the check to be returned to Seller unpaid; or

(ii) the check cleared Retailer's account and funds were withdrawn from Retailer's account in the amount of the check.

(2) The Retailer must immediately submit a notice of resolution of a dispute to the commission under this subsection.

(g) Penalty for Violation. An action to cancel or suspend a permit or license may be initiated under [~~§§11.61, 28.12, 61.71, 61.73 or 61.74 of~~] the Code for one or more violations of this section. The commission may consider whether a violation is the result of an event or incident when initiating an action under this subsection.

(h) Calculation of Time. Sundays and legal holidays are not counted in determining time periods under this section.

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

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

TRD-201303188
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3489

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER E. STUDENT COMPLAINT PROCEDURE

19 TAC §1.110, §1.111

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §1.110 and §1.111, concerning student complaint procedures. The amendments are adopted on an emergency basis and are proposed to allow for a 30 day comment period. The intent of the amendments are to incorporate into existing rules changes and provisions enacted by the 83rd Texas Legislature, Regular Session (H.B. 2000). A provision was added to define a Title IV participating exempt school as exempted by the Texas Workforce Commission. A provision was added to implement Texas Education Code §132.002(k) which requires the Coordinating Board to take appropriate action to address complaints received from a student or prospective student of a Title IV participating exempt school regulated by the Coordinating Board.

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

Dr. Silverman has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be to clarify to the public that the Coordinating Board will take appropriate action to address complaints from students or prospective students of Title IV participating exempt schools regulated by the Coordinating Board. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

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

The amendments are proposed under the Texas Education Code, Chapter 132, §132.002(k), which provides the Coordinating Board with the authority to receive student complaints and take appropriate action with regard to the schools.

The amendments affect the implementation of Texas Education Code, Chapter 132.

§1.110. Definitions.

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

(1) - (6) (No change.)

(7) Title IV participating exempt school--A school exempted by the Texas Workforce Commission under Texas Education Code, §132.002(h).

§1.111. Scope and Purpose.

(a) (No change.)

(b) This subchapter implements Texas Education Code, §61.031, concerning Public Interest Information and Complaints, and 34 C.F.R. §600.9(a)(1) of the United States Department of Education's Program Integrity regulations, which requires each state to establish "a process to review and appropriately act on complaints concerning an institution of higher education including enforcing applicable State laws." This subchapter implements Texas Education Code, §132.002(k), which requires the Agency to take appropriate action, including by making appropriate referrals to an accrediting agency or to the Office of the Attorney General of Texas, to address any complaints received by the Agency from a student or prospective student of a Title IV participating exempt school as defined in Texas Education Code, §132.002(h) exemption applies and is regulated by the Agency.

(c) (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 July 31, 2013.

TRD-201303125

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

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

SUBCHAPTER G. EARLY COLLEGE HIGH SCHOOLS

19 TAC §4.153, §4.159

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §4.153 and §4.159, concerning definitions for the early college high school program and its evaluation and accountability. The intent of the amendments is to incorporate into existing rules the replacement of reference to "Recommended or Advanced" High School Program with "Distinguished Level of Achievement under the Foundation" High School Program. The reference to TAKS was also eliminated from §4.159.

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

Dr. Silverman has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the amended sections will be the clarification of the high school program which early college high schools must enable the participating student to attain. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

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

The amendments are proposed under the Texas Education Code, Chapter 29, Subchapter Z, §29.908, which states that the board may adopt rules as necessary to exercise its powers and duties under Texas Education Code, §29.908.

The amendments do not affect the Texas Education Code.

§4.153. Definitions.

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

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

(5) Early College High School or ECHS--The institution or entity designated by the Texas Education Agency as an Early College High School in accordance with §102.1091 of this title (relating to Early College High Schools), that provides the outreach, curricula, and student learning and support programs that enable the participating student to combine high school courses and college-level courses during grade levels 9 through 12 and to attain the Distinguished Level of Achievement under the Foundation [~~Recommended or Advanced~~] High School Program diploma and earn up to 60 semester credit hours toward an associate or baccalaureate degree by the fifth anniversary of the student's first day of high school.

(6) Distinguished Level of Achievement under the Foundation [~~Recommended or Advanced~~] High School Program--The curriculum specified in the Texas Education Code, §28.025, and the rules promulgated thereunder [~~there under~~] by the State Board of Education.

§4.159. Evaluation and Accountability.

Each ECHS and sponsoring C/U shall be responsible for the development and implementation of an evaluation process to determine the effectiveness of the ECHS. Measures of effectiveness shall include, but are not limited to, student results on the K-12 accountability assessments [~~(e.g., TAKS)~~] and success indicators of graduates at Texas public institutions of higher education (e.g., participation rates, grade point average, retention rates, and graduation rates).

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

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER L. FINANCIAL LITERACY TRAINING

19 TAC §4.211

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §4.211, concerning financial literacy training. The amendments are adopted on an emergency basis and are proposed to allow for a 30 day comment period. The intent of the amendments is to incorporate into existing rules other topics that should be included in the financial literacy course that is provided by the institution.

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

Dr. Silverman has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the section will be to clarify for institutions what specific topics should be covered in the financial literacy courses they are required by statute to provide to students. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Dr. Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcom-

ments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 51, §51.305, which provides the Coordinating Board with the authority to adopt rules to administer the section.

The amendments affect the implementation of Texas Education Code, Chapter 51.

§4.211. Topics for Financial Literacy Training.

The topics to be covered in the training shall include, but are not limited to, budgeting, managing debt and credit, saving and investing, preventing identity theft, [~~and~~] retirement planning, taxes, insurance and financing of health care. The training may be offered in any format an institution deems appropriate, including online.

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

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TRD-201303126
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 24, 2013
For further information, please call: (512) 427-6114

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19 TAC §4.213

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

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §4.213, concerning financial literacy training. The repeal of this section is adopted on an emergency basis and is proposed to allow for a 30 day comment period. The repeal will remove the certification that is required by institutions.

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

Dr. Silverman has also determined that for the first five years the repeal is in effect, the public benefits anticipated as a result of administering the section will be to clarify for institutions what specific topics should be covered in the financial literacy courses they are required by statute to provide to students. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

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

The repeal is proposed under the Texas Education Code, Chapter 51, §51.305, which provides the Coordinating Board with the authority to adopt rules to administer the section.

The repeal affects the implementation of Texas Education Code, Chapter 51.

§4.213. Certification.

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

Filed with the Office of the Secretary of State on July 31, 2013.

TRD-201303127
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 24, 2013
For further information, please call: (512) 427-6114

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SUBCHAPTER P. APPROVAL OF DISTANCE EDUCATION COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §4.256

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §4.256, concerning the authority for approval of distance education courses and programs for public institutions. The intent of the amendment is to renumber the reference to the cited section of the Texas Education Code from §61.051(j) to §61.0512(g), per Senate Bill 215, 83rd Texas Legislature, Regular Session.

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

Dr. Silverman has also determined that no effect on public benefits or local employment is anticipated as a result of the amendment. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

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

The amendment is proposed under the Texas Education Code, Chapter 61, §61.0512(g), which provides the Coordinating Board with the authority to administer the programs.

The amendment affects Texas Education Code, §61.0512.

§4.256. Authority.

Authority for this subchapter [~~these provisions~~] is provided by Texas Education Code §61.0512(g) [~~§61.051(j)~~], which provides the Board with the authority to approve courses for credit and distance education programs.

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

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TRD-201303144
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 24, 2013
For further information, please call: (512) 427-6114

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SUBCHAPTER Q. APPROVAL OF OFF-CAMPUS AND SELF-SUPPORTING COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §4.271

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §4.271, concerning the authority for the approval of off-campus and self-supporting courses and programs for public institutions. The intent of the amendment is to renumber the reference to the cited section of the Texas Education Code from §61.051(j) to §61.0512(g), per Senate Bill 215, 83rd Texas Legislature, Regular Session.

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

Dr. Silverman has also determined that no effect on public benefits or local employment is anticipated as a result of the amendment. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

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

The amendment is proposed under the Texas Education Code, Chapter 61, §61.0512(g), which provides the Coordinating Board with the authority to administer the programs.

The amendment affects Texas Education Code, §61.0512.

§4.271. Authority.

Authority for this subchapter [~~these provisions~~] is provided by Texas Education Code §61.0512(g) [~~§61.051(j)~~] which provides the Board with the authority to approve courses for credit and distance education programs, including off-campus and self-supporting programs, and Texas Education Code §130.008 and §28.009, which provide for the offering of dual credit courses by public institutions of higher education.

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

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

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

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SUBCHAPTER R. REVIEW OF LOW-PRODUCING DEGREE PROGRAMS

19 TAC §§4.286, 4.287, 4.290

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§4.286, 4.287, and 4.290, concerning the review of low-producing degree programs. These amendments are adopted on an emergency basis elsewhere in this issue, and now are being proposed to allow for a 30-day comment period. The intent of the amendments is to incorporate into existing rules a statutory change in the authority of the Board. The Board no longer has the authority to order the closure or consolidation of degree programs at institutions of higher education, but may instead issue recommendations for closure or consolidation to the institution and its governing board. The amended sections reflect this change in authority.

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

Dr. Silverman has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be to give institutions and their governing boards direct authority over decisions regarding the closure or consolidation of degree programs. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

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

The amendments are proposed under the Texas Education Code, Chapter 61, §61.0512, which provides the Coordinating Board with the authority to review existing degree programs at public institutions of higher education.

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

§4.286. Authority.

Unless otherwise noted in a section, the authority for these provisions is provided by Texas Education Code, §61.0512 [~~§61.051~~] which describes the Board's role in the Texas system of higher education.

§4.287. Definitions.

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

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

[(6) Temporary Exemption--Exemption for degree programs which removes them from the consequences of low-producing degree programs for a defined period of time.]

(6) [(7)] Related Degree Program--A degree program for which an institution may use common faculty and other resources.

[(8) Small class--Sections of a course offered by an institution that meets the following criteria:]

[(A) Undergraduate classes with fewer than 10 registrants; or]

[(B) Graduate classes with fewer than five graduate registrants; and]

[(C) The primary type of instruction is reported as lecture, laboratory, or seminar in CBM - 004 Class Report.]

§4.290. Consequences for Non-Exempt Low-Producing Degree Programs.

Coordinating Board staff will recommend to the institution's governing board or to an institution where a system does not exist the closure of any non-exempt degree program which has been on the annual list of low-producing programs for three or more consecutive years. If the governing board or institution does not accept the recommendation to close the program, then the university system or, where a system does not exist, the institution must identify the programs recommended for closure on the next legislative appropriations request submitted by the system or institution. [Once the institution has been notified that a degree program has not met the minimum standards for five consecutive years, the institution must:]

[(1) Phase out or consolidate the low-producing degree program with another program or programs; or]

[(2) Request a temporary exemption.]

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

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

TRD-201303200
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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19 TAC §§4.291 - 4.293

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

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§4.291 - 4.293, concerning the review of low-producing degree programs. The repeal is adopted on an emergency basis and is proposed to allow for a 30 day comment period. The intent of this repeal is to incorporate into existing rules a statutory change in the authority of the Board. The Board no longer has the authority to order the closure or consolidation of degree programs at institutions of higher education, but may instead issue recommendations for closure or consolidation to the institution and its governing board. The repeal reflects this change in authority.

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

Dr. Silverman has also determined that for the first five years the repeal is in effect, the public benefits anticipated as a result of repealing the sections will be to give institutions and their governing boards direct authority over decisions regarding the closure or consolidation of degree programs. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

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

The repeal is proposed under the Texas Education Code, Chapter 61, §61.0512, which provides the Coordinating Board with the authority to review existing degree programs at public institutions of higher education.

The repeal affects the implementation of Texas Education Code, Chapter 61.

§4.291. Process for Requesting a Temporary Exemption.

§4.292. Appeals Process.

§4.293. Reinstatement of Closed Programs.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 6. HEALTH EDUCATION, TRAINING, AND RESEARCH FUNDS
SUBCHAPTER F. PLANNING GRANTS FOR GRADUATE MEDICAL EDUCATION

19 TAC §§6.105 - 6.110

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§6.105 - 6.110, concerning Planning Grants for Graduate Medical Education. The new rules are adopted on an emergency basis, and are proposed to allow for a 30 day comment period. The Coordinating Board made the finding that these new sections should be adopted on an emergency basis, pursuant to §2001.034 of the Government Code, because House Bill 1025 and House Bill 2550 of the 83rd Texas Legislature passed both houses and was signed by the Governor, making them effective on September 1. The new sections will support the increase of first-year residency

positions in the state. The Coordinating Board will immediately begin planning and implementation of the grant programs, some of which have statutorily mandated timelines. Therefore, these new sections must be adopted on less than 30 days notice pursuant to §2001.034 of the Government Code. The intent of the new sections is to specify the Board's criteria and process for awarding Planning Grants to eligible entities planning to create additional first-year residency positions in the state.

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

Dr. Silverman has also determined that for the first five years the new sections are in effect, the public benefits anticipated as a result of administering the sections will be to increase entry-level training opportunities for physicians in the state. Texas increased its medical school enrollments by more than 30 percent over the past decade. However, the number of entry-level graduate medical education training positions has not increased commensurately, causing some medical school graduates to leave the state for their first year of residency training. 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 new sections may be submitted by mail to Dr. Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, Chapter 58A, Subchapter B, which provides the Coordinating Board with the authority to administer the programs.

The new sections affect the implementation of Texas Education Code, Chapter 58A.

§6.105. Purpose.

The purpose of this subchapter is to implement rules regarding awards for Graduate Medical Education Planning Grants.

§6.106. Authority.

The authority for this subchapter is found in Texas Education Code, Chapter 58A, Subchapter B, §58A.021 and §58A.022.

§6.107. Definitions.

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

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

(2) Commissioner--The Commissioner of Higher Education.

(3) First-Year Residency Position--A position filled by a physician that is entering into residency training for the first time. These positions are also referred to as entry level positions.

(4) First-year Residency Program--Any graduate medical education program that accepts first-year physicians immediately after their successful completion of medical school.

(5) Graduate-Year Level--A resident's current year of accredited graduate medical education. Graduate-Year Level is also referred to as "postgraduate year" or "PGY."

(6) Graduate Medical Education Program--A nationally-accredited post-medical degree (M.D.) or doctor of osteopathic medicine (D.O.) program that prepares physicians for the independent practice of medicine in a specific specialty area, also referred to as residency training.

(7) Hospital--A Texas health care facility, as defined in Texas Health and Safety Code, §241.003, and includes a hospital owned, maintained, or operated by the state, but does not include a facility that is owned, maintained, or operated by the federal government or an agency of the federal government.

(8) Medical School--A public or independent medical institution that awards the doctor of medicine (M.D.) or doctor of osteopathic medicine (D.O.) degree, as defined in Texas Education Code, §61.501(1).

(9) Request for Applications--The full text of the administrative regulations, budget guidelines, reporting requirements, and other standards of accountability for this program.

(10) Sponsoring Institution--The organization or entity that assumes the ultimate financial and/or academic responsibility for a program of graduate medical education, e.g., a university, a medical school, a hospital, a school of public health, a health department, a public health agency, an organized health care delivery system, a medical examiner's office, a consortium, an educational foundation.

§6.108. Eligibility.

(a) Entities located in the state are eligible to apply for support under the Planning Grant Program if the entity:

(1) does not operate a graduate medical education (GME) program; and

(2) has not been assigned a cap on the number of residents applicable to Medicare GME funding.

(b) A grant under this subchapter must be used for the purpose of planning a GME first-year residency program.

§6.109. Selection for Funding.

(a) Applicants shall be selected for funding on a competitive basis. Application requirements and selection criteria shall be provided in the Request for Applications (RFA).

(b) The selection process includes an application review and staff recommendation for funding. Board staff shall review applications to determine if they adhere to the grant program requirements and the funding priorities contained in the RFA. An application must meet the requirements of the RFA and be submitted with proper authorization before or on the day specified by the Board to qualify for further consideration.

§6.110. General Information.

(a) Cancellation or Suspension of Grants. The Board has the right to reject all applications and cancel a grant solicitation at any point.

(b) Notice of Grant Award (NOGA). Before release of funds, the successful applicants must sign a NOGA issued by Board staff.

(c) Reporting. Grantees must file reports with Board staff as required by the RFA.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER G. UNFILLED POSITION GRANTS FOR GRADUATE MEDICAL EDUCATION

19 TAC §§6.120 - 6.125

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§6.120 - 6.125, concerning Unfilled Position Grants for Graduate Medical Education. The new sections are adopted on an emergency basis and are proposed to allow for a 30 day comment period. The Coordinating Board made the finding that these new sections should be adopted on an emergency basis, pursuant to §2001.034 of the Government Code, because House Bill 1025 and House Bill 2550 of the 83rd Texas Legislature passed both houses and was signed by the Governor, making them effective on September 1. The new sections will support the increase of first-year residency positions in the state. The Coordinating Board will immediately begin planning and implementation of the grant programs, some of which have statutorily mandated timelines. Therefore, these new sections must be adopted on less than 30 days notice pursuant to §2001.034 of the Government Code. The intent of the new sections is to specify the Board's criteria and process for awarding Unfilled Position Grants to eligible existing graduate medical education programs seeking to fill accreditor-approved but unfilled first-year residency positions in the state.

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

Dr. Silverman has also determined that for the first five years the new sections are in effect, the public benefits anticipated as a result of administering the sections will be to increase entry-level training opportunities for physicians in the state. Texas increased its medical school enrollments by more than 30 percent over the past decade. However, the number of entry-level graduate medical education training positions has not increased commensurately, causing some medical school graduates to leave the state for their first year of residency training. 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 new sections may be submitted by mail to Dr. Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, Chapter 58A, Subchapter B, which provides the Coordinating Board with the authority to administer the programs.

The new sections affect the implementation of Texas Education Code, Chapter 58A.

§6.120. Purpose.

The purpose of this subchapter is to implement rules regarding awards for Graduate Medical Education Unfilled Position Grants.

§6.121. Authority.

The authority for this subchapter is found in Texas Education Code, Chapter 58A, Subchapter B, §§58A.021, 58A.023 and 58A.025.

§6.122. Definitions.

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

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

(2) Commissioner--The Commissioner of Higher Education.

(3) First-Year Residency Position--A position filled by a physician that is entering into residency training for the first time. These positions are also referred to as entry level positions.

(4) First-Year Residency Program--Any graduate medical education program that accepts first-year physicians immediately after their successful completion of medical school.

(5) Graduate Medical Education Program--A nationally-accredited post-medical degree (M.D.) or doctor of osteopathic medicine (D.O.) program that prepares physicians for the independent practice of medicine in a specific specialty area, also referred to as residency training.

(6) Graduate-Year Level--A resident's current year of accredited graduate medical education. Graduate-Year Level is also referred to as "postgraduate year" or "PGY."

(7) Medical School--A public or independent medical institution that awards the doctor of medicine (M.D.) or doctor of osteopathic medicine (D.O.) degree, as defined in Texas Education Code, §61.501(1).

(8) Request for Applications--The full text of the administrative regulations, budget guidelines, reporting requirements, and other standards of accountability for this program.

(9) Sponsoring Institution--The organization or entity that assumes the ultimate financial and/or academic responsibility for a program of graduate medical education, e.g., a university, a medical school, a hospital, a school of public health, a health department, a public health agency, an organized health care delivery system, a medical examiner's office, a consortium, an educational foundation.

(10) Unfilled Position--A residency position that is approved by the accreditor for the graduate medical education program and that was not filled as of July 1 of the preceding state fiscal year.

§6.123. Eligibility.

(a) An existing graduate medical education (GME) program is eligible to participate in the program and may apply for support if the GME program:

(1) is a first-year residency program; and

(2) has unfilled positions that are approved by the program's accrediting body.

(b) A grant under this subchapter may only support costs related to the direct resident costs of the GME program.

§6.124. Selection for Funding.

(a) Applicant shall be selected for funding based on requirements and selection criteria provided in the Request for Applications (RFA).

(b) The selection process includes an application review and staff recommendation for funding. Board staff shall review applications to determine if they adhere to the grant program requirements and the funding priorities contained in the RFA. An application must meet the requirements of the RFA and be submitted with proper authorization before or on the day specified by the RFA to qualify for further consideration.

(c) Board staff shall distribute funding only after awarded applicants verify that funded residency positions have been filled.

§6.125. General Information.

(a) Cancellation or Suspension of Grants. The Board has the right to reject all applications and cancel a grant solicitation at any point.

(b) Notice of Grant Award (NOGA). Before release of funds, the successful applicants must sign a NOGA issued by Board staff.

(c) Reporting. Grantees must file reports with Board staff as required by the RFA.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER H. GRANTS FOR NEW AND EXPANDED PROGRAMS FOR GRADUATE MEDICAL EDUCATION

19 TAC §§6.135 - 6.140

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§6.135 - 6.140, concerning Grants for New and Expanded Programs for Graduate Medical Education. The new sections are adopted on an emergency basis and are proposed to allow for a 30 day comment period. The Coordinating Board made the finding that these new sections should be adopted on an emergency basis, pursuant to §2001.034 of the Government Code, because House Bill 1025 and House Bill 2550 of the 83rd Texas Legislature passed both houses and was signed by the Governor, making them effective on September 1. The new sections will support the increase of first-year residency positions in the state. The Coordinating Board will immediately begin planning and implementation of the grant programs, some of which have statutorily mandated timelines. Therefore, these new sections must be adopted on less than 30 days notice pursuant to §2001.034 of the Government Code. The intent of the new sections is to specify the Board's criteria and process for awarding Grants for New and Expanded Programs to eligible: 1) existing first-year graduate medical education programs that intend to increase their number of accreditor-approved first-year residency positions and 2) sponsoring institutions that intend to establish a new graduate medical education program with first-year residency positions.

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

Dr. Silverman has also determined that for the first five years the new sections are in effect, the public benefits anticipated as a result of administering the sections will be to increase entry-level training opportunities for physicians in the state. Texas increased its medical school enrollments by more than 30 percent over the past decade. However, the number of entry-level graduate medical education training positions has not increased commensurately, causing some medical school graduates to leave the state for their first year of residency training. 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 new sections may be submitted by mail to Dr. Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, Chapter 58A, Subchapter B, which provides the Coordinating Board with the authority to administer the programs.

The new sections affect the implementation of Texas Education Code, Chapter 58A.

§6.135. Purpose.

The purpose of this subchapter is to implement rules regarding awards for Graduate Medical Education Program Expansion and New Programs.

§6.136. Authority.

The authority for this subchapter is found in Texas Education Code, Chapter 58A, Subchapter B, §§58A.021, 58A.024 and 58A.025.

§6.137. Definitions.

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

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

(2) Commissioner--The Commissioner of Higher Education.

(3) First-Year Residency Position--A position filled by a physician that is entering into residency training for the first time. These positions are also referred to as entry level positions.

(4) First-Year Residency Program--Any graduate medical education program that accepts first-year physicians immediately after their successful completion of medical school.

(5) Graduate Medical Education Program--A nationally-accredited post-medical degree (M.D.) or doctor of osteopathic medicine (D.O.) program that prepares physicians for the independent practice of medicine in a specific specialty area, also referred to as residency training.

(6) Graduate-Year Level--A resident's current year of accredited graduate medical education. Graduate-Year Level is also referred to as "postgraduate year" or "PGY."

(7) Medical School--A public or independent medical institution that awards the doctor of medicine (M.D.) or doctor of osteopathic medicine (D.O.) degree, as defined in Texas Education Code, §61.501(1).

(8) Request for Applications--The full text of the administrative regulations, budget guidelines, reporting requirements, and other standards of accountability for this program.

(9) Sponsoring Institution--The organization or entity that assumes the ultimate financial and/or academic responsibility for a program of graduate medical education, e.g., a university, a medical school, a hospital, a school of public health, a health department, a public health agency, an organized health care delivery system, a medical examiner's office, a consortium, an educational foundation.

§6.138. Eligibility.

(a) The following entities are eligible to participate in the grant program and may apply for support:

(1) An existing graduate medical education (GME) program that intends to increase the number of approved first-year residency positions; or

(2) A sponsoring institution that intends to establish a new GME program with first-year residency positions.

(b) A grant under this subchapter may only support costs related to the direct resident costs of the GME program.

§6.139. Selection for Funding.

(a) Applicant shall be selected for funding based on requirements and selection criteria provided in the Request for Applications (RFA).

(b) The selection process includes an application review and staff recommendation for funding. Board staff shall review applications to determine if they adhere to the grant program requirements and the funding priorities contained in the RFA. An application must meet the requirements of the RFA and be submitted with proper authorization before or on the day specified by the RFA to qualify for further consideration.

(c) Board staff shall distribute funding only after awarded applicants verify that funded residency positions have been filled.

§6.140. General Information.

(a) Cancellation or Suspension of Grants. The Board has the right to reject all applications and cancel a grant solicitation at any point.

(b) Notice of Grant Award (NOGA). Before release of funds, the successful applicants must sign a NOGA issued by Board staff.

(c) Reporting. Grantees must file reports with Board staff as required by the RFA.

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

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General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES
SUBCHAPTER A. DEFINITIONS

19 TAC §9.1

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §9.1, concerning definitions for Program Development in Public Two-Year Colleges. The intent of the amendments is to incorporate into existing rules a provision that requires public institutions of higher education to limit the number of semester credit hours required for students to complete in order to be awarded an associate's degree to the minimum number of semester credit hours required by the Southern Association of Colleges and Schools, unless the institution determines there is a compelling academic reason for requiring additional semester credit hours in order to award the degree. Language has been added to define "compelling academic reason" and the definition of "contractual agreements" was repositioned in the text to follow alphabetic order. The remaining definitions were renumbered. The amended rule will affect entering students enrolling in public or institutions of higher education on or after the 2015 fall semester.

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

Dr. Silverman has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the amended section will be the reduction in the number of semester credit hours required for students to complete in order to be awarded an associate's degree to the minimum number of semester credit hours required by the Southern Association of Colleges and Schools, unless the institution determines there is a compelling academic reason for requiring additional semester credit hours in order to award the degree. The benefits of administering the amended section would increase the standardization of associate degree program completion requirements for public colleges in the state. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

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

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carry-

ing out the duties with respect to public junior colleges placed upon it by the legislature.

The amendments affect the Texas Education Code, §61.05151.

§9.1. Definitions.

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

(1) - (8) (No change.)

(9) Compelling Academic Reason--A justification for an associate's degree program consisting of more than 60 semester credit hours. Acceptable justifications are programmatic accreditation requirements, statutory requirements, and requirements for licensure/certification of graduates.

(10) [~~(9)~~] Concurrent course credit--See "Dual credit."

(11) [~~(10)~~] Continuing education unit or CEU--Ten (10) contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction, as outlined in the Guidelines for Instructional Programs in Workforce Education.

~~[(11) Contractual agreements--Agreements or contracts between public two-year colleges and one of the following:]~~

~~[(A) a non-SACS/COC-accredited organization, for postsecondary instructional services that could not be offered otherwise;]~~

~~[(B) a public secondary school, for instructional services that could not be offered otherwise; or]~~

~~[(C) another SACS/COC-accredited institution of higher education, whether public or independent.]~~

(12) (No change.)

(13) Contractual agreements--Agreements or contracts between public two-year colleges and one of the following:

(A) a non-SACS/COC-accredited organization, for postsecondary instructional services that could not be offered otherwise;

(B) a public secondary school, for instructional services that could not be offered otherwise; or

(C) another SACS/COC-accredited institution of higher education, whether public or independent.

(14) [~~(13)~~] Developmental courses--Courses designed to correct academic deficiencies and bring students' skills to an appropriate level for entry into college.

(15) [~~(14)~~] Distance education--Classes in which the majority of the instruction occurs when the student and instructor are not in the same physical setting. A class is considered a distance education class if students receive more than one-half of the instruction at a distance. Distance education can be delivered synchronously or asynchronously to any single or multiple location(s):

(A) other than the main campus of a senior institution (or "on campus"), where the primary office of the chief executive officer of the campus is located;

(B) outside the boundaries of the taxing authority of a community college district; or

(C) via instructional telecommunications to any other distance location, including electronic delivery of all types.

(16) [~~(15)~~] Dual credit--A process by which a high school student enrolls in a college course and receives simultaneous academic credit for the course from both the college and the high school. While dual credit courses are often taught on the secondary school campus to high school students only, §4.84 of this title (relating to Institutional Agreements) and §4.85 of this title (relating to Dual Credit Requirements), also apply when a high school student takes a course on the college campus and receives both high school and college credit. Dual credit is also referred to as concurrent course credit; the terms are equivalent. However, dual (or concurrent) enrollment refers to a circumstance in which a student is enrolled in more than one educational institution (including a high school and a college).

(17) [~~(16)~~] Governing board--The body charged with policy direction of any public community college district, the technical college system, public state college, public senior college or university, career school or college, or other educational agency including but not limited to boards of directors, boards of regents, boards of trustees, and independent school district boards.

(18) [~~(17)~~] Governing board, Tech-Prep consortium--Consists at a minimum of representatives of each educational entity that participates in a Tech-Prep consortium which determines the policies and operations of the Tech-Prep consortium in accordance with its written by-laws and fiscal agency and personnel agreements. A representative may represent multiple entities as agreed upon by the participating consortium members.

(19) [~~(18)~~] Guidelines for Instructional Programs in Workforce Education (GIPWE)--A Coordinating Board-approved publication containing policies and procedures related to the design, development, proposal, approval, operation, and evaluation of career technical/workforce education courses and programs for Texas public institutions of higher education and career schools and colleges.

(20) [~~(19)~~] Independent institution of higher education--A private or independent college or university that is:

(A) organized under the Texas Non-Profit Corporation Act;

(B) exempt from taxation under Article V, §2, of the Texas Constitution and §501(c)(3) of the Internal Revenue Code; and

(C) accredited by the Southern Association of Colleges and Schools Commission on Colleges.

(21) [~~(20)~~] Lower-Division Academic Course Guide Manual (ACGM)--A Coordinating Board-approved publication listing academic courses that public two-year colleges can teach and report for contact hour reimbursement from state appropriations without special approval from the Board.

(22) [~~(21)~~] Public community college--Any public junior college or public community college as defined in Texas Education Code, §61.003 and §130.005, and whose role, mission, and purpose is outlined in Texas Education Code, §130.0011 and §130.003.

(23) [~~(22)~~] Public two-year college--Any public junior college, public community college, public technical institute, or public state college as defined in Texas Education Code, §61.003.

(24) [~~(23)~~] Related-instruction--Relates to §9.27 of this title (relating to Related-Instruction for Apprenticeship Programs), organized off-the-job classroom instruction in theoretical or technical subjects required for the completion of an apprenticeship program.

(25) [~~(24)~~] Remedial and compensatory--All courses designated as developmental or remedial in the Lower-Division Academic

Course Guide Manual. These courses are designed to address academic deficiencies and may not be offered for college degree credit.

(26) [~~(25)~~] Remedial courses--Courses for high school students designed to correct academic deficiencies and bring students' skills to an appropriate level for graduation from high school.

(27) [~~(26)~~] SACS/COC--The Southern Association of Colleges and Schools Commission on Colleges.

(28) [~~(27)~~] Voluntary statewide transfer compact--A set of courses, up to the level of an academic associate degree, that will satisfy the lower-division requirements of a baccalaureate degree in a specific discipline. A voluntary statewide transfer compact must:

(A) have the same rigor and content as the equivalent course work in the baccalaureate program offered at a general academic teaching institution;

(B) minimize the time and course work required to complete a baccalaureate degree;

(C) be consistent with the common course numbering system approved by the Board and the recommendations and rules of the Board; and

(D) include only course work directly applicable to the requirements of the baccalaureate degree program(s) with which it is associated.

(29) [~~(28)~~] Technical courses or programs--Workforce education courses or programs for which semester/quarter credit hours are awarded.

(30) [~~(29)~~] Tech-Prep consortium--A collaboration of educational entities and, at local option, employer and labor organizations, and universities defined in the Carl D. Perkins Career and Technical Education Improvement Act of 2006, as amended, and the Texas Education Code, Chapter 61, Subchapter T, Tech-Prep Education, which work together to implement a tech-prep program.

(31) [~~(30)~~] Unique need academic course--An academic course created by a two-year college to meet a specific lower-division requirement of a baccalaureate degree program that cannot be met by an existing course in the Lower Division Academic Course Guide Manual.

(32) [~~(31)~~] Workforce continuing education course--A course offered for continuing education units (CEUs) with an occupationally specific objective and supported by state funding. A career technical/workforce continuing education course differs from a community service course offered for recreational or a vocational purposes and is not supported by state funding.

(33) [~~(32)~~] Workforce education--Career technical/workforce courses and programs for which semester/quarter credit hours and/or continuing education units are awarded. Career technical/workforce education courses and programs prepare students for immediate employment or job upgrade within specific occupational categories.

(34) [~~(33)~~] Workforce Education Course Manual (WECM)--An online database composed of the Coordinating Board's official statewide inventory of career technical/workforce education courses available for two-year public colleges to use in certificate and associate degree programs.

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

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

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SUBCHAPTER E. CERTIFICATE AND ASSOCIATE DEGREE PROGRAMS

19 TAC §9.92, §9.93

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §9.92 and §9.93, concerning Certificate and Associate Degree Programs. The intent of these amendments is to incorporate into existing rules a provision that requires public institutions of higher education to limit the number of semester credit hours required for students to complete in order to be awarded an associate's degree to the minimum number of semester credit hours required by the Southern Association of Colleges and Schools, unless the institution determines there is a compelling academic reason for requiring additional semester credit hours in order to award the degree. Reference to Texas Education Code §61.051(e)(f) was eliminated from §9.92 in defining where in statute the Board is given authority to adopt policies, enact regulations, and establish rules for the coordination of postsecondary career technical/workforce certificate and associate degree programs eligible for state appropriations. Language has also been added to §9.93 that requires an institution of higher education to provide written documentation describing the compelling academic reason, such as programmatic accreditation requirements, statutory requirements, or licensure/certification for a proposed associate's program that exceeds 60 semester credit hours. Language requiring the Coordinating Board to review the documentation provided by the public institutions of higher education submitted on associate degree programs exceeding the 60-hour limit for determination of approval or denial has also been included in §9.93. The amended rules will affect entering students enrolling in public or institutions of higher education on or after the 2015 fall semester.

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

Dr. Silverman has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the amended sections will be the reduction in the number of semester credit hours required for students to complete in order to be awarded an associate's degree to the minimum number of semester credit hours required by the Southern Association of Colleges and Schools, unless the institution determines there is a compelling academic reason for requiring additional semester credit hours in order to award the degree. The benefits of administering the amended sections would increase the standardization of associate degree program completion requirements for public colleges in the state. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amended sections as proposed. There is no impact on local employment.

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

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon it by the legislature.

The amendments affect the Texas Education Code, §61.05151.

§9.92. Authority.

The Texas Education Code, §§61.003, [~~61.051(e)(f),~~] 61.0513, 61.053, 61.054, 61.055, 61.061, 61.062(c) - (d), 61.075, 130.001(b)(3) - (4), 130.003(e)(1), (2), (3) and (7) and 135.04, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for the coordination of postsecondary career technical/workforce certificate and associate degree programs eligible for state appropriations.

§9.93. Presentation of Requests and Steps for Implementation of New Degree and Certificate Programs in Career Technical/Workforce Education.

(a) (No change.)

(b) Approval of new associate degree and certificate programs is automatic if all of the following conditions are met.

(1) (No change.)

(2) If a proposed two-year career technical/workforce education program or a certificate program meets the conditions stipulated in paragraph [~~subsection (b)~~] (1)(A) - (P) of this subsection [~~section~~], the institution shall submit a request to the Assistant Commissioner for Academic Affairs and Research to add the program. If a proposed program does not meet the conditions stipulated in paragraph [~~subsection (b)~~] (1)(A) - (P) of this subsection [~~section~~], the institution must submit a proposal using the standard degree request form.

(3) If the minimum number of semester hours required to complete a proposed associate's program exceeds 60, the institution must provide detailed written documentation describing the compelling academic reason for the number of required hours, such as programmatic accreditation requirements, statutory requirements, or licensure/certification requirements that cannot be met without exceeding the 60-hour limit. The Coordinating Board will review the documentation provided and make a determination to approve or deny a request to exceed the 60-hour limit. Institutions of higher education must be in compliance with this paragraph on or before the 2015 fall semester.

(4) [~~(A)~~] The Coordinating Board shall post the proposed program online for public comment for a period of 30 days. If no objections are received, the Coordinating Board staff shall update the institution's program inventory accordingly.

(5) [~~(B)~~] If objections to the proposed program are received by the Coordinating Board staff, the proposed program shall not be implemented until all objections are resolved. The Coordinating Board reserves the right to audit a certificate or degree program at any time to ensure compliance with any of the criteria contained in paragraph [~~subsection (b)~~] (1)(A) - (P) of this subsection [~~section~~].

(c) - (m) (No change.)

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER G. RESEARCH DEVELOPMENT FUND

19 TAC §13.122, §13.126

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §13.122 and §13.126, concerning Research Development Fund. The amendments are adopted on an emergency basis and are proposed to allow for a 30 day comment period. The intent of the amendments is to specify Prairie View A&M University (PVAMU) as an RDF-eligible university, list the two conditions under which the university can participate, and clarify that pass-through funding to entities other than RDF-eligible universities may be counted in the reporting of restricted research expenditures.

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

Dr. Silverman has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be to assist PVAMU in building their research capacity allowing them to compete for more external funding. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

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

The amendments are proposed under the Texas Education Code, Chapter 62, Subchapter E, which creates the Research Development Fund and provides the Coordinating Board with the authority to create the standards and accounting methods for determining the amount of restricted research funds expended by each eligible institution per year, convening a committee to approve those methods, and providing the Comptroller with verified information regarding the apportionment of the funds to each eligible institution.

The amendments affect the implementation of Texas Education Code, Chapter 62.

§13.122. Definitions.

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

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

(8) Eligible Institution [~~or Institution~~]--A general academic teaching institution, as defined by Texas Education Code, §61.003, other than The University of Texas at Austin and[~~,~~] Texas A&M University[~~, and Prairie View A&M University~~]. Prairie View A&M University (PVAMU) is eligible to participate in the RDF if the university is not eligible for an appropriation from the Texas Competitive Knowledge Fund. In addition, for the state fiscal biennium ending August 31, 2017, PVAMU is eligible only if appropriations for the RDF over the state fiscal biennium for institutions that received distributions from the fund during the preceding biennium is at a level not less than the total amount of money that was appropriated for distributions to those eligible institutions in the preceding biennium.

(9) - (21) (No change.)

§13.126. Reporting of Restricted Research Expenditures and Use of Allocated Funds.

(a) Not later than October 15, each eligible institution shall provide a verified, preliminary report of its restricted research expenditures to the Commissioner.

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

[~~(3) Expenditures for pass-throughs to sub-recipients shall not be included in the report.~~]

(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.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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CHAPTER 14. RESEARCH FUNDING PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §14.1, §14.2

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §14.1 and §14.2, concerning Research Funding Programs. The intent of the amendments is to align the rules with statute due to passage of Senate Bill 215 by the 83rd Texas Legislature in Regular Session. The changes give the Advisory Committee on Research Programs and the Coordinating Board flexibility in allocating appropriated funds to the Norman Hackerman Advanced Research Program, which supports basic research, and the Advanced Technology Program, which supports applied research. This means that funding could be directed toward one program or the other, or a combination of the two.

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

Dr. Silverman has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the amended sections will be to better serve the researchers and students at institutions of higher education by offering grant awards in both basic and applied research. Only a basic research program has been offered since 2005. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

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

The amendments are proposed under the Texas Education Code, Chapter 142, §142.003, which provides the Coordinating Board with the authority to administer the programs.

The amendments affect the implementation of Texas Education Code, Chapter 142.

§14.1. Definitions.

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

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

(3) Advisory Committee--the Advisory Committee on Research Programs appointed by the Coordinating Board pursuant to Texas Education Code, [§]§142.003 [~~and 143.004~~].

(4) - (11) (No change.)

§14.2. Authority and Scope.

(a) Authority for this chapter is provided in the Texas Education Code, Chapter [~~Chapters~~] 142 [~~and 143 respectively,~~] on the Norman Hackerman Advanced Research Program; [~~and~~] Advanced Technology Program.

(b) - (c) (No change.)

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER C. ADVANCED TECHNOLOGY PROGRAM

19 TAC §14.31

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §14.31, concerning the purpose of the Advanced Technology Program. The intent of the amendment is to align the rule with statute due to passage of Senate Bill 215 by the 83rd Texas Legislature, Regular Session. The change gives the Advisory Committee on Research Programs and the Coordinating Board flexibility in allocating appropriated funds to the Norman Hackerman Advanced Research Program, which supports basic research, and the Advanced Technology Program, which supports applied research. This means that funding could be directed toward one program or the other, or a combination of the two.

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

Dr. Silverman has also determined that for the first five years the amendment is in effect, the public benefits anticipated as a result of administering the amended section will be to better serve the researchers and students at institutions of higher education by offering grant awards in both basic and applied research. Only a basic research program has been offered since 2005. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

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

The amendment is proposed under the Texas Education Code, Chapter 142, §142.003, which provides the Coordinating Board with the authority to administer the programs.

The amendment affects Texas Education Code, Chapter 142.

§14.31. Purpose.

(a) (No change.)

(b) The technology program is designed to provide support for technology research conducted in eligible public or independent institutions in Texas in the research areas specified by Texas Education Code, §142.0035 [~~§143.003~~].

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER E. PROCEDURAL ADMINISTRATION OF THE RESEARCH FUNDING PROGRAMS

19 TAC §§14.71 - 14.73, 14.76 - 14.78

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§14.71 - 14.73 and §§14.76 - 14.78, concerning Research Funding Programs. The intent of the amendments is to align the rules with statute due to passage of Senate Bill 215 by the 83rd Texas Legislature, Regular Session. The changes give the Advisory Committee on Research Programs and the Coordinating Board flexibility in allocating appropriated funds to the Norman Hackerman Advanced Research Program, which supports basic research, and the Advanced Technology Program, which supports applied research. This means that funding could be directed toward one program or the other, or a combination of the two.

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

Dr. Silverman has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the amended sections will be to better serve the researchers and students at institutions of higher education by offering grant awards in both basic and applied research. Only a basic research program has been offered since 2005. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

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

The amendments are proposed under the Texas Education Code, Chapter 142, §142.003, which provides the Coordinating Board with the authority to administer the programs.

The amendments affect the implementation of Texas Education Code, Chapter 142.

§14.71. Advisory Committee.

(a) (No change.)

(b) The Advisory Committee shall advise and report to the Coordinating Board concerning the development of research priorities, guidelines, funding allocations, and procedures for the selection of specific projects for awards on a competitive, peer review basis.

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

§14.72. Pre-proposals and Proposal Solicitation.

(a) At least five weeks prior to the pre-proposal due date, the Coordinating Board shall issue a Request for Applications [~~Program Announcement~~] that describes key information about the research funding programs including investigator eligibility, pre-proposal and proposal formats, funding allocations, evaluation criteria, and schedules.

(b) - (f) (No change.)

(g) Reviewers may, at their discretion, shift pre-proposals submitted under one research funding program to another[~~, except that pre-proposals from independent institutions may not be moved into the research program~~].

(h) - (i) (No change.)

§14.73. Proposal Evaluation.

(a) (No change.)

(b) The [~~Pursuant to Texas Education Code, §142.006 and §143.007, the~~] Coordinating Board shall appoint as many review panels as necessary that consist of scientists and engineers with recognized expertise recruited from academic, government laboratories, non-profit research centers, and industries under the condition that employees of any institution of higher education in Texas shall not be reviewers.

(c) - (e) (No change.)

§14.76. Funding and Grants.

(a) Funding for the research funding programs are subject to Texas Education Code, §142.004 [~~and §143.005~~].

(b) Limitations on the number of awards that an individual investigator may receive will be recommended by the Advisory Committee and published in the Request for Applications [~~Program Announcements~~].

(c) Budgets recommended by a review panel may be adjusted to comply with the Request for Applications [~~Program Announcements~~]. Budgets recommended by a review panel for a proposal that is in line for funding but has not yet been funded may be decreased to allow award of any remaining funds in the final stages of the funding assignment process.

(d) The Coordinating Board [~~staff~~] shall assign funding to all proposals in order of rank by review panels [~~and the Advisory Committee~~] until the money assigned to that research area allocation is depleted. However, no more than 70 percent of the funds in each of the research program and the technology program may be awarded to eligible institutions from The University of Texas System and the Texas A&M University System.

(e) (No change.)

(f) The Advisory Committee shall recommend research projects and allocation of funds to the Commissioner and the [~~Board of the~~] Coordinating Board.

(g) - (j) (No change.)

§14.77. Progress Reports.

(a) (No change.)

[~~(b) The due dates specified by the Coordinating Board for the progress reports are subject to Texas Education Code, §142.005 and §143.006.~~]

(b) [~~(c)~~] The progress reports shall be in the manner and format specified by the Coordinating Board and shall provide all requested information.

(c) [~~(d)~~] The Coordinating Board shall report on the progress of active grants by annually posting information on the research funding programs' web site. Each year, the Coordinating Board shall notify the Governor and the Legislative Budget Board of the date and location of the posting.

§14.78. Merit Review.

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

(c) The external evaluation committee will meet [~~in Austin~~] to discuss the research funding programs with representatives of the State government, institutional research offices, investigators, industry, the Advisory Committee, and the Coordinating Board [~~research~~] staff.

(d) The Commissioner shall present the external evaluation committee report to the Coordinating Board no later than January 31 of each odd numbered year.

[~~(d) A member of the external evaluation committee will present the committee's findings to the Coordinating Board.~~]

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER J. THE PHYSICIAN EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.251, 21.254, 21.256 - 21.258, 21.260, 21.262

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§21.251, 21.254, 21.256 - 21.258, 21.260, and 21.262 concerning the Physician Education Loan Repayment Program (PELRP).

The proposed amendments would codify new provisions resulting from the passage of House Bill 2550, 83rd Regular Session of the Texas Legislature. These provisions create an eligibility path for physicians who are not practicing in a Health Professional Shortage Area (HPSA), but who provide services to a designated number of Medicaid and Texas Women's Health Program enrollees. Applications from these physicians may be considered only if funds are remaining at the end of the fiscal year, after shortage area physicians and up to ten physicians practicing in secure correctional facilities have received consideration.

The amendment to §21.251 adds the word "primary" to clarify that the primary purpose of the program is to encourage physicians to practice medicine in HPSAs.

The amendments to §21.254 clarify the definition of Rural HPSA and add the definition of the Texas Women's Health Program. The amendment to §21.256 adds a statement that application deadlines will be posted on the program web page; clarifies that physicians qualifying on the basis of practice in a HPSA must agree to provide four years of service in a HPSA; replaces the reference to the Texas Youth Commission with the current name of the agency; adds the provision for physicians qualifying on the basis of providing services to a designated number of Medicaid and Texas Women's Health Program enrollees.

The amendment to §21.257 states that application deadlines will be posted to the program web page throughout the fiscal year. Additionally, the second priority relating to practice in a rural HPSA incorporates the consolidated definition of rural HPSA. The priority relating to HPSA score is amended to refer to HPSA scores in non-rural areas and clarifies that the scores reflecting the highest degrees of shortage will receive priority ranking. The amendment also adds, as a last priority for ranking, the physicians who are not practicing in HPSAs or secure correctional

facilities, but who have served a designated number of Medicaid and Texas Women's Health Program enrollees. The amendment also states that the designated number will be established in the Board's Memorandum of Understanding with the Health and Human Services Commission. The amendment to §21.258 adds "or to cover costs incurred after completion of medical school" to the statement that the loan may not have been made during residency.

The amendment to §21.260 adds the statement that physicians practicing in HPSAs will be released from the agreement to provide four years of eligible service for any year for which loan repayment funds are not available. Additionally this section has been updated to add the statement that physicians who are not practicing in HPSAs must apply for participation in the program each year by established deadlines and will be subject to the ranking criteria set forth in §21.257. This change is to clarify that the Coordinating Board will not make multi-year financial commitments to physicians qualifying on the basis of services to Medicaid and Texas Women's Health Program enrollees, should funds be available at the end of the fiscal year, or to physicians providing services in secure correctional facilities. The governing statute states that repayment assistance to physicians serving patients in these facilities will be limited to the first ten physicians who establish eligibility each fiscal year. Also included in this amendment is the new statutory requirement that applications from physicians qualifying on the basis of services to Medicaid and Texas Women's Health Program enrollees will be considered only if funds are available after financial commitments for the fiscal year have been made to physicians practicing in HPSAs and secure correctional facilities.

Section 21.262 is amended to add the new statutory requirement that the Board annually solicit and collect information regarding the number of patients enrolled in Medicaid and the Children's Health Insurance Program (CHIP) who are treated by each physician receiving loan repayment assistance through the PELRP.

Dan Weaver, Assistant Commissioner for Business and Support Services, 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.

Mr. Weaver has also determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of administering the sections will be that the administrative rules for the PELRP will be aligned with the governing statute, and the health care needs of the State will be served.

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, unless physicians are recruited or retained locally as a result of the amendments.

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

The amendments are proposed under the Texas Education Code, §61.537, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§61.531 - 61.540.

The amendments affect the Texas Education Code, §§61.531 - 61.540.

§21.251. Authority and Purpose.

(a) (No change.)

(b) Purpose. The primary purpose of the Physician Education Loan Repayment Program is to encourage qualified physicians to practice medicine in a health professional shortage area designated by the U. S. Department of Health and Human Services, and provide health care services to recipients under the medical assistance program authorized by the Texas Human Resources Code, Chapter 32, and to enrollees under the child health plan program authorized by the Texas Health and Safety Code, Chapter 62.

§21.254. Definitions.

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

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

(10) Rural HPSA--A HPSA-designated whole county whose population is less than 50,000 or a HPSA-designated facility [~~area~~] or population group located in a county whose population is [~~of~~] less than 50,000 [~~people~~].

(11) (No change.)

(12) Texas Women's Health Program--The program authorized by Health and Safety Code, §31.002(a)(4)(C) and (H), §31.003, and §31.004, which provides primary health care services, including family planning services and health screenings, at no cost to eligible low-income women; administered by the Texas Health and Human Services Commission.

§21.256. Eligibility.

(a) To be eligible for the Board to reserve loan repayment funds, a physician must:

(1) ensure that the Board or its designee has received the completed application by the established [~~stated~~] deadline, which will be posted on the program web page;

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

(5) in the case of physicians qualifying on the basis of practice in a HPSA, agree to provide four consecutive service periods in a HPSA.

(b) To be eligible to receive loan repayment assistance, a physician must:

(1) have completed one, two, three, or four consecutive service periods in a:

(A) HPSA; [~~or in~~ a]

(B) secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or [~~Youth Commission and~~] its successor or in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice or its successor; or[~~;~~]

(C) location other than a HPSA, if during the service period the physician has provided health care services to a designated number of Medicaid or Texas Women's Health Program enrollees, established in the Board's Memorandum of Understanding with the Texas Health and Human Services Commission and posted on the program web page;

(2) during the service period, have provided direct patient care to:

(A) Medicaid enrollees and CHIP enrollees, if the practice includes children; [~~or~~]

(B) persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or [~~Youth Commission and~~] its successor or persons confined to a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice or its successor; or[~~.~~]

(C) a designated number of Medicaid or Texas Women's Health Program enrollees, established in the board's Memorandum of Understanding with the Texas Health and Human Services Commission and posted on the program web page;

(3) (No change.)

§21.257. Application Ranking Criteria.

Application deadlines will be established throughout the fiscal year and will be posted on the program web page. If there are not sufficient funds to award loan repayment assistance for all eligible physicians whose applications are received by the stated deadline, applications shall be ranked according to the following criteria, in priority order:

(1) applications from physicians practicing in HPSAs, in the following priority order:

(A) [~~(1)~~] renewal applications, with first priority assigned to those for primary care;

(B) [~~(2)~~] applications from primary care physicians practicing in rural [~~geographic whole-county~~] HPSAs [~~and applications from physicians practicing in Federally Qualified Health Centers or practice sites that accept payments on a sliding fee scale and follow a policy of providing health care to all who present for care~~];

(C) applications from primary care physicians practicing in non-rural areas whose HPSA scores reflect the highest degrees of shortage;

(2) initial applications from non-primary care physicians who are practicing in HPSAs, if the DSHS determines that there is a critical need for the applicant's specialty;

[~~(3) HPSA score for applicant practice location;~~]

(3) [~~(4)~~] the first ten applications received each year from eligible physicians serving persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or [~~Youth Commission and~~] its successor or persons confined to a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice or its successor;[~~.~~]

(4) applications from physicians who have provided health care services to a designated number of Medicaid or Texas Women's Health Program enrollees, as established in the board's Memorandum of Understanding with the Texas Health and Human Services Commission.

§21.258. Eligible Lender and Eligible Education Loan.

(a) (No change.)

(b) To be eligible for repayment, an education loan must:

(1) (No change.)

(2) not have been made during residency or to cover costs incurred after completion of medical school;

(3) - (7) (No change.)

§21.260. Limitations.

(a) (No change.)

(b) Except under circumstances determined by the Board and DSHS to constitute good cause, failure to meet the program requirements will result in non-payment for that service period and removal from the program. Additionally, providers who do not meet the requirements will be ineligible to apply for other loan repayment programs in Texas. Physicians practicing in HPSAs will be released from the agreement to provide four years of eligible service for any year for which loan repayment funds are not available.

(c) (No change.)

(d) Physicians who are not practicing in HPSAs must apply for participation in the program each year by established deadlines and will be subject to the ranking criteria set forth in §21.257 of this title (relating to Application Ranking Criteria).

(e) Applications from physicians who establish eligibility under §21.257(4) of this title will be considered only if funds are available after financial commitments for the fiscal year have been made to physicians practicing in HPSAs and secure correctional facilities.

§21.262. Reporting and Data Collection [~~of Retention Rates~~].

(a) Prior to September 1 of every even-numbered year, the Board shall report to the Legislative Budget Board and the Governor the results of annual verification of the practice sites of physicians who have completed a Physician Education Loan Repayment Program agreement to practice in a HPSA to determine short-term and long-term rates of retention in those shortage areas and counties.

(b) The Board annually shall solicit and collect information regarding the number of patients enrolled in Medicaid and CHIP who are treated by each physician receiving loan repayment assistance under this subchapter.

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

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

TRD-201303151
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 24, 2013
For further information, please call: (512) 427-6114

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SUBCHAPTER M. TEXAS COLLEGE WORK-STUDY PROGRAM

19 TAC §21.409

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §21.409 concerning the Texas College Work-Study Program.

The amendment to §21.409 will add language to the Texas College Work-Study (TCWS) rules to address institutions' authority to transfer funds between all applicable programs as provided in Rider 22, page III-49 of the General Appropriations Act for the 2014-2015 Biennium.

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

the amended section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the section.

Mr. Weaver has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering this section will be the institutions' ability to better meet the needs of their student populations.

There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

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

The amendments are proposed under Texas Education Code, §56.077, which provides the Coordinating Board with the authority to adopt rules to implement the TCWS Program.

The amendments affect Texas Education Code, §§56.071 - 56.079.

§21.409. Authority to Transfer Funds.

Institutions participating in a combination of the Toward EXcellence, Access and Success Grant, Texas Educational Opportunity Grant, Tuition Equalization Grant, and Texas College Work-Study Programs, in accordance with instructions from the Board, may transfer in a given fiscal year up to the lesser of 10 percent or $20,000 [~~$10,000~~] between these programs.

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

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

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

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SUBCHAPTER T. THE VACCINATION AGAINST BACTERIAL MENINGITIS FOR ENTERING STUDENTS AT PUBLIC AND PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION

19 TAC §§21.611, 21.612, 21.614

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§21.611, 21.612, and 21.614, concerning the vaccination against bacterial meningitis for entering students at public and private or independent institutions of higher education. The intent of the amendments is to incorporate into existing rules changes and provisions enacted by the 83rd Texas Legislature, Regular Session (Senate Bill 62). Language has been added to change the age for an exemption from the vaccine requirement from the age of 30 to 22 and above. A definition was added for "public junior college." A provision was added that allows entering students attending public junior colleges to submit a form through a secure, Internet-based process developed and implemented by the Texas Department of State Health Services to claim an objection from the bacterial meningitis vaccine requirement for reasons of conscience. Language has been added that allows public junior colleges to require an entering student to use the Internet-based process as the exclusive method to apply for an exemption from the vaccine requirement for reasons of conscience. As with the changes in law made by Senate Bill 62 the effective date for these rules is October 1, 2013. The newly amended statute will affect entering students enrolling in public and private or independent institutions of higher education on or after January 1, 2014.

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

Dr. Silverman has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be to better serve the students attending institutions of higher education by decreasing their risks of contracting bacterial meningitis and aligning the rules with age recommendations from the Center for Disease Control. There is no effect on small businesses. There is an anticipated economic cost to persons who are required to comply with the section, as the cost of the bacterial meningitis vaccine can be up to $150 for uninsured students. There is no impact on local employment.

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

The amendments are proposed under the Texas Education Code, Chapter 51, §51.9192(e), which provides the Coordinating Board with the authority to administer the programs.

The amendments affect the implementation of Texas Education Code, Chapter 51.

§21.611. Authority.

Texas Education Code, §51.9192, Subchapter Z, establishes the requirement for bacterial meningitis vaccination for certain students and identifies exceptions to that requirement. This subchapter applies only to entering students enrolling in public, private or independent institutions of higher education on or after January 1, 2014 [~~2012~~].

§21.612. Definitions.

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

(1) Entering student includes:

(A) New student--A first-time student of an institution of higher education or private or independent institution of higher education, including a student who transfers to the institution from another institution. A student who was previously exempt under §21.614(a)(2) - (5) of this title (relating to Exceptions) will be treated as a new student, should the exception no longer apply.

(B) Public Junior College--Any junior college certified by the Texas Higher Education Coordinating Board in accordance with Texas Education Code, §61.063.

(C) [~~(B)~~] Returning student--A student who previously attended an institution of higher education or private or independent institution of higher education before January 1, 2012, and who is enrolling in the same or another institution of higher education or private or independent institution of higher education following a break in enrollment of at least one fall or spring semester.

(2) - (6) (No change.)

§21.614. Exceptions.

(a) A student is not required to submit evidence of receiving the vaccination against bacterial meningitis or evidence of receiving a booster dose if:

(1) the student is 22 [~~30~~] years of age or older by the first day of the start of the semester; or

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

(b) A student, or a parent or guardian of a student, is not required to submit evidence of receiving the vaccination against bacterial meningitis if the student, or a parent or guardian of a student, submits to the institution:

(1) an affidavit or a certificate signed by a physician who is duly registered and licensed to practice medicine in the United States, in which it is stated that, in the physician's opinion, the vaccination required would be injurious to the health and well-being of the student; [~~or~~]

(2) an affidavit signed by the student stating that the student declines the vaccination for bacterial meningitis for reasons of conscience, including a religious belief. A conscientious exemption form from the Texas Department of State Health Services must be used for students attending a public university, health-related institution, or private or independent institution of higher education. The form must be submitted to the designated department or unit no later than the 90th day after the date the affidavit is notarized; or

(3) evidence of submitting a conscientious objection form through a secure, Internet-based process developed and implemented by the Texas Department of State Health Services. The Internet form may be used by entering students attending a public junior college. Public junior colleges may use the Internet-based process as the exclusive method to apply for an exemption from the vaccination requirement for reasons of conscience.

(c) The exception noted in subsection (b)(2) and (3) of this section does not apply during a disaster or public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency declared by an appropriate official or authority from the Texas Department of State Health Services and is in effect for the location of the institution the student attends.

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 July 31, 2013.

TRD-201303132
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 24, 2013
For further information, please call: (512) 427-6114

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SUBCHAPTER U. NURSING FACULTY LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§21.630 - 21.638

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Subchapter U, §§21.630 - 21.638, concerning the Nursing Faculty Loan Repayment Assistance Program.

The proposed new sections would codify new provisions resulting from the passage of House Bill 2099, 83rd Regular Session of the Texas Legislature. These provisions create a student loan repayment program for nursing faculty at Texas institutions of higher education. Funds will be available for this program only if gifts, grants, or donations are received, or if funds are reallocated for this purpose from the Physician Education Loan Repayment Program account at the end of a fiscal year. Therefore, applications will be considered only if funds are available at the end of the fiscal year.

New §21.630 states the authority for the program and the purpose of the program, which is to improve access to nursing education programs by encouraging qualified nurses to serve as faculty at eligible institutions.

New §21.631 provides definitions.

New §21.632 describes eligibility requirements.

New §21.633 states priorities of application acceptance if there are not sufficient funds to award loan repayment assistance to all eligible nursing faculty whose applications are received by the published deadline.

New §21.634 describes eligible lender and holder.

New §21.635 describes eligible education loan.

New §21.636 states when and how repayment awards are disbursed.

New §21.637 states limitations in the number of years a nursing faculty member may receive loan repayment assistance, the maximum annual award amount, and the fact that applications will be considered only if funds are available for this purpose at the end of the state fiscal year.

New §21.638 states that program information will be disseminated to eligible institutions and appropriate state agencies and professional associations.

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

Mr. Weaver has also determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be that administrative rules for the Nursing Faculty Loan Repayment Assistance Program will be established for public viewing and comment. Should funds be available for this program, there may be improved access to nursing programs as a result of improved recruitment and retention of nursing faculty.

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, unless nursing faculty are recruited or retained locally as a result of the program implementation.

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

The new sections are proposed under the Texas Education Code, §61.9828, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§61.9821 - 61.9828.

The new sections affect the Texas Education Code, §§61.9821 - 61.9828.

§21.630. Authority and Purpose.

(a) Authority for this subchapter is provided in the Texas Education Code, Chapter 61, Subchapter II, Nursing Faculty Loan Repayment Assistance Program. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §§61.9821 - 61.9828.

(b) The purpose of the Nursing Faculty Loan Repayment Assistance Program is to improve access to nursing education programs by encouraging qualified nurses to serve as faculty at eligible institutions of higher education in positions that require an advanced degree in professional nursing.

§21.631. Definitions.

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

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

(2) Eligible Institution--Texas institutions of higher education or private or independent institutions, as defined in §61.003 of the Texas Education Code.

(3) Service period--A period of service equal to a minimum of nine months of a 12-month academic year that qualifies an eligible faculty member for an annual education loan repayment award.

(4) Texas Center for Nursing Workforce Studies (TCNWS)--Authorized by Chapter 105 of the Texas Health and Safety Code. Under the governance of the Statewide Health Coordinating Council's Nursing Advisory Committee, the TCNWS serves as a resource for data and research on the nursing workforce in Texas.

§21.632. Eligibility.

To be eligible to receive loan repayment assistance under this subchapter, a nurse must:

(1) hold a master's or doctoral degree in nursing;

(2) be licensed by the Texas Board of Nursing for the State of Texas;

(3) apply to the Board by the published application deadline; and

(4) at the time of application for repayment assistance, have been employed full time for at least one year as, and be currently employed full time as a faculty member of a nursing program at an eligible institution in a position that requires an advanced degree in professional nursing.

§21.633. Priorities of Application Acceptance.

If there are not sufficient funds to award loan repayment assistance for all eligible nursing faculty whose applications are received by the published deadline, priority shall be given to renewal applications. Initial applications shall be ranked in a manner that takes into account the following information, provided by the Texas Center for Nursing Workforce Studies:

(1) the number of vacant nursing faculty positions, as a percentage of the total number of nursing faculty positions at the eligible institutions; and

(2) the degree of difficulty in recruiting and retaining nursing faculty at the eligible institutions, indicated by the period of time nursing faculty positions remain vacant at the institutions.

§21.634. Eligible Lender and Holder.

The Board shall retain the right of determining eligibility of lenders and holders of student loans to which payments may be made. An eligible lender or holder shall, in general, make or hold loans made to individuals for purposes of attending postsecondary institutions and shall not be any private individual. An eligible lender or holder may be, but is not limited to, a bank, savings and loan association, credit union, institution of higher education, secondary market, governmental agency, or private foundation.

§21.635. Eligible Education Loan.

An education loan eligible for repayment is one that:

(1) was obtained through an eligible lender for education costs at any public or private institution of higher education;

(2) is not a loan made to oneself from one's own insurance policy or pension plan or from the insurance policy or pension plan of a spouse or other relative;

(3) does not have an existing service obligation; and

(4) is not in default at the time of the nursing faculty's application for repayment.

§21.636. Repayment of Education Loans.

Eligible education loans of eligible professional nurses shall be repaid under the following conditions:

(1) repayment shall be made following completion of each service period and verification of employment and loan information; and

(2) the annual repayment shall be disbursed directly to the lender(s) or holder(s).

§21.637. Limitations.

The following limitations apply to the Nursing Faculty Loan Repayment Assistance Program.

(1) The total annual repayment to one or more eligible lenders shall not exceed $7,000.00.

(2) A nursing faculty member may receive loan repayment assistance under this subchapter for a maximum of five years.

(3) Funds will be available for loan repayment assistance under this subchapter only if there are gifts, grants, and donations made for this purpose and/or funds have been reallocated for this purpose from the Physician Education Loan Repayment Program Account at the end of a fiscal year.

(4) Applications from nursing faculty will be considered by the Board only if funds are available for this purpose at the end of the state fiscal year.

§21.638. Dissemination of Information.

The Board shall publish and disseminate information about the Nursing Faculty Loan Repayment Assistance Program to eligible institutions, in addition to appropriate state agencies and professional associations of professional nurses, employers of professional nurses and associations of employers of professional nurses.

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

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

TRD-201303155
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 24, 2013
For further information, please call: (512) 427-6114

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SUBCHAPTER SS. WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §21.2263, §21.2264

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §21.2263 and §21.2264 concerning the Waiver Programs for Certain Nonresident Persons.

The amendments to §21.2263 add a requirement for eligibility for the competitive scholarship waiver program. The amendments to §21.2264 add language concerning the waiver program for general academic teaching institutions located within 100 miles of the Texas border to indicate that, to be eligible, a person must meet Selective Service registration requirements or be exempt from them, unless the person is attending a public community college. These amendments are in accordance with Texas Education Code, §51.9095, which indicates a person receiving any state revenues must meet Selective Service registration requirements or be exempt from them. Tuition revenues for public institutions other than community colleges are considered state revenues.

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

Mr. Weaver has also determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of administering the sections will be the institutions' ability to better meet the needs of their student populations.

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

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

The amendments are proposed under Texas Education Code, §54.0601, which provides the Coordinating Board with the authority to adopt rules to implement these waiver programs.

The amendments affect Texas Education Code, §54.213 and §54.0601.

§21.2263. Competitive Scholarships.

(a) (No change.)

(b) Eligible Persons. A nonresident person who receives a competitive scholarship from a Texas public institution of higher education under the following conditions may receive a waiver under the provisions of this section.

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

(5) The individual receiving a waiver under this provision, unless attending a public community college (for which tuition is local revenue), must provide the institution proof of meeting Selective Service registration requirements or being exempt.

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

§21.2264. General Academic Teaching Institutions Located within 100 Miles of the Texas Border.

(a) (No change.)

(b) Eligible Persons. Any nonresident person attending an eligible institution may receive a waiver under this section if the person, unless attending a public community college (for which tuition is local revenue), also meets Selective Service registration requirements or is exempt.

(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.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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

19 TAC §21.2273

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §21.2273 concerning the Exemption Program for Dependent Children of Persons Who are Members of Armed Forces Deployed on Combat Duty.

The proposed amendment adds language to the exemption eligibility requirements to indicate that, to be eligible, a person must meet Selective Service registration requirements or be exempt from them, unless the person is attending a public community college. This amendment is in accordance with Texas Education Code, §51.9095, which indicates a person receiving any state revenues must meet Selective Service registration requirements or be exempt from them. Tuition revenues for public institutions other than community colleges are considered state revenues.

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

Mr. Weaver has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering this section will be the institutions' ability to better meet the needs of their student populations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

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

The amendments are proposed under Texas Education Code, §54.2031(i), which provides the Coordinating Board with the authority to adopt rules to implement the Combat Exemption Program.

The amendments affect Texas Education Code, §54.2031.

§21.2273. Eligibility Requirements.

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

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

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

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

(4) unless attending a public community college (for which tuition is local revenue), provide the institution proof that the person meets Selective Service registration requirements or is exempt.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §§22.23, 22.25, 22.30

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§22.23, 22.25, and §22.30, concerning the Tuition Equalization Grant (TEG) Program.

Amendments to §22.23 clarify that it is the Commission on Colleges of the Southern Association of Colleges and Schools that accredits institutions. New §22.23(a)(4) and (5) reflect new language from Senate Bill 976, passed by the 83rd Legislature, Regular Session, that enables the Board to grant certain institutions temporary permission to participate in the TEG program if they had previously participated in the program, lost their accreditation status, but have taken specific steps to reacquire that status.

The amendment to §22.25 indicates the provisions of that section will expire as of January 1, 2016. This is in accordance with Senate Bill 490, passed by the 83rd Legislature, Regular Session. The section relates to eligibility requirements for students who entered the program prior to fall 2005.

The amendment to §22.30 will update language to address institutions' authority to transfer funds between programs as provided in Rider 22, page III-49 of the General Appropriations Act for the 2014-2015 Biennium.

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

Mr. Weaver has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended sections will be the institution's ability to better meet the needs of their student populations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

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

The amendments are proposed under Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules to implement the TEG Program.

The amendments affect Texas Education Code, §§61.221 - 61.230.

§22.23. Institutions.

(a) Eligibility.

(1) Any college or university defined as a private or independent institution of higher education by Texas Education Code, §61.003, or that is located in Texas and accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, except theological or religious seminaries, is eligible to participate in the TEG Program.

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

(4) A private or independent institution of higher education that previously qualified under paragraph (1) of this subsection but no longer holds the same accreditation as public institutions of higher education may temporarily participate in the TEG Program if it is:

(A) accredited by an accreditor recognized by the Board;

(B) actively working toward the same accreditation as public institutions of higher education;

(C) participating in the federal financial aid program under 20 United States Code (U.S.C.) §1070a; and

(D) a "part B institution" as defined by 20 U.S.C. §1061(2) and listed in 34 Code of Federal Regulations §608.2.

(5) The Board may grant temporary approval to participate in the TEG program to an institution described under paragraph (4) of this subsection for a period of two years. The Board may renew that approval for a given institution once for a period of two years.

(b) - (c) (No change.)

§22.25. Provisions that Apply Only to Original TEG Program Students.

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

(c) Expiration of Rules. This section expires as of January 1, 2016.

§22.30. Authority to Transfer Funds.

Institutions participating in the Tuition Equalization Grant and Texas College Work-Study Program, in accordance with instructions from Board staff, may transfer in a given fiscal year up to the lesser of 10 percent or $20,000 [~~$10,000~~] between these programs.

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

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

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SUBCHAPTER D. PROVISIONS FOR THE TEXAS PUBLIC EDUCATIONAL GRANT PROGRAMS

19 TAC §22.63

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §22.63, concerning their responsibilities regarding the Texas Public Educational Grant Program (TPEG).

The amendment to this section removes language that indicated the Coordinating Board is to review guidelines submitted by institutions for the administration of their TPEG funds. The authority for the Coordinating Board to review the guidelines was terminated as of September 1, 2013 through the passage of Senate Bill 5 by the 82nd Legislature. In order to remain in compliance with §11.2, Special Provisions Relating only to State Agencies of Higher Education, page 111-237 of the General Appropriations Act for the 2014-2015 Biennium, however, institutions are still required to file copies of their guidelines with the Coordinating Board.

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

Mr. Weaver has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering the amended section will be the institution's ability to better meet the needs of their student populations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

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

The amendment is proposed under Senate Bill 5, Article 9; repealer, §9.01(b)(5), 82nd Legislative Session.

The amendment affects Texas Education Code, §§56.031 - 56.039.

§22.63. Coordinating Board Responsibilities.

The Texas Higher Education Coordinating Board shall perform the following services with regard to the Texas Public Educational Grant Program:

(1) Collect and maintain copies of [~~Review~~] guidelines submitted by institutions for the administration of the Texas Public Educational Grant program on their campuses [~~to ensure the program is being conducted in a manner that will fulfill the purpose of the program. If guidelines are rejected, the Board is to provide the institution a written explanation and an opportunity to submit revised guidelines~~].

(2) - (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 August 1, 2013.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER H. PROVISIONS FOR THE LICENSE PLATE INSIGNIA SCHOLARSHIP PROGRAM

19 TAC §22.144

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §22.144, concerning eligible students for the License Plate Insignia Scholarship Program.

The proposed amendment to this section adds language to the program rules to indicate that, to be eligible, a person must meet Selective Service registration requirements or be exempt from

them, unless the person is attending a public community college. This amendment is in accordance with Texas Education Code, §51.9095, which indicates a person receiving any state revenues must meet Selective Service registration requirements or be exempt from them. Tuition revenues for public institutions other than community colleges are considered state revenues.

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

Mr. Weaver has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering the amended section will be the institution's ability to better meet the needs of their student populations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

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

The amendment is proposed under Texas Transportation Code, §504.615, which provides the Coordinating Board with the authority to adopt rules to implement the License Plate Insignia Scholarship Program.

The amendment affects Texas Transportation Code, §504.615.

§22.144. Eligible Students.

In order to qualify for an award through this program a student must demonstrate financial need and unless attending a public community college (for which tuition is local revenue), provide the institution proof that the student meets Selective Service registration requirements or is exempt.

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

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

TRD-201303158
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 24, 2013
For further information, please call: (512) 427-6114

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SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §§22.225 - 22.230, 22.234 - 22.236, 22.239, 22.241

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§22.225 - 22.230, 22.234 - 22.236, 22.239, and 22.241, concerning Toward EXcellence, Access, and Success (TEXAS) Grant Program.

The amendment to §22.225 eliminates reference to private institutions of higher education, which no longer participate in the program, and introduces the term "eligible institution" which is defined in §22.226.

The amendments to §22.226 include the addition of four definitions - "Eligible institution," "Foundation high school program," "Medical or dental unit," and "Public state college." All of these terms are relevant to the TEXAS Grant program as amended by Senate Bill 215 (SB 215) and House Bill 5 (HB 5), passed by the 83rd Legislature, Regular Session. Another amendment to the section is the elimination of the definition for "Private or Independent Institution of Higher Education," because such institutions no longer participate in the program. These changes generated a renumbering of subsequent definitions in the section.

The definition for "Enrolled on at least a three-quarter basis" is amended to indicate the given definition applies to undergraduate hours. In the definition of "Period of enrollment" and throughout the document, references to "approved institution" were changed to "eligible institution" to align wording in the rules with program terminology as amended by the passage of SB 215. The definition of "Priority model" is amended to reflect changes from SB 215 which cause the priority model to apply to award applicants attending general academic teaching institutions during the 2013-2014 academic year, but only to award applicants attending medical and dental units and general academic teaching institutions (GATIs) other than state colleges as of fall 2014. In addition, the definition for "Recommended or advanced high school program" was adjusted to cross reference Texas Education Code, §28.025, as it existed on January 1, 2013 (prior to the passage of HB 5).

Amendments to §22.227(a) were made to reflect changes in the types of institutions eligible to participate in the TEXAS Grant program. At present, the program is open to students attending all public institutions of higher education. SB 215 will cause the program to be open only to students attending medical and dental units and GATIs other than state colleges as of fall 2014. In addition, the reference to "approved institution" was changed to "eligible institution" to align wording in the rules with program terminology as amended by the passage of SB 215.

Amendments to the lead-in sentence of §22.228(a), in accordance with SB 215, indicate its provisions apply to the 2013-2014 academic year. In addition, wording regarding the timeline for an associate degree recipient's eligibility to enter the TEXAS Grant program was amended in §22.228(a)(6)(D) and (7)(B) to more closely track statutory language. The term "approved institution" in §22.228(a)(7) was replaced with "eligible institution" to align with program language from SB 215.

Amendments to the opening sentence of §22.228(b) were made to reflect the limited the timeline for its provisions (the 2013-2014 academic year only), in accordance with SB 215. The lead-in to §22.228(b)(6) was updated to reflect there can be an exception to the stated rule if the student meets certain hardship provisions.

New §22.228(c) was added to address initial award provisions that will go into effect in fall 2014. These requirements are identical to those in §22.228(b) except:

(1) Subsection (c)(1) indicates initial award recipients will have to be enrolled in medical or dental units or in GATIs other than state colleges. This change is from SB 215.

(2) Otherwise, initial award recipients will need to meet the same priority academic requirements as listed in subsection (b)(5) for

recipients in the 2013-2014 academic year, except for the following changes:

(a) Subsection (c)(6)(A) indicates they will have to have graduated or be on track to graduate under the Foundation (rather than Recommended) High School program as the Foundation program is amended in keeping with Texas Education Code, §56.009. Section 56.009 authorizes the Board and Commissioner of Education to set minimum high school curriculum requirements for aid programs that have curriculum restrictions. These changes are from HB 5. However, until such time that students will be graduating under the Foundation program, graduation or being on track to graduate under the Recommended program will be required.

(b) Subsection (c)(6)(A)(i), the first of the four priority criteria, will no longer include graduation under the distinguished curriculum as an option. This change is from HB 5.

(c) Subsection (c)(6)(A)(iv), the fourth of the priority criteria will include the option of completing at least one technical applications course. This is from HB 5.

(3) Enrollment requirements listed in subsection (c)(7) differ in two ways from the requirements for 2013-2014 recipients, both based on provisions in SB 215. Subsection (c)(7) indicates students must enroll in a baccalaureate degree plan (certificate programs are no longer an option) and subsection (c)(7)(D) introduces new conditions under which an incoming transfer student may qualify for an initial TEXAS Grant award.

Existing §22.228(c) is relettered as §22.228(d) and reflects requirements for continuation awards. Subsection (d)(4) is amended to differentiate the continuation requirement for 2013-2014 (enrollment in an undergraduate degree or certificate program) from the requirement for fall 2014 (enrollment in a baccalaureate degree program). Subsection (d)(7) is changed to reflect that progress towards a degree or certificate is a requirement for those enrolled prior to fall 2014, but if enrolled in fall 2014 or later, progress towards a baccalaureate degree is required. Subsection (d)(8) is amended to update the cross-referenced citation for rule sections dealing with meeting academic requirements. New subsection (d)(8)(D) indicates persons gaining access to TEXAS Grants through the acquisition of an associate's degree must enroll in a higher level undergraduate degree program in an eligible institution to qualify.

The amendment to §22.229(b)(2) brings rule continuation requirements into alignment with statutes. The 75 percent completion requirement is no longer a requirement, now that students are required to complete at least 24 semester credit hours per year. This causes the other parts of this paragraph to be relettered and the cross reference in §22.229(b)(2)(C) to be updated.

The amendment to §22.230(c) is made to make the provisions dealing with a student's period of eligibility apply to all students awarded initial grants based on the expectation of meeting the requirements of §22.228. The final sentence of that subsection is amended to accommodate the varying periods of eligibility for persons enrolled in degree plans of four years, and those enrolled in degree plans of greater than four years. The associate's degree is counted as two years of college work. Therefore, the person pursuing a four year degree may receive grants for up to three years; a person pursuing a degree of more than four years may receive grants for up to four years. The amendment to §22.230(d) broadens the wording to indicate the 150-hour limit applies to all students who enter the program based on completing a given high school curriculum.

Amendments to §22.234(b)(1) and (3) remove language regarding awards to students attending private or independent institutions. The TEXAS Grant program is now limited to persons attending public universities and medical dental units. The deletion of subsection (b)(3) requires subsequent parts of subsection (b) to be renumbered and an update to the paragraph cross-references in §22.234(b)(5).

The amendment to §22.235 clarifies that although a student may be granted an award after his/her period of enrollment, the funds may not be disbursed to the student. They must be used to meet any outstanding balance at the institution for the period of enrollment or to make a payment against an outstanding loan for that period.

Amendments to §22.236(a)(1) remove references to allocations to private or independent institutions and update the cross-reference to §22.228 regarding the priority model requirements.

The changes to §22.239 update language to address institutions' authority to transfer funds between programs as provided in Rider 22, page III-49 of the General Appropriations Act for the 2014-2015 Biennium.

Amendments to §22.241(a)(3) and (b)(2) update the citation for §22.228 as it has been amended by this proposal.

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

Mr. Weaver has also determined that each year of the first five years the amendments are in effect, the public benefit anticipated as a result of these changes will be that TEXAS Grant awards will be more effectively targeted to financially needy students who are well prepared to be successful in college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

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

The amendments are proposed under Texas Education Code, §56.303, which provides the Coordinating Board with the authority to adopt rules to implement the TEXAS Grant Program.

The amendments affect Texas Education Code, §§56.301 - 56.311.

§22.225. Authority and Purpose.

(a) (No change.)

(b) Purpose. The purpose of this program is to provide grants of money to enable certain [~~eligible~~] students to attend eligible [~~public and private~~] institutions of higher education in this state.

§22.226. Definitions.

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

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

(8) Eligible institution--During the 2013-2014 academic year, all institutions of higher education; beginning with awards for fall 2014, only medical and dental units and general academic teaching institutions other than the public state colleges, as defined in Texas Education Code, §61.003.

(9) [~~(8)~~] Enrolled on at least a three-quarter basis--Enrolled for the equivalent of nine undergraduate semester credit hours in a regular semester.

(10) [~~(9)~~] Entering undergraduate--A student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination.

(11) [~~(10)~~] Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(12) [~~(11)~~] Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines. Federal and state veterans' educational and special combat pay benefits are not to be considered in determining a student's financial need.

(13) Foundation high school program--The curriculum specified in the Texas Education Code, §28.025, as it exists after the passage of House Bill 5 by the 83rd Legislature, Regular Session, and the rules promulgated there under by the State Board of Education.

(14) [~~(12)~~] General Academic Teaching Institution--As the term is defined in Texas Education Code, §61.003.

(15) [~~(13)~~] Honorably discharged--Released from active duty military service with an Honorable Discharge, General Discharge under Honorable Conditions, or Honorable Separation or Release from Active Duty, as documented by the Certificate of Release or Discharge from Active Duty (DD214) issued by the Department of Defense.

(16) [~~(14)~~] Initial year award--The grant award made in the student's first year in the TEXAS Grant program, typically made up of a fall and spring disbursement.

(17) [~~(15)~~] Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003(8).

(18) Medical or dental unit--As the term is defined in Texas Education Code, §61.003.

(19) [~~(16)~~] Period of enrollment--The term or terms within the current state fiscal year (September 1 - August 31) for which the student was enrolled in an eligible [~~approved~~] institution and met all the eligibility requirements for an award through this program.

[~~(17) Private or Independent Institution of Higher Education--Any college or university defined as a private or independent institution of higher education by Texas Education Code, §61.003(15).~~]

(20) [~~(18)~~] Priority Model--The academic requirements for initial year TEXAS Grant awards to persons who graduate from high school on or after May 1, 2013 and enroll in [~~attend~~] a general academic teaching institution in the 2013-2014 academic year or enroll in a medical or dental unit or general academic teaching institution other than a state college in fall 2014 [~~2013~~] or later, as described [~~given~~] in §22.228[~~(b)(5)~~] of this title (relating to Eligible Students).

(21) [~~(19)~~] Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(22) Public state college--As the term is defined in Texas Education Code, §61.003.

(23) [~~(20)~~] Recommended or advanced high school programs--The curriculum specified in the Texas Education Code, §28.025 as it existed as of January 1, 2013, and the rules promulgated there under by the State Board of Education.

(24) [~~(21)~~] Required fees--A mandatory fee (required by statute) or discretionary fee (authorized by statute, imposed by the governing board of an institution) that an institution charges to a student as a condition of enrollment at the institution or in a specific course.

(25) [~~(22)~~] Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(26) [~~(23)~~] Tuition--Statutory tuition, designated and/or Board-authorized tuition.

§22.227. Institutions.

(a) Eligibility.

(1) Prior to fall 2014, all institutions [~~Institutions and private or independent institutions~~] of higher education are eligible to participate in the TEXAS Grant program. Beginning with awards for fall 2014, the only institutions eligible to participate in the program are medical and dental units and general academic teaching institutions other than the public state colleges.

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

(b) Approval.

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

(2) (No change.)

(c) (No change.)

§22.228. Eligible Students.

(a) All persons who receive an initial award through the TEXAS Grant Program while [~~prior to fall 2013, and all initial award recipients~~] attending public community colleges, technical colleges or the Lamar Institute of Technology in the 2013-2014 academic year [~~fall 2013 or later~~] must:

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

(6) have completed the Recommended or Advanced High School Program, or if a graduate of a private high school, its equivalent, unless the student:

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

(D) was anticipated to receive an associate degree from an eligible institution no earlier than the 12th month prior to the month in which the student enrolled for fall 2013 [~~within 12 months of enrolling for fall 2013 or a later term~~];

(7) enroll in an undergraduate degree or certificate program at an eligible [~~approved~~] institution on at least a three-quarter time basis:

(A) (No change.)

(B) not later than the [~~end of the~~] 12th month after the month the [~~a~~] student has received an associate degree;

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

(b) To [~~Beginning with awards made for the fall 2013 semester, to~~] receive an initial TEXAS Grant award for the 2013-2014 academic year, a person graduating from high school on or after May 1, 2013 and enrolling in a general academic teaching institution must:

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

(6) except as provided under §22.231 of this title (relating to Hardship Provisions), enroll in an undergraduate degree or certificate program at a general academic teaching institution on at least a three-quarter time basis as:

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

(7) (No change.)

(c) Initial Awards in Fall 2014 or Later. To qualify for an initial award for fall 2014, a person who graduates from high school on or after May 1, 2013 must:

(1) be enrolled in a medical or dental unit or general academic teaching institution other than state colleges;

(2) be a resident of Texas;

(3) meet financial need requirements established by the Board;

(4) have applied for any available financial aid assistance;

(5) not have been granted a baccalaureate degree;

(6) meet the academic requirements prescribed by subparagraph (A), (B), or (C) of this paragraph:

(A) graduate or be on track to graduate from a public or accredited private high school in Texas on or after May 1, 2013 and complete or be on track to complete the Foundation High School program or its equivalent as amended in keeping with Texas Education Code §56.009. An otherwise eligible student graduating before the Foundation High School program is established must complete or be on track to complete the recommended or advance high school program. The person must also be on track to have accomplished any two or more of the following at the time the award was made:

(i) successful completion of the course requirements of the international baccalaureate diploma program, or earning of the equivalent of at least 12 semester credit hours of college credit in high school through courses described in Texas Education Code, §28.009(a)(1), (2), and (3), or if graduating prior to September 1, 2020, graduate under the recommended or advanced high school program;

(ii) satisfaction of the Texas Success Initiative (TSI) college readiness benchmarks prescribed by the Board under Texas Education Code, §51.3062(f) on any assessment instrument designated by the Board under Texas Education Code, §51.3062(c) or qualification for an exemption as described by Texas Education Code, §51.3062(p), (q), or (q-1);

(iii) graduation in the top one-third of the person's high school graduating class or graduation from high school with a grade point average of at least 3.0 on a four-point scale or the equivalent; or

(iv) completion for high school credit of at least one advanced mathematics course following the successful completion of an Algebra II course, or at least one advanced career and technical or technical applications course;

(B) have received an associate's degree or be on track to receive an associate's degree from a public or private institution of higher education at the time the award was made; or

(C) if sufficient money remains, meet the eligibility criteria described in subsection (a) of this section;

(7) except as provided under §22.231 of this title, enroll in a baccalaureate degree program at an eligible institution on at least a three-quarter time basis as:

(A) an entering undergraduate student not later than the end of the 16th month after high school graduation; or

(B) an entering undergraduate student who entered military service not later than the first anniversary of the date of high school graduation and enrolled in an eligible institution no later than 12 months after being honorably discharged from military service; or

(C) a continuing undergraduate student not later than the end of the 12th month after the calendar month in which the student received an associate's degree; or

(D) an entering undergraduate student who has:

(i) previously attended a Texas institution of higher education;

(ii) received an initial grant under Subchapter M of this chapter (relating to Texas Educational Opportunity Grant Program) for the 2014 fall semester or a subsequent academic term;

(iii) completed at least 24 semester credit hours at any Texas public or private institution or institutions of higher education;

(iv) earned an overall grade point average of at least 2.5 on a four-point scale or the equivalent on all course work previously attempted; and

(v) has never previously received a TEXAS Grant; and

(8) have a statement on file with his or her institution that indicates the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law.

(d) [~~(c)~~] Continuation Awards. To receive a continuation award through the TEXAS Grant Program, a student must:

(1) have previously received an initial award through this program;

(2) show financial need;

(3) be enrolled at least three-quarter time unless granted a hardship waiver of this requirement under §22.231 of this title [~~(relating to Hardship Provisions)~~];

(4) if enrolled prior to fall 2014, be enrolled in an undergraduate degree or certificate program at an eligible [~~approved~~] institution; if enrolled in fall 2014 or later, be enrolled in a baccalaureate degree at an eligible institution;

(5) not have been granted a baccalaureate degree;

(6) have a statement on file with his or her institution that indicates the student is registered with the selective service system as

required by federal law or is exempt from selective service registration under federal law; and

(7) if enrolled prior to fall 2014, make satisfactory academic progress towards an undergraduate degree or certificate, as defined in §22.229 of this title (relating to Satisfactory Academic Progress); if enrolled in fall 2014 or later, make satisfactory academic progress towards a baccalaureate degree at an eligible institution, as defined in §22.229 of this title.

(8) If a student's eligibility was based on the expectation that the student would complete the Recommended or Advanced High School Program, meet the academic requirements as outlined in subsection (b)(5) or (c)(6) of this section, or acquire an associate's degree and the student failed to do so, then in order to resume eligibility such a student must:

(A) receive an associate's degree;

(B) meet all other qualifications for a TEXAS Grant; [and]

(C) if required to do so by the institution through which the TEXAS Grant was made, repay the amount of the TEXAS Grant that was previously received; and[.]

(D) enroll in a higher-level undergraduate degree program in an eligible institution not later than the 12th month after the month the student received an associate's degree.

(e) [(d)] In determining initial student eligibility for TEXAS Grant [grant] awards pursuant to subsections (a), (b) and (c) of this section, priority shall be given to those students who have an expected family contribution that does not exceed the lesser of the limit set by the Board for the relevant fiscal year or 60 percent of the average statewide amount of tuition and fees for general academic teaching institutions for the relevant academic year.

§22.229. Satisfactory Academic Progress.

(a) (No change.)

(b) At the end of the year in which a person receives a continuation award:

(1) (No change.)

(2) A recipient who was awarded an initial year award through the TEXAS Grant Program on or after September 1, 2005 shall, unless granted a hardship postponement in accordance with §22.231 of this title [(relating to Hardship Provisions)]:

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

(A) [(B)] complete at least 24 semester credit hours in his or her most recent academic year; and[,]

(B) [(C)] maintain an overall grade point average of at least 2.5 on a four point scale or its equivalent, for all coursework attempted at an institution or private or independent institution.

(C) [(D)] A first-time [first time] entering freshman student enrolling in a participating institution for the second regular term or semester in a given academic year meets the semester-credit-hour requirement outlined in subparagraph (A) [(B)] of this paragraph for continuing in the program if he or she completes at least 12 semester credit hours or its equivalent during that term or semester.

(c) (No change.)

§22.230. Discontinuation of Eligibility or Non-Eligibility.

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

(c) A student's eligibility ends one year from the date of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award, if the student's eligibility was based on the expectation that the student would complete the initial award requirements as outlined in §22.228 of this title (relating to Eligible Students) [Recommended or Advanced High School Program], but the student failed to do so. However, if such a student later receives an associate's degree and again qualifies for TEXAS Grants, he or she can receive an additional three [four] years of eligibility if enrolled in a degree plan of four years or less, an additional four years if enrolled in a degree plan of greater than four years.

(d) A student who is eligible for a TEXAS Grant based on completion of a required high school curriculum [the Recommended or Advanced High School Program] or its equivalent in high school may receive a TEXAS Grant for no more than 150 semester credit hours or the equivalent.

(e) - (g) (No change.)

§22.234. Award Amounts and Adjustments.

(a) (No change.)

(b) Award Amounts.

(1) The amount of a TEXAS Grant awarded through an institution may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any aid other than loans received equals or exceeds the student's tuition and required fees. [The amount of a TEXAS Grant awarded to a student attending a private or independent institution may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any gift aid exceeds the student's financial need.]

(2) (No change.)

[(3) For students enrolled in eligible private or independent institutions:]

[(A) The amount of the TEXAS Grant may not exceed the maximum award possible through the Tuition Equalization Grant Program (Texas Education Code, §61.221).]

[(B) No student may receive both a TEXAS Grant and a Tuition Equalization Grant in the same term or semester.]

(3) [(4)] An eligible institution may not charge a person receiving a TEXAS Grant through that institution, an amount of tuition and required fees in excess of the amount of the TEXAS Grant received by the person unless it also provides the student sufficient aid other than loans to meet his or her full tuition and required fees. Nor may it deny admission to or enrollment in the institution based on a person's eligibility to receive or actual receipt of a TEXAS Grant.

(4) [(5)] The eligible institution may require a student to forgo or repay the amount of an initial TEXAS Grant awarded to the student as described in §22.228(a)(6)(B) of this title (relating to Eligible Students) if the student is determined to have failed to complete the Recommended or Advanced High School Program or its equivalent as evidenced by the final high school transcript.

(5) [(6)] If the money available for TEXAS Grants is sufficient to provide grants to all eligible applicants in the amounts specified in paragraphs (1) - (3) [(1) - (4)] of this subsection, the Board may use any excess money to award a grant in an amount not more than three times the amount that may be awarded under paragraphs (1) - (3) [(1) - (4)] of this subsection, to a student who:

(A) is enrolled in a program that fulfills the educational requirements for licensure or certification by the state in a health care

profession that the Board, in consultation with the Texas Workforce Commission and the Statewide Health Coordinating Council, has identified as having a critical shortage in the number of license holders needed in this state;

(B) has completed at least one-half of the work toward a degree or certificate that fulfills the educational requirement for licensure or certification; and

(C) meets all the requirements to receive a grant award under §22.228 of this title.

(6) [~~(7)~~] No person enrolled for fewer than six semester credit hours may receive a TEXAS Grant. In addition, an award to an otherwise eligible student enrolled for less than a three quarter-time load due to hardship is to be prorated. The amount he/she can be awarded is equal to the semester's maximum award for the relevant type of institution, divided by twelve hours and multiplied by the actual number of hours for which the student enrolled.

(c) - (e) (No change.)

§22.235. Retroactive Disbursements.

(a) A student may receive an award [~~a disbursement~~] after the end of his/her period of enrollment if the student:

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

(b) (No change.)

§22.236. Allocation and Reallocation of Funds.

(a) Allocations.

(1) Initial Year Funds. Available program funds for initial year awards will be allocated to each participating institution in proportion to each institution's share of the state's undergraduate financial aid population with significant amounts of financial need[~~, except that, beginning with September 1, 2005, no additional initial year funds will be allocated to private or independent institutions~~]. No allocations of initial year funds are to be impacted by an institution's number of initial award recipients who met the priority model requirements described in §22.228(b)(5) or (c)(6) of this title (relating to Eligible Students).

(2) (No change.)

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

§22.239. Authority to Transfer Funds.

Institutions participating in a combination of the Toward EXcellence, Access and Success Grant, Texas Educational Opportunity Grant, [~~Tuition Equalization Grant,~~] and Texas College Work-Study Programs, in accordance with instructions from the Board, may transfer in a given fiscal year up to the lesser of 10 percent or $20,000 [~~$10,000~~] between these programs.

§22.241. Tolling of Eligibility for Initial Award.

(a) A person is eligible for consideration for an Initial Year TEXAS Grant award under this subsection if the person was eligible for an award under §22.228 of this title (relating to Eligible Students) in an academic year for which the Texas Legislature failed to appropriate sufficient funds to make awards to at least 10 percent of the eligible student population, and:

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

(3) meets the eligibility requirements for a continuation award as described in §22.228(d) [~~(e)~~] of this title.

(b) A person who meets the requirements outlined in subsection (a) of this section:

(1) (No change.)

(2) is to receive highest priority in the selection of recipients if he or she met the priority model requirements of §22.228(b)(5) or (c)(6) of this title, when originally determined to be eligible;

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

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

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

TRD-201303159
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 24, 2013
For further information, please call: (512) 427-6114

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SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §22.262

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §22.262, concerning the allocation and reallocation of funds for the Texas Educational Opportunity Grant (TEOG) Program.

This amendment will add language to the TEOG Program rules to address institutions' authority to transfer funds between programs as provided in Rider 22, page III-49 of the General Appropriations Act for the 2014-2015 Biennium.

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

Mr. Weaver has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering the amended section will be the institution's ability to better meet the needs of their student populations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

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

The amendment is proposed under Texas Education Code, §56.403, which provides the Coordinating Board with the authority to adopt rules to implement the TEOG Program.

The amendment affects Texas Education Code, §§56.401 - 56.4075.

§22.262. Allocation and Reallocation of Funds.

(a) - (d) (No change.)

(e) Authority to Transfer Funds. Institutions participating in a combination of the Texas Educational Opportunity Grant, Toward EXcellence, Access, and Success Grant, and Texas College Work-Study

Programs, in accordance with instructions from the Board, may transfer in a given fiscal year up to the lesser of 10 percent or $20,000 between these programs.

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

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

TRD-201303160
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 24, 2013
For further information, please call: (512) 427-6114

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SUBCHAPTER P. EXEMPTION PROGRAM FOR CLINICAL PRECEPTORS AND THEIR CHILDREN

19 TAC §22.305, §22.306

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §22.305 and §22.306, concerning the Exemption Program for Clinical Preceptors and Their Children.

The amendments to these sections add language to the exemption program rules to indicate that, to be eligible, a preceptor (§22.305) or his or her child (§22.306) must meet Selective Service registration requirements or be exempt from them, unless attending a public community college. These amendments are in accordance with Texas Education Code, §51.9095, which indicates a person receiving any state revenues must meet Selective Service registration requirements or be exempt from them. Tuition revenues for public institutions other than community colleges are considered state revenues.

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

Mr. Weaver has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended sections will be the institution's ability to better meet the needs of their student populations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

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

The amendments are proposed under Texas Education Code, §54.356, which provides the Coordinating Board with the authority to adopt rules to implement the Preceptor Exemption Program.

The amendments affect Texas Education Code, §54.356.

§22.305. Eligible Preceptors.

To receive an exemption under this program, a preceptor must:

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

(3) serve, on an average, at least one day per week under a written preceptor agreement with an undergraduate professional nursing program as a clinical preceptor for students enrolled in the program for:

(A) (No change.)

(B) the time period the program conducts clinicals during a semester or other academic term that ended less than one year prior to the beginning of the semester or term in which the exemption is to be used; [~~and~~]

(4) unless attending a public community college (for which tuition is local revenue), have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law.

§22.306. Eligible Children.

To receive an exemption under this program, a child must:

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

(3) be enrolled as an undergraduate student; [~~and~~]

(4) unless attending a public community college (for which tuition is local revenue), have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law.

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

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER T. EXEMPTION FOR FIREFIGHTERS ENROLLED IN FIRE SCIENCE COURSES

19 TAC §22.518, §22.521

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §22.518 and §22.521, concerning the Exemption for Firefighters Enrolled in Fire Science Courses.

The amendment to §22.518 updates the statutory citation for the Exemption Program, based on changes resulting from the passage of Senate Bill 220 by the 83rd Legislature.

The amendment to §22.521(a)(2)(A) updates the eligibility requirements for volunteer firefighters to indicate an eligible volunteer firefighter currently, and for at least the past year, must be an active member of an organized volunteer fire department in this

state participating in the Texas Emergency Services Retirement System or a retirement system established under the Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes). This is done in accordance with Senate Bill 220, passed by the 83rd Legislature.

New §22.521(a)(3) indicates that, to be eligible, an otherwise eligible paid or volunteer firefighter must meet Selective Service registration requirements or be exempt from them, unless the person is attending a public community college.

These amendments are in accordance with Texas Education Code, §51.9095, which indicates a person receiving any state revenues must meet Selective Service registration requirements or be exempt from them. Tuition revenues for public institutions other than community colleges are considered state revenues.

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

Mr. Weaver has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended sections will be the institution's ability to better meet the needs of their student populations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

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

The amendments are proposed under Texas Education Code, §54.353(f), which provides the Coordinating Board with the authority to adopt rules to implement the Firefighter Exemption Program.

The amendments affect Texas Education Code, §54.353.

§22.518. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, §54.353 [~~§54.208~~], Firefighters Enrolled in Fire Science Courses. This subchapter establishes [~~These rules establish~~] procedures to administer this exemption program.

(b) (No change.)

§22.521. Eligible Firefighters.

(a) To receive an initial exemption under this program:

(1) (No change.)

(2) A volunteer firefighter must:

(A) currently, and for at least the past year, be an active member of an organized volunteer fire department in this state participating in the Texas Emergency Services Retirement System or a retirement system established under the Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes)[~~, as defined by the fire fighters' pension commissioner~~]; and

(B) (No change.)

(3) Otherwise eligible paid or volunteer firefighters, unless attending a public community college (for which tuition is local revenue), must provide the institution proof that they meet Selective Service registration requirements or are exempt.

(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 August 1, 2013.

TRD-201303162
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 24, 2013
For further information, please call: (512) 427-6114

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SUBCHAPTER U. EXEMPTION FOR PEACE OFFICERS ENROLLED IN LAW ENFORCEMENT OR CRIMINAL JUSTICE COURSES

19 TAC §22.530, §22.533

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §22.530 and §22.533, concerning the Exemption for Peace Officers Enrolled in Law Enforcement or Criminal Justice Courses.

The amendment to §22.530 updates the statutory citation for the Exemption Program, based on changes resulting from the passage of Senate Bill 220 by the 83rd Legislature, Regular Session.

The first amendment to §22.533 clarifies that, to be eligible for an exemption a person must be employed as a peace officer by the State of Texas or by a political subdivision of the State. The second amendment to §22.533 adds language to the exemption program rules to indicate that, to be eligible, a person must meet Selective Service registration requirements or be exempt from them, unless the person is attending a public community college. These amendments are in accordance with Texas Education Code, §51.9095, which indicate a person receiving any state revenues, must meet Selective Service registration requirements or be exempt from them. Tuition revenues for public institutions other than community colleges are considered state revenues.

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

Mr. Weaver has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended sections will be the institution's ability to better meet the needs of their student populations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; or dan.weaver@thecb.state.tx.us. Comments will be accepted

for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under Texas Education Code, §54.3531(e), which provides the Coordinating Board with the authority to adopt rules to implement the Peace Officer Exemption Program.

The amendments affect Texas Education Code, §54.3531.

§22.530. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, §54.3531 [~~§54.2081~~], Peace Officers Enrolled in Certain Courses. This subchapter establishes procedures to administer this exemption program.

(b) (No change.)

§22.533. Eligible Peace Officers.

To qualify, a Peace Officer must:

(1) (No change.)

(2) apply for the exemption at least one week before the last day of the institution's regular registration period for that semester; [~~and~~]

(3) be in compliance with the institution's financial aid satisfactory academic progress requirements;[~~.~~]

(4) be employed as a peace officer by this state or by a political subdivision of this state; and

(5) unless attending a public community college (for which tuition is local revenue), provide the institution proof that the peace officer meets Selective Service registration requirements or is exempt.

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

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

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

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

19 TAC §33.25

The State Board of Education (SBOE) proposes an amendment to §33.25, concerning the Texas Permanent School Fund (PSF). The section establishes permissible and restricted investments and general guidelines for investment managers. The proposed amendment would modify language relating to prohibited transactions and restrictions.

The rules in 19 TAC Chapter 33 establish provisions supporting the management and investment of the PSF. Section 33.25 establishes the permissible and restricted investments and general guidelines for the investment managers. The proposed amendment to 19 TAC §33.25 would revise language in subsection (b)(13), which addresses the purchase of publicly traded fixed income security. The proposed amendment would increase the ability to make the best investments for the PSF.

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

Holland Timmins, executive administrator and chief investment officer of the Texas PSF, has determined that for the first five-year period the proposed amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Timmins has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be updated provisions supporting the management and investment of the PSF. The distribution of the PSF will flow to the school districts and reduce the tax burden to the public and the state of Texas. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-5337. A request for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

The amendment is proposed under the Texas Education Code, §7.102(c)(31), which authorizes the State Board of Education to invest the Permanent School Fund within the limits of the authority granted by the Texas Constitution, Article VII, §5, and the TEC, Chapter 43; and the Texas Constitution, Article VII, §5, which authorizes the SBOE to manage the assets of the PSF.

The amendment implements the Texas Education Code, §7.102(c)(31), and the Texas Constitution, Article VII, §5(f).

§33.25. Permissible and Restricted Investments and General Guidelines for Investment Managers.

(a) Permissible investments.

(1) Equities are considered to be common or preferred corporate stocks; corporate bonds, debentures, or preferreds that may be converted into corporate stock; and investment trusts. Stocks listed or traded on well recognized or principal U.S. or foreign exchanges or nationally recognized over-the-counter markets are permitted.

(2) Fixed income securities are considered to be U.S. or foreign treasury or government agency obligations, U.S. or foreign corporate bonds, asset- or mortgage-backed securities, taxable municipal obligations, Canadian bonds, Yankee bonds, supranational bonds (denominated in U.S. dollars), and 144A securities.

(3) Real estate is considered to be investments in real properties, as well as investments in real estate related securities, real estate related debt, and real estate related funds. Common property types as-

sociated with real estate investments are, but not limited to, apartments, office buildings, retail centers, infrastructure, timberlands, and industrial parks.

(4) Private equity is considered to be, but not limited to, venture capital, buy-out investing, mezzanine financing, and distressed debt.

(5) Absolute returns are investments in a diversified bundle of primarily marketable investment strategies that seek positive returns, regardless of market direction.

(6) Real returns are investments that target a return that exceed the rate of inflation, measured by the Consumer Price Index (CPI), by a premium.

(7) Risk parity is an investment strategy that creates a portfolio in which various asset class groups contribute equally to the overall risk of the portfolio as measured by the standard deviation of returns.

(8) Cash equivalents are securities with maturities of less than or equal to one year that are considered to include interest bearing or discount instruments of the U.S. government or its agencies, money market funds, corporate discounted instruments, corporate-issued commercial paper, time deposits of U.S. or foreign banks, bankers acceptances, and fully collateralized repurchase agreements. Both U.S. and foreign offerings are permitted. All residual cash in the Texas Permanent School Fund (PSF) portfolio must be swept and invested on a daily basis.

(9) Any form of investment or nonpublicly traded investment may be considered by the State Board of Education (SBOE) based on risk and return characteristics, provided the investment is consistent with PSF goals and objectives.

(10) The SBOE may approve currency hedging strategies for the international portfolios and delineate the related procedures in the "Standards of Performance" section of the PSF Investment Procedures Manual.

(b) Prohibited transactions and restrictions. Unless the SBOE gives its written approval, the following prohibited transactions and restrictions apply for all PSF managers:

(1) short sales of any kind;

(2) purchasing letter or restricted stock;

(3) buying or selling on margin;

(4) engaging in purchasing or writing options or similar transactions;

(5) purchasing or selling futures on commodities contracts;

(6) borrowing money, or pledging or otherwise encumbering PSF assets;

(7) purchasing the equity or debt securities of the portfolio manager's organization or an affiliated organization;

(8) engaging in any purchasing transaction, after which the cumulative market value of common stock in a single corporation exceeds 2.5% of the PSF total market value or 5.0% of the manager's total portfolio market value;

(9) engaging in any purchasing transaction, after which the cumulative number of shares of common stock in a single corporation held by the PSF exceeds 5.0% of the outstanding voting stock of that issuer;

(10) engaging in any purchasing transaction, after which the cumulative market value of fixed income securities or cash equivalent securities in a single corporation (excluding the U.S. government, its federal agencies, and government sponsored enterprises) exceeds 2.5% of the PSF total market value or 5.0% of the manager's total portfolio market value;

(11) purchasing tax exempt bonds;

(12) purchasing guaranteed investment contracts (GICs) from an insurance company or bank investment contracts (BICs) from a bank not rated at least AAA by Standard & Poor's or Moody's;

(13) purchasing any publicly traded fixed income security not rated investment grade by Standard & Poor's (BBB-), Moody's (Baa3), or Fitch (BBB-), subject to the provisions of the PSF Investment Procedures Manual and the following restrictions: [~~at least two of the following ratings agencies: at least BBB- by Standard & Poor's, Baa3 by Moody's, and BBB by Fitch, subject to the provisions in the PSF Investment Procedures Manual related to the fixed income portfolio mandates regarding quality and duration;~~]

(A) when ratings are provided by the three rating agencies, the middle rating shall be used;

(B) when ratings are provided by two ratings agencies, the lower rating is used; or

(C) when a rating is provided by one rating agency, the sole rating is used;

(14) purchasing short-term money market instruments rated below A-1 by Standard & Poor's or P-1 by Moody's;

(15) engaging in any transaction that results in unrelated business taxable income (excluding current holdings);

(16) engaging in any transaction considered a "prohibited transaction" under the Internal Revenue Code or the Employee Retirement Income Security Act (ERISA);

(17) purchasing precious metals or other commodities;

(18) engaging in any transaction that would leverage a manager's position;

(19) lending securities owned by the PSF, but held in custody by another party, such as a bank custodian, to any other party for any purpose, unless lending securities according to a separate written agreement the SBOE approved; and

(20) purchasing fixed income securities without a stated par value amount due at maturity.

(c) General guidelines for investment managers.

(1) Each investment manager retained to manage a portion of PSF assets shall be aware of, and operate within, the provisions of this chapter and all applicable Texas statutes.

(2) As fiduciaries of the PSF, investment managers shall discharge their duties solely in the interests of the PSF according to the prudent expert rule, engaging in activities that include the following.

(A) Diversification. The investment policy shall be to diversify each manager's common stock portfolio by participating in industries and companies with above average prospects or sound fundamentals.

(B) Securities trading.

(i) Each manager shall send copies of each transaction record to the PSF investment staff and custodians.

(ii) Each manager shall be required to reconcile the accounts under management on a monthly basis with the PSF investment staff and custodians.

(iii) Each manager shall be responsible for complying fully with PSF policies for trading securities and selecting brokerage firms, as specified in §33.40 of this title (relating to Trading and Brokerage Policy). In particular, the emphasis of security trading shall be on best execution; that is, the highest proceeds to the PSF and the lowest costs, net of all transaction expenses. Placing orders shall be based on the financial viability of the brokerage firm and the assurance of prompt and efficient execution.

(iv) The SBOE shall require each external manager to indemnify the PSF for all failed trades not due to the negligence of the PSF or its custodian in instances where the selection of the broker dealer is not in compliance with §33.40 of this title (relating to Trading and Brokerage Policy).

(C) Acknowledgments in writing.

(i) Each external investment manager retained by the PSF must be a person, firm, or corporation registered as an investment adviser under the Investment Adviser Act of 1940, a bank as defined in the Act, or an insurance company qualified to do business in more than one state, and must acknowledge its fiduciary responsibility in writing. A firm registered with the Securities and Exchange Commission (SEC) must annually provide a copy of its Form ADV, Section II.

(ii) The SBOE may require each external manager to obtain coverage for errors and omissions in an amount set by the SBOE, but the coverage shall be at least the greater of $500,000 or 1.0% of the assets managed, not exceeding $10 million. The coverage should be specific as to the assets of the PSF. The manager shall annually provide evidence in writing of the existence of the coverage.

(iii) Each external manager may be required by the SBOE to obtain fidelity bonds, fiduciary liability insurance, or both.

(iv) Each manager shall acknowledge in writing receiving a copy of, and agreeing to comply with, the provisions of this chapter.

(D) Discretionary investment authority. Subject to the provisions of this chapter, any investment manager of marketable securities or other investments, retained by the PSF, shall have full discretionary investment authority over the assets for which the manager is responsible. Specialist advisors retained for alternative asset investments may have a varying degree of discretionary authority, which will be outlined in the respective management contract.

(d) Reporting procedures for investment managers. The investment manager shall:

(1) prepare a monthly and quarterly report for delivery to the SBOE, the SBOE Committee on School Finance/Permanent School Fund, and the PSF investment staff that shall include, in the appropriate format, items requested by the SBOE. The monthly reports shall briefly cover the firm's economic review; a review of recent and anticipated investment activity; a summary of major changes that have occurred in the investment markets and in the portfolio, particularly since the last report; and a summary of the key characteristics of the PSF portfolio. Quarterly reports shall comprehensively cover the same information as monthly reports but shall also include any changes in the firm's structure, professional team, or product offerings; a detail of the portfolio holdings; and transactions for the period. Periodically, the PSF investment staff shall provide the investment manager a detailed description of, and format for, these reports;

(2) when requested by the SBOE Committee on School Finance/Permanent School Fund, make a presentation describing the professionals retained for the PSF, the investment process used for the PSF portfolio under the manager's responsibility, and any related issues;

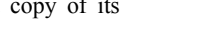
(3) when requested by the PSF investment staff, meet to discuss the management of the portfolio, new developments, and any related matters; and

(4) implement a specific investment process for the PSF. The manager shall describe the process and its underlying philosophy in an attachment to its investment management agreement with the PSF and manage according to this process until the PSF and manager agree in writing to any change.

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

Filed with the Office of the Secretary of State on August 2, 2013.

TRD-201303166
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 475-1497



CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER C. TEXAS CERTIFICATE OF HIGH SCHOOL EQUIVALENCY

The State Board of Education (SBOE) proposes amendments to §§89.42, 89.43, and 89.47 and the repeal of §89.48, concerning the Texas certificate of high school equivalency. The sections establish provisions relating to official testing centers, eligibility for and issuance of a certificate, and online testing. The proposed amendments and repeal would incorporate changes resulting from the transition from a paper-based test (PBT) format to a computer-based test (CBT) format as of January 1, 2014.

The current rules in 19 TAC Chapter 89, Subchapter C, provide for administration of high school equivalency testing and certification. The rules address testing center requirements, test taker identification and eligibility, retesting, examinees with disabilities, and standard fees for the issuance of high school equivalency certificates and scores. Revisions to 19 TAC Chapter 89, Subchapter C, adopted by the SBOE in 2011 clarified and updated the rules by changing references to the GED examinations and the American Council on Education (ACE) to use the more general term "high school equivalency certification." The 2011 revisions also added a section for provision of an online test in accordance with the TEC, §7.111, as amended by SB 1094, 82nd Texas Legislature, 2011.

The proposed revisions to 19 TAC Chapter 89, Subchapter C, would update the current rules as follows.

Section 89.42, Official Testing Centers, would be amended in subsection (a) to add to the list of eligible entities that may apply to become testing centers, including local workforce development boards, U.S. Department of Labor One-Stop Career Centers, public technical institutions, and any other public postsecondary institutions offering academic or technical education or

vocational training under a certificate program or an associate degree program. The list of entities eligible to apply to become testing centers would also include U.S. Department of Labor Job Corps Centers; public or private correctional institutions; private technical institutions or career preparation schools; private post-secondary institutions offering academic or technical education or vocational training under a certificate program or an associate degree program; and independent, stand-alone testing centers. Subsection (a) would also be reorganized to improve readability.

New subsection (b) would be added to address the process necessary for an eligible entity to request approval to serve as an official testing center. The new subsection would also clarify the parties associated with a center contract.

Subsection (e) would be re-lettered as subsection (c) and revised to clarify the authority of the TEA to withdraw agreement of a testing center to operate if it is in violation of SBOE rules.

New subsection (d) would be added to clarify that authorized testing centers may administer the test by paper or computer, as appropriate, at the testing center to eligible candidates who are 16 years of age or older.

As a result of the proposed revisions, existing subsections (b)-(d) would be deleted as those provisions would no longer be applicable to the CBT format or necessary to continue the PBT format in correctional institutions. Existing subsections (f) and (g) would also be deleted since those provisions would be addressed in the contract between the applicant entity and the authorized testing organization and its partners.

Section 89.43, Eligibility for a Texas Certificate of High School Equivalency, would be amended in subsection (a)(2)(C)(iii) to accurately refer to the Texas ChalleNGe Academy program. Language would also be revised to refer to the Texas Military Department where appropriate as a result of House Bill (HB) 1536, 83rd Texas Legislature, Regular Session, 2013. Subsection (a)(4) would be revised to clarify minimum test score requirements. Language would be added in subsection (a)(2)(B) and (C) and subsection (b) to specify that examination eligibility requirements must be submitted in accordance with procedures established by the TEA. Additionally, language in subsection (a)(2)(C)(i) would be revised to incorporate changes relating to court orders as a result of HB 2058, 83rd Texas Legislature, Regular Session, 2013.

Section 89.47, Issuance of the Certificate, would be amended in subsection (a) to change the fee charged from a per certificate amount to an amount assessed upon registration for each individual test through December 31, 2013, and after January 1, 2014. Subsection (c) would be revised to remove language that is no longer necessary. The rule would still require that the certificate of high school equivalency must specify the test version taken.

Subsections (d) and (e) would be revised to specify that the state administrator is appointed by the commissioner of education. Subsection (e) would also be revised to clarify that a decision by the state administrator to not issue or cancel a certificate if the candidate violates SBOE rules is final and may not be appealed.

Subsections (f) and (g) would be deleted as those provisions would no longer be necessary for the CBT program or to continue the PBT program in correctional institutions.

Section 89.48, Online Testing, would be repealed since provisions relating to fees and eligibility would be addressed elsewhere in Chapter 89, Subchapter C.

The proposed amendments and repeal would have procedural and reporting implications, including changes to align with the transition from a PBT format to a CBT format and to specify that examination eligibility requirements must be submitted in accordance with procedures established by the TEA. Transitioning from a PBT format to a CBT format will dramatically reduce the locally maintained paperwork requirements of operating a testing center.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the proposed amendments and repeal are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed amendments and repeal.

Ms. Givens has determined that for each year of the first five years the proposed amendments and repeal are in effect the public benefit anticipated as a result of enforcing the amendments and repeal would be updates to rules to reflect transition from a PBT to a CBT and the addition of clarifying language. There may be fiscal implications for persons who are required to comply with the proposed amendments and repeal. Currently, fees to test candidates vary greatly across the state and from test center to test center. The proposed rule actions would establish a uniform statewide cost for individual candidates, regardless of geographic location or test center. In some cases candidates would experience an increase in individual cost and in other cases candidates would experience a cost decrease.

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

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-5337. A request for a public hearing on the proposed amendments and repeal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

19 TAC §§89.42, 89.43, 89.47

The amendments are proposed under the Texas Education Code, §7.111, which authorizes the SBOE to provide for the administration of high school equivalency examinations and to by rule establish and require payment of a fee as a condition to the issuance of a high school equivalency certificate and a copy of the scores of the examinations. The statute further states that the fee must be reasonable and designed to cover the administrative costs of issuing the certificate and a copy of the scores. In addition, the Texas Education Code, §7.111, authorizes the SBOE to by rule develop and deliver high school equivalency examinations and provide for the administrations of the examinations online.

The amendments implement the Texas Education Code, §7.111.

§89.42. Official Testing Centers.

(a) Entities eligible to serve as official testing centers include:

(1) an accredited school district;

(2) an institution of higher education;

(3) an education service center;

(4) a local workforce development board;

(5) a United States Department of Labor One-Stop Career Center;

(6) a United States Department of Labor Job Corps Center;

(7) a public or private correctional institution;

(8) a public or private technical institution or career preparation school;

(9) any other public or private postsecondary institution offering academic or technical education or vocational training under a certificate program or an associate degree program; and

(10) an independent, stand-alone testing center.

(b) The appropriate official of an eligible entity desiring to provide the testing service to residents in the community must request approval from the Texas Education Agency (TEA) to apply for authorization from the authorized testing organization. If the need for a testing center in the location exists, the appropriate entity official, in writing, shall inform the state administrator appointed by the commissioner of education that the establishment of an official testing center is requested at that particular entity. The contract to operate a center shall be between the applicant entity and the authorized testing organization and its partners.

[(a) When authorized by the Texas Education Agency (TEA), official testing centers shall be established by annual contract with an accredited school district, an institution of higher education (IHE), or an education service center (ESC). The testing center must be located at a high school in an accredited district, an accredited IHE, or an ESC. The chief administrative officer of a school, an IHE, or an ESC desiring to provide the testing service to residents in the community must request authorization to do so from the TEA. If the need for a testing center in the location exists, the appropriate entity official, in writing, shall inform the commissioner of education that the establishment of an official testing center is requested at that particular entity. The center shall be sent an annual contract, together with order forms and other material, relating to the operation of the testing center.]

[(b) The chief administrative officer of the entity at which an official testing center is established must agree to provide appropriate storage for restricted test materials and to provide a suitable place for administering the test. Each center is responsible for selecting and ordering test materials.]

[(c) The administrative officer of a testing center must designate a professional person with a bachelor's degree and a background in teaching, training, testing, or counseling to serve as chief examiner. The chief administrative officer must obtain prior authorization from the TEA to change the chief examiner or the location of a testing center. The person designated as chief examiner must attend annual training conducted by the TEA.]

[(d) A testing center may transport restricted test material to correctional facilities, health facilities, or schools if authorization to do so has been obtained. The chief administrative officer of an entity housing an official testing center and the administrator of the correctional facility, health facility, or school must request authorization to provide the testing services from the TEA. Only the exact number of tests plus one needed at a test session may be transported to the addendum site. Testing services at correctional or health facilities shall be limited to inmates or patients of the facility, and the tests must be administered by an employee of an official testing center. To maintain the integrity of the test, a complete inventory of all secure testing materials shall be conducted:]

[(1) before leaving the official testing center;]

[(2) upon arrival at the addendum site;]

[(3) immediately before and after the test administration;]

[(4) before departure from the addendum site; and]

[(5) upon return to the official testing center.]

(c) [(e)] The authorization to function as an official testing center may be withdrawn by the TEA if [when a center has failed to maintain the integrity of the testing program. The TEA may suspend testing at a center if restricted test material is reported missing or if conditions reported by the TEA site visit indicate that] the testing center is in violation of State Board of Education rules.

(d) A testing center may administer the test by paper or computer, as appropriate, at the testing center to eligible candidates who are 16 years of age or older.

[(f) An official testing center may charge a fee to cover the costs for test administration. The amount of the fee shall be determined by the administration or board of the entity housing the testing center and be approved by the TEA.]

[(g) The administration or board of an entity housing an official testing center shall have a written policy concerning the operation of the center, a written emergency plan, and a testing schedule. Each official testing center must provide the following assurances:]

[(1) appropriate resources;]

[(2) suitable physical facilities;]

[(3) adequate staffing;]

[(4) full testing support services;]

[(5) cooperation with the TEA;]

[(6) financial management; and]

[(7) test security.]

§89.43. Eligibility for a Texas Certificate of High School Equivalency.

(a) An applicant for a certificate of high school equivalency shall meet the following requirements.

(1) Residence. The applicant must be a resident of Texas or a member of the United States armed forces stationed at a Texas installation.

(2) Age.

(A) The applicant must be 18 years old.

(B) An applicant who is 17 years of age is eligible with parental or guardian consent. An applicant who is 17 years of age must submit [present written] permission of [signed by] the applicant's parent or guardian according to procedures established by the Texas Education Agency (TEA). An applicant who is 17 years of age and married, who has entered military service, who has been declared an adult by the court, or who has otherwise legally severed the child/parent relationship is not required to present parent or guardian permission to be tested.

(C) An applicant who is at least 16 years of age may test if recommended by a public agency having supervision or custody under a court order. Recommendations must include the applicant's name and date of birth and must be submitted according to procedures established by the TEA [signed] by an official of the public agency having supervision or custody of the person under a court order. An applicant who is at least 16 years old may also test if:

(i) required to take the examination under a [~~justice or municipal~~] court order [~~issued under the Code of Criminal Procedure, Article 45.054(a)(1)(C) (formerly codified as Family Code, §54.021(d)(1)(B))~~];

(ii) enrolled in a Job Corps training program under the Workforce Investment Act of 1998 (29 United States Code, §§2801 et seq.) and its subsequent amendments; or

(iii) enrolled in the Texas Military Department's Texas [~~adjutant general's department's~~] ChalleNGe Academy program [~~Corps~~].

(3) Educational status. The applicant must not have received a high school diploma from an accredited high school in the United States. The applicant must not be enrolled in school, unless the applicant is enrolled in a High School Equivalency Program (HSEP) approved by the TEA [~~Texas Education Agency (TEA)~~]. A student who is 17 years of age is eligible to test if the student is enrolled in an HSEP approved by the TEA. The student must comply with the provisions of the HSEP.

(4) Minimum test scores. An applicant must achieve the appropriate minimum standard scores in effect at the time the applicant tested as established by the TEA or the designated test organization, as appropriate.

(b) Verification [~~Test centers shall verify~~] that any person being tested meets the eligibility requirements in this section will be provided according to procedures established by the TEA.

§89.47. Issuance of the Certificate.

(a) [~~Following review for eligibility and approval, certificates will be issued directly to clients.~~] A nonrefundable fee of $3.00 [~~$15~~] will be assessed for each individual test upon registration through December 31, 2013. A nonrefundable fee of $3.75 will be assessed for each individual test upon registration beginning January 1, 2014. [~~issuance of a certificate and a copy of test scores. An additional convenience fee of no more than $2.00 per transaction shall be charged to cover the cost of printing certificates online.~~] A permanent file shall be maintained for all certificates issued.

(b) Duplicate certificates will be issued upon request from the client. The client is required to pay a nonrefundable fee of $5.00 for each request for a duplicate certificate. An additional convenience fee of no more than $2.00 per transaction shall be charged to cover the cost of printing certificates online.

(c) The certificate of high school equivalency shall indicate the version of the test taken by the applicant[~~: audiotape, large print, Braille, English, French, or Spanish~~].

(d) The state administrator appointed by the commissioner of education may disapprove issuance of a certificate or may cancel a certificate under the following conditions:

(1) an applicant does not meet eligibility requirements under §89.43 of this title (relating to Eligibility for a Texas Certificate of High School Equivalency);

(2) the applicant in any way violates security of the restricted test material;

(3) the applicant presents fraudulent identification or is not who he or she purports to be;

(4) the applicant uses another person's certificate or test scores in an attempt to defraud; or

(5) the applicant willingly allows another person to use his or her certificate or test scores in an attempt to defraud.

(e) In the case of nonissuance or cancellation of a certificate, the applicant shall be notified in writing by the testing entity [~~state administrator~~] that the certificate will not be issued or may be canceled. A decision by the state administrator appointed by the commissioner is final and may not be appealed.

[~~(f) An applicant who has been notified that his or her certificate will not be issued or may be canceled may appeal to the state administrator within 30 days of receiving written notification.~~]

[~~(g) If, after further review, the state administrator does not approve issuance of the certificate or cancels a certificate, this decision may be appealed to the commissioner of education under Chapter 157 of this title (relating to Hearings and Appeals).~~]

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

Filed with the Office of the Secretary of State on August 2, 2013.

TRD-201303167
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 475-1497

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19 TAC §89.48

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

The repeal is proposed under the Texas Education Code, §7.111, which authorizes the SBOE to provide for the administration of high school equivalency examinations and to by rule establish and require payment of a fee as a condition to the issuance of a high school equivalency certificate and a copy of the scores of the examinations. The statute further states that the fee must be reasonable and designed to cover the administrative costs of issuing the certificate and a copy of the scores. In addition, the Texas Education Code, §7.111, authorizes the SBOE to by rule develop and deliver high school equivalency examinations and provide for the administrations of the examinations online.

The repeal implements the Texas Education Code, §7.111.

§89.48. Online Testing.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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CHAPTER 111. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR MATHEMATICS
SUBCHAPTER A. ELEMENTARY

19 TAC §111.5

The Texas Education Agency (TEA) proposes an amendment to §111.5, concerning the Texas essential knowledge and skills (TEKS) for mathematics. The section establishes the mathematics TEKS for Grade 3. The proposed amendment would make a technical correction to language relating to geometry and measurement by referencing two- and three-dimensional figures instead of two- and three-dimensional solids. Pursuant to delegation to the commissioner of education by the State Board of Education (SBOE) under SBOE Operating Rule §5.4, Filing Non-Substantive Rule Corrections with the Secretary of State, the commissioner is authorized to approve and file this technical correction with the *Texas Register.*

The SBOE adopted new elementary mathematics TEKS in 19 TAC Chapter 111, Subchapter A, effective September 10, 2012. The TEKS for Grade 3 mathematics adopted in 19 TAC §111.5 include knowledge and skills for geometry and measurement. Subsequent to the adoption taking effect in September 2012, an error was identified in the geometry and measurement student expectation in subsection (b)(6)(A). The subsection should specify that the student is expected to classify and sort two- and three-dimensional figures instead of two- and three-dimensional solids. TEA staff informed the SBOE Committee of the Full Board at its November 2012 meeting that a technical correction would be filed with the *Texas Register.*

The proposed amendment to 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics, Subchapter A, Elementary, §111.5, Grade 3, Adopted 2012, would correct the language in subsection (b)(6)(A).

The technical correction would have no procedural or reporting implications. The technical correction would have no locally maintained paperwork requirements.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

Ms. Givens has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be updated mathematics TEKS with correct mathematical terminology. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

The public comment period on the technical correction begins August 16, 2013, and ends September 16, 2013. Comments on the technical correction may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-5337.

The amendment is proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, and §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the assessment instruments.

The proposed amendment implements the Texas Education Code, §7.102(c)(4) and §28.002.

§111.5. Grade 3, Adopted 2012.

(a) (No change.)

(b) Knowledge and skills.

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

(6) Geometry and measurement. The student applies mathematical process standards to analyze attributes of two-dimensional geometric figures to develop generalizations about their properties. The student is expected to:

(A) classify and sort two- and three-dimensional figures [~~solids~~], including cones, cylinders, spheres, triangular and rectangular prisms, and cubes, based on attributes using formal geometric language;

(B) - (E) (No change.)

(7) - (9) (No change.)

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

Filed with the Office of the Secretary of State on August 2, 2013.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.7

Introduction. The Texas Board of Nursing (Board) proposes amendments to §211.7, relating to Executive Director. The amendments are proposed pursuant to the Occupations Code §§301.101, 301.151, 301.452, 301.453, and 301.467 and authorize the Board's Executive Director to approve and accept certain Board Orders on behalf of the Board, without Board ratification.

Background. The Occupations Code §301.455 and §301.4551 authorize the Board to temporarily suspend a nurse's license under certain conditions. If a nurse's license is temporarily suspended under §301.455 and/or §301.4551, the nurse must immediately cease working as a nurse pending a probable cause hearing at the State Office of Administrative Hearings, which must be held within 17 days of the temporary suspension of

the nurse's license. If the administrative law judge (ALJ) finds that probable cause exists to uphold the Board's temporary suspension of the nurse's license, the nurse's license will remain in suspended status pending the final hearing in the matter, which must be held within 60 days of the temporary suspension of the nurse's license. During this time, the individual may not work as a nurse.

Some nurses whose licenses are temporarily suspended under §301.455 and/or §301.4551 are willing to enter into an agreed order with the Board to resolve the contested case. However, under the Board's existing rules, the nurse's license must remain in suspended status until the agreed order is ratified by the Board. Because the Board, or its designated subcommittee, only meets once each month to ratify agreed orders, the ratification process can take approximately 45-60 days. During the time that the nurse is waiting for the agreed order to be ratified, the individual remains prohibited from working as a nurse.

The proposed amendments are intended to provide relief to individuals who wish to enter into agreed orders to resolve contested cases matters by authorizing the Executive Director to accept these agreed orders without Board ratification, thereby allowing an individual to return to work under the terms of the agreed order as soon as the Executive Director approves the order.

The proposed amendments, however, only authorize the Executive Director's approval of these agreed orders in limited circumstances. First, under the proposal, the Executive Director can only approve agreed orders that are entered into by an individual whose license has been temporarily suspended under the Occupations Code §301.455 and/or §301.4551. Second, the Executive Director may only approve and accept the agreed order if he/she is of the opinion that the agreed order falls within, and is consistent with, public safety and the parameters of 22 Texas Administrative Code §213.27 (relating to Good Professional Character), §213.29 (relating to Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters), and §213.33 (relating to Factors Considered for Imposition of Penalties/Sanctions) of this title. Third, the Executive Director must report summaries of the dispositions to the Board at its regularly scheduled meetings. Finally, an agreed order may still be reviewed and approved by the Board if the Executive Director does not feel that he/she can approve and accept it under the terms of proposed amended §211.7.

Section-by-Section Overview. Proposed amended §211.7(f) authorizes the Executive Director of the Board to accept the agreed orders set forth in new §211.7(i) on behalf of the Board without Board ratification and requires the Executive Director to report summaries of dispositions to the Board at its regular meetings.

Proposed amended §211.7(i) authorizes the Executive Director, following the temporary suspension of an individual's license pursuant to the Occupations Code §301.455 or §301.4551, to approve and accept on behalf of the Board an agreed order resolving the contested case if he/she is of the opinion that the agreed order falls within, and is consistent with, public safety and the parameters of §§213.27, 213.29, and 213.33 of this title.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of requirements that provide a more efficient process for individuals whose nursing license has been temporarily suspended pursuant to the Occupations Code §301.455 and/or §301.4551, but who wish to settle the contested case through an agreed order. The proposed amendments may allow such individuals to return to work sooner, thereby reducing the amount of lost income the individual may have suffered during the temporary suspension period. Further, contested case matters that cannot be resolved by the Executive Director under the proposed amendments will continue to be reviewed and approved by the Board. Such requirements ensure that the Board is able to continue to fulfill its mission of protecting the public health and safety through regulation.

Potential Costs to Comply with the Proposal. The Board does not anticipate any potential costs of compliance with the proposal. Rather, the proposed amendments may result in savings to individuals who are able to resolve a contested case under the proposed amendments and return to work in a faster manner.

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

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on September 16, 2013, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendment is proposed under the Occupations Code §§301.101, 301.151, 301.452, 301.453, and 301.467.

Section 301.101(b) provides that, under the direction of the Board, the Executive Director shall perform the duties required by Chapter 301 or designated by the Board.

Section 301.151 provides that the Board may adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.452(a) defines intemperate use to include practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or

for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) provides that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic Board review; (v) suspension of the person's license for a period not to exceed five years; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.467(a) states that, on application, the Board may reinstate a license to practice professional nursing or vocational nursing to a person whose license has been revoked, suspended, or surrendered.

Cross Reference to Statute. The following statutes are affected by this proposal: Occupations Code §§301.101, 301.151, 301.452, 301.453, and 301.467.

§211.7. Executive Director.

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

(f) The Executive Director is authorized to accept the following orders on behalf of the Board and ratification by the Board is not necessary. The Executive Director will report summaries of dispositions to the Board at its regular meetings.

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

(3) Orders issued under subsection (i) of this section.

(g) - (h) (No change.)

(i) Following the temporary suspension of an individual's license pursuant to the Occupations Code §301.455 or §301.4551, the Executive Director may approve and accept on behalf of the Board an agreed order resolving the contested case if he/she is of the opinion that the agreed order falls within, and is consistent with, public safety and the parameters of §213.27 of this title (relating to Good Professional Character); §213.29 of this title (relating to Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters); and §213.33 of this title. The Executive Director shall report summaries of dispositions under this subsection to the Board at its regularly scheduled meetings.

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

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TRD-201303175
Jena Abel
Assistant General Counsel
Texas Board of Nursing
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CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.3

Introduction. The Texas Board of Nursing (Board) proposes amendments to §213.3, relating to Pleading. The amendments are proposed pursuant to the Government Code §2001.054 and the Occupations Code §§301.151, 301.452, 301.453, 301.454, and 301.458 and are necessary to: (i) implement the provisions of Senate Bill (SB) 1058, which was enacted by the 83rd Texas Legislature, Regular Session, effective September 1, 2013; and (ii) clarify the Board's existing procedural requirements relating to licensure and eligibility matters.

Background. SB 1058 was enacted during the 83rd Legislative Session and makes changes to the Occupations Code §301.454 and §301.458. The proposed amendments to §213.3(a) are necessary for consistency with these amended statutory provisions. The proposed amendments to §213.3(a) also clarify that a notice of hearing or an amended notice of hearing constitutes the institution of agency proceedings for purposes of the Government Code §2001.054(c).

The proposed amendments to §213.3(b) clarify the Board's existing procedural requirements applicable to licensure and eligibility matters. Matters that involve an individual's existing Texas nursing license or privilege, including a Texas license that may be in current, inactive, or delinquent status, are collectively referred to in the rule as "licensure matters." Matters that involve an individual's eligibility for a Texas nursing license or privilege, including initial licensure, licensure renewal, or licensure reinstatement following the limit, suspension, surrender, or revocation of a Texas nursing license or privilege, are collectively referred to as "eligibility matters" in the rule. The procedural requirements that apply to a "licensure matter" or an "eligibility matter" are then set forth accordingly in the remaining provisions of the subsection.

Section-by-Section Overview. Proposed amended §213.3(a) sets forth the requirements that apply in licensure matters. In actions where Board Staff is the petitioner against a licensee, proposed amended §213.3(a)(1) states that Staff's pleading will be styled "Formal Charges."

Proposed amended §213.3(a)(2) provides that, except in cases of temporary suspension and injunction, the Board may not take disciplinary action unless notice of the facts or conduct alleged to warrant the intended action has been sent to the licensee's address of record and the licensee has an opportunity to show compliance with the law for retention of the license as provided in the APA, Texas Government Code §2001.054(c). Further, the proposed amendment provides that notice of hearing or amended notice of hearing constitutes institution of agency proceedings for purposes of §2001.054(c).

Proposed amended §213.3(b) sets forth the requirements that apply in eligibility matters. In actions where Board Staff is the petitioner, proposed amended §213.3(b)(1) states that Staff's pleading shall ordinarily be styled "Petition of the Board of Nursing."

Proposed amended §213.3(b)(2) states that, in actions by a person as the petitioner, e.g., an individual seeking a determination of eligibility for licensure, examination or licensure applicant, or an individual petitioning to return to direct patient care or seeking reinstatement of a surrendered, revoked, or suspended license, the person's pleading shall be styled "Petition of NAME." Further, the person shall have the burden of initiating the action, going forward with the administrative proceeding and proving the allegations contained in the pleading. The Board at its discretion may initiate proceedings before the State Office of Administrative Hearings (SOAH) without relieving the petitioner of the burden of proof. Finally, if the Board has provided the petitioner with written notice of the basis of its refusal or denial of license, permit, application or petition, the Board may file an answer incorporating this notice and may rely on the notice as a responsive pleading.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit will be the adoption of requirements that are consistent with the provisions of SB 1058. There are no anticipated economic costs to persons who are required to comply with the proposal. None of the proposed amendments substantively alter the existing requirements of the section in a manner that would generate new costs associated with compliance with the rule. Further, none of the proposed amendments impose new or additional requirements or restrictions upon individuals required to comply with the proposal. Rather, the proposed amendments clarify the Board's existing requirements for licensure and eligibility matters and conform to the amendments made by SB 1058. Further, the Board does not anticipate that an individual's method of compliance with the provisions of the rule will be altered as a result of the proposed amendments. Therefore, the Board does not anticipate any costs of compliance associated with the proposed amendments.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposal.

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

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on September 16, 2013, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendment is proposed under the Government Code §2001.054 and the Occupations Code §§301.151, 301.452, 301.453, 301.454, and 301.458.

Section 2001.054(c) provides that a revocation, suspension, annulment, or withdrawal of a license is not effective unless, before institution of state agency proceedings: (i) the agency gives notice by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action; and (ii) the license holder is given an opportunity to show compliance with all requirements of law for the retention of the license.

Section 301.151 provides that the Board may adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.452(a) defines intemperate use to include practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to prac-

tice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) provides that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic Board review; (v) suspension of the person's license for a period not to exceed five years; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.454(a) states that, except in the case of a temporary suspension authorized under §301.455 or §301.4551 or an action taken in accordance with an agreement between the Board and a license holder, the Board may not take any disciplinary action relating to a license unless: (i) the Board has served notice to the license holder of the facts or conduct alleged to warrant the intended action; and (ii) the license holder has been given an opportunity, in writing or through an informal meeting, to show compliance with all requirements of law for the retention of the license.

Section 301.458(a) states that, unless there is an agreed disposition of the complaint under §301.463, if probable cause is found under §301.457(e)(2), the Board or the Board's authorized representative shall file formal charges against the nurse.

Cross Reference to Statute. The following statutes are affected by this proposal: Government Code §2001.054 and the Occupations Code §§301.151, 301.452, 301.453, 301.454, and 301.458.

§213.3. Pleading.

(a) In licensure [~~disciplinary~~] matters:

(1) (No change.)

(2) Except in cases of temporary suspension and injunction, the Board may not take disciplinary action unless [~~formal charges shall be filed only after~~] notice of the facts or conduct alleged to warrant the intended action has been sent to the licensee's address of record and the licensee has an opportunity to show compliance with the law for retention of the license as provided in the APA, Texas Government Code §2001.054(c). Notice of hearing or amended notice of hearing constitutes institution of agency proceedings for purposes of §2001.054(c).

(b) In eligibility [~~nondisciplinary~~] matters:

(1) In actions by the staff as petitioner, [~~to enforce and regulate matters~~] the staff's pleading shall ordinarily be styled "Petition of the Board of Nursing [~~Nurse Examiners~~]."

(2) In actions by a person as petitioner, e.g., an individual seeking a determination of eligibility for licensure, examination or licensure applicant, or an individual petitioning to return to direct patient care or seeking reinstatement of a surrendered, revoked, or suspended license, the person's pleading shall be styled "Petition of NAME." The person shall have the burden of initiating the action, going forward with the administrative proceeding and proving the allegations contained in the pleading. The Board at its discretion, may initiate proceedings before SOAH without relieving petitioner of the burden of proof as outlined herein. If the Board has provided the petitioner with written notice of the basis of its refusal or denial of license, permit, application or petition, the Board may file an answer incorporating this notice and may rely on the notice as a responsive pleading.

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

Filed with the Office of the Secretary of State on August 2, 2013.

TRD-201303173

Jena Abel
Assistant General Counsel
Texas Board of Nursing
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 305-6822

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CHAPTER 216. CONTINUING COMPETENCY

22 TAC §216.3

Introduction. The Texas Board of Nursing (Board) proposes an amendment to §216.3, relating to Requirements. The amendment is proposed pursuant to the Occupations Code §§157.0511, 301.151, 301.152, and 301.303 and requires advanced practice registered nurses (APRNs) who prescribe controlled substances to complete an additional 3 hours of continuing education related to prescribing controlled substances each biennium. The proposed amendment is necessary for consistency with the requirements of proposed new Chapter 222, relating to Advanced Practice Registered Nurses with Prescriptive Authority, published in the *Texas Register* on August 9, 2013.

Background. The Board proposed new Chapter 222, relating to Advanced Practice Registered Nurses with Prescriptive Authority, in the August 9, 2013, issue of the *Texas Register* (38 TexReg 4990). The proposed new chapter is necessary to implement Senate Bill (SB) 406, which was enacted by the 83rd Texas Legislature, Regular Session, effective November 1, 2013. SB 406 was intended to improve the process by which physicians delegate and supervise the prescribing and/or ordering of drugs to APRNs and physician assistants. Further, SB 406 expands the scope of APRNs by authorizing APRNs to prescribe and/or order Schedule II controlled substances in certain practice settings. The proposed amendment to §216.3 is necessary for consistency with the requirements previously proposed by the Board.

The provisions of proposed new Chapter 222 require an APRN who prescribes controlled substances to complete three additional contact hours of continuing education related to prescribing controlled substances each biennium. The Board determined that this additional continuing education was reasonably related to the expanded scope authorized by SB 406 with regard to the prescription of Schedule II controlled substances. Further, the Board determined that the additional continuing education would ensure that APRNs who prescribe controlled substances stay abreast of current industry practices and treatment regimes, enhance their professional competence, and maintain their clinical skills.

The proposed amendment permits an APRN to complete the additional continuing education in any area related to prescribing controlled substances. Thus, the Board anticipates that many different types of continuing education courses will be able to meet the proposed requirement. For instance, courses in pain management, content related to recognition of patients with addictions/pseudo addictions, and medical management of patients with conditions such as Attention Deficit Hyperactivity Disorder could appropriately meet the proposed requirement. So long as the content of a course relates to the prescription of controlled substances in a meaningful way, the Board anticipates that the course would be sufficient to meet the proposed continuing education requirement.

Section-by-Section Overview. Proposed amended §216.3(c)(3) requires an APRN who holds prescriptive authority and prescribes controlled substances to complete, in addition to the other requirements of the subsection, at least three additional contact hours of continuing education related to prescribing controlled substances.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendment is in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be the adoption of a requirement that ensures the protection of the public health, safety, and welfare through the demonstration of continuing competency.

Under the proposal, APRNs who prescribe controlled substances are required to complete an additional three hours of continuing education related to prescribing controlled substances each biennium. The proposed new continuing education requirement is designed to assist APRNs in maintaining and improving their knowledge and skills and further developing their expertise in their current area of practice. Requiring a nurse to maintain competence in his or her current area of practice, such as where he/she prescribes controlled substances, is especially important because it ensures that the nursing skills necessary for that particular setting are thoroughly developed and enriched. As a result, the nurse's patients directly benefit because the nurse is more knowledgeable and competent in his or her practice. In this way, the proposed new requirement seeks to ensure a higher quality of nursing care.

Potential Costs for Individuals Required to Comply with the Proposal. The proposed amendment only applies to APRNs who prescribe controlled substances. For APRNs who prescribe controlled substances, there may be associated costs of compliance with the proposed amendment. The probable costs of compliance with proposed amended §216.3(c)(3) may vary among individual APRNs based upon a variety of factors. However, the Board anticipates that the total probable economic costs of compliance with proposed amended §216.3(c)(3) will range between $0.00 to $800. This estimated cost is based upon the following considerations.

The Board collected a sampling of continuing education courses currently being offered by various continuing education providers. It should be noted that several continuing education providers offer free online continuing education courses. Of the continuing education courses surveyed that were not free, the credit hours ranged from .5 hours to larger numbers of credit hours, such as 40 hours, for courses ranging over a six-week period. Under the proposal, an APRN must complete three hours of continuing education each biennium that is sufficiently related to prescribing controlled substances. This proposed requirement can be met with a variety of continuing education courses, structured in a variety of ways, including online courses, conferences, or week-long courses. Because the proposed requirement can be met through a variety of ways, each individual APRN has the flexibility to choose the most economic method of compliance. Further, some APRNs may be able to meet the proposed additional continuing education requirement through the education the APRN completes to maintain his/her certification. Additionally, an APRN must only meet the addi-

tional continuing education requirement each biennium, so the associated costs of compliance may be somewhat offset. Each APRN has the information necessary to estimate his or her own individual costs of compliance. Further, any other costs to comply with the proposed new requirement results from the enactment of SB 406 and the Occupations Code Chapter 301 and are not a result of the adoption, enforcement, or administration of the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Government Code §2006.002(c) and (f) require that if a proposed rule may have an economic impact on small businesses or micro businesses state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule.

The Government Code §2006.001(a)(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated and has fewer than 100 employees or less than $6 million in annual gross receipts. The Government Code §2006.001(a)(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees. The Government Code §2006.001(a)(1) does not specify a maximum level of gross receipts for a "micro business."

The Board has determined that the proposal will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposal because no individual, Board regulated entity, or other entity required to comply with the proposal meets the definition of a small or micro business under the Government Code §2006.001(1) or §2006.001(2). Each of the elements in §2006.001(1) and §2006.001(2) must be met in order for an entity to qualify as a micro business or small business. The only entities subject to the proposal are individuals. Because individuals are not independently owned and operated legal entities that are formed for the purpose of making a profit, no individual licensee or applicant qualifies as a micro business or small business under the Government Code §2006.001(1) or §2006.001(2). Therefore, in accordance with the Government Code §2006.002(c) and (f), the Board is not required to prepare a regulatory flexibility analysis.

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

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on September 16, 2013, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. An additional copy of the comments on the proposal or any request for a public hearing must be simultaneously submitted to Jolene Zych, Advanced Practice Nursing Consultant, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to jolene.zych@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendment is proposed under the Occupations Code §§157.0511, 301.151, 301.152, and 301.303.

Section 157.0511(b-1) provides that a physician may delegate the prescribing or ordering of a controlled substance listed in Schedule II as established by the commissioner of the Department of State Health Services under Chapter 481, Health and Safety Code, only: (i) in a hospital facility-based practice under §157.054, in accordance with policies approved by the hospital's medical staff or a committee of the hospital's medical staff as provided by the hospital bylaws to ensure patient safety, and as part of the care provided to a patient who: (A) has been admitted to the hospital for an intended length of stay of 24 hours or greater; or (B) is receiving services in the emergency department of the hospital; or (ii) as part of the plan of care for the treatment of a person who has executed a written certification of a terminal illness, has elected to receive hospice care, and is receiving hospice treatment from a qualified hospice provider.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.152(a) states that "advanced practice registered nurse" means a registered nurse licensed by the board to practice as an advanced practice registered nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse."

Section 301.152(b) states that the Board shall adopt rules to: (i) license a registered nurse as an advanced practice registered nurse; (ii) establish: (A) any specialized education or training, including pharmacology, that an advanced practice registered nurse must have to prescribe or order a drug or device as delegated by a physician under §157.0512 or §157.054; (B) a system for approving an advanced practice registered nurse to prescribe or order a drug or device as delegated by a physician under §157.0512 or §157.054 on the receipt of evidence of completing the specialized education and training requirement under paragraph (A); and (C) a system for issuing a prescription authorization number to an advanced practice registered nurse approved under paragraph (B); and (iii) concurrently renew any license or approval granted to an advanced practice registered nurse under §301.152(b) and a license renewed by the advanced practice registered nurse under §301.301.

Section 301.152(c) states that at a minimum, the rules adopted under §301.152(b)(2) must: (i) require completion of pharmacology and related pathophysiology education for initial approval; and (ii) require continuing education in clinical pharmacology and related pathophysiology in addition to any continuing education otherwise required under §301.303.

Section 301.303(a) states that the Board may recognize, prepare, or implement continuing competency programs for license holders under Chapter 301 and may require participation in continuing competency programs as a condition of renewal of a license. The programs may allow a license holder to demonstrate competency through various methods, including: (i) completion

of targeted continuing education programs; and (ii) consideration of a license holder's professional portfolio, including certifications held by the license holder.

Section 301.303(c) states that, if the Board requires participation in continuing education programs as a condition of license renewal, the Board by rule shall establish a system for the approval of programs and providers of continuing education.

Section 301.303(e) provides that the Board may adopt other rules as necessary to implement §301.303.

Section 301.303(g) states that the Board by rule may establish guidelines for targeted continuing education required under Chapter 301. The rules adopted under §301.303(g) must address: (i) the nurses who are required to complete the targeted continuing education program; (ii) the type of courses that satisfy the targeted continuing education requirement; (iii) the time in which a nurse is required to complete the targeted continuing education; (iv) the frequency with which a nurse is required to meet the targeted continuing education requirement; and (v) any other requirement considered necessary by the board.

Cross Reference to Statute. The following statutes are affected by this proposal: the Occupations Code §§157.0511, 301.151, 301.152, and 301.303.

§216.3. Requirements.

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

(c) Requirements for the Advanced Practice Registered Nurse. The licensee authorized by the board as an advanced practice registered nurse (APRN) is required to obtain 20 contact hours of continuing education or attain, maintain or renew the national certification recognized by the board as meeting the certification requirement for the advanced practice registered nurse's role and population focus area of licensure within the previous two years of licensure. National certification as discussed in this section will only meet the requirement for licensure renewal.

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

(3) The APRN who holds prescriptive authority must complete, in addition to the requirements of this subsection, at least five additional contact hours of continuing education in pharmacotherapeutics. The APRN who holds prescriptive authority and prescribes controlled substances must complete, in addition to the requirements of this subsection, at least three additional contact hours of continuing education related to prescribing controlled substances.

(4) (No change.)

(d) - (f) (No change.)

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

Filed with the Office of the Secretary of State on August 2, 2013.

TRD-201303169
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 305-6822

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER L. TEXAS ORGAN, TISSUE, AND EYE DONOR COUNCIL

25 TAC §37.231

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

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §37.231, concerning the Texas Organ, Tissue, and Eye Donor Council (council).

BACKGROUND AND PURPOSE

The council was established under the Health and Safety Code, §§113.001 - 113.014, and administered by the department. The purpose of the council was to advise the department on (1) the Glenda Dawson Donate Life-Texas Registry (registry); (2) priorities for the initiatives to be implemented under the registry program; (3) donor education, awareness, and registry outreach specifically targeted at African American and Hispanic populations; (4) allocation of money received by the comptroller for registry activities; and (5) necessary performance standards and quality control measures concerning the operation of the registry, as well as related donor educational programs.

This proposal implements House Bill (HB) 2904, 82nd Legislature, Regular Session, 2011, abolishing the council and associated statute, effective January 1, 2012. HB 2904 did not abolish the registry, but placed its administration with a nonprofit organization under contract with the department.

SECTION-BY-SECTION SUMMARY

The department is repealing §37.231 in accordance with HB 2904 abolishing the department's administration of the registry under Health and Safety Code, §§113.001 - 113.014, Texas Organ, Tissue, and Eye Donor Council.

FISCAL NOTE

Jann Melton-Kissel, Section Director, Specialized Health Services Section, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to the state or local governments as a result of repealing the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Melton-Kissel has also determined that there will be no adverse effect on small businesses or micro-businesses required to comply with the section as proposed because small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

PUBLIC BENEFIT

In addition, Ms. Melton-Kissel has also determined that for each year of the first five years that the repeal will be in effect, the public will benefit by eliminating an unnecessary rule that was abolished by statute effective January 1, 2012.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted by mail to Laura Ethridge, Purchased Health Services Unit, Mail Code 1938, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; telephone at (512) 776-3664; or email to laura.ethridge@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The repeal is proposed under Government Code, §531.0055(e), 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 repeal affects Government Code, Chapter 531; and Health and Safety Code, 1001.

§37.231. Texas Organ, Tissue, and Eye Donor Council.

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

Filed with the Office of the Secretary of State on August 2, 2013.

TRD-201303172

Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 776-6972

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CHAPTER 169. ZOONOSIS CONTROL
SUBCHAPTER B. CARE OF ANIMALS BY CIRCUSES, CARNIVALS, AND ZOOS

25 TAC §§169.41 - 169.48

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§169.41 - 169.48, concerning the care of animals by circuses, carnivals, and zoos.

BACKGROUND AND PURPOSE

These rules are necessary to comply with Occupations Code, Chapter 2152, "Regulation of Circuses, Carnivals, and Zoos," §§2152.051 - 2152.054, which provide the Executive Commissioner of the Health and Human Services Commission with the authority to adopt standards for the operation of circuses, carnivals, and zoos, prescribe qualifications for its inspection agents, and prescribe the amount of each fee required by the chapter.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 169.41 - 169.48 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are required by statute.

Specifically, the sections cover purpose, definitions, facilities for housing the animals, transportation of animals, food and water requirements in transit, care in transit, licenses, and state inspection agents.

After carefully considering the alternatives, the department believes the rules as amended are the best method of implementing the statute to promote humane conditions for animals and protect the public health with rules for the standards of circuses, carnivals, and zoos in the State of Texas.

SECTION-BY-SECTION SUMMARY

The amendment to §169.41 modifies the language to make it more concise and clarifies that the subchapter establishes "minimum" standards for the care of "live" animals in circuses, carnivals, and zoos.

The amendment to §169.42 updates a definition of "Sanitize" in paragraph (5) of the section to make it technically correct and consistent with the department's rabies rule concerning Rabies Control and Eradication, definition in §169.22(26).

The amendment to §169.43 modifies language pertaining to indoor and outdoor housing facilities, including standards for the provision of food, water, and care, to make it consistent with the standards of the department's rabies rules and standards in Rabies Control and Eradication and in the United States Department of Agriculture (USDA)-Animal and Plant Health Inspection Service (APHIS), Animal Welfare Act (AWA) (7 USC, §§2131 - 2159).

The amendment to §169.44 modifies the language pertaining to transportation of animals to make it consistent with the standards of the department's rabies rules and standards in Rabies Control and Eradication and in the USDA-APHIS, AWA.

The amendment to §169.45 modifies the language pertaining to food and water while animals are in transit to make it consistent with the standards of the department's rabies rules in Rabies Control and Eradication and in the USDA-APHIS, AWA.

The amendment to §169.46 modifies the language to make it consistent with the standards in the USDA-APHIS, AWA, concerning frequent observation of animals during transportation.

The amendment to §169.47 provides the updated mailing address for the department.

The amendment to §169.48 clarifies language relating to the approval of state inspection agents.

FISCAL NOTE

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

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Zumbrun has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

PUBLIC BENEFIT

In addition, Ms. Zumbrun has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be that it enhances public health and safety by providing structurally sound housing facilities for animals under the care of circuses, carnivals, and zoos. After careful consideration of alternatives, the department concludes that the rules, as revised, provide a clear, concise, comprehensive policy of standards of humane care for animals under the care of circuses, carnivals, and zoos. This policy is the most efficient use of public and private resources to achieve these goals.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §2152.051, which requires that the department adopt rules necessary to administer Chapter 2152, "Regulation of Circuses Carnivals, and Zoos;" §2152.052, which provides the department with the authority to adopt standards for the operation of circuses, carnivals, and zoos; §2152.053, which provides the department with the authority to prescribe qualifications for its inspection agents; §2152.054, which provides the department with the authority to prescribe the amount of each fee required by Chapter 2152; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendments affect Occupations Code, Chapter 2152; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

§169.41. Purpose.

The purpose of this subchapter [~~these rules~~] is to establish minimum standards regarding the care of live animals in circuses, carnivals, and zoos that will promote humane conditions for these animals and public health and safety.

§169.42. Definitions.

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

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

(5) Sanitize--To make visibly [~~physically~~] clean followed by the use of a disinfectant [~~and~~] to destroy disease-producing agents [~~organisms~~].

(6) (No change.)

§169.43. Facilities for Housing the Animals.

(a) Housing facilities shall:

(1) be structurally sound, constructed of material(s) and of a strength appropriate for any enclosed animals, and maintained in good repair in order to protect the animals from injury, to contain them, and to prevent transmission of diseases [~~exposure to other animals~~];

(2) have reliable and adequate electric power, if required to comply with other provisions of this section [~~subsection~~], and have adequate fresh, clean [~~potable~~] water available;

(3) store and adequately protect supplies of food and bedding against deterioration, molding, and infestation or contamination by vermin and provide refrigeration for supplies of perishable food;

(4) make provision for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris, and provide and operate disposal facilities so as to minimize vermin infestations, odors, and disease hazards; and

(5) (No change.)

(b) Indoor facilities shall:

(1) be sufficiently heated or cooled to protect the animals from extremes of temperature, provide for their health, and prevent their discomfort, plus the ambient temperature shall not be allowed to fall below or rise above temperatures compatible with the health and comfort of the animals [~~when necessary~~];

(2) (No change.)

(3) have ample light as appropriate for the species involved and to permit routine inspection and cleaning, plus be designed to protect the animals from excessive illumination [~~during the entire work period~~];

(4) (No change.)

(5) have a method to eliminate excess water rapidly.

(A) Drains shall be properly constructed and kept in good repair to avoid foul odors or backup of sewage.

(B) (No change.)

(c) Outdoor holding facilities shall:

(1) (No change.)

(2) provide adequate shelter to protect animals from any form of discomfort, overheating, direct rays of the sun, cold or inclement weather, and direct effects of wind, rain, or snow;

(3) be constructed in such a manner that they will protect and contain the animals (as an additional safety measure, a perimeter fence constructed in a manner to contain the animals and keep unauthorized persons out is recommended);

(4) be readily sanitized[~~,~~] and not create a nuisance; and

(5) (No change.)

(d) Primary enclosures shall:

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

(5) provide sufficient space to allow each animal to [~~turn around fully, stand, sit, lie down, and~~] make normal postural adjustments without touching the top of the enclosure, including turning freely, standing easily, sitting, stretching, moving its head, lying in a comfortable position with limbs extended, and moving and assuming a comfortable posture for feeding, drinking, urinating, and defecating.

(e) Feeding shall:

(1) be at least once a day or more often as appropriate for the species, age, condition, and size of the animal, except as otherwise directed by a licensed veterinarian, as defined in the [~~Texas~~] Health and Safety Code, §826.002, and with food free from contamination, wholesome, palatable, and of sufficient quality and nutritive value to meet the normal daily requirements for the species, age, condition, and size of each animal [~~the animal(s)~~]; and

(2) be in food receptacles accessible to each animal and located so as to minimize contamination by excreta.

(A) Feeding pans [~~pens~~] shall be durable and kept clean and sanitary.

(B) (No change.)

(C) Self feeders may be used for feeding dry foods to animals acclimated to their use, but they must be kept clean and sanitary to prevent molding, contamination, deterioration, or caking of feed.

(f) If fresh, clean [~~potable~~] water is not accessible to every animal [~~the animal(s)~~] at all times, it shall:

(1) be provided as often as necessary for the health and comfort of the animal when considering the species, age, condition, and size of the animal and/or [~~offered at least twice daily for periods of not less than one hour, except~~] as directed by a licensed veterinarian; and

(2) (No change.)

(g) Sanitation of primary enclosures shall include:

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

(3) having building and premises kept clean and in good repair to protect every animal from injury.

(h) A regular program for the control of insects, ectoparasites, and other vermin [~~pests~~] shall be established and maintained.

(i) Emergency [~~and routine~~] veterinary care shall be provided for sick and injured animals, and routine veterinary care shall be provided for all animals.

§169.44. Transportation of Animals.

(a) Primary enclosure construction. All compartments, transport cages, cartons, or crates shall be constructed such that:

(1) structural strength and size are sufficient to contain the [~~live~~] animal(s) and to withstand the normal rigors of transportation;[~~.~~]

(2) - (6) (No change.)

(7) the size is adequate to allow each animal to turn about freely and to make normal postural adjustments without touching the top of the enclosure, including turning freely, standing easily, sitting, stretching, moving its head, lying in a comfortable position with limbs extended, and moving and assuming a comfortable posture for feeding, drinking, urinating, and defecating, except when restriction of movement is essential to prevent danger to any animals, handlers, or other persons; and

(8) the bottom is solid and impervious to moisture in order to prevent leakage in shipment and [~~still~~] be readily sanitized [~~at destination~~] prior to reuse. Litter will be clean and of a suitable absorbent material that [~~which~~] is safe and nontoxic and in sufficient quantity to absorb and cover excreta.

(b) Transportation in primary enclosures. Primary enclosures used to transport animals [~~live animal(s)~~] shall:

(1) (No change.)

(2) not have [~~live~~] animals that have not reached puberty in the same primary enclosure with adult animals other than their dam; [~~and~~]

(3) allow socially dependent animals (such as the siblings, dam, or other members of the family) to have visual and olfactory contact; and

(4) [~~(3)~~] not transport a female animal in season (estrus) in the same primary enclosure with any male animal unless it is the prepubescent offspring of that female animal.

(c) Primary conveyances. The animal cargo space of primary conveyances transporting [~~live~~] animals shall:

(1) be designed and constructed to protect the health and ensure the safety and comfort of the [~~live~~] animals contained therein and allow them to remain dry and clean at all times;

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

(5) have the interior of the animal cargo space kept clean and free from visible signs of vermin; and

(6) (No change.)

§169.45. Food and Water Requirements in Transit.

(a) Each [~~live~~] animal shall be fed a sufficient quantity of food for the species, age, condition, and size of the animal at least once in each 24-hour period unless there are special instructions given by a licensed veterinarian. The food shall be free from contamination, wholesome, palatable, and of sufficient quality and nutritive value to meet the normal requirements for the species, age, condition, and size of the animal.

(b) If not accessible at all times, fresh, clean [~~Potable~~] water shall be provided to each animal [~~at all times or~~] at least within four hours prior to being transported and then as often as necessary for the health and comfort of the animal when considering the species, age, condition, and size of the animal and/or [~~twice daily for periods of not less than one hour, except~~] as directed by a licensed veterinarian.

(c) Written instructions concerning the food and water requirements of each animal shall be affixed to the primary enclosure used for transporting the animal and shall accompany the animal during transport.

§169.46. Care in Transit.

The carrier, driver, or other employee shall be responsible to:

(1) observe each animal [~~the live animals~~] visually during surface transportation as frequently as circumstances may dictate, but not less than once every four hours, to ensure that each animal is receiving sufficient air for normal breathing, the ambient temperatures are compatible for the health and comfort of each animal, and that all other standards are being met (for transport by air, this observation requirement must be met if the animal cargo space is accessible during flight; if it is not accessible, visual observation shall be made whenever an animal is loaded and unloaded, plus whenever the animal cargo space is made accessible);

(2) obtain [~~provide~~] any needed veterinary care as soon as possible if an [~~a live~~] animal appears [~~becomes~~] in obvious physical stress;

(3) not remove wild or otherwise dangerous animals from their primary enclosure except under extreme emergency conditions, and, if the wild animal requires moving, provide a temporary primary [~~secondary~~] enclosure of adequate strength and size to contain the animal;

(4) provide adequate shelter to protect animals from extremes of hot, cold, or inclement weather, direct rays of the sun, and effects of wind, rain, or snow, plus [~~and~~] provide for the reasonable comfort of the animals; [~~and~~]

(5) provide protection to [~~live~~] animals, allowing them to remain dry during any form of precipitation; and[~~,~~]

(6) remove excreta as often as necessary to prevent contamination of the animals and to reduce disease hazards and odors if doing so does not create a safety hazard for any person or animal.

§169.47. Licenses.

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

(d) Information. Applications [~~Application~~], renewal forms, and/or information may be obtained by contacting the Texas Department of State Health Services, Zoonosis Control Branch, Mail Code 1956, P.O. Box 149347, [~~1100 West 49th Street~~], Austin, Texas 78714-9347 [~~78756~~].

(e) Fees. The following fees shall accompany each application for an operating license and/or renewal of a license:

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

(4) 501 or more animals [~~on up~~]--$800.

(f) (No change.)

(g) Any facility that does not meet required minimum standards will not be licensed by the department.

§169.48. State Inspection Agents.

Each agent inspecting circuses, carnivals, or zoos under Occupations Code, Chapter 2152, will be approved by the manager of the[~~,~~] Zoonosis Control Branch.

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

Filed with the Office of the Secretary of State on August 2, 2013.

TRD-201303179
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 776-6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER P. ANNUITY MORTALITY TABLES

28 TAC §§3.1501 - 3.1506

The Texas Department of Insurance proposes amendments to §§3.1501 - 3.1505 and new §3.1506, concerning mortality tables for annuity reserve liabilities. The proposed amendments

will adopt the 2012 Individual Annuity Reserve Table (2012 IAR) to be used for the minimum reserve valuation for individual annuities or pure endowment contracts issued on and after January 1, 2014.

The department proposes the amendments under Insurance Code §425.059(d)(2), which authorizes the commissioner to approve by regulation any individual annuity mortality table adopted by the National Association of Insurance Commissioners (NAIC) after 1980. The joint American Academy of Actuaries/Society of Actuaries Payout Annuity Table Team developed the 2012 IAR mortality table, and the NAIC adopted it in Model Regulation 821. The department modeled the proposed amendments to §§3.1501 - 3.1505 and new §3.1506 after the NAIC's currently adopted Model Regulation 821.

Because people who purchase annuities are living longer, resulting in an improvement in mortality, it is necessary to update the mortality table so that insurers will maintain reasonably conservative reserves. This annuity mortality table is a "generational" table containing factors that adjust the mortality rates annually based on expected mortality improvements.

FISCAL NOTE. Mr. Danny Saenz, Deputy Commissioner, Financial Regulation Division, has determined that, for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments and new section. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Saenz also has determined that for each year of the first five years the proposed amendments and new section are in effect, the public benefit from enforcing the amended sections will be improved reserving practices by insurers issuing individual annuities and pure endowments. Because persons purchasing annuities will generally live longer, the insurer must be prepared to pay annuity benefits over a longer period. The amendments provide for an updated mortality table that increases minimum reserve liabilities, recognizing the longer life expectancy of those who purchase these products. Such reasonably conservative reserve practices strengthen the solvency of companies that issue annuities and justify consumers' reliance on payment of benefits.

Reserves calculated using the updated mortality table will be higher to support the greater number of annuity payments resulting from the improvement in life expectancy for such annuitants. Based on the September 2011 report from the joint American Academy of Actuaries/Society of Actuaries Payout Annuity Table Team, the reserve increase for immediate annuities at male issue ages 65, 75, and 85 is estimated to be 9.9%, 11.2%, and 3.9% respectively. For an annuity issued at age 60 with payout deferred to age 80, the reserve increase is estimated to be 38.2% and 22.7% for a male issue and a female issue, respectively. These examples assume an interest rate of 5%. For more information and additional reserve examples applying the 2012 IAR table, the complete report is available at the following URL: http://www.actuary.org/files/publications/Payout_Annuity_Report_09-28-11.pdf.

Additional costs related to reserves and implementing the 2012 IAR mortality table may result from statutory requirements (including Insurance Code §425.053 and §425.059 concerning the establishment of reserves) or from existing rule requirements, rather than from this proposal. Additional costs related to these amendments - whether the result of the statutes or this proposal - will vary by insurer based on various factors, including the insurer's available resources and ease of updating the reserve software with the new mortality table. The department does not believe these additional costs will be significant, relative to the benefit to the insurer and the consumer of the improved reserving these amendments provide.

Each insurer has the information on which to estimate its actual costs for reserves. The ultimate cost of compliance is a function of each insurer's business decisions rather than a direct result of this proposal. Given the range of business options an insurer may exercise, it is not feasible for the department to quantify in this proposal the cost impact on each insurer to implement the updated mortality table.

The department has determined that to implement this proposal, insurers will incur costs related to information technology services and actuarial services. It is not feasible for the department to determine the actual cost to insurers for these services or employees, nor can the department determine the actual amount of time each insurer will need to implement this proposal. However, based on the *2011 Texas Statewide Wages, Occupational Employment Statistics Program* published by the Texas Workforce Commission, the mean hourly wage for an actuary for that year in Texas was $53.55, and the mean hourly wage for a computer programmer was $38.02.

In addition to the costs associated with applying the tables, an insurer may incur a one-time cost to amend its existing annuity contracts to reflect the new table, if the policies include the reserving table. In that instance, an insurer will pay, in addition to the legal and administrative costs, a filing fee of $100 to the department for filing any amendments to the annuity contracts.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In applying Government Code §2006.002(c), the department has determined the proposed amendments will not have a material adverse economic effect on small or micro business insurance companies required to comply with the proposal. The department is unable to estimate the number of small or micro businesses (as defined by Government Code §2006.001(1) and (2)) that issue annuities or pure endowments and that may be subject to this rule.

Any insurance companies subject to the proposed requirements that are small and micro businesses may have initial start up costs to implement the 2012 IAR mortality table and may have to maintain higher reserves to cover the additional liabilities from improved mortality rates. The department's cost analysis in the Public Benefit/Cost Note portion of this proposal also applies to small and micro businesses. The amendments implementing the 2012 IAR mortality table are necessary to provide the minimum reserve standard required by Insurance Code §425.053.

The department considered alternatives to accomplish the objectives of the proposal and to minimize the impact on small or micro businesses. One alternative was to not adopt the 2012 NAIC mortality tables at all. The department concluded that this was not appropriate under statute. Insurance Code §425.053 requires that companies issuing annuities and pure endowments maintain certain required reserves, and those reserve liabilities are, in part, a function of the mortality tables. Further, Insurance Code §425.059(d)(2) provides that the commissioner may adopt by rule an individual annuity mortality table adopted by the NAIC after 1980. The 2012 IAR mortality table is the mortality table currently adopted by the NAIC and is the appropriate table to

use under Insurance Code §425.059(d)(2) for the purposes of Insurance Code §425.053.

Another alternative was to implement different mortality tables for small and micro businesses. The department determined that this is not a viable alternative because these businesses will still be affected by improved mortality rates and the resulting need for increased reserves to support the increased benefits to consumers. Further, as discussed in the analysis of the first alternative, Insurance Code §425.059(d)(2) only gives the commissioner the option of adopting a mortality table that has been adopted by the NAIC. This statute establishes a uniform requirement for all insurers and does not authorize the commissioner to adopt a different table for small and micro businesses.

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

REQUEST FOR PUBLIC COMMENT. To be considered, written comments or a hearing request on the proposal must be submitted no later than 5:00 p.m. on September 16, 2013. The department requires two copies of your comments or hearing request. Send your comments or hearing request to the Chief Clerk by email to chiefclerk@tdi.texas.gov or by mail to the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The duplicate copy of the comments must be submitted simultaneously to Mike Boerner, Director, Actuarial Office, Mail Code 302-3E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The department proposes the amendments and new section under Insurance Code §§452.053, 425.059(d)(2), and 36.001. Insurance Code §425.053 requires that companies issuing annuities and pure endowments maintain certain required reserves. Section 425.059(d)(2) authorizes the commissioner to adopt by rule any individual annuity mortality table adopted by the NAIC after 1980. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §425.053 and §425.059(d)(2).

§3.1501. Purpose.

The purpose of this subchapter is to approve and adopt the following [~~four~~] mortality tables and establish the effective dates of their use in determining the minimum standard of valuation for annuity and pure endowment contracts[~~. The mortality tables approved and adopted are~~]:

(1) the 1983 Table "a";
Figure: 28 TAC §3.1501(1)

(2) the 1983 GAM Table;
Figure: 28 TAC §3.1501(2)

(3) the Annuity 2000 Mortality Table; [~~and~~]
Figure: 28 TAC §3.1501(3)

(4) the 1994 GAR Table; and[~~.~~]
Figure: 28 TAC §3.1501(4)

(5) the 2012 Individual Annuity Reserving (2012 IAR) Table which, under §3.1506 of this title (relating to Application of the 2012 IAR Mortality Table), is derived from the following tables:

(A) the 2012 Individual Annuity Mortality Period Life (2012 IAM Period) Table; and
Figure: 28 TAC §3.1501(5)(A)

(B) the Projection Scale G2 (Scale G2) table of annual rates.
Figure: 28 TAC §3.1501(5)(B)

§3.1502. Definitions.

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

(1) 1983 GAM Table--Mortality table developed by the Society of Actuaries' Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983, by the National Association of Insurance Commissioners.

(2) 1983 Table "a"--Mortality table developed by the Society of Actuaries' Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982, by the National Association of Insurance Commissioners.

(3) 1994 GAR Table--The 1994 Group Annuity Reserving Table developed by the Society of Actuaries' Group Annuity Valuation Table Task Force and adopted as a recognized mortality table for annuities on December 16, 1996, by the National Association of Insurance Commissioners.

(4) Annuity 2000 Mortality Table--Mortality table developed by the Society of Actuaries' Committee on Life Insurance Research and adopted as a recognized mortality table for annuities on December 16, 1996, by the National Association of Insurance Commissioners.

(5) Period Table--Table of mortality rates applicable to a given calendar year.

(6) Generational Mortality Table--Mortality table containing a set of mortality rates that decrease for a given age from one year to the next based on a combination of a Period Table and a projection scale containing rates of mortality improvement.

(7) 2012 IAR Table--Generational mortality table developed by the Society of Actuaries' Committee on Life Insurance Research and containing rates, q_x^{2012+n}, derived from a combination of the 2012 IAM Period Table and Projection Scale G2, using the methodology stated in §3.1506 of this title (relating to Application of the 2012 IAR Mortality Table).

(8) 2012 Individual Annuity Mortality Period Life (2012 IAM Period) Table--The Period table containing loaded mortality rates for calendar year 2012. This table contains rates, q_x^{2012}, developed by the Society of Actuaries' Committee on Life Insurance Research.

(9) Projection Scale G2 (Scale G2)--Table of annual rates, $G2_x$, of mortality improvement by age for projecting future mortality rates beyond calendar year 2012. The Society of Actuaries' Committee on Life Insurance Research developed this table.

§3.1503. Individual Annuity or Pure Endowment Contracts.

(a) Except as provided in subsections [~~subsection~~] (b) and (c) of this section, the 1983 Table "a" is recognized and approved as an

individual annuity mortality table for valuation and, at the option of the company, may be used to determine [~~for purposes of determining~~] the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after August 29, 1977.

(b) Except as provided in subsection (c) of this section, either the 1983 Table "a" or the Annuity 2000 Mortality Table must [~~shall~~] be used to determine [~~for determining~~] the minimum standard of valuation for any individual annuity or pure endowment contract delivered or issued for delivery on or after January 1, 1987.

(c) Except as provided in subsection (d) of this section, the Annuity 2000 Mortality Table must [~~shall~~] be used to determine [~~for determining~~] the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2000.

(d) The 1983 Table "a" without projection must be used to determine [~~is to be used for determining~~] the minimum standard [~~standards~~] of valuation for an individual annuity or pure endowment contract issued on or after January 1, 2000, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

(1) settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;

(2) settlements involving similar actions such as workers' compensation claims; or

(3) settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

(e) Except as provided in subsection (d) of this section, the 2012 IAR Mortality Table must be used to determine the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2014.

§3.1504. Group Annuity or Pure Endowment Contracts.

(a) Except as provided in subsections (b) and (c) of this section, the 1983 GAM Table, the 1983 Table "a", and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for any annuity or pure endowment purchased on or after August 29, 1977, under a group annuity or pure endowment contract.

(b) Except as provided in subsection (c) of this section [~~subsection~~], either the 1983 GAM Table or the 1994 GAR Table must [~~is to~~] be used to determine [~~for determining~~] the minimum standard of valuation for any annuity of pure endowment purchased on or after January 1, 1987, under a group annuity or pure endowment contract.

(c) The 1994 GAR Table must [~~shall~~] be used to determine [~~for determining~~] the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 2000 under a group annuity or pure endowment contract.

§3.1505. Application of the 1994 GAR Table.

In using the 1994 GAR Table, the mortality rate for a person age x in year (1994 + n) is calculated as [~~is~~] follows:

Figure: 28 TAC §3.1505

§3.1506. Application of the 2012 IAR Mortality Table.

In using the 2012 IAR Mortality Table, the mortality rate for a person age x in year (2012 + n) is calculated as follows:

Figure: 28 TAC §3.1506

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 July 31, 2013.

TRD-201303116
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 111. CONTROL OF AIR POLLUTION FROM VISIBLE EMISSIONS AND PARTICULATE MATTER

SUBCHAPTER B. OUTDOOR BURNING

30 TAC §111.211

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §111.211.

If adopted, amended §111.211 will be submitted to the United States Environmental Protection Agency as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rule

The Texas Prescribed Burning Board (TPBB) petitioned the TCEQ to address wildfires in the state's prescribed burn rule. In particular, the TPBB asked for a revision that would add hazard mitigation to the rule. The commission approved the request at its February 27, 2013, Agenda meeting and issued an order on March 5, 2013, directing the executive director to initiate rulemaking (Project No. 2013-018-PET-NR).

The rule revision would amend §111.211 by adding prescribed burning for wildfire hazard mitigation as an exception to the state's prohibition on outdoor burning. Currently, a prescribed burn is allowed only for forest, range and wildland/wildlife management purposes, and coastal salt-marsh management burning. The proposed revision would allow prescribed burning in other areas, such as where rural areas interface with urban areas, for the purpose of wildfire hazard mitigation in order to reduce the incidence, intensity, and spread of wildfires. While the petitioner did not specifically request that the hazard mitigation provision be specific to wildfires, the commission is proposing that the exception added to §111.211(1) be specific to wildfire hazard mitigation in order to provide clarity and specificity consistent with the commission's understanding of the TPBB's intent.

Without the proposed rule revision, a prescribed burn for wildfire hazard mitigation is authorized only by written permission on a case-by-case basis from the TCEQ executive director under §111.215. Under current rules, prescribed burning is underutilized due to lack of awareness of the authorization available under §111.215. Without written permission from the executive director, prescribed burning for hazard mitigation is subject to TCEQ enforcement action. Prescribed burning is not appropri-

ate for land-clearing operations, which are addressed separately under §111.209.

A prescribed burn is defined in §111.203(5) as the controlled application of fire to naturally occurring vegetative fuels under specified environmental conditions and confined to a predetermined area, following appropriate planning and precautionary measures. The state's prohibition on outdoor burning is found in Chapter 111, Subchapter B.

Demonstrating Noninterference under Federal Clean Air Act, Section 110(l)

The proposed revision to add wildfire hazard mitigation to Chapter 111 will not negatively impact the state's attainment of the particulate matter National Ambient Air Quality Standard (NAAQS), will not interfere with control measures for NAAQS compliance, and will not prevent reasonable further progress toward attainment of the particulate matter NAAQS.

The outdoor burning rules in Chapter 111, Subchapter B, are included in the SIP as part of the state's strategy for control of particulate matter emissions. The revision would not interfere with applicable requirements for attainment and for reasonable further progress toward attainment, or with other applicable requirements of the Federal Clean Air Act. While prescribed burning does result in some air emissions, controlled burning for wildfire hazard mitigation purposes helps reduce the incidence, intensity, and spread of wildfires. By reducing the likelihood of the significantly greater air emissions associated with wildfires, the rule revision is expected to help improve air quality. Additionally, as discussed elsewhere in this preamble, the executive director currently authorizes prescribed burning for wildfire hazard mitigation on a case-by-case basis as provided by §111.215. The commission's purpose in amending the rule is to streamline the existing process for authorization of prescribed burning for wildfire hazard mitigation provided by §111.215, consistent with the executive director's current enforcement of the outdoor burning rules in Chapter 111, Subchapter B.

Section Discussion

The proposed amendment to §111.211 would change existing paragraph (1) to add "wildfire hazard mitigation" to the list of authorized prescribed burn purposes.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule is in response to a petition from the TPBB. The proposed rule would add prescribed burning for wildfire hazard mitigation as an exception to the state's prohibition on outdoor burning at §111.211. A prescribed burn is defined in §111.203(5) as the controlled application of fire to naturally occurring vegetative fuels. Currently, a prescribed burn is allowed without written authorization from the TCEQ only for forest, range and wildland/wildlife management purposes, and coastal salt-marsh management burning.

This proposed revision would not change or increase the equipment, training, or other resources needed to conduct a prescribed burn, and the agency, other state agencies, and units of local government are not expected to experience a fiscal impact as a result of the proposed rule.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be a reduction in the incidence spread, and intensity of wildfires by reducing the naturally occurring available fuel load.

The proposed rule would not have an immediate significant fiscal impact on individuals or business. The proposed rule would not change or increase the equipment, training, or other resources needed to conduct a prescribed burn, but the proposed rule would reduce the naturally occurring available fuel load and mitigate the effects of a wildfire thereby reducing the possible loss from a wildfire.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rule revision in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, Regulatory Analysis of Major Environmental Rules, and determined that the amendment does not meet the definition of a major environmental rule as defined in the statute. According to Texas Government Code, §2001.0225, a major environmental rule means "a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." The purpose of this revision is to increase protection of the environment through wildfire hazard mitigation and reduce risk to human health; it is not expected that this revision will adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, or the public health and safety of the state or a sector of the state. Therefore, no regulatory impact analysis is required.

Furthermore, even if the revision to the rule constituted a major environmental rule, a regulatory impact analysis would not be required because the revision does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the fed-

eral government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The revision does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the revision is designed to meet, not exceed the relevant standard set by federal law; 2) no contract or delegation agreement covers the topic that is the subject of this rule; and 3) the rule revision is authorized by specific sections of the Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), cited in the Statutory Authority section of this preamble.

The purpose of the rule revision is to allow prescribed burns for the purpose of wildfire hazard mitigation. Also, the rule revision would be incorporated into the Texas SIP. The revision would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Federal Clean Air Act. In addition, the revision is expected to improve air quality by reducing the incidence, intensity, and spread of wildfires.

Without the rule revision, a prescribed burn for wildfire hazard mitigation may be authorized only by written permission on a case-by-case basis from the TCEQ executive director under §111.215. Under current rules, prescribed burning is underutilized due to lack of awareness of the provision in §111.215. Without written permission from the executive director, prescribed burning for hazard mitigation is subject to TCEQ enforcement action.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission completed a takings impact assessment for this rulemaking action under Texas Government Code, §2007.043. The primary purpose of the rulemaking is to add at §111.211, prescribed burning for wildfire hazard mitigation as an exception to the state's prohibition on outdoor burning. Currently, a prescribed burn is allowed only for forest, range and wildland/wildlife management purposes, and coastal salt-marsh management burning. A prescribed burn is defined in §111.203(5) as the controlled application of fire to naturally occurring vegetative fuels under specified environmental conditions and confined to a predetermined area, following appropriate planning and precautionary measures.

This revision is expected to improve air quality by reducing the incidence, intensity, and spread of wildfires. In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule amendment because this is an action that is taken in response to a real and substantial threat to public health and safety, that is designed to significantly advance the health and safety purpose, and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13).

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Because Chapter 111 contains applicable requirements under 30 TAC Chapter 122, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise operating permits to include the revised Chapter 111 requirements for emissions affected by the revisions to Chapter 111 at their site.

Owners or operators must revise operating permits to include the new Chapter 111 requirements upon the effective date of the adopted rulemaking.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on September 10, 2013, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-023-111-CE. The comment period closes September 16, 2013. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Joe Janecka, (512) 239-1353.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, General Powers, §5.103, Rules, and §5.105, General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under the Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sec-

tion is also proposed under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.018, which authorizes the commission to control outdoor burning; and §382.085, which prohibits unauthorized air emissions.

The proposed amendment will implement TWC, §§5.102, 5.103, and 5.105; THSC, §§382.002, 382.011, 382.012, 382.017, 382.018, and 382.085; and Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*

§111.211. Exception for Prescribed Burn.

Outdoor burning shall be authorized for:

(1) Prescribed burning for forest, range and wildland/wildlife management, and wildfire hazard mitigation purposes, with the exception of coastal salt-marsh management burning. Such burning shall be subject to the requirements of §111.219 of this title (relating to General Requirements for Allowable Outdoor Burning), and structures containing sensitive receptors must not be negatively affected by the burn. When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required.

(2) Coastal salt-marsh management burning conducted in Aransas, Brazoria, Calhoun, Chambers, Galveston, Harris, Jackson, Jefferson, Kleberg, Matagorda, Nueces, Orange, Refugio, and San Patricio Counties. Coastal salt-marsh burning in these counties shall be subject to the following requirements:

(A) All land on which burning is to be conducted shall be registered with the appropriate commission regional office using a United States Geological Survey map or equivalent upon which are identified significant points such as roads, canals, lakes, and streams, and the method by which access is made to the site. For large acreage, the map should be divided into manageable blocks with identification for each defined block. The information must be received for review at least 15 working days before the burning takes place.

(B) Prior to any burning, notification, either verbal or written, must be made to, and authorization must be received from the appropriate commission regional office. Notification must identify the specific area and/or block to be burned, approximate start and end time, and a responsible party who can be contacted during the burn period.

(C) Such burning shall be subject to the requirements of §111.219 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 July 30, 2013.

TRD-201303096
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 239-2548

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CHAPTER 303. OPERATION OF THE RIO GRANDE

SUBCHAPTER F. CONTRACTUAL SALES

30 TAC §303.53

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §303.53.

Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking will remove the one-year limitation for certain water contracts in the Rio Grande Watermaster Program. Under the existing rule, water contracts in the Rio Grande may also serve as pushwater contracts to move municipal water through irrigation conveyances. Under §303.53(a)(8), these contracts have a maximum duration of one year. With this one-year limitation, unused water purchased by a municipality under contract is returned to the system and no longer available to the municipality. By removing the one-year limitation, the water rights holders' investments will be better protected and reduce the risk of losing part of the monetary investment in contract water.

The commission also proposes to add §303.53(d) to the rule to clarify that all contracts for water will remain subject to §303.22, Allocations to Accounts. This will maintain the requirement that allocations of water be put to beneficial use within two consecutive calendar years; otherwise, the account will be reduced to zero as per §303.22.

The proposed amendment will not allow for speculative purchase and resale of water under contract. The change would not remove any other requirements related to water contracts. The change also would not apply to contracts for Domestic, Municipal, or Industrial (DMI) water. These DMI contracts expire on the last Saturday of the year.

Section Discussion

Section 303.53(a)(8) limits the length of the contract for the purchase of water to one year. The commission proposes to remove the requirement that contracts for the purchase of all or a part of the annual authorized amount of use for a water right in the Middle or Lower Rio Grande be limited to one year. This will allow municipalities to avoid the risk of losing part of their investment if they do not use all of the water they purchases within that timeframe. Further, this will allow municipalities to avoid the expense of entering into additional contracts for pushwater. These additional contract costs are typically passed on to a municipality's water customers.

The commission proposes to add §303.53(a)(8)(A) and (B) to the rule to clarify that contracts for DMI water must terminate by the last Saturday of the calendar year in which the contract was entered. All other contracts shall terminate at a date determined by the interested parties.

The commission also proposes to add §303.53(d) to the rule to clarify that all contracts for water would remain subject to §303.22. This would maintain the requirement that allocations of water be put to beneficial use within two consecutive calendar years; otherwise, the account will be reduced to zero as per §303.22.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed

rule is in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rule. Other units of state or local government may experience cost benefits since the proposed rule may allow them access to unused purchased water longer than allowed by current rule and potentially decrease the frequency of water purchases.

Under current rule, contracted sales of water in the Middle or Lower Rio Grande are limited to one year whether or not the buyer has fully used the amount of water purchased. The proposed rule would amend Chapter 303, Subchapter F to allow water purchased, but unused, to remain allocated to the purchaser until the contract terminates if the requirements found in §303.22 regarding beneficial use are met. The rulemaking does not allow for speculative purchase and resale of water under a contract and does not remove any other requirements related to water contracts. The rule also does not apply to contracts for DMI water. These DMI contracts expire on the last Saturday of the calendar year in which the contract was entered.

The proposed rule would only affect regulated entities (units of local government, holders of Class A and B water rights, and domestic and industrial water rights holders, etc.) in the Middle and Lower Rio Grande. Agency records indicate that there may be as many as 935 water rights in the Lower Rio Grande and 246 water rights in the Middle Rio Grande that could be affected by the proposed rule. Of these, the agency estimates that there may be as many as 123 water rights that belong to units of local government and six that belong to the state in the Lower Rio Grande and as many as 17 water rights owned by local governments in the Middle Rio Grande. Under the proposed rule, these governmental entities could experience cost savings, especially those related to pushwater contracts, since they would be allowed to keep the rights to their unused purchased water for a period longer than a year if allowed by the terms of the purchase contract. The amount of any cost savings due to less frequent water purchases would depend on a number of factors including the price of water, the termination date of contracts for the purchase of water, conservation efforts, evaporation rates, and the ability of the governmental entities to manage their purchased water efficiently.

Public Benefits and Costs

Ms. Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule could be stable prices for water purchased in the Middle and Lower Rio Grande areas of the state.

Individuals in these areas could experience more stable prices for water as a result of the proposed rule. A water utility typically passes higher contract costs to individuals and other customers. As the frequency for purchasing water under a contract decreases or as the amount of new water purchased decreases, individuals are expected to benefit from stable costs and less exposure to price variability during drought conditions.

The proposed rule could benefit businesses in the Middle and Lower Rio Grande that purchase water. Businesses could experience more stable prices than expected during a drought since their supplier would be allowed to keep unused purchased water for a longer period and use it to supply their customers. Any cost savings would depend on a variety of factors including the future price of water, the water use patterns of other customers, the length of duration of any unused water supply, other environmental factors, and the ability of the water supplier to manage water efficiently.

Businesses that sell water in the Middle and Lower Rio Grande are not expected to experience adverse fiscal implications as a result of the proposed rule. Sellers of water are expected to sell available water at the market price at the time they enter into a contract. Sellers are expected to negotiate for the most favorable contract terms they can obtain.

The agency does not have a tracking mechanism to easily distinguish between water suppliers that are a large or small business. However, the agency estimates that there may be as many as 800 accounts owned by businesses in the Lower Rio Grande and as many as 228 owned by businesses in the Middle Rio Grande.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses in the Middle or Lower Rio Grande that purchase water. These small businesses should experience the same stability in prices as those experienced by large businesses. If a small business supplies water in this area of the state, it is not expected to experience adverse fiscal impacts from the proposed rule. A seller of water is expected to sell available water at the prevailing market price and negotiate favorable contract terms.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission evaluated the proposed rule and performed an analysis of whether this proposed rule requires a regulatory impact analysis under Texas Government Code, §2001.0225. The specific intent of this rule is to amend §303.53(a)(8) to delete the requirement that contracts for the purchase of all or a part of the annual authorized amount of use for a water right in the Middle or Lower Rio Grande be limited to one year and to provide that contracts for DMI water shall terminate on the last Saturday of the calendar year in which the contract was entered, and the effective date and termination date for all other contracts shall be determined by the interested parties. This rule is needed because cities that use irrigation contracts for pushwater to move municipal water through irrigation conveyances may not be able to use all of the contracted water in one year and run the risk of facing unanticipated expenses and losing a part of their investment. This rulemaking will not allow speculative purchase and resale of water under contract because §303.22(c), which requires that allocations of water be put to beneficial use within two consecutive calendar years, will remain. This amended rule is not a "major environmental rule" under Texas Government Code, §2001.0225 because the specific intent of the rulemaking is not to protect the environment, and it is not for the purpose of reducing risks to human health from environmental exposure. This rule does not regulate any type of pollution or waste. The rule

will help irrigators who purchase water to use water in a way that maximizes the beneficial use of the water and does not result in loss of the irrigator's investment.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this amended rule and performed an analysis of whether this amendment constitutes a taking under Texas Government Code, Chapter 2007. The commission has determined that it does not constitute a taking. The specific purpose of the propose rule is to amend §303.53(a)(8) to delete the requirement that contracts for the purchase of all or a part of the annual authorized amount of use for a water right in the Middle or Lower Rio Grande be limited to one year and to provide that contracts for DMI water shall terminate on the last Saturday of the calendar year in which the contract was entered, and the effective date and termination date for all other contracts shall be determined by the interested parties. Cities that use irrigation contracts for pushwater to move municipal water through irrigation conveyances may not be able to use all of the contracted water in one year and run the risk of facing unanticipated expenses and losing a part of their investment. The proposed rule would substantially advance this stated purpose by allowing these contracts to be for longer than a year while maintaining the requirement that allocations of water be put to beneficial use within two consecutive calendar years or the account will be reduced to zero.

This rule is not a taking because promulgation and enforcement of this amended rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The rule provides that contracts for water covered by §303.53 may be longer than one year. The water rights of the water right holders selling the water will not be impacted.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Harlingen on September 10, 2013, at 9:00 a.m. at the Texas State Technical College Service Support Center (TSTC), Conference Room 145. The TSTC Service Support Center is at 1902 North Loop 499 in Harlingen, Texas. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-031-303-OW. The comment period closes September 16, 2013. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Amy Settemeyer, Watermaster Section, at (512) 239-2588.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC) §5.013(1), concerning the jurisdiction of the commission over water rights; §5.102, concerning the commission's general powers; §5.103, concerning rules; and §5.105, concerning general policy, which authorizes the commission to adopt rules as necessary to carry out its power and duties under the TWC. The amendment is also proposed under TWC, §11.3271, concerning the powers and duties of the Rio Grande Watermaster.

The proposed amendment implements TWC, §§5.013, 5.102, and 11.3271.

§303.53. Documents Needed to [~~To~~] File.

(a) A contract of sale of water to be filed with the executive director in accordance with §303.52(d) of this title (relating to General Filing Requirements) shall indicate all of the following:

(1) the specific certificate of adjudication or other water right under which the water is being sold;

(2) the specific certificate of adjudication or other water right under which the bought water is to be used;

(3) the name and address of the seller and buyer;

(4) the total quantity of water being purchased in acre-feet;

(5) the purpose of use for which the water is to be used;

(6) the cost of water to the buyer per acre-foot;

(7) the diversion point to which the buyer is requesting deliveries to be made;

(8) the effective date and termination date of the contract; [~~(contract period can not exceed one year);~~]

(A) contracts for Domestic, Municipal, and Industrial water shall terminate on the last Saturday of the calendar year in which the contract was entered; and,

(B) for all other contracts, an effective date and termination date shall be determined by the interested parties;

(9) the acreage to be irrigated, if applicable; and

(10) the contract executed by all verified owners of the water right from which water is purchased.

(b) The contract will be accompanied by an aerial photograph or United States Geological Survey topographic map with the location of diversion points and areas to be irrigated described thereon. In water-in-transit contractual sales, the contract must also include an aerial photograph or United States Geological Survey topographic map with the location of the discharge point(s).

(c) The executive director may require any additional information needed to approve the contract, including any agreements with diverters if the buyer is not pumping from his own diversion point and deeds of any tracts to be irrigated.

(d) All contracts for water, irrespective to termination date of the contract, remain subject to the requirements of §303.22(c) of this title (relating to Allocations to Accounts).

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 July 30, 2013.

TRD-201303099
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 239-6087

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER KK. SCHOOL FUND BENEFIT FEE

34 TAC §3.1251

The Comptroller of Public Accounts proposes an amendment to §3.1251, concerning school fund benefit fee. The amendment removes subsection (e)(5), which refers to due dates in 1999, as that information is obsolete. The amendment to subsection (e)(1) removes reference to paragraph (5). The amendment is a result of a rules review of Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter KK, conducted by the comptroller. The rule review was performed under Government Code, §2001.039.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by improving the rule's clarity. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amendment implements Transportation Code, §20.002.

§3.1251. School Fund Benefit Fee.

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

(1) Commercial motor vehicle--A self-propelled vehicle used to transport passengers for compensation or hire between points in Texas on a fixed or scheduled route that:

(A) has a gross weight, registered weight, or gross weight rating of more than 26,000 pounds; or

(B) is designed to transport more than 15 passengers, including the driver.

(2) Fixed or scheduled route--Published routes between fixed points in Texas that are open for travel by the general public with intended times of departure and arrival at a terminal or other specified location. Fixed or scheduled route travel includes the distance from the Texas border to the first arrival point, the distance from the first arrival point to the last departure point, and the distance from the last departure point to the Texas border.

(3) Political subdivision--Any county, city, town, village, district, or other political subdivision of the state. For the purpose of this section, a political subdivision includes a person performing a contract to provide transportation services for any city, town, village, district, or other political subdivision of the state.

(b) Collection of tax on sales of diesel fuel. Diesel fuel suppliers, permissive suppliers, distributors, and retail dealers must collect the tax imposed by Tax Code, Chapter 162, on sales of diesel fuel to any person qualifying for a tax refund under subsection (c) of this section.

(c) Refund of tax paid on diesel fuel used on fixed or scheduled routes.

(1) A person, other than a political subdivision, who owns, controls, operates, or manages a commercial motor vehicle and uses diesel-powered motor vehicles to transport passengers for compensation or hire between points in Texas on fixed or scheduled routes may file a claim for refund with the comptroller for state taxes paid on diesel fuel used exclusively in commercial motor vehicles while traveling fixed or scheduled routes.

(2) The amount of fuel subject to state motor fuels tax refund shall be computed by dividing the total miles traveled on fixed or scheduled routes by the vehicles' average mile-per-gallon.

(3) A claim for refund must be filed in the calendar month following the month in which the diesel fuel is used in a commercial motor vehicle.

(4) A claim for refund of tax paid on diesel fuel consumed while traveling fixed or scheduled routes may not be paid unless the motor vehicle operator has filed the required school fund benefit fee report.

(5) Tax paid on diesel fuel used to operate commercial motor vehicles on charter trips or other non-fixed or non-scheduled routes

is not refundable, other than for refunds provided by §3.432 of this title (relating to Refunds on [~~of~~] Gasoline and Diesel Fuel Tax).

(d) School fund benefit fee due. A fee is imposed under Transportation Code, Chapter 20, §20.002, on diesel fuel exempted from the motor fuels tax under Tax Code, Chapter 162, at a rate of $0.04875 per gallon.

(e) Due date of report and payment.

(1) The school fund benefit fee report and payment are due not later than the last day of the month following the calendar month in which liability for the fee is incurred[~~, except as provided by paragraph (5) of this subsection~~].

(2) A commercial motor vehicle operator must file a monthly report even if there is no fee to report.

(3) Penalties due on delinquent fees and reports shall be imposed as provided by Tax Code, §111.061.

(4) Interest on delinquent fees shall be imposed as provided by Tax Code, §111.060.

[~~(5) The due date for the September, October, and November, 1999, school fund benefit fee report and payment is extended to January 31, 2000. The report and payment for the period September 1, 1999, through November 30, 1999, are to be included with the December, 1999 report and payment.~~]

(f) Records required. A commercial motor vehicle operator shall keep records showing:

(1) all fixed or scheduled routes;

(2) the date and number of miles traveled on fixed or scheduled routes in Texas;

(3) the date and number of miles traveled on charter trips and other non-fixed or non-scheduled routes in Texas;

(4) the number of gallons of diesel fuel on hand on the first day of each month;

(5) the number of gallons of diesel fuel purchased or received, showing the name of the seller and the date of each purchase;

(6) the date and number of gallons of diesel fuel delivered into the fuel supply tanks of commercial motor vehicles; and

(7) the date and number of gallons delivered into the fuel supply tanks of other diesel powered motor vehicles.

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

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

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Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: September 15, 2013
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 355. NON-SECURE CORRECTIONAL FACILITIES

The Texas Juvenile Justice Department (TJJD) proposes new §§355.100, 355.200, 355.202, 355.204, 355.206, 355.210, 355.220, 355.226, 355.230, 355.232, 355.234, 355.236, 355.300, 355.304, 355.306, 355.310, 355.312, 355.314, 355.316, 355.318, 355.320, 355.324, 355.326, 355.330, 355.334, 355.336, 355.340, 355.342, 355.344, 355.346, 355.350, 355.360, 355.400, 355.404, 355.406, 355.410, 355.414, 355.416, 355.420, 355.422, 355.424, 355.426, 355.428, 355.430, 355.434, 355.440, 355.442, 355.444, 355.446, 355.448, 355.450, 355.452, 355.454, 355.458, 355.460, 355.462, 355.464, 355.470, 355.476, 355.480, 355.500, 355.502, 355.504, 355.506, 355.510, 355.512, 355.514, 355.516, 355.518, 355.520, 355.522, 355.524, 355.530, 355.532, 355.534, 355.536, 355.538, 355.540, 355.600, 355.602, 355.604, 355.610, 355.612, 355.614, 355.616, 355.618, 355.620, 355.624, 355.626, 355.630, 355.632, 355.634, 355.636, 355.638, 355.640, 355.644, 355.648, 355.650, 355.654, 355.658, 355.660, 355.662, 355.664, 355.668, 355.670, 355.672, 355.674, 355.678, 355.680, 355.684, 355.700, 355.702, 355.704, 355.706, 355.708, 355.710, 355.712, 355.800, 355.802, 355.804, 355.806, 355.808, 355.810, and 355.818, concerning non-secure correctional facilities.

The new chapter will establish minimum standards for non-secure correctional facilities that are operated by a juvenile board or under contract with a juvenile board. The rules establish standards relating to physical plant, fire safety, facility management and operations, resident health and safety, resident rights, programming, physical training programs, and restraints.

Mike Meyer, Chief Financial Officer, has determined that for the first five-year period the sections are in effect, there will be some fiscal impact for state government as a result of enforcing or administering 37 TAC Chapter 355. Specifically, TJJD must monitor and inspect facilities regulated by the chapter, pursuant to Family Code §51.126(c), with an estimated annual cost to TJJD for each non-secure correctional facility of up to $5,000. Individual juvenile probation departments that currently operate a non-secure correctional facility may incur some additional cost. The extent of the fiscal impact will vary and cannot be determined at this time due to operational and physical plant differences among existing non-secure correctional facilities. Additionally, local decisions may affect how much, if any, additional cost is incurred to comply with this chapter. There is no fiscal impact on juvenile probation departments that do not operate a non-secure correctional facility. Juvenile probation departments were extensively consulted and considered by TJJD when drafting this chapter, so that the fiscal impact, if any, would be as minimal as possible.

James Williams, Senior Director of Probation and Community Services, has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the provision of statewide standards designed to protect health and safety, provide adequate programming and education, and protect due process rights for residents in non-secure correctional facilities.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER A. DEFINITIONS

37 TAC §355.100

The new section is proposed under Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

No other statute, code, or article is affected by this proposal.

§355.100. Definitions.

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

(1) Behavioral Health Assessment--A mental health assessment conducted by a masters-level mental health provider who is licensed by one of the boards listed in paragraph (22) of this section and qualified by training to conduct all required elements of a behavioral health assessment. At a minimum, a behavioral health assessment must include the following elements:

(A) Clinical interview;

(B) Psycho-social evaluation, to include:

(i) family history;

(ii) community/living environment;

(iii) peer relationships; and

(iv) academic/vocational history;

(C) Review of the following files and associated records in the possession of the juvenile probation department:

(i) juvenile probation records;

(ii) mental health records;

(iii) medical records;

(iv) previous mental health testing records; and

(v) educational records;

(D) Parent/guardian interview, unless the parent/guardian is unwilling to participate, and any other collateral interviews the mental health provider deems appropriate, such as a teacher or the child's juvenile probation officer;

(E) Psychometric testing, to include:

(i) Achievement assessment, only if there is no record of an achievement assessment within the last three years;

(ii) Personality assessment, only if there is no record of a personality assessment within the last three years;

(iii) Intellectual assessment, only if:

(I) there is no record of an intellectual assessment within the last three years; or

(II) a new intellectual assessment is indicated by:

(-a-) pervasive use of drugs known to impair thought processes;

(-b-) traumatic brain injury;

(-c-) the child was age 12 or younger on the date of the most recent psychometric testing; or

(-d-) obvious impairment in cognitive or interpersonal functioning; and

(F) Review of risks, strengths, and recommendations for intervention.

(2) Chief Administrative Officer--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department for a single county or a multi-county judicial district.

(3) Contraband--Any item not issued to employees for the performance of their duties and which employees have not obtained supervisory approval to possess. Contraband also includes any item given to a resident by an employee or other individual which a resident is not authorized to possess or use. Specific items of contraband include, but are not limited to:

(A) firearms;

(B) knives;

(C) ammunition;

(D) drugs;

(E) intoxicants;

(F) pornography; and

(G) any unauthorized written or verbal communication brought into or taken from an institution for a resident, former resident, associate of a resident, or family members of a resident.

(4) Date and Time of Admission--The date and time a juvenile was admitted into a non-secure correctional facility.

(5) Disciplinary Restriction--The removal of a resident from other residents for behavior modification and the placement of the resident alone for 90 minutes or less.

(6) Disciplinary Separation--The removal of a resident from program activities or other residents for 24 hours or less because of a major rule violation or an imminent physical threat to self or others.

(7) Facility Administrator--The individual designated by the chief administrative officer or governing board of the facility who has the ultimate responsibility for managing and operating the facility. This definition includes the certified juvenile supervision officer who is designated in writing as the acting facility administrator during the absence of the facility administrator.

(8) Facility Staff--All full-time, part-time, temporary, and seasonal staff who are employed or contracted to perform facility-related duties.

(9) Governing Board--A governmental unit (typically a juvenile board) or a board of trustees appointed by the governmental unit that establishes and operates or contracts for the establishment and operation of the facility. The governing board for the facility shall provide oversight of facility operations, policies, and procedures.

(10) Hazardous Material--Any substance that is explosive, flammable, combustible, poisonous, corrosive, irritating, or otherwise harmful and is likely to cause injury or death.

(11) Health Assessment--The process whereby the health status of an individual is evaluated, which may include questioning the patient regarding symptoms.

(12) Health Care Professional--A term that includes physicians, physician assistants, nurses, nurse practitioners, dentists, medical assistants, emergency medical technicians, and others who, by virtue of their education, credentials, and experience, are permitted by law to evaluate and care for patients.

(13) Health Service Authority--The agency, organization, entity, or individual responsible for consulting and collaborating with the facility administrator and/or the health services coordinator to ensure a coordinated and adequate health care system is available to residents of the facility.

(14) Housing Area--An area within the non-secure correctional facility that contains residents.

(15) Housing Unit--A unit within the housing area that may be designed and constructed as either a single occupancy housing unit (SOHU) or a multiple occupancy housing unit (MOHU).

(16) Intra-Jurisdictional Custodial Transfer--The transfer of a resident from a pre-adjudication or post-adjudication secure facility into a non-secure correctional facility under the same administrative authority.

(17) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program administered or operated under the authority of the juvenile board.

(18) Juvenile Supervision Officer--A person whose primary responsibility and essential function is the supervision of juveniles in a juvenile justice facility or a juvenile justice program operated by or under contract with the governing board.

(19) Material Safety Data Sheet (MSDS)--A document prepared by the supplier or manufacturer of a product clearly stating its hazardous nature, ingredients, precautions to follow, health effects, and safe handling/storage information.

(20) Medical Separation--The removal of a resident from program activities or other residents for medical purposes in accordance with §355.524 of this title.

(21) Medical Treatment--Medical care, including diagnostic testing (e.g., x-rays, laboratory testing, etc.), performed or ordered by a physician or physician assistant or performed by a licensed nurse practitioner, emergency medical technician, paramedic, registered nurse (RN), or licensed vocational nurse (LVN) according to their respective licensure.

(22) Mental Health Provider--An individual who is licensed or otherwise authorized to provide mental health services by one or more of the following licensing boards:

(A) Texas State Board of Examiners of Psychologists;

(B) Texas State Board of Examiners of Professional Counselors;

(C) Texas State Board of Examiners of Marriage and Family Therapists;

(D) Texas Department of State Health Services;

(E) Texas Medical Board; or

(F) Texas State Board of Social Worker Examiners.

(23) Mental Health Screening--A process that includes a series of questions that are designed to identify a resident who is at an increased risk of having mental health disorders that warrant attention and a professional review.

(24) Multiple-Occupancy Housing Unit (MOHU)--A housing unit designed and constructed for multiple-occupancy sleeping.

(25) Non-Program Hours--The time period when the facility's scheduled resident activity has ceased for the day.

(26) Non-Secure Correctional Facility--Any public or private residential facility operated by or under contract with a juvenile board in which the construction fixtures, hardware, staffing models, and procedures do not restrict the egress of residents from the facility.

(27) Physical Training Program--Any program that requires participants to engage in and perform structured physical training and activity. This does not include recreational team activities or activities related to the educational curriculum (i.e., physical education).

(28) Positive Screening--A scored result of a completed mental health screening instrument (i.e., MAYSI-2) recommending services requiring a primary service by a mental health provider as described on the MAYSI-2 reference card.

(29) Premises--A building(s) together with its grounds or other appurtenances.

(30) Program Hours--The time period when the facility schedules activities for the resident population.

(31) Qualified Individual--A person who may supervise residents when working with residents in a capacity that relates to the person's qualifications.

(32) Qualified Mental Health Professional--An individual employed by the local mental health authority or an entity who contracts as a service provider with the local mental health authority who meets the guidelines of the Texas Department of State Health Services.

(33) Rated Capacity--The maximum number of beds available in a facility that were architecturally designed or redesigned as a housing unit.

(34) Resident--A juvenile who is placed in the non-secure correctional facility.

(35) Riot--A situation in which three or more residents in the facility intentionally participate in conduct that constitutes a clear and present danger to persons or property and substantially obstructs the performance of facility operations or a program therein. Rebellion is a form of riot.

(36) Secondary Screening--A triage process that is brief and designed to clarify if a resident is in need of intervention or a more comprehensive assessment and what type of intervention or assessment is needed.

(37) Single-Occupancy Housing Unit (SOHU)--A housing unit designed and constructed with separate and individual resident sleeping quarters.

(38) TJJD--The Texas Juvenile Justice Department.

(39) Volunteer--An individual who agrees to perform services without compensation and may have regular or periodic supervised contact with juveniles under the direction of the non-secure correctional facility.

(40) Youth Activities Supervisor--Regardless of title, an individual whose primary responsibility and essential job function is the supervision of juveniles strictly in a non-secure setting within a juvenile justice program or facility other than a juvenile justice alternative education program.

(41) Youth-on-Youth Sexual Conduct--Two or more juveniles, regardless of age, who engage in deviate sexual intercourse, sexual contact, sexual intercourse, or sexual performance as those terms are defined in subparagraphs (A)-(D) of this paragraph:

(A) "Deviate sexual intercourse" means:

(i) any contact between any part of the genitals of one person and the mouth or anus of another person; or

(ii) the penetration of the genitals or the anus of another person with an object.

(B) "Sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:

(i) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a person; or

(ii) any touching of any part of the body of a person, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

(C) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

(D) "Sexual performance" means acts of a sexual or suggestive nature performed in front of one or more persons, including simulated or actual sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

(E) A juvenile may not consent to the acts as defined in this paragraph under any circumstances. Consent may not be implied regardless of the age of the juvenile.

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

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

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Brett Bray
General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7014

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SUBCHAPTER B. APPLICABILITY AND GENERAL PROVISIONS

37 TAC §§355.200, 355.202, 355.204, 355.206, 355.210, 355.220, 355.226, 355.230, 355.232, 355.234, 355.236

The new sections are proposed under Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

No other statute, code, or article is affected by this proposal.

§355.200. Applicability.

(a) Except as specified in subsections (b) and (c) of this section, this chapter applies to all non-secure juvenile correctional facilities in this state.

(b) Non-secure correctional facilities designated for detention by the juvenile board pursuant to Texas Family Code §51.12 are subject to Chapter 351 of this title.

(c) A non-secure correctional facility is subject only to §355.206 of this title and exempt from the rest of this chapter if:

(1) the facility is licensed by another state governmental entity; and

(2) the facility's governing board has determined the facility will operate solely under the license of the other state governmental entity.

§355.202. Waiver or Variance.

Unless expressly prohibited by another standard, an application for waiver or variance of any standard in this chapter may be submitted in accordance with §349.200 of this title.

§355.204. Authority to Operate Non-Secure Correctional Facility.

Pursuant to Texas Family Code §51.126, a non-secure correctional facility may only be operated by:

(1) a governmental unit in this State; or

(2) a private entity under a contract with a governmental unit in this State.

§355.206. Certification and Registration of Facility.

Before admitting residents, the juvenile board in the county or district where a non-secure correctional facility is located shall ensure:

(1) the facility is certified in compliance with §51.126 of the Texas Family Code;

(2) the number of beds is designated in the facility certification;

(3) the facility is registered with TJJD in compliance with §51.126 of the Texas Family Code; and

(4) the current facility certification and TJJD's facility registration are posted within a public area of the facility.

§355.210. Acceptance of Residents.

(a) A non-secure correctional facility that is not licensed by another state agency may only accept and admit a child, as that term is defined in §51.02(2) of the Texas Family Code, who is under the jurisdiction of the juvenile court.

(b) In addition to children admitted under subsection (a) of this section, a non-secure correctional facility that is licensed by another state agency may accept and admit children as permitted by the facility's license.

§355.220. Facility Governing Board.

Each facility shall have a governing board.

§355.226. Location and Operations.

(a) Co-located Facilities.

(1) If the facility is located in the same building or on the grounds of any type of adult corrections facility, it shall be a separate, self-contained unit.

(2) All applicable federal and state laws pertaining to the separation of juveniles from adult inmates shall apply.

(3) The facility shall submit information and agree to monitoring from the Office of the Governor and/or the contract representative.

(b) Separate Operations. Where a non-secure correctional facility is located in the same building or on the same grounds as a secure pre-adjudication detention or post-adjudication correctional facility, the following shall apply:

(1) Direct verbal interaction and/or physical interaction shall be kept to a minimum. Sight and sound separation is not required.

(2) During program hours, any situation where secure and non-secure populations are sharing the same physical space and/or program activity, there shall be separate and distinct supervision ratios maintained according to standards.

(3) During non-program hours, a single juvenile supervision officer may simultaneously satisfy the supervision ratios for both secure and non-secure populations as long as the facility uses single occupancy housing units (SOHUs).

§355.230. Criminal History Searches.

All staff, including contract staff, volunteers, and interns, shall have criminal history searches in accordance with Chapter 344 of this title.

§355.232. Serious Incidents.

All non-secure correctional facilities shall adhere to the requirements set forth in Chapter 358 of this title regarding serious incidents.

§355.234. Abuse, Neglect, and Exploitation.

All non-secure correctional facilities shall adhere to requirements set forth in Chapter 358 of this title regarding abuse, neglect, and exploitation.

§355.236. Data Collection.

The facility administrator or chief administrative officer shall maintain and report to TJJD electronically, or in the format requested, accurate statistics in the following areas:

(1) total number of grievances;

(2) total number of personal restraint incidents;

(3) total number of mechanical restraint incidents;

(4) total number of disciplinary separations; and

(5) total number of staff injuries resulting from interaction with residents.

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

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Brett Bray
General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7014

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SUBCHAPTER C. PHYSICAL PLANT AND FIRE SAFETY

37 TAC §§355.300, 355.304, 355.306, 355.310, 355.312, 355.314, 355.316, 355.318, 355.320, 355.324, 355.326, 355.330, 355.334, 355.336, 355.340, 355.342, 355.344, 355.346, 355.350, 355.360

The new sections are proposed under Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

No other statute, code, or article is affected by this proposal.

§355.300. External and Perimeter Security.

The facility shall be constructed so:

(1) the general public is denied access without authorization; and

(2) egress for residents is unimpeded by architectural barriers.

§355.304. Single-Occupancy Housing Units--SOHUs.

(a) SOHUs shall be constructed to contain no more than 24 beds in each housing unit.

(b) Individual resident sleeping quarters shall be utilized as single-occupancy only, and at no time may more than one resident be placed in an individual resident sleeping quarter.

(c) Individual resident sleeping quarters shall contain a bed above floor level.

§355.306. Multiple-Occupancy Housing Units--MOHUs.

(a) MOHUs shall be designed to contain no more than 24 beds in each housing unit.

(b) MOHUs shall have one bed above floor level for every resident assigned to the unit.

(c) MOHUs shall contain residents of the same sex.

§355.310. Program Areas.

The facility shall provide access to space for:

(1) visitation;

(2) religious activities;

(3) interviewing and counseling;

(4) educational instruction;

(5) exercise; and

(6) common activities.

§355.312. Housing for Residents with Physical Disabilities.

All housing areas used by residents with a physical disability shall be designed for their use and provide for their safety and security in accordance with state and federal law.

§355.314. Shower Facilities.

Residents shall have access to shower facilities with hot and cold running water within the non-secure correctional facility.

(1) Non-secure correctional facilities shall contain one operable shower for every eight beds.

(2) The facility shall have policies and procedures regarding residents' access to shower facilities and their supervision during the use of shower facilities.

§355.316. Toilet Facilities.

(a) Residents shall have access to toilet facilities within the non-secure correctional facility.

(b) Non-secure correctional facilities shall contain at least one operable toilet above floor level for every eight beds.

(c) Urinals may be substituted for up to one-half of the toilets in housing areas permanently designed as all-male units.

(d) The facility shall have policies and procedures regarding residents' access to toilet facilities and their supervision during the use of toilet facilities.

§355.318. Washbasins.

(a) Residents shall have access to washbasins within the non-secure correctional facility.

(b) Non-secure correctional facilities shall contain one operable washbasin for every 12 beds.

(c) All washbasins shall have hot and cold running water.

§355.320. Drinking Water.

(a) Residents shall have access to clean and fresh drinking water within the non-secure correctional facility.

(b) The facility shall have policies and procedures regarding residents' access to drinking water.

§355.324. Heating and Ventilation.

(a) The facility shall provide fully functioning heating, cooling, and ventilation systems adequate for the square footage of the facility.

(b) Alternate means of ventilation in the facility shall be maintained.

§355.326. Lighting.

Adequate lighting shall be provided to all areas of the facility.

§355.330. Alternate Power Source.

(a) The facility shall have at least one alternate source of electrical power that provides for the simultaneous operation of life safety systems including:

(1) emergency lighting;

(2) illuminated emergency exit lights and signs;

(3) emergency audible communication systems and equipment; and

(4) fire detection and alarm system.

(b) The alternate power source system shall be tested at least once every 15 calendar days to ensure the system is in working condition.

(c) The alternate power source system (e.g., the alternate power source and the life safety systems required to be operated) shall be inspected at least once each year, no later than the last day of the calendar month of the previous year's inspection. This inspection must be completed by a person with qualifications established through work experience, relevant training, specialized licensure, or certification.

(d) Each test of the alternate power source system shall be documented and include, at a minimum, the test date and test results.

(e) Any system malfunctions or maintenance needs that are identified during a test or at any other time shall require that a written maintenance request be immediately submitted to the appropriate personnel.

§355.334. Secure Storage Areas.

(a) Cleaning Supplies. Cleaning supplies and equipment shall be stored in a locked area and not accessible to residents.

(b) Restraint Devices. There shall be a location for secure storage of restraining devices and related security equipment. This equipment shall be readily accessible to authorized persons.

(c) Personal Property. The facility shall maintain written policies and procedures that addresses the process for secure storage of any personal property as needed.

§355.336. Hazardous Materials.

(a) The facility shall maintain an inventory and a copy of the Material Safety Data Sheet (MSDS) for all hazardous materials located in the facility.

(b) Materials manufactured for cleaning purposes or those used in the training process of a vocational training program or another program may be used by residents under the general supervision of a certified staff member or qualified individual. The resident must be provided instruction on the use of the hazardous material and the proper equipment as prescribed by the MSDS. Facility policies and procedures shall detail the requirements and restrictions of materials described in this standard.

(c) Any use of hazardous materials shall be used according to the manufacturer's instructions.

§355.340. Safety Codes.

(a) The facility shall conform to the provisions set forth in the Life Safety Code (i.e., National Fire Protection Association (NFPA) 101) and/or any applicable state and local fire safety codes. Local government ordinances or codes may substitute for the Life Safety Code only if the local ordinances or codes are specifically written to include building occupancy for correctional usage.

(b) A formalized Life Safety Code/fire safety inspection shall be completed prior to the facility becoming operational.

(c) All subsequent Life Safety Code/fire safety inspections shall be conducted no later than the last day of the calendar month of the previous year's inspection.

(d) Each Life Safety Code/fire safety inspection shall result in a written report that contains at least the following information:

(1) the identification of the specific code(s) used to complete the inspection. The code(s) used must be the Life Safety Code or the applicable state, municipal, or county specific fire code adopted by the jurisdiction;

(2) the name of the governmental entity that conducted the inspection;

(3) the identification of any applicable code violations or infractions and the corresponding corrective action requirements;

(4) the name and title of the person conducting the inspection; and

(5) the date(s) of the inspection.

(e) Any deficiencies noted in the annual inspection report shall be immediately addressed by the facility administrator or designee. The facility administrator shall develop and document a corrective action plan to rectify all deficiencies.

§355.342. Fire Safety Plan.

(a) The facility shall have in effect and available to all supervisory personnel written copies of a fire safety plan for the protection of

all persons in the event of a fire for their evacuation to areas of refuge and for their evacuation from the building if necessary.

(b) The fire safety plan shall be coordinated with and reviewed by the fire department whose jurisdiction includes the facility. The coordination and review efforts required in this standard shall be validated by written documentation prepared or attested to by a representative of the applicable fire department.

(c) The fire safety plan shall require that all employees be instructed to ensure the following:

(1) proper disposal of combustible refuse;

(2) prompt evacuation of the facility; and

(3) procedures for the use and control of flammable, toxic, and caustic materials.

§355.344. Fire Safety Officer.
The fire safety officer shall:

(1) ensure maintenance of a current fire drill log;

(2) ensure that fire drills are conducted as required by §355.346 of this title;

(3) ensure the posting of a plan for prompt evacuation of the facility as required by §355.346 of this title;

(4) implement procedures for proper disposal of combustible refuse; and

(5) implement procedures for the use and control of flammable, toxic, and caustic materials.

§355.346. Fire Drills.
(a) Fire drills shall be conducted on all shifts at least every 90 calendar days. The facility shall maintain documentation of the date, time, and name of the staff conducting each fire drill.

(b) All staff on duty in the facility shall participate in the fire drills.

(c) Facility exits shall be clear of obstructions and properly marked for evacuation in the event of fire or emergencies.

(d) Facility emergency evacuation plans shall be posted in all common and housing areas.

§355.350. Emergency Preparedness Plan.
The facility shall have an emergency preparedness plan that includes, but is not limited to, severe weather, natural disasters, disturbances or riots, national security issues, and medical emergencies. The plan shall address:

(1) the identification of key personnel and their specific responsibilities during an emergency or disaster situation;

(2) agreements with other agencies or departments; and

(3) transportation to pre-determined evacuation sites.

§355.360. Facility Maintenance, Cleanliness, and Appearance.
(a) Housekeeping Plan. The facility shall have a written and implemented housekeeping plan for the maintenance of a clean and sanitary facility.

(1) The plan shall contain the following:

(A) a schedule for periodic and routine cleaning and housekeeping including:

(i) the identification of staff and resident responsibilities; and

(ii) the regular cleaning and disinfection of toilet and shower areas currently in use;

(B) a schedule for pest and vermin control; and

(C) a requirement for the weekly cleaning, safety, and maintenance inspection by facility staff of all areas of the facility that are currently in use.

(2) The housekeeping plan shall be accessible to staff.

(b) Maintenance. The facility administrator shall be responsible for ensuring that the interior physical plant, exterior grounds, and all equipment are safe and properly functioning including, but not limited to, the following:

(1) repairs shall be made promptly to all furniture, fixtures, and equipment currently in use that are not in safe working order;

(2) all surfaces in facility areas currently being used shall be regularly maintained and repaired if damaged and shall be reasonably free from graffiti and markings, excluding minor damage from reasonable and expected wear and tear from normal use; and

(3) all exterior grounds currently used for programmatic purposes or accessed by staff, residents or visitors are free from any health and safety hazards and are appropriately maintained to ensure the safe use by residents, staff and visitors.

(c) Cleanliness. All areas of the facility where residents reside or participate in programming or services shall be clean, sanitary, and reasonably free from debris, rodents, insects and strong, offensive or foul odors.

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

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SUBCHAPTER D. FACILITY MANAGEMENT AND OPERATIONS

37 TAC §§355.400, 355.404, 355.406, 355.410, 355.414, 355.416, 355.420, 355.422, 355.424, 355.426, 355.428, 355.430, 355.434, 355.440, 355.442, 355.444, 355.446, 355.448, 355.450, 355.452, 355.454, 355.458, 355.460, 355.462, 355.464, 355.470, 355.476, 355.480

The new sections are proposed under Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

No other statute, code, or article is affected by this proposal.

§355.400. Policy, Procedure, and Practice.

The governing board of the facility shall require that written policies and procedures exist governing the operation of all non-secure juvenile

correctional facilities in the county or district, as applicable. The policies, procedures, and practices of the facility shall include:

(1) a policy that strictly prohibits the following:

(A) physical, sexual or emotional abuse, neglect, or exploitation of a resident by any individual having contact with a resident of the facility;

(B) youth-on-youth sexual conduct between residents;

(C) violations of the juvenile justice professionals' code of ethics as outlined in Chapter 345 of this title;

(D) violations of any professional code of ethics or code of conduct by any individual providing services to or having contact with residents of the facility; and

(2) a zero-tolerance policy and practice regarding sexual abuse in accordance with the Prison Rape Elimination Act of 2003 that provide for administrative and/or criminal disciplinary sanctions.

§355.404. Designation and Qualifications of Facility Administrator.

(a) The chief administrative officer or the governing board of the facility or the governing board's designee shall designate a single facility administrator for each non-secure facility.

(b) The facility administrator shall:

(1) have acquired a bachelor's degree conferred by a college or university accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(2) have either:

(A) one year of graduate study in criminology, corrections, counseling, law, social work, psychology, sociology, or other field of instruction approved by TJJD; or

(B) one year of experience in full-time case work, counseling, or community or group work in a social service, community, corrections, or juvenile agency that deals with offenders or disadvantaged persons, as determined by TJJD; and

(3) maintain an active TJJD certification as a juvenile supervision officer.

§355.406. Duties of Facility Administrator.

(a) The facility administrator shall be responsible for the daily operations of the facility and shall maintain an office on the grounds of the facility.

(b) The facility administrator shall designate a certified juvenile supervision officer to be in charge during his or her absence from the facility.

(c) The facility administrator shall develop, implement, and maintain a policies and procedures manual for the facility and shall ensure the daily facility practice conforms to the policies and procedures detailed in the manual.

(d) The facility administrator shall review the facility's policies and procedures manual at least once each year, no later than the last day of the calendar month of the previous year's review, and maintain documentation of this review.

(e) The facility administrator shall make the policies and procedures manual available to all employees of the facility.

(f) The facility administrator shall ensure that all employees of the facility are:

(1) trained on the policies and procedures manual provisions relevant to the employee's job functions during new employee orientation or prior to beginning service at the facility and maintain documentation of that training; and

(2) notified of all changes or modifications to the policies and procedures manual in a timely manner.

(g) The facility administrator or designee shall ensure that current, accurate, and confidential personnel records are maintained for each employee which shall include:

(1) proof of age;

(2) documentation of criminal background checks conducted as required by this title;

(3) the completed application for employment;

(4) training records; and

(5) documentation of promotion, demotion, termination and other personnel actions.

(h) The facility administrator or chief administrative officer of a private entity under contract with a governmental unit in this state shall provide the presiding officer of the juvenile board with jurisdiction of the facility with periodic updates on the operation of the facility, including the following information to be provided at least every quarter:

(1) facility population/capacity reports;

(2) number of serious incidents by category that occurred in the facility;

(3) number of resident restraints by type (e.g., personal and mechanical);

(4) number of injuries to residents requiring medical treatment; and

(5) number of injuries to staff requiring medical treatment.

(i) The facility administrator or chief administrative officer shall ensure the accurate and timely submission of statistical data to TJJD in an electronic format or other format as requested by TJJD.

(j) The facility administrator or chief administrative officer shall ensure that all individuals employed by the facility who have unsupervised contact with residents are subjected to all required criminal history background checks as required by Chapter 344 of this title.

§355.410. Internal Security.

(a) Policies and Procedures. Written policies and procedures for security and control of the facility shall include the following:

(1) continued operations in the event of a work stoppage;

(2) key control;

(3) control of the use of:

(A) tools;

(B) medical equipment; and

(C) kitchen tools;

(4) provisions to prevent firearms from entering the facility; and

(5) provisions for coordination with law enforcement authorities in the case of situations requiring assistance from city, county, or state law enforcement agencies.

(b) Carrying of Firearms in Facility Prohibited. The policy set forth in subsection (a)(4) of this section shall include a provision to prohibit a juvenile probation officer authorized to carry a firearm

under §142.006 of the Texas Human Resources Code from entering the facility with a firearm.

(c) Documentation.

(1) The facility administrator or designee shall ensure all incidents that affect the physical safety of residents or staff or otherwise significantly affect the operation of the facility are documented.

(2) A copy of the documentation shall be placed in the file of any resident(s) involved in the incident.

§355.414. Population.

(a) The population of the facility shall not exceed the rated capacity of the facility.

(b) A daily population roster shall be maintained in chronological order by date and shall be available for TJJD monitoring purposes. The population roster shall include at a minimum:

(1) the date and time the roster was compiled;

(2) the names of all residents in the facility;

(3) the sex of all residents in the facility;

(4) the housing assignment location (e.g., multiple/single occupancy housing unit, assigned pod, bay, etc.) of all residents in the facility; and

(5) the total resident population for each day.

§355.416. Classification Plan.

All facilities shall have a classification plan that takes at least the following into account:

(1) age;

(2) sex;

(3) offense;

(4) behavior;

(5) resident's potential vulnerabilities for sexual abuse that are discovered during the resident's behavioral health screening; and

(6) any other special considerations.

§355.420. Admission Records.

The facility shall obtain and record the following information at the time the resident is admitted into the facility:

(1) date and time of admission;

(2) name;

(3) nicknames and aliases;

(4) social security number;

(5) last known address;

(6) document(s) authorizing legal admission;

(7) admitting offense;

(8) name of attorney;

(9) name, title, and signature of delivering individual;

(10) sex;

(11) race;

(12) date of birth;

(13) citizenship;

(14) place of birth;

(15) current education level;

(16) last school attended;

(17) name, relationship, address, and phone number of parents, legal guardians, or custodians; and

(18) primary language of resident and resident's parent, legal guardian, or custodian.

§355.422. Content of Resident Records.

Each resident's record shall include the following:

(1) offense history;

(2) inventory of cash and property surrendered;

(3) list of approved visitors;

(4) name of the assigned probation officer;

(5) behavioral record, including any special incidents, discipline, or grievances;

(6) referrals to other agencies; and

(7) final release or transfer report.

§355.424. Format and Maintenance of Records.

(a) Resident records shall be maintained in a uniform format for identifying and separating files.

(b) Each facility shall have written policies and procedures to ensure the confidentiality of resident files.

§355.426. Housing Records.

For each housing unit in the facility, the following documentation shall be maintained:

(1) a daily chronological log or electronic record documenting the resident's or housing unit's activity that identifies the juvenile supervision officers or youth activities supervisors supervising the residents;

(2) a daily report of admissions and releases; and

(3) a population roster compiled as of 5:00 a.m. each day that shall include at a minimum:

(A) the date and time the roster was compiled;

(B) the name of all residents in the facility;

(C) the sex of all residents in the facility;

(D) the housing assignment location (i.e., the location where the resident sleeps) of all residents in the facility; and

(E) the numerical total of the resident population for each day.

§355.428. Qualifications to Provide Resident Supervision.

A juvenile supervision officer or youth activities supervisor may provide resident supervision if he or she:

(1) is currently certified as a juvenile supervision officer or youth activities supervisor; or

(2) has been employed by the facility less than 180 calendar days and has completed at least 40 hours of training, which shall include the mandatory topics as outlined in Chapter 344 of this title, as well as current certification in CPR, first aid, and a personal restraint technique approved by TJJD.

§355.430. Supervision Requirements.

(a) Ratios. Ratios of juvenile supervision officers or youth activities supervisors to residents on facility premises shall adhere to the

requirements set forth in this standard and be documented in policies and procedures.

(1) Regardless of the ratio requirements established in paragraphs (2) - (3) of this subsection, at least one juvenile supervision officer shall be on duty at all times.

(2) During program hours, the ratio shall be at least one juvenile supervision officer or youth activities supervisor for every 12 residents.

(3) During non-program hours, the ratio shall be at least one juvenile supervision officer or youth activities supervisor for every 24 residents.

(4) A juvenile supervision officer or youth activities supervisor may be counted in the ratio only if requirements of §355.428 of this title are met.

(b) Same-Gender Supervision Requirement.

(1) Policies and practice shall ensure at least one juvenile supervision officer or youth activities supervisor of each gender represented in the resident population is on duty and available to the residents on every shift.

(2) Cross-gender supervision shall be prohibited during showers, physical searches, pat downs, disrobing of suicidal residents, or other times in which personal hygiene practices or needs would require the presence of a staff member of the same gender. However, if the resident is behind a closed, windowless door to shower or care for other personal hygiene needs, a same-gender staff member is not required. The requirements of this standard shall be detailed in the facility's policies and procedures.

(c) Level of Supervision.

(1) Program Hours.

(A) A juvenile supervision officer or youth activities supervisor shall provide direct supervision for residents during all program activities occurring on the facility's premises, except as described in paragraph (2) of this subsection.

(B) The facility shall conduct two documented resident counts during program hours. To count a resident as present, the staff member shall visually observe the resident. Each count shall include:

(i) the physical location of each resident;

(ii) for residents who are on the facility's premises, the resident's current activity; and

(iii) for residents who are off the facility's premises, the reason for the off-premises activity.

(2) Groups Supervised by Qualified Individuals. Residents may be supervised by a qualified individual when the individual is working with the residents in a capacity that relates to the individual's:

(A) work experience;

(B) relevant training;

(C) specialized licensure; or

(D) certification.

(3) Non-Program Hours.

(A) A juvenile supervision officer or youth activities supervisor shall visually observe and document each resident at random intervals not to exceed 15 minutes in a SOHU.

(B) A juvenile supervision officer or youth activities supervisor shall have constant visual observation of residents in a MOHU and shall document general observations of dorm activity at intervals not to exceed 30 minutes. If the physical configuration of the MOHU does not allow for constant visual observation of all residents, a juvenile supervision officer or youth activities supervisor shall visually observe and document each resident at random intervals not to exceed 15 minutes.

(C) A juvenile supervision officer or youth activities supervisor shall document each visual observation made of residents. The documentation shall include the time of the observation.

§355.434. Primary Control Room.

A juvenile supervision officer or youth activities supervisor stationed in and assigned to the facility's primary control room(s) shall not count toward meeting any required ratios required by this subchapter.

§355.440. Nutritional Requirements.

Meals shall contain a variety of foods and meet the dietary requirements of the United States Department of Agriculture.

§355.442. Menu Plans.

(a) The facility shall develop and follow daily written menu plans. Menu plans shall be reviewed and approved at least once each year, no later than the last day of the calendar month of the previous year's approval. The review and approval shall be conducted by a licensed or provisionally licensed dietician to ensure that the menu plans meet or exceed the requirements of the United States Department of Agriculture.

(b) All deviations from the menu plan shall be documented.

§355.444. Modified Diets.

Modified diets shall be provided upon the recommendation of a health care professional or when a resident's religious beliefs require it.

§355.446. Mealtime Seating.

Each resident shall have access to a chair and table during mealtimes.

§355.448. Staff Meals.

Facility staff members on duty where residents are eating are not required to eat, but if they do, they shall eat the same food served to the residents unless a special diet has been ordered by a health care professional or a staff's religious beliefs require it.

§355.450. Daily Meal Schedule.

(a) Three meals shall be provided daily to each resident in the facility.

(b) At least two of the meals shall be hot.

(c) No more than 14 hours may elapse between the evening meal and breakfast unless a snack is provided.

(d) Residents shall be allowed no less than ten minutes to eat once they have received their food.

§355.452. On-Site Food Preparation.

A facility that prepares food on site shall maintain a valid permit and any required licenses issued by the local health department or the Texas Department of State Health Services.

§355.454. Off-Site Food Preparation.

(a) Except as provided in subsection (b) of this section, a facility that receives food from an off-site source shall maintain a copy of

any permit and/or license required by the local health department or the Texas Department of State Health Services. The transfer of such food to the facility shall be conducted in a manner to prevent contamination or adulteration.

(b) If the facility receives food from an off-site source on a special occasion, the facility is not required to maintain a copy of any required permits or licenses for the additional off-site source. The facility shall not accept food from residents' family members.

§355.458. Personal Hygiene.

(a) Residents shall be given appropriate instruction on personal and oral hygiene and shall be provided the necessary articles to maintain proper personal cleanliness.

(b) Residents shall be provided the opportunity to shower daily and after participating in strenuous exercise.

§355.460. Bedding.

(a) Each resident shall be provided suitable clean bedding, including at least one mattress cover, one sheet, one blanket, one pillow and pillowcase, and a mattress. Mattresses with an integrated pillow may be substituted for a separate pillow and pillowcase. An additional blanket may substitute for one sheet.

(b) Clean bed linens shall be issued at least every seven calendar days.

(c) Modifications to a resident's bedding items may be made in accordance with the facility's suicide prevention plan.

§355.462. Towels.

A clean towel shall be issued to each resident daily.

§355.464. Clothing.

(a) Residents shall have access to clean and appropriate clothing upon admission into the facility.

(b) Residents shall have access to clean undergarments and socks daily and shall have access to other clean clothing at least twice per week.

(c) Residents shall have access to climate-appropriate clothing for any outdoor programming or activities.

(d) Modifications to a resident's clothing requirements may be made in accordance with the facility's suicide prevention plan.

§355.470. Resident Searches.

(a) Residents shall be subjected only to the following searches:

(1) a pat-down or frisk search as necessary for facility safety and security;

(2) an oral cavity search to prevent concealment of contraband and to ensure the proper administration of medication;

(3) a strip search in which the resident is required to surrender their clothing based on the reasonable belief that the resident is in possession of contraband or if there is reasonable belief that the resident presents a threat to the facility's safety and security;

(A) a strip search shall be limited to a visual observation of the resident and shall not involve the physical touching of a resident;

(B) a strip search shall be performed in an area that ensures the privacy and dignity of the resident; and

(C) a strip search shall be conducted by a staff member of the same gender as the resident being searched;

(4) an anal or genital body cavity search only if there is probable cause to believe that they are concealing contraband;

(A) an anal or genital body cavity search shall be conducted only by a physician. The physician shall be of the same gender as the resident, if available;

(B) all anal and genital body cavity searches shall be conducted in an office or room designated for medical procedures; and

(C) all anal and genital body cavity searches shall be documented with the documentation being maintained in the resident's file.

(b) During searches, the residents shall not be touched any more than necessary to conduct a comprehensive search.

(c) Every effort shall be made to prevent embarrassment or humiliation of the resident.

§355.476. Volunteers and Interns.

(a) Facilities utilizing a volunteer or internship program shall have written policies and procedures that contain the following components:

(1) a description of the authority, responsibility, and accountability of volunteers and interns who work with the department;

(2) provisions that govern the use of volunteers and interns who have regular or periodic supervised and unsupervised contact with residents regardless of the frequency of contact;

(3) the selection and termination criteria, including disqualification based on specified criminal history;

(4) the orientation and training requirements, including training on recognizing and reporting abuse, neglect, and exploitation;

(5) a requirement that volunteers and interns meet minimum professional requirements if applicable; and

(6) a written volunteer and intern registry, log, or other documentation that details all dates and times a volunteer or intern is present on the premises of the facility as well as the purpose of his or her visit.

(b) This rule does not apply to an individual who performs volunteer services only once per year, and only under the supervision of facility staff.

(c) Facilities may use volunteers and interns whose criminal history does not meet the requirements as described in Chapter 344 of this title; however, in no case shall these volunteers and interns be allowed to have unsupervised contact with residents.

§355.480. Release Procedures.

Prior to the release of a resident from the facility, the authorized staff member shall:

(1) verify the identity of the person receiving custody;

(2) verify the release authorization documents or document the authorization if a judge or juvenile probation officer authorized the release by telephone;

(3) secure a signed release by the individual receiving the resident's personal property;

(4) provide information to a parent, legal guardian, or custodian regarding:

(A) all medication prescribed while the resident was in the facility that the resident is currently taking, and the name and contact information of the prescribing physician;

(B) any pending medical, mental health, or dental appointments; and

(C) any present concerns regarding the resident; and

(5) secure a receipt signed by the person receiving custody.

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

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SUBCHAPTER E. RESIDENT HEALTH AND SAFETY

37 TAC §§355.500, 355.502, 355.504, 355.506, 355.510, 355.512, 355.514, 355.516, 355.518, 355.520, 355.522, 355.524, 355.530, 355.532, 355.534, 355.536, 355.538, 355.540

The new sections are proposed under Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

No other statute, code, or article is affected by this proposal.

§355.500. Pre-Admission Assessment for Injury, Illness, or Intoxication.

(a) Each facility shall have written policies and procedures addressing the admission of juveniles who are in need of emergency medical care due to injury, illness, or intoxication or who are in need of emergency mental health services.

(1) Anyone presented for admission into the non-secure correctional facility who is in need of emergency medical care due to injury, illness, or intoxication, or is in need of mental health intervention shall not be admitted.

(2) The referring person shall be directed to a health care facility to have the individual evaluated and treated.

(b) Subsequent admission into the facility is contingent upon written medical clearance provided by a health care or mental health provider.

(c) Each facility shall have written policies and procedures addressing intoxicated or chemically-impaired juveniles being admitted into the non-secure correctional facility and their need for specialized supervision.

(d) Intoxicated or chemically-impaired individuals who have been medically cleared for admission should be placed under medical separation in accordance with §355.524 of this title.

(e) Residents shall be assigned to the general program as soon as possible after admittance into the facility.

§355.502. Mental Health Screening and Referral.

(a) Screening.

(1) Unless the exception in subsection (b) of this section applies, a mental health screening instrument approved by TJJD shall be administered to each resident that is admitted into the non-secure correctional facility within 24 hours after admission. Documentation of administration shall be maintained to include, at a minimum, the date and time administered and the name and title of the person administering the screening.

(2) The individual administering the screening instrument is not required to be a juvenile supervision officer or a certified juvenile probation officer, but the individual shall have either received training from TJJD in administering the screening instrument or training from an individual who is documented to have received training from TJJD on administering the screening instrument.

(b) Exceptions.

(1) A mental health screening is not required if the referral documents that arrive with the resident contain a TJJD-approved mental health screening instrument completed within the previous 14 calendar days or a psychological evaluation or behavioral health assessment completed within the previous 365 days. However, if the resident experienced a significant event (such as adjudication or removal from his/her home county) after the mental health screening was conducted, a new screening is required within 24 hours of admission.

(2) A facility that chooses to administer a clinical assessment conducted by a mental health provider within 48 hours of a resident's admission is exempted from the screening instrument required by this standard. However, if a resident is released prior to the 48-hour time frame, a mental health screening shall be conducted prior to release.

(3) If the facility uses the mental health screening instrument for the suicide risk assessment required in §355.504 of this title, the mental health screening instrument shall be administered within two hours after a resident's admission into the facility.

(c) Referral. A resident who scores a positive screening on the screening instrument shall be:

(1) administered a secondary screening immediately to assist in clarifying the resident's need for mental health intervention;

(A) If the secondary screening confirms the positive screening and that mental health intervention is warranted, then a referral shall be made to a mental health provider or licensed physician within two hours from the completion of the initial mental health screening.

(B) If the secondary screening substantiates that the initial positive screening was false, then no further mental health intervention is required; or

(2) referred to a qualified mental health professional within two hours for consultation to determine if further mental health intervention is warranted;

(A) The facility shall maintain documentation of the consultation in the resident's file.

(B) If the qualified mental health professional recommends further mental health intervention is needed, then the resident must be referred to a mental health provider or licensed physician within 48 hours; or

(3) referred directly to a mental health provider or licensed physician within two hours.

(d) Documentation of secondary screening and referrals specific to the juvenile's positive screening on the screening instrument shall be maintained and forwarded to the resident's supervising juvenile probation officer.

(e) Documentation of referrals, completed assessments, and evaluations, including dates and times, shall be retained in the resident's file and forwarded to the resident's supervising juvenile probation officer.

§355.504. Health Screening and Assessment.

(a) Timing of Health Screening. A health screening shall be conducted on each resident within two hours after admission.

(b) Persons Qualified to Conduct Screening. The health screening shall be conducted by:

(1) an appropriately supervised licensed vocational nurse (LVN), a registered nurse (RN), or a higher-credentialed health care professional; or

(2) an individual who has been trained on administering the facility's health screening by an appropriately supervised LVN, an RN, or a higher-credentialed health care professional. The training must include, at a minimum, instruction on:

(A) how to take medical history;

(B) how to make the required observations;

(C) how to determine the appropriate disposition of a resident based on observations and responses to questions; and

(D) how to document the findings on the screening instrument.

(c) Screening Instrument. The health screening instrument shall be developed by an RN or higher-credentialed health care professional and shall include, at a minimum:

(1) mental health conditions and treatment, including any hospitalizations;

(2) suicide risk assessment in accordance with the facility's suicide prevention plan;

(3) observation of the following, at a minimum:

(A) general appearance, such as sweating, tremors, anxious, disheveled, or appropriate;

(B) behavior, such as disorderly, erratic, or appropriate;

(C) state of consciousness, such as alert, responsive, or lethargic;

(D) ease of movement, such as ability to walk and move limbs, gait, and bodily deformities;

(E) breathing, such as persistent cough, hyperventilation, or normal; and

(F) skin condition, such as lesions, swelling, yellowing, rashes, scars, tattoos, bruises, and/or needle marks;

(4) history of or current serious infectious disease including, at a minimum, tuberculosis;

(5) recent communicable illness symptoms, such as chronic cough, coughing up blood, lethargy, weakness, weight loss, loss of appetite, fever, and/or night sweats;

(6) history of or current sexually transmitted infections;

(7) history of or current illnesses or chronic health conditions including, at a minimum:

(A) allergies;

(B) asthma or other respiratory problems;

(C) dermatological conditions;

(D) seizure disorder;

(E) eye conditions; and

(F) other acute or chronic conditions as determined by the health service authority;

(8) history of or current gynecological problems;

(9) current or recent pregnancy;

(10) current use of medication(s) including, at a minimum, name, dosage, frequency, time of last dose taken, and name of prescribing physician;

(11) dental problems;

(12) use of alcohol or illegal drugs, including, at a minimum, type, amount, time of last use, and past treatment;

(13) drug withdrawal symptoms;

(14) special health requirements, such as dietary needs, physical disabilities, or prosthetics;

(15) evidence of physical trauma;

(16) recent injuries;

(17) weight and height; and

(18) any other health concerns reported by the resident.

(d) Screening Methodology. The health screening shall be administered through directly questioning the resident, observing the resident's behavior and physical condition, and review of any available records. If any of the information is unknown at the time of the health screening, the screener shall indicate this by entering "unknown," "not applicable," or a line in the space or electronic field provided for this information on the health screening form.

(e) Disposition and Medical Referral.

(1) The individual who completes the screening shall:

(A) document the disposition of the youth, such as referral to emergency services or placement in the general population with later referral for medical follow up; and

(B) sign the screening instrument and document his/her title and the date and time of the screening.

(2) For residents who are identified by the screening instrument as requiring follow-up consultation with a health care professional, facility staff shall:

(A) contact the health care professional designated by the screening instrument as soon as possible but no later than 24 hours after completion of the screening, unless the screening instrument provides otherwise; and

(B) ensure the resident receives follow-up medical care as directed by the health care professional.

(3) The facility shall maintain and implement written policies and procedures to ensure that residents identified with potential medical problems (e.g., asthma, diabetes) are appropriately supervised until medical follow-up is received.

(4) For residents who report taking prescription medication, facility staff shall document whether the resident's parent, guardian, or custodian has provided the facility with the medication and a written request to administer the medication. If the medication or written request has not been provided, facility staff shall contact a health care professional within 24 hours after completion of the screening to receive instruction.

(f) Mandatory Health Assessment. Each resident shall receive a health assessment within 30 days after admission into the facility.

(g) Results of Screening and Assessment. The results of the health screening and health assessment shall be communicated to appropriate staff.

(h) Contagious or Infectious Disease. Any finding of the health screening that indicates a significant potential health risk to the staff or residents from a contagious or infectious disease shall be immediately reported to the facility administrator, and the affected resident shall be placed in medical separation until proper medical clearance is obtained.

(i) Intra-Jurisdictional Custodial Transfer. A health screening is not required for intra-jurisdictional custodial transfer of residents if the non-secure facility receiving the resident is located within the same premises as the sending facility. If the two facilities are not located within the same premises, the only items required for the health screening are items enumerated in subsection (c)(2) and (15) of this section.

§355.506. Behavioral Screening.

(a) Before being assigned to housing, the juvenile shall be screened for potential vulnerabilities or tendencies of acting out with sexually aggressive or assaultive behavior. Documentation of the screening shall be maintained. Housing assignments shall be made accordingly.

(b) The behavioral screening shall take into consideration and address the following information:

(1) age;

(2) current charge(s) and offense history;

(3) physical size/stature;

(4) current state of mind;

(5) sexual orientation;

(6) prior sexual victimization or abuse;

(7) level of emotional and cognitive development;

(8) physical disabilities;

(9) mental disabilities, including emotional, intellectual, and developmental disabilities; and

(10) any other pertinent information.

(c) The admission form shall contain the date of the behavioral screening and a written acknowledgement signed by the staff member who completed the behavioral screening stating that the information in the behavioral screening was taken into consideration when making a housing assignment.

§355.510. Health Service Authority.

The facility shall have a designated health service authority responsible for the development and implementation of health care protocols within the facility. The health service authority shall be a physician, physician assistant, registered nurse, nurse practitioner, health administrator, or a medical entity. When a medical entity is designated as the health service authority, an individual shall be identified as the primary point of contact.

§355.512. Health Service Plan.

(a) Health Service Plan. The facility shall have and implement a written health service plan developed in consultation with the designated health service authority. The health service plan shall establish the facility's health care delivery system and detail the protocols for the delivery of medical, mental health, and dental services for all residents. The plan(s) shall include, at a minimum:

(1) procedures for the referral of residents in need of medical attention, either self-reported or identified by staff, for medical, mental, and dental services;

(2) procedures for emergency health care services;

(3) procedures to ensure continuity of care in accordance with the instructions of the medical provider including, but not limited to, the delivery of treatment, medication, referrals, follow up, and medically modified diets;

(4) procedures relating to informed consent for medical, dental, psychological, and surgical treatment, as well as consent relating to immunizations and counseling services;

(5) procedures relating to procurement, distribution, dispensing, disposal, and accounting of prescription and over-the-counter medication;

(6) procedures for performing all examinations, treatments, and other procedures in a confidential setting consistent with facility operations and security;

(7) procedures for patient transportation and evacuation;

(8) procedures for identification and control of communicable diseases;

(9) procedures for staff education and training relating to the facility's health care delivery system;

(10) procedures relating to first aid kit contents, location, and periodic inspections; and

(11) procedures for pregnant residents to receive timely and appropriate prenatal care, specialized obstetrical services when indicated, and postpartum care. These procedures shall also include procedures for the safe and appropriate restraint (both physical and mechanical) of pregnant residents.

(b) Review of Health Service Plan. The health service plan shall be reviewed at least once every 24 months in consultation with the health service authority.

§355.514. Health Services Coordinator.

(a) The facility shall have a designated health services coordinator on staff to coordinate health care delivery in the facility. The health services coordinator may be a contract employee as long as this staff member is on site.

(b) If the health services coordinator is not a health care professional, the health services coordinator shall receive special training in health care and health care service delivery topics relevant to non-secure correctional facilities and be familiar with local health care providers and facilities. The facility shall work in conjunction with the health service authority to determine the topics of the specialized training required by this standard.

§355.516. Medical Referral.

If a staff member observes any resident to be in need of medical attention or if a resident requests medical attention, the health care concern shall be addressed in accordance with the health service plan. The resident may not be denied access to health care if the resident will disclose the condition or reason for the treatment request only to a health care professional.

§355.518. Consent for Medical Treatment.

(a) Consent for medical treatment shall be secured in accordance with Chapter 32 of the Texas Family Code.

(b) Documentation of consent for medical treatment received, in accordance with Chapter 32 of the Texas Family Code, shall be maintained in the applicable resident files.

§355.520. Confidentiality of Healthcare Encounters.

(a) All medical and mental health screenings and assessments shall be conducted in a confidential setting consistent with facility operations and security.

(b) All interactions between a resident and a health care professional that involve treatment or an exchange of confidential medical information shall be conducted in private. The facility's policies and procedures may authorize a juvenile supervision officer or youth activities supervisor to be present in the following situations:

(1) if the resident poses a substantial risk to the safety of the health care professional or others;

(2) if the facility has a written policy requiring the presence of a juvenile supervision officer or youth activities supervisor during medical treatment;

(3) if the health care professional or resident requests the presence of a juvenile supervision officer or youth activities supervisor during the treatment; or

(4) if the circumstances or situation indicate the presence of a juvenile supervision officer or youth activities supervisor is necessary and prudent.

§355.522. Medication Administration.

(a) Use of Medication. Except upon the order of a physician, physician assistant, dentist, or nurse practitioner, no stimulant, tranquilizer, or psychotropic drug shall be administered to residents.

(b) Medication Policy. The governing board of the facility shall adopt a policy concerning the administration of medication to residents. The policy shall:

(1) specify which facility personnel are authorized to administer medication to residents;

(2) include medication that is brought into the facility by the resident's parent, guardian or custodian, in which case the facility administrator shall have a written request from the resident's parent, guardian or custodian to administer the medication and the medication shall be in the original, properly labeled container; and

(3) include the dispensing of all prescription medication prescribed to the resident during the resident's stay in the facility.

(c) Non-prescription Medication. Only staff who have had appropriate training in the administration of medication shall administer non-prescription medication (i.e., over-the-counter medication). The medication shall be administered according to the product instructions unless otherwise instructed by the health services coordinator. A health services coordinator who orders deviations from the product's directions shall be a health care professional. Deviations and the reason for the deviations shall be documented.

(d) Documentation. Written documentation of all dispensed medication shall be maintained.

§355.524. Medical Separation.

Medical separation may be authorized as a health precaution at the direction of a health care professional or the facility administrator.

(1) The reasons for the medical separation of a resident shall be documented and a copy placed in the resident's file.

(2) If a resident has been placed in medical separation by a facility administrator for over 24 hours, the health care concern shall be addressed by a health care professional in accordance with the health service plan. Upon completion of the health care professional's evaluation, the facility shall obtain a written recommendation as to the need for the resident's continued medical separation and ongoing treatment services from the health care professional.

(3) During medical separation, a juvenile supervision officer or youth activities supervisor shall personally observe and record the resident's behavior at random intervals not to exceed 15 minutes if the youth is placed behind an architectural barrier.

§355.530. Suicide Prevention Plan.

(a) Plan.

(1) The facility shall have a written suicide prevention plan developed in consultation with a mental health provider. The mental health provider's consultation services shall be documented and retained. Acceptable documentation includes, but is not limited to, the mental health provider's written name, signature, title, and professional credentials or licensing designation (e.g., LPC, LMSW, etc.).

(2) The plan shall address at least the following components:

(A) definitions of moderate risk and high risk for suicidal behavior;

(B) a listing of the facility-specific criteria associated with each of the two risk classifications and the identification of staff with the authority and responsibility for assigning or determining a resident's risk classification;

(C) a screening methodology which shall include, at a minimum:

(i) policies and procedures relating to suicide screening at intake/admission and at other times during the resident's stay at the facility;

(ii) identification of the specific suicide screening instrument, specific elements of the screening process, and identification of the person(s) responsible for the screening process;

(iii) specific provisions regarding the assessment of risk when a resident refuses or is unable to cooperate with the screening process; and

(iv) policies and procedures relating to how completed screening information and results are used in determining a resident's risk for suicidal behavior;

(D) communication protocols which shall include, at a minimum:

(i) policies and procedures specific to the internal and external communications directly related to residents who have been or are currently classified as moderate risk or high risk for suicidal behavior. For purposes of this standard, communications are defined as any written or verbal communications specific to the circumstances relating to the resident's status as a moderate risk or high risk for suicidal behavior; and

(ii) policies and procedures for notifying the sending agency or a mental health provider as required in §355.534 of this title for youth classified as high risk for suicidal behavior. The policies and procedures shall identify what information must be communicated, who is responsible for initiating the communication, who is required to receive the information, and how the information must be communicated (e.g., direct contact, telephone, email, etc.);

(E) level of supervision for residents assigned to moderate risk or high risk for suicidal behavior;

(F) policies and procedures for intervening in an active suicide attempt, which shall identify, at a minimum:

(i) staff responsibilities specific to the administration of first aid (e.g., cardiopulmonary resuscitation, etc.) and emergency notification of other facility staff for assistance and contact of outside emergency medical services;

(ii) the process by which emergency medical services personnel are to gain access to the facility and how they are to be guided or escorted to the resident; and

(iii) any life-saving and emergency equipment (e.g., first aid kit, Ambu-bag, rescue tools, ladder, etc.) that will be made available for staff to use in their intervention efforts, the location of such equipment, and staff responsible for maintaining, issuing, and using the equipment;

(G) reporting of resident suicides and attempted suicides:

(i) to TJJD as a serious incident within the time frames established in Chapter 358 of this title; and

(ii) in accordance with any other applicable state law, administrative rule, or local policy or ordinance;

(H) policies and procedures for staff training on the contents and implementation of the suicide prevention plan. The policies and procedures shall address, at a minimum, the training topics, curriculum to be used, and timeline for initial training and any follow-up training;

(I) housing of residents assigned to moderate risk or high risk for suicidal behavior, including removal of any dangerous objects, which may include clothing and bedding items, from the resident's presence; and

(J) formal mortality reviews following a resident's suicide to examine the specific circumstances that occurred prior to, during, and after the suicide to determine if there is a need for modified policies, procedures, and physical plant configurations. The mortality review plan shall, at a minimum:

(i) require a review process that is separate and distinct from any and all formal investigations (e.g., investigations conducted by the facility, law enforcement, TJJD, etc.);

(ii) identify the person or position who is responsible for leading the mortality review and any other applicable review team members (identified by name, position, or agency);

(iii) identify how the findings and recommendations of the mortality review are to be recorded; and

(iv) identify how the findings and any subsequent recommendations are to be relayed to the facility's governing board.

(b) Implementation. The facility shall implement the suicide prevention plan. All residents shall be screened and assessed for suicide risk upon admission and as necessary thereafter.

§355.532. Review and Dissemination of Suicide Prevention Plan.

(a) The suicide prevention plan shall be reviewed in consultation with a mental health provider at least once each year, no later than the last day of the calendar month of the previous year's review. Documentation of the review shall be maintained on the actual plan or in the form of a dated and signed letter from the mental health provider indicating the individual's title and the date that the review occurred. The documentation shall include the mental health provider's signature, title, and date of the review.

(b) The suicide prevention plan shall be disseminated or made available to all facility staff having responsibilities named or enumerated in the facility's suicide prevention plan.

§355.534. Mental Health Referral of High-Risk Suicidal Youth.

(a) If a resident is classified as high risk for suicidal behavior, the facility shall immediately notify the sending agency for transfer or release. Documentation of this notification shall be maintained including the date, time, name, and jurisdiction of the person notified.

(b) If immediate transfer or release is not possible, the facility shall refer the resident classified as high risk for suicidal behavior to a mental health provider or mental health care facility for further assessment or intervention. The referral shall be made within two hours after classification. The facility shall maintain written documentation of the referral that includes:

(1) the name and title of the mental health provider or mental health care facility notified;

(2) the date and time of the referral;

(3) the method of referral; and

(4) a brief description of the response provided by the mental health provider or the responsive document from the mental health provider.

§355.536. Supervision of High-Risk Suicidal Youth.

(a) Supervision. Residents classified as high risk for suicidal behavior who are awaiting an assessment by a mental health provider or transfer or release or as described in §355.534(b) of this title shall be:

(1) provided constant, uninterrupted supervision by a certified juvenile probation officer, certified juvenile supervision officer, or certified youth activities supervisor; and

(2) the supervising staff member shall document his or her personal observations of the high-risk resident at intervals not to exceed 30 minutes.

(b) Required Documentation. The following documentation shall be maintained for high-risk suicidal residents:

(1) the date and time the resident was classified as high risk for suicidal behavior;

(2) name and title of the person who classified the resident as high risk for suicidal behavior;

(3) a description of the resident's behavior and/or factors that led to the resident's classification as high risk for suicidal behavior;

(4) name of the certified juvenile probation officer, certified juvenile supervision officer, or certified youth activities supervisor providing supervision of the resident;

(5) the location of the resident's supervision;

(6) the date and time the resident was reclassified as no longer being at high risk for suicidal behavior; and

(7) the name and title of the mental health provider or physician who recommended the reclassification of the resident as no longer being at high risk for suicidal behavior.

§355.538. Supervision of Moderate-Risk Suicidal Youth.

(a) Observation. Any time a resident is classified as a moderate risk for suicidal behavior and is not under constant visual observation, a juvenile supervision officer or youth activities supervisor shall personally observe and record the resident's behavior at random intervals not to exceed ten minutes.

(b) Required Documentation. When providing supervision at random intervals, the juvenile supervision officer or youth activities supervisor shall document:

(1) the date and time the resident was classified as moderate risk for suicidal behavior;

(2) the location of the resident's supervision;

(3) the name of the juvenile supervision officer or youth activities supervisor providing supervision of the resident;

(4) each visual observation made and the time of the observation; and

(5) a general description of the resident's behavior.

§355.540. Reclassification of High- or Moderate-Risk Suicidal Youth.

Reclassification of a resident designated as high or moderate risk for suicidal behavior to a lower risk level shall only be determined by the facility administrator with the recommendation of a qualified mental health professional, a mental health provider, or a licensed physician.

(1) Prior to recommending reclassification, a qualified mental health professional, mental health provider, or a licensed physician shall conduct a review of the resident's current suicide risk and issue a written recommendation which addresses the following:

(A) the need to reclassify the resident's suicide risk level;

(B) the need for intervention strategies and/or services during the resident's period of confinement within the facility; and

(C) the need for additional assessment(s), screening(s) or evaluation(s).

(2) The written recommendation of the qualified mental health professional, mental health provider, or licensed physician shall be maintained in the resident's record.

(3) The facility administrator or designee shall review the written recommendation of the qualified mental health professional, mental health provider, or licensed physician prior to reclassifying a resident as no longer being at high risk for suicidal behavior.

(4) Only the facility administrator or designee shall authorize the reclassification of a resident classified as high risk for suicidal behavior under this section.

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

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

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Brett Bray
General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7014

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SUBCHAPTER F. RESIDENT RIGHTS AND PROGRAMMING

37 TAC §§355.600, 355.602, 355.604, 355.610, 355.612, 355.614, 355.616, 355.618, 355.620, 355.624, 355.626, 355.630, 355.632, 355.634, 355.636, 355.638, 355.640, 355.644, 355.648, 355.650, 355.654, 355.658, 355.660, 355.662, 355.664, 355.668, 355.670, 355.672, 355.674, 355.678, 355.680, 355.684

The new sections are proposed under Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

No other statute, code, or article is affected by this proposal.

§355.600. Visitation.

(a) Residents have the right to receive visitors and to communicate subject only to the limitations authorized in §355.602 of this title.

(b) Residents shall be allowed visitation by a parent, legal guardian, or custodian at least once every seven calendar days for at least 30 minutes or the equivalent over multiple visits.

(c) The parent, legal guardian, or custodian of the resident shall be provided a copy of the visitation schedule as soon as possible after the resident's admission to the facility.

(d) A registry of all visitors shall be maintained to document the name and relationship to the resident.

(e) A parent, legal guardian, or custodian shall not be denied private, in-person communication with his or her child for reasonable periods of time. The time, place, and conditions of the private, in-person communication may be regulated only to prevent disruption of scheduled activities and to maintain the safety of the facility/program.

§355.602. Limitations on Visitation.

(a) The policies, procedures, and practices of the facility may limit a resident's visitation rights only to the extent required to maintain safety of the facility.

(b) Restrictions on a resident's visitation rights shall not be imposed as a disciplinary sanction.

(c) The facility administrator or designee shall provide written documentation justifying any restriction placed on a resident's visitation rights.

(d) A resident shall not be denied communication or visitation with a parent, legal guardian, or custodian for a prescribed period of time after admission into the facility.

§355.604. Access to Attorney.

A resident shall be permitted reasonable opportunities for confidential contact with the resident's attorney and the attorney's designated representatives through telephone, uncensored letters, and personal visits. A facility does not need to suspend visual supervision to accommodate this provision.

§355.610. Telephone.

(a) Each facility shall have written policies and procedures regarding the rules for reasonable and fair telephone access by residents. The policy shall detail the specific telephone number(s), time of day, and length of phone calls allowed.

(b) Restrictions on a resident's telephone rights shall not be imposed as a disciplinary sanction.

(c) At a minimum, residents shall be provided the opportunity to complete at least one five-minute phone call every seven calendar days.

(d) Facility staff shall document any restriction placed on a resident's telephone usage and maintain this documentation in the resident's file.

(e) The facility's policies and procedures shall ensure the resident's parent, guardian, or custodian be provided with a copy of the policy regarding telephone privileges as soon as possible after the resident's admission to the facility.

§355.612. Mail.

(a) Residents shall be provided access to writing materials and postage for no fewer than two letters every seven calendar days.

(b) When a resident is released or transferred from the facility, his or her mail shall be forwarded to the resident's new address.

(c) Each facility shall maintain written policies and procedures regarding the disposition of property received in the mail.

§355.614. Limitations on Mail.

(a) Authorized Limitations. A resident's rights to privacy and correspondence may not be limited except when:

(1) a reasonable belief exists to suspect that the correspondence is part of an attempt to formulate, devise, or otherwise effectuate a plan to violate a court order or state or federal laws. If such cause exists, then facility staff shall:

(A) ask the resident's permission to read the letter;

(B) if permission is denied, request a search warrant prior to opening and reading the letter; and

(C) if a search warrant request is denied, the correspondence shall be provided to the resident;

(2) correspondence with certain individuals is specifically forbidden by:

(A) the resident's juvenile court-ordered rules of probation or parole;

(B) the facility's rules of separation; or

(C) a specific list of individuals furnished by a resident's parents, legal guardian, or custodian indicating who they feel should not communicate with the resident.

(b) Returning Mail. Incoming correspondence described by subsection (a)(2) of this section shall be returned unopened to the sender.

(c) Withholding Mail. When mail is withheld from the resident, the reasons shall be documented and a copy placed in the resident's file.

§355.616. Legal Correspondence.

Residents shall be furnished adequate postage for legal correspondence during their stay in the facility.

§355.618. Inspection of Mail.

Mail may be opened by staff only in the presence of the resident with inspection limited to searching for contraband.

§355.620. Illegal Discrimination.

Residents shall not be subjected to discrimination based on race, national origin, religion, sex, sexual orientation, gender identity, or disability.

§355.624. Prohibited Supervision.

Residents shall not be subjected to supervision and control by other residents.

§355.626. Facility Orientation.

(a) Each resident shall be provided a verbal orientation within 12 hours after admission into the facility.

(b) The verbal orientation shall include an explanation of the facility's:

(1) procedures to access health care and available services;

(2) program rules with corresponding and maximum disciplinary sanctions;

(3) grievance policies and procedures;

(4) procedures to access mental health care and available services;

(5) information regarding the reporting of suspected abuse, neglect, or exploitation of a child in a juvenile justice facility; and

(6) policy that states the resident is ensured the right of confidentiality with regard to the items included in paragraphs (3) and (5) of this subsection and will not face reprisal for participating in the procedures included in these items.

(c) If the resident is not sufficiently fluent in English, arrangements shall be made to provide the resident with an orientation in the resident's primary language within 48 hours after admission.

(d) When a literacy problem prevents a resident from understanding written rules, a staff member or translator shall assist the resident within 48 hours after admission.

(e) The facility shall:

(1) provide each resident a written copy of the orientation materials upon completion of the orientation process; and/or

(2) post the orientation information in an accessible area in the housing unit such as on a wall or in a binder.

§355.630. Resident Discipline Plan.

Each facility shall develop and implement a written resident discipline plan that provides for the fair and consistent application of resident rules and sanctions. The resident discipline plan shall include, at a minimum, the following:

(1) resident rule violations categorized into minor infractions and major violations as well as the corresponding sanctions available to staff. Minor infractions shall be limited to those rules which do not represent serious behavior against persons or property and behavior that does not pose a serious threat to facility order and safety. Major violations shall be limited to those rules which constitute serious behavior against persons or property and behavior that poses a serious threat to facility order and safety;

(2) provisions to ensure that rule infractions or resident behaviors which constitute probable cause for a class B misdemeanor offense or above shall be referred to the law enforcement agency with jurisdiction for possible investigation and/or prosecution;

(3) a listing of prohibited sanctions for residents that includes at least:

(A) corporal punishment;

(B) humiliating punishment including verbal harassment of a sexual nature or that relates to a resident's sexual orientation or gender identity;

(C) allowing or directing one resident to sanction another;

(D) group punishment for the acts of individuals;

(E) deprivation or modification of required meals and snacks;

(F) deprivation of clean and appropriate clothing;

(G) deprivation or intentional disruption of scheduled sleeping opportunities;

(H) deprivation or intentional delay of medical or mental health services;

(I) physical exercise imposed for the purposes of compliance, intimidation, or discipline with the exception of practices allowed in §355.710 of this title; and

(J) placement in a locked area or room during disciplinary restriction or disciplinary separation;

(4) provisions that a resident shall be provided written notice of the alleged major rule violation against him or her no more than 24 hours after the violation;

(5) provisions for an informal process for residents to resolve conflict with rule infractions and the corresponding sanctions, if the facility chooses to employ such a process. This process shall include established guidelines that provide instruction for residents and staff in using this informal process to review and resolve resident concerns. In no case shall a resident be sanctioned or retaliated against for electing to forego the informal disciplinary review process when they are eligible for formal disciplinary reviews;

(6) provisions for disciplinary reviews for major rule violations, including established requirements for when to initiate formal disciplinary reviews and any ensuing appeals; and

(7) provisions for the administrative review and closure of formal disciplinary reviews and appeals that are not disposed of prior to a resident's discharge from the facility.

§355.632. Formal Disciplinary Reviews for Major Rule Violations.

Residents who are charged with a major rule violation shall receive a formal disciplinary review unless waived in writing by the resident. The formal disciplinary review shall occur within ten calendar days after the date the resident received notice of the violation.

§355.634. Formal Disciplinary Review Process.

The formal disciplinary review process shall, at a minimum, adhere to the following requirements:

(1) Disciplinary reviews must be before a neutral and impartial person or board that shall not include any staff member directly involved in the alleged rule violation or the imposed sanction.

(2) Provisions shall be made for the disclosure of the evidence against the resident accused with a rule violation. A facility may choose not to disclose all evidence against a resident when the facility can document that the evidence would likely:

(A) interfere with a corresponding criminal investigation or prosecution;

(B) create a significant breach of facility security; and/or

(C) compromise the physical safety of a resident.

(3) A resident shall have the opportunity to be heard in person and to present evidence on his or her behalf.

(4) A resident shall have the opportunity to request relevant witnesses on his or her behalf.

(5) A resident shall have the opportunity to secure the aid of a staff member if the resident is illiterate, disabled, or otherwise unable to understand the nature of the proceedings.

(6) If the disciplinary review determines that the resident did not commit a rule violation or that the corresponding sanction was inappropriate, facility staff shall restore or reinstate any denied or modified resident privileges; and

(7) At the conclusion of a disciplinary review, a written statement by the individual who conducted the disciplinary review or disciplinary board shall be prepared indicating the evidence relied upon and justification for the disposition. The statement shall be made available to the resident for review and a copy shall be retained in the resident's file.

§355.636. Appeal of Disciplinary Review.

A resident may appeal the findings of a disciplinary review. The facility's resident discipline plan shall include at least the following:

(1) provisions for a documented appeals process before a neutral and impartial person or persons who are not members of the disciplinary board. The appeals process shall afford each of the due process provisions enumerated in §355.634(2) - (7) of this title;

(2) provisions that require the resident to submit the written request for an appeal no later than seven calendar days after a disposition is rendered in the disciplinary review;

(3) provisions that require the resident's appeal to be heard within 30 calendar days after resident's request; and

(4) provisions for a written statement by the appeals officer or appellate board at the conclusion of the review indicating the evidence relied upon and justification for the disposition. The statement shall be made available to the resident for review and a copy shall be retained in the resident's file.

§355.638. Disciplinary Restriction.

(a) Disciplinary restriction may be used for minor rule infractions, major rule violations, imminent physical threat, or preventive behavior modifications. Disciplinary restriction shall not exceed 90 minutes for the same incident.

(b) If the resident is behind an architectural barrier during the period of restriction, a juvenile supervision officer or youth activities supervisor shall personally observe and record the resident's behavior at random intervals not to exceed 15 minutes.

§355.640. Disciplinary Separation.

(a) Disciplinary separation may be used only when a resident commits a major rule violation or poses an imminent physical threat to self or others. Disciplinary separation shall not exceed 24 hours for the same incident.

(b) A written disciplinary report that describes the resident's precipitating behavior and identifies the staff's response shall be completed promptly, but no later than the end of the shift on which the disciplinary separation occurs. The report shall be submitted immediately to the facility administrator for review.

(c) If the resident is behind an architectural barrier during the period of disciplinary separation, a juvenile supervision officer or youth activities supervisor shall personally observe and record the resident's behavior at random intervals not to exceed 15 minutes.

(d) Any time period a resident is placed in disciplinary separation shall be continuous and shall include non-program hours.

§355.644. Resident Grievance Process.

(a) Grievance Process. Written policies and procedures, as well as actual practices, shall demonstrate that there is a formalized grievance process to address residents' complaints about their treatment and facility services. At a minimum, the formalized grievance process shall include the following policy, procedural, and practice elements:

(1) the residents' ability to submit a grievance and have full access to the process;

(2) a written response and resolution to all grievances no later than 10 calendar days from the date the grievance is received by staff;

(3) confidentiality of grievance without fear of reprisal;

(4) the resident's ability to participate in the resolution of a grievance, including the use of an intermediary and the ability to request witnesses;

(5) periodic formal reviews of the grievance process and dispositions by administrative-level staff;

(6) a tracking system and grievance log that accounts for all grievances submitted; and

(7) post-release forwarding of a resident's unresolved grievance to the facility administrator or designee to determine if any action is needed.

(b) Grievance Appeals. A resident may appeal a grievance resolution. The facility shall have written policies and procedures that include appeal provisions. The provisions shall include at least the following:

(1) The resident shall have at least one level of appeal.

(2) The resident shall have the ability to appeal to a supervisory or higher-level staff member who is not named in the grievance and who did not provide the initial grievance resolution.

(3) A written response and resolution shall be provided to the resident within ten calendar days after the resident's appeal request.

(4) A copy of the final disposition shall be retained in the resident's file.

(c) Grievance Form. The grievance form shall contain the following elements:

(1) the name of the resident;

(2) the housing assignment;

(3) the date of the grievance;

(4) the grievance tracking identification;

(5) the nature or description of the grievance;

(6) the date and time of receipt;

(7) the name and title of the person receiving the grievance;

(8) the response or resolution to the grievance;

(9) the date and time of the response;

(10) the name and title of the person responding to the grievance; and

(11) a space for a written request to appeal the grievance response.

§355.648. Religious Services.

Residents shall not be required to participate in religious services and religious counseling. Residents who refuse to participate in religious services or religious counseling shall not be subjected to disciplinary sanctions.

§355.650. Program Hours.

Each facility shall have a daily written program schedule outlining the stated activities during program hours.

(1) Each resident shall be provided a minimum of ten hours of structured and unstructured activities.

(2) Exceptions. Residents who are in disciplinary separation, disciplinary restriction, or medical separation may receive modification to their program schedule.

(3) The facility shall maintain documentation of any program schedule deviation or modification.

§355.654. Residential Case Plan and Case Plan Review.

A case plan shall be completed and reviewed for every adjudicated youth in the facility in accordance with requirements of §341.37 and §341.39 of this title.

§355.658. Recreation and Exercise.

(a) Supplies. Recreational equipment and supplies shall be provided to the residents.

(b) Schedule. The recreational schedule shall offer the following programming:

(1) at least one hour of large muscle exercise shall be scheduled each day; and

(2) at least one hour of open recreational activity shall be scheduled each day.

(c) Exceptions. A resident's recreational schedule may be altered under the following conditions:

(1) participation by the resident is contraindicated for medical reasons;

(2) the resident is in disciplinary separation, disciplinary restriction, or medical separation;

(3) the resident has a scheduled appointment;

(4) extenuating circumstances exist that impede the recreational schedule; or

(5) the resident presents an imminent danger to self or others. Use of this provision shall require the written approval of the facility administrator.

§355.660. Educational Program.

(a) The facility administrator shall ensure that there is an educational program that:

(1) requires participation by all residents who have not attained a high school diploma or GED; and

(2) provides educational services that comply with federal and state laws and regulations and that are commensurate with educational services provided to other students attending the educational provider's main campus.

(b) When a resident is admitted to the facility, the facility administrator shall notify the school district in which the facility is located of the admission promptly, but no later than three business days after the admission.

(c) The facility administrator shall ensure that the education provider has access to residents so that the educational program is afforded to all residents.

§355.662. Educational Curriculum.

Students shall be provided coursework that is aligned with the Texas Essential Knowledge and Skills, in accordance with rules adopted by the Texas Education Agency.

§355.664. Instructional Days.

The facility administrator shall ensure that the educational program provides for at least 180 days of instruction unless a waiver has been granted by the Texas Education Agency for fewer days or the number of educational days coincides with the local school district calendar.

§355.668. Special Education.

(a) The facility administrator, through a cooperative effort with the Local Education Agency (LEA), will ensure that residents with disabilities are provided a free and appropriate public education as determined by the Admission, Review, and Dismissal committee in order to meet the individual educational needs of the student as defined by federal and state laws.

(b) The facility administrator, through a cooperative effort with the Local Education Agency (LEA), will ensure that residents with disabilities have available an instructional day commensurate with that of students without disabilities, in accordance with requirements contained in 19 TAC §89.1075.

§355.670. Educational Space.

If the educational program is administered on facility premises, the facility administrator shall ensure that educational space is adequate to meet the instructional requirements for each resident.

§355.672. Educational Staff Orientation.

(a) If the educational program is administered on facility premises, all permanent educational staff shall receive a facility orientation prior to performing instructional duties. Orientation shall include:

(1) security procedures;

(2) emergency procedures;

(3) behavior management system and prohibited sanctions; and

(4) reporting abuse, neglect, and exploitation.

(b) A substitute educational staff member shall receive the orientation described in subsection (a) of this section prior to performing instructional duties if he/she is providing sole supervision of residents.

§355.674. Reading Materials.

Age-appropriate reading materials shall be available to all residents.

§355.678. Vocational Training Program.

If the facility offers a vocational training program that is not administered by the school and through which no academic credit is gained, the facility administrator shall ensure that appropriately qualified individuals provide instruction or mentoring in the vocational skills.

§355.680. Work by Residents.

(a) Residents may be required to perform the following types of work responsibilities without monetary compensation:

(1) assignments which are part of a formalized vocational training curriculum;

(2) tasks performed as a community service pursuant to a juvenile court order; and

(3) routine housekeeping chores which are shared by all youth in the facility, including general facility maintenance.

(b) Residents shall not be permitted to perform any work prohibited by state or federal regulations pertaining to child labor.

(c) Repetitive, purposeless, or degrading make-work is prohibited.

(d) A resident's work assignments shall be excused or temporarily suspended if medically contraindicated.

(e) Residents shall be provided with the necessary supervision, appropriate tools, cleaning implements, and clothing to safely and effectively complete their assignments.

(f) Residents shall not perform personal services for staff.

§355.684. Experimentation and Research Studies.

(a) Experimentation. Participation by residents in medical, psychological, pharmaceutical, or cosmetic experiments is prohibited.

(b) Research Studies. Participation by residents in medical, psychological, pharmaceutical, or cosmetic research is prohibited unless the research study is approved in writing by the governing board subject to the following guidelines:

(1) The governing board shall promulgate policies that govern all authorized research studies. Studies that include medically invasive procedures shall be prohibited.

(2) Approved research studies shall adhere to all applicable policies of the authorizing governing board.

(3) Research studies approved by the governing board shall be reported to TJJD in a format prescribed by TJJD prior to the commencement of the study.

(4) The results of the study shall be made available to TJJD upon request from the facility administrator, chief administrative officer, or governing board.

(5) Policies governing research studies shall adhere to all federal requirements governing human subjects and confidentiality.

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

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SUBCHAPTER G. PHYSICAL TRAINING PROGRAMS

37 TAC §§355.700, 355.702, 355.704, 355.706, 355.708, 355.710, 355.712

The new sections are proposed under Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

No other statute, code, or article is affected by this proposal.

§355.700. Physical Training Program.

(a) A non-secure correctional facility shall not operate a physical training program if the facility accepts non-adjudicated juveniles.

(b) This subchapter applies only to facilities that operate a physical training program.

§355.702. Governing Board Approval of Physical Training Program.

(a) Facilities that utilize a physical training program shall have written authorization from the governing board prior to operation.

(b) The governing board's operational authorization process and written authorization shall be separate and distinct from the juvenile board's annual certification of the facility required by Texas Family Code §51.126.

(c) The governing board's written authorization shall be retained as long as the physical training program remains operational.

§355.704. Pre-Admission Requirements for Physical Training Programs.

(a) Prior to admitting a resident into the facility, the following documentation shall be reviewed by the facility administrator or designee:

(1) a medical release signed and dated by a physician, physician assistant, or nurse practitioner approving the resident's participation in the facility's physical training program;

(2) acknowledgement of the physician, physician assistant, or nurse practitioner of the components of the physical training program; and

(3) a psychological evaluation, or behavioral health assessment, which shall indicate in writing the appropriateness for the juvenile's placement at the facility based on the needs and/or limitations of the child, including the juvenile's mental capabilities and limitations.

(b) The documentation required by this rule shall be maintained in the resident's file or the resident's medical file.

§355.706. Physical Training Program Plan.

The facility shall have a written physical training program plan developed in consultation with the facility's health service authority and approved by the governing board. The plan shall include:

(1) a physical fitness screening tool that addresses whether the resident has the physical capability to fully participate in the physical training program. The tool shall be selected or developed by the facility administrator or designee;

(2) a curriculum that addresses the specific types of exercises authorized to be used within the program. The curriculum shall:

(A) define the time limitations of the individual exercises used in the physical training program; and

(B) define the set number of repetitions of each exercise per session;

(3) specific, minimum criteria to determine when outdoor weather conditions are too extreme or dangerous for physical training. The criteria shall address scheduling changes when necessary to ensure the safety of residents (e.g., seasonal scheduling changes to accommodate for weather patterns);

(4) adjustments for increased dietary allowances in the residents' menu plan to accommodate the need for modified caloric intake and hydration; and

(5) protocols for removal from the program if a resident becomes unfit to participate in the physical training program due to medical or mental health reasons.

§355.708. Injury and Illness of Residents in Physical Training Programs.

If a resident is deemed unfit to participate in the physical training program at any time due to medical reasons, to return the resident to the program, the facility must obtain a written release signed by a physician, nurse practitioner, or physician assistant indicating that the resident is fit to resume program activities.

§355.710. Disciplinary Sanctions in Physical Training Programs.

(a) The facility shall have written policies and procedures, including guidelines, parameters, and limitations, on the types of physical activity that may be used for discipline or refocusing purposes (e.g., physical activities used to discipline for non-compliant behavior or as a substitute for write-ups or disciplinary separation).

(b) Physical exercise used for intimidation shall be prohibited in all facilities. This rule allows for physical exercise to be used for discipline in non-secure correctional facilities that incorporate a physical training program.

(c) Residents shall not receive sanctions that cause bodily duress (i.e., physical punishment to the body).

§355.712. Physical Fitness Screening Tool.

(a) The resident shall not participate in the physical training program until the initial physical fitness screening tool has been completed and evaluated.

(b) Every 30 calendar days, the facility shall administer the physical fitness screening tool to re-evaluate the resident's ability to participate in the physical training program.

(c) The results of the resident's physical fitness screening and the facility designee's evaluation of the screening results shall be maintained in the resident's file.

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SUBCHAPTER H. RESTRAINTS

37 TAC §§355.800, 355.802, 355.804, 355.806, 355.808, 355.810, 355.818

The new sections are proposed under Human Resources Code §221.002, which authorizes the Texas Juvenile Justice Department to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

No other statute, code, or article is affected by this proposal.

§355.800. Restraint Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless otherwise expressly defined within the chapter.

(1) Approved Mechanical Restraint Device--A professionally manufactured and commercially available mechanical device designed to aid in the restriction of a person's bodily movement. TJJD-approved mechanical restraint devices are limited to the following for non-secure correctional facilities:

(A) Ankle Cuffs--A metal band designed to be fastened around the ankle to restrain free movement of the legs;

(B) Handcuffs--Metal devices designed to be fastened around the wrist to restrain free movement of the hands and arms;

(C) Plastic Cuffs--Plastic devices designed to be fastened around the wrists or legs to restrain free movement of hands, arms or legs;

(D) Waist Belt--A cloth, leather, or metal band designed to be fastened around the waist used to secure the arms to the sides or front of the body; and

(E) Wristlets--A cloth or leather band designed to be fastened around the wrist which may be secured to a waist belt.

(2) Approved Personal Restraint Technique--A professionally trained, curriculum-based, and competency-based restraint technique that uses a person's physical exertion to completely or partially constrain another person's body movement without the use of mechanical restraints. Personal restraint techniques shall first be approved for use by TJJD.

(3) Chemical Restraint--The application of a chemical agent on a resident or residents.

(4) Mechanical Restraint--The application of an approved mechanical restraint device which restricts or aids in the restriction of the movement of the whole or a portion of an individual's body to control physical activity.

(5) Non-Ambulatory Mechanical Restraint--A method of prohibiting a resident's ability to stand upright and walk with the use of a combination of approved mechanical restraint devices, cuffing techniques, and the subject's body positioning. The four-point restraint and a restraint chair are examples of non-ambulatory mechanical restraints.

(6) Personal Restraint--The application of physical force alone, restricting the free movement of the whole body or a portion of an individual's body to control physical activity.

(7) Physical Escort--Touching or holding a resident with a minimum use of force for the purpose of directing the resident's movement from one place to another. A physical escort is not considered a personal restraint.

(8) Protective Devices--Professionally manufactured devices used for the protection of residents or staff that do not restrict the movement of a resident. Protective devices are not considered mechanical restraint devices.

(9) Restraint--The application of an approved personal restraint technique, an approved mechanical restraint device, or a chemical restraint to an individual so as to restrict the individual's freedom of movement or to modify the individual's behavior.

(10) Soft Restraints--Non-metallic wristlets and anklets used as stand-alone restraint devices. These devices are designed to reduce the incidence of skin, nerve, and muscle damage to the restrained subject's extremities.

§355.802. Restraint Requirements.

(a) Restraints shall only be used by juvenile supervision officers, youth activities supervisors, and probation officers.

(b) Prior to participating in any restraint, juvenile probation officers, youth activities supervisors, and juvenile supervision officers shall be trained in the use of the facility's specific verbal de-escalation policies, procedures, and practices.

(c) Prior to participating in a restraint, juvenile probation officers, youth activities supervisors, and juvenile supervision officers shall have received training and demonstrated competency in the TJJD-approved restraint used by the facility.

(d) Restraints shall only be used in instances of an imminent threat of self-injury, injury to others, or serious property damage.

(e) Restraints shall only be used as a last resort.

(f) Only the amount of force and type of restraint necessary to control the situation shall be used.

(g) Restraints shall be implemented in such a way as to protect the health and safety of the resident and others.

(h) Restraints shall be terminated as soon as the resident's behavior indicates that the imminent threat of self-injury, injury to others, serious property damage, or the threat of escape has subsided.

§355.804. Restraint Prohibitions.

Restraints that employ a technique listed in this section are prohibited:

(1) restraints used for punishment, discipline, retaliation, harassment, compliance, intimidation, or as a substitute for an appropriate disciplinary separation;

(2) restraints that deprive the resident of basic human necessities, including restroom privileges, water, food, and clothing;

(3) restraints that are intended to inflict pain;

(4) restraints that place a resident in a prone or supine position with sustained or excessive pressure on the back, chest, or torso;

(5) restraints that place a resident in a prone or supine position with pressure on the neck or head;

(6) restraints that obstruct the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(7) restraints that interfere with the resident's ability to communicate;

(8) restraints that obstruct the view of the resident's face;

(9) any technique that does not require the monitoring of the resident's respiration and other signs of physical distress during the restraint;

(10) percussive or electrical shocking devices;

(11) chemical restraints; and

(12) non-ambulatory restraints.

§355.806. Restraint Documentation.

(a) Except for restraints described in §355.818 of this title, all restraints shall be fully documented and the documentation shall be maintained. Written documentation regarding the use of restraints shall, at a minimum, require:

(1) the name of the resident;

(2) the name and title of the staff member(s) who administered the restraint;

(3) the date of the restraint;

(4) the duration of each type of restraint, including notation of the time each type of restraint began and ended;

(5) the location of the restraint;

(6) the description of the preceding activities;

(7) the behavior which prompted the initial and the continued restraint of the resident;

(8) the type of restraint(s) applied;

(A) the specific type of personal restraint hold applied;

(B) the type of mechanical restraint device(s) applied; and

(C) the type of chemical restraint(s) utilized;

(9) de-escalation efforts as well as all restraint alternatives attempted; and

(10) whether or not any injury occurred during the restraint and the description of the injury.

(b) Any deviations from the holds as trained in the TJJD-approved personal restraint technique shall also be documented.

§355.808. Personal Restraint.

In addition to the requirements found in §§355.802, 355.804, and 355.806 of this title, the use of personal restraints shall be governed by the following criteria:

(1) Personal restraints shall be administered in a manner specific, or consistent, to the approved personal restraint technique adopted by the facility.

(2) Juvenile supervision officers, youth activities supervisors, and probation officers shall be retrained in the approved personal restraint technique selected by the facility according to the requirements of the particular technique or at least every 365 calendar days, whichever time frame is shorter.

§355.810. Mechanical Restraint.

(a) Requirements.

(1) Only approved mechanical restraint devices shall be used by a facility.

(2) Mechanical restraint devices shall only be used in a manner consistent with their intended use.

(3) All mechanical restraint devices shall be inspected at least once each year, no later than the last day of the calendar month of the previous year's inspection. All faulty or malfunctioning devices shall be restricted from use until they are repaired or replaced.

(b) Prohibitions.

(1) Approved mechanical restraint devices shall not be altered from the manufacturer's design.

(2) A resident shall not be placed in a prone position while restrained in any mechanical restraint for a period of time longer than necessary to apply the restraint device.

(3) A mechanical restraint shall not secure a resident in a prone, supine, or lateral position with the resident's arms and hands behind the resident's back and secured to the resident's legs.

(4) Approved mechanical restraint devices shall not be secured so tightly as to interfere with circulation or so loosely as to cause chafing of the skin.

(5) Approved mechanical restraint devices shall not be secured to a stationary object.

(6) A resident in an approved mechanical restraint device shall not participate in any physical activity.

(7) Plastic cuffs shall only be used in emergency situations.

§355.818. Preventative Mechanical Restraints.

(a) For resident, staff, and public safety purposes, a resident may be placed in ankle cuffs, handcuffs, wristlets, or a waist belt absent the imminent threat requirements enumerated in §355.802(d) of this title. These types of preventative mechanical restraints are authorized under the following circumstances:

(1) Intra-facility relocation. Mechanical restraints may be used when moving a resident from point to point within a secure facility. The mechanical restraint devices shall be removed upon completion of the resident's relocation.

(2) Vehicular transport. A resident shall not be secured to:

(A) any part of the vehicle; or

(B) another resident.

(3) Off-site activities. Mechanical restraints may be used when a resident is required to leave the facility premises.

(b) The routine, preventative mechanical restraint applications used in this section are exempt from the documentation requirements contained in §355.806 of this title, except when:

(1) the resident's cooperation is compelled through the use of a personal restraint;

(2) the resident receives an injury in relation to the restraint event or restraint devices; or

(3) the resident's behavior escalates to the imminent threat criteria listed in §355.802(d) of this title.

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