

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

## TITLE 1. ADMINISTRATION

### PART 3. OFFICE OF THE ATTORNEY GENERAL

#### CHAPTER 56. SKIMMERS

##### 1 TAC §§56.1 - 56.6

The Office of the Attorney General ("OAG") proposes new rules, §§56.1 - 56.6, relating to best practices for motor fuel merchants to prevent, detect, and report the installation of payment card skimmers on their motor fuel dispensers.

##### BACKGROUND

The OAG proposes these rules in order to implement §1 of H.B. 2945 enacted in 2019 by the 86th Regular Session of the Texas Legislature. Specifically, §1 of H.B. 2945 created a new Chapter 607 of the Tex. Bus. & Com. Code related to payment card skimmers on motor fuel dispensers. Chapter 607, which took effect September 1, 2019, requires motor fuel merchants to implement procedures to prevent, detect, and report the installation of skimmers on their unattended motor fuel dispensers. The statute further directs the OAG to adopt rules to establish practices for merchants to use to comply with those provisions. In accordance with §607.052 of the Tex. Bus. & Com. Code, in drafting the proposed rule, the OAG considered emerging technology, compliance costs to merchants, and any impact the policies and procedures may have on consumers.

##### SECTION-BY-SECTION SUMMARY

Section 56.1, relating to Definitions, incorporates definitions from Chapter 607 of Tex. Bus. & Com. Code and adds definitions for other terms used in the rules. The proposed definitions are intended to add clarity and specificity to the requirements of the rules.

Section 56.2, relating to Policies, Procedures, and Training, requires motor fuel merchants to implement and maintain written policies and procedures for complying with the proposed rules and to properly train employees to ensure they understand and will comply with those policies and procedures. Subsection (a) requires any merchant that has a fuel dispenser with an unattended payment terminal to implement and maintain written policies and procedures, consistent with the mandates of Chapter 607 of the Tex. Bus. & Com. Code. Consistent with best practices in the area of data security and the recommendation of experts, the proposed rule requires the policies and procedures to include a plan of action that the merchant will follow upon the discovery of a skimmer. Subsection (b) requires merchants to conduct training for all employees who are involved in the merchant's fuel operations in any capacity to ensure that they understand the policies and procedures as well as how to comply

with them. The proposed rule also requires merchants to include in the training background information regarding skimmers, and the harm that such skimmers can cause to both customers and to the merchant. Understanding the harms posed by skimmers will help employees to understand the importance of complying with the merchant's policies and procedures. The proposed rule also requires training on recognizing suspicious activity and warning signs so employees can effectively prevent and detect skimmers.

Section 56.3, relating to Minimum Practices for Prevention of Skimmers, sets out required practices for all merchants that have a fuel dispenser with an unattended payment terminal. Paragraph (1) requires merchants to implement and maintain the policies, procedures, and training detailed in proposed §56.2. Paragraph (2) requires merchants to affix to or install on each door or panel that provides access to an interior portion of the dispenser from which the payment terminal or any electronic component of the payment terminal may be accessed, a lock requiring a key unique to the merchant's place of business. One characteristic that makes fuel dispensers attractive to criminals is that they have historically been manufactured and installed to be accessible with a universal key. Criminals can therefore open many motor fuel dispensers using just a few keys. The proposed rule would require merchants to utilize locks with unique keys, while providing merchants the flexibility to use the same key on all dispensers at the same business location. A merchant that has multiple business locations, however, would need to use a different key for each location, in part to ensure that if a key is compromised at one location, it would not affect the security of dispensers at other locations.

Paragraph (3) of proposed §56.3 requires merchants to maintain a log of all persons who do work on the forecourt. In order to avoid detection, criminals sometimes impersonate technicians working on the fuel dispenser. Requiring all persons who are working on the forecourt to check in with the merchant and sign a maintenance log will allow employees to quickly recognize when unauthorized persons are accessing the fuel dispensers.

Paragraph (4) of proposed §56.3 requires merchants to use tamper-evident security labels to secure every opening that provides access to an interior portion of a dispenser from which a payment terminal or any electronic component of a payment terminal may be accessed. Using tamper-evident security labels will allow merchants, as well as consumers, to see when the pump has been opened without authorization. Unfortunately, not long after merchants started using security labels, criminals started buying and carrying their own labels so that they could remove the merchant's label, open the dispenser, and then replace the label with a similar-looking label. The proposed rule, therefore, requires merchants to use numbered security labels, so that the merchant can confirm that the number on the security label on

the dispenser matches the number on the label that the merchant put on the dispenser.

Paragraph (5) of proposed §56.3 requires merchants to conduct a thorough inspection of the exterior of each fuel dispenser at least once per day. During this inspection, merchants are required to conduct a visual inspection of the dispenser, looking for signs that a skimmer has been installed. Today, most skimmers are installed inside the pump and are not visible from the outside. Merchants are therefore required to look for signs that the dispenser has been opened, including scratches, pry marks, drilled holes, and other signs that the dispenser has been tampered with. In addition, as it becomes harder to get into the dispenser, and as the technology inside the dispenser gets harder to compromise, it is likely that criminals will revert to placing skimmers on the outside of the dispenser. Therefore, regardless of how diligent a merchant is and how well they protect the inside of the dispenser, it remains vital that the merchant continue to inspect the exterior of the dispenser for skimmers, shimmers, deep-insert skimmers, overlays, and other items that may have been installed on the exterior of the dispenser. It is also critical that every time the merchant does an inspection, the merchant inspects the tamper-evident security labels to confirm that the number on the label matches the merchant's log and that the label has not been cut or tampered with.

Criminals sometimes resort to extreme measures to access fuel dispensers. For example, there have been reports that criminals have drilled a hole in a dispenser door to install a skimmer and then covered the hole with a sticker or a leaflet holder. The rule therefore requires merchants to maintain a photo of its dispensers that employees can review and compare to the dispenser the employee is inspecting. The proposed rule provides merchants discretion regarding how and where to maintain the photo. Some may choose to print out the photo and post it on a bulletin board behind the counter, while others may keep a copy in their written policies and procedures, and others may maintain the photo electronically. The proposed rule gives merchants the flexibility to determine the best way to maintain the photo, so long as the photo is easily accessible to employees conducting the dispenser inspections. Moreover, to the extent that all dispensers are uniform in appearance (e.g. have the same stickers, leaflets, etc. in essentially the same position on each dispenser), the merchant only needs to maintain a photo of a single dispenser.

Many experts recommend inspections even more frequently than daily, such as three times a day or at every shift change. More frequent inspections allow for faster detection of skimmers. In addition, some criminals install skimmers for less than 24 hours in order to avoid detection. Nevertheless, in order to limit the burden on small businesses and to give merchants sufficient flexibility, the proposed rule only requires that merchants conduct such inspections at least once per day. The OAG encourages merchants to conduct inspections more frequently than once per day. The OAG cautions, however, that the quality of the inspections is more important than the quantity. The OAG believes that less frequent, but more thorough inspections are more likely to detect skimmers than inspections that are performed frequently, but less thoroughly.

Paragraph (5) of proposed §56.3 further requires merchants to maintain a log of all inspections, documenting the date and time of the inspection as well as the name of the person who conducted the inspection. Although not required by the proposed rule, the OAG recommends that inspections be conducted by

different employees at least periodically. For example, if a merchant conducts more than one inspection per day, it is recommended that the inspections be conducted by at least two different employees. If a merchant only conducts inspections once a day, it is recommended that no single employee conduct inspections on consecutive days. This will help limit the likelihood that an employee will become careless in the inspection process and will help limit the risk that the person conducting the inspections is complicit with persons installing skimmers. However, because some small businesses may have a limited number of employees, the proposed rule does not require that the inspections be conducted by multiple employees.

If an inspection reveals anything suspicious, signs that a dispenser has been opened or tampered with, or evidence that a skimmer has been installed in or on a dispenser, subparagraph (5)(F) of proposed §56.3 requires the merchant to disable the dispenser and to take appropriate steps to ensure that customers do not try to use the payment terminal that may include a skimmer. The merchant must keep the dispenser disabled until it has been manually inspected by a person trained in the identification and detection of skimmers. As with the dispenser's exterior, the proposed rule requires the merchant to maintain a photo of the interior of the dispenser that the person conducting an inspection may use to help determine whether any foreign object has been installed. And as with the photo of the exterior, the proposed rule provides merchants with discretion regarding how the merchant will maintain the photo of the interior and only requires one photograph to be maintained for all substantially similar dispensers.

In order to minimize the impact of the proposed rule on small businesses in remote areas of the state, where it may be difficult or expensive to have a service technician travel to the merchant's place of business, the proposed rule gives merchants discretion regarding how to comply with the rule. The manual inspection may be conducted by a service technician or an employee, so long as the person has been trained in the detection of skimmers. Moreover, the proposed rule does not specify how, where, or by whom such training must occur. The training does not have to be a formal class. It could be sufficient to have a service technician or experienced law enforcement officer come to the merchant's place of business and train employees on how to identify and detect skimmers on the merchant's own dispensers. It may be sufficient thereafter for experienced employees to train new employees.

In addition, paragraph (7) provides that if shutting down a dispenser would cause a merchant hardship or substantially disrupt the merchant's business, the merchant need not completely shut down the dispenser, but can instead disable the payment terminal and take steps to prevent consumers from trying to use the payment terminal. The OAG has provided this flexibility to accommodate small businesses that may have only a couple of dispensers. Instead of completely disabling the dispenser, resulting in lost business and potentially negatively impacting consumers, the merchant may cover the payment card slot and direct customers to pay inside the merchant's place of business.

Paragraph (6) of proposed §56.3 requires merchants to monitor its dispensers and payment terminals for high levels of invalid payment card read errors, dispenser offline messages, or other indications of problems accepting payment cards at the pump. These could be signs that a skimmer has been installed on the dispenser. The merchant may also be contacted by a card brand, a payment processor, a financial institution, a law enforcement officer, or a representative of the Center, informing the merchant

that the merchant's place of business appears to be a common point of purchase for fraudulent activity. If the merchant detects suspicious activity or if the merchant is notified by someone else that it may be a common point of purchase for fraudulent activity, the rule requires the merchant to take reasonable steps to investigate whether a skimmer has been installed on one of its motor fuel dispensers. If a merchant receives or observes credible evidence that a skimmer has been installed on a dispenser, the merchant must disable the affected dispenser until a person trained in the detection of skimmers has conducted a manual inspection of the dispenser. Just as under subparagraph (5)(F), paragraph (6) gives the merchant discretion regarding whether to have the dispenser inspected by a service technician or an employee who has been trained in the identification and detection of skimmers. Paragraph (7) also gives the merchant the ability to just disable the payment terminal and have customers pay inside if shutting down the dispenser would cause a hardship or substantially disrupt the merchant's business. Paragraph (8) requires the merchant to maintain a log of all inspections conducted pursuant to subparagraph (5)(F) or paragraph (6).

Section 56.4, relating to Additional Practices for the Prevention of Skimmers at Medium-Risk Places of Business, sets out practices a merchant must follow if the merchant's place of business meets the criteria to be a medium-risk place of business. Under the proposed rule, whether a merchant's place of business is considered a medium-risk place of business is determined on a sliding scale based on the number of dispensers the merchant's place of business has and the number of skimmer breaches it has suffered in a 24-month period. For locations with ten or fewer dispensers, the merchant's place of business is considered a medium-risk place of business if it has suffered a skimmer breach on more than two separate occasions in a 24-month period. For locations with eleven to twenty dispensers, the merchant's place of business is considered a medium-risk place of business if it has suffered a skimmer breach on more than four separate occasions in a 24-month period. For locations with more than twenty dispensers, the merchant's place of business is considered a medium-risk place of business if it has suffered a skimmer breach on more than seven separate occasions in a 24-month period.

Paragraph (1) of proposed §56.4 requires merchants whose place of business meets the criteria for a medium-risk place of business to implement a program to electronically monitor their dispensers at that place of business. The merchant must implement the electronic monitoring program as soon as practical, but not later than ninety days after the date on which the place of business meets the definition of a medium-risk place of business. In particular, the merchant must install on each dispenser an electronic monitoring device that will detect when the dispenser is opened without authorization, immediately disabling the dispenser and either sounding an audible alarm or sending a notification to the merchant. If the device sounds an audible alarm, the alarm must continue to emit an audible alert at least every 30 seconds until the merchant deactivates the alarm. If the device sends a notification, the notification must be sent to the merchant's owner, an executive of the merchant, or to a supervisor that the owner or executive has designated. This requirement ensures that notification goes to someone with sufficient authority to implement an appropriate response. However, this requirement does not exclude the possibility that notification could also be sent to a cashier or other employee. The rule also requires that the electronic monitoring device create a log of every event that occurs on the

dispenser. For example, the device must log every time that it is armed or disarmed and every time that it is triggered. The merchant must monitor the log for suspicious behavior, like the alarm being disarmed at inappropriate times. After the device has been triggered and the dispenser disabled, the dispenser must remain inoperable until it has been inspected by a person properly trained in the identification and detection of skimmers. The proposed rule gives the merchant discretion to have the inspection conducted by a service technician or an employee, so long as the inspector is trained in the identification and detection of skimmers.

Pursuant to §56.4, merchants whose place of business is a medium-risk place of business are required to install electronic monitoring devices only on dispensers that are not EMV compliant. Instead of installing electronic monitoring devices on its dispensers, a merchant may decide to upgrade the payment terminals on its dispensers to be EMV compliant.

A merchant who installs an electronic monitoring device or upgrades to EMV compliant dispensers is not required to use tamper-evident security labels pursuant to paragraph (4) of proposed §56.3.

For merchants whose place of business is a medium-risk place of business, paragraph (2) of proposed §56.4 requires the merchant to have the interior of each dispenser inspected by a person trained in the identification and detection of skimmers at least once a month. Paragraph (3) requires the merchant to maintain a log of all inspections required by proposed §56.4 and to retain such logs for a minimum of 12 months.

The OAG considered imposing the obligations in §56.4 on all merchants with an unattended payment terminal on a motor fuel dispenser. Such practices are strongly encouraged by many experts and law enforcement personnel. Because of the costs such practices might impose on small businesses and micro-businesses, however, the OAG has decided to impose these obligations only on merchants who meet the definition of a medium-risk place of business.

Section 56.5, relating to Additional Practices for the Prevention of Skimmers at High-Risk Places of Business, sets out the practices a merchant must follow if the place of business meets the criteria to be a high-risk place of business. Under the rule, whether a merchant's place of business is considered a high-risk place of business is determined on a sliding scale based on the number of dispensers the merchant's place of business has and the number of skimmer breaches it has suffered in a 24-month period. For locations with ten or fewer dispensers, the merchant's place of business is considered a high-risk place of business if it has suffered a skimmer breach on more than four separate occasions in a 24-month period. For locations with eleven to twenty dispensers, the merchant's place of business is considered a high-risk place of business if it has suffered a skimmer breach on more than seven separate occasions in a 24-month period. For locations with more than twenty dispensers, the merchant's place of business is considered a high-risk place of business if it has suffered a skimmer breach on more than eleven separate occasions in a 24-month period.

Paragraph (1) of proposed §56.5 requires merchants whose place of business meets the criteria for a high-risk place of business to install, no later than 90 days after it meets such criteria, and maintain high resolution video cameras. The cameras must be positioned in such a way that they will capture both images of license plates of vehicles entering and exiting the dispenser

area, and images of persons pumping gas at the dispenser. The rule requires all such images to be captured at a minimum resolution of 60 pixels per foot. Requiring a minimum resolution of 60 pixels per foot is likely to ensure that the images are of sufficient clarity to provide beneficial evidence in related law enforcement investigations. In order to ensure that this video footage is available for any relevant law enforcement matter, the rule requires merchants to retain the video footage for 31 days. In addition to providing valuable evidence, the mere presence of the video cameras will provide a strong deterrence against the installation of skimmers.

Paragraph (2) of proposed §56.5 requires merchants whose place of business meets the criteria for a high-risk place of business to install compliant lighting no later than 90 days after it meets such criteria and to maintain the lighting on the forecourt. In particular, the rule requires merchants to install lighting around the dispensers and under any canopy such that the minimum horizontal illuminance at grade level is 10 footcandles. Although this is a very modest level of required lighting, it should serve the purposes of the rule, which include providing enough light for video surveillance cameras and to provide enough light so that persons accessing fuel dispensers can be clearly seen by others, including other vehicles passing by. For marketing and promotional reasons, many, if not most, merchants already maintain lighting that meets the minimum required by the rule.

Section 56.6, relating to Detection, Reporting, and Removal of Skimmers, sets out practices that a merchant who discovers a skimmer on one of its dispensers must take. The proposed rule prohibits the merchant from touching the skimmer in order to avoid compromising or contaminating any physical evidence that a criminal may have left. The merchant is required to immediately disable both sides of the fuel dispenser, notify law enforcement, and take steps to protect the dispenser from tampering until law enforcement arrives. The merchant is also required to notify the Department within 24 hours. The proposed rule also requires the merchant to run a receipt for the last dispenser transaction on the compromised dispenser, and to preserve all video surveillance and logs related to the compromised dispenser. The proposed rule also requires the merchant to cooperate with law enforcement, the Department, and the Center in the investigation of the skimmer, including allowing access to the dispenser so that the skimmer may be removed. Recognizing that disabling the dispenser for an extended period could adversely affect the merchant, especially merchants that qualify as small businesses and micro-businesses, the proposed rule provides the merchant discretion to remove the skimmer itself if neither law enforcement nor the Department has contacted the merchant within 24 hours of the merchant's notification to the Department. If the merchant removes the skimmer, the rule requires that the merchant take certain steps to maintain the integrity of the evidence. This includes wearing sterile gloves to remove the skimmer, bagging the skimmer, and securing the skimmer for later pick-up by law enforcement.

#### FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Jennifer Jackson, Chief of the Consumer Protection Division of the OAG, has determined that for the first five-year period the proposed rules are in effect, there are no reasonably foreseeable implications relating to cost or revenues of state or local governments, under Tex. Gov't Code §2001.024(a)(4), as a result of enforcing or administering these new rules, as proposed.

#### PUBLIC BENEFIT/COST NOTE

Ms. Jackson has determined, under Tex. Gov't Code §2001.024(a)(5) that for the first five-year period the proposed rules are in effect, the public benefit of the rules will be a significant reduction in the number of skimmers installed on fuel dispensers in the State of Texas. Skimmers on motor fuel dispensers have become a massive problem in Texas over the last few years. Skimmers are commonly discovered by many different entities, including state regulators, local law enforcement agencies across the state, service technicians, and merchants themselves. Unfortunately, before H.B. 2945, there was no clear duty for merchants or service technicians to report skimmers they found. There was also no centralized location where skimmers were reported. As a result, there is no good data on the entire scope of the problem. What data there is, however, suggests that Texas is a hotbed for criminal enterprises committing card fraud by installing skimmers on motor fuel dispensers.

For example, a representative of Wex, Inc., a provider of payment processing and information management services based in the State of Maine, traveled to Texas to testify in support of H.B. 2945. In his testimony, the witness from Wex, Inc., testified that of the company's total nationwide fraud losses attributable to skimmers, 35 to 42 percent occurred in Texas. Testimony from detectives with the Houston Police Department and the Tyler Police Department was also presented at the hearing. Both detectives testified that Houston is a major hub for organized crime gangs involved in installing skimmers on fuel dispensers, and that those crime gangs have spread to other parts of Texas. The head of the Financial Crimes Unit of the Tyler Police Department testified that in the last two and one-half years, the Tyler Police Department has made over 45 felony arrests related to credit card skimming at gas stations. Similarly, the detective from the Houston Police Department testified that the motor fuel skimming problem involves hundreds of millions of dollars and that the Houston Police Department has thousands of suspects.

The scope of Texas' skimming problem is also evidenced by the number of skimmers found by the Texas Department of Agriculture ("TDA") on an annual basis. From 2017 through August 2019, TDA generally only inspected fuel dispensers for skimmers after it received a complaint alleging that there may be a skimmer in a fuel dispenser, and even then, TDA could only inspect the interior of a dispenser with the consent of the merchant. Nevertheless, in 2017 TDA found more than 40 skimmers in fuel dispensers in Texas, on 31 different occasions. On five other occasions, TDA did not find a skimmer at the time it inspected the dispenser but was informed that a skimmer had been removed before they arrived. In 2018, TDA found more than 60 skimmers on 39 different occasions. On another 16 occasions, TDA was informed that at least one skimmer was removed before TDA's inspection. From January 1, 2019, through August 20, 2019, TDA found more than 110 skimmers on 64 different occasions. Fourteen additional times, TDA was told that a skimmer was removed before the inspection.

Another good indication of the scope of the problem comes from a nationwide initiative the U.S. Secret Service carried out in November 2018. Over the Thanksgiving holiday, the Secret Service and its partners conducted inspections of over 400 gas stations in 16 states. During those searches, nearly 200 skimmers were recovered from inside fuel dispensers. With more than 14,000 gas stations in the State of Texas, the ratio of one skimmer for every two gas stations suggests there could be nearly 7,000 skimmers in fuel dispensers in Texas at any one time.

Although the number of skimmers found or reported to law enforcement officials is significant, most skimmers are likely discovered directly by merchants or by the service technicians the merchants retain to maintain their dispensers. For example, one large petroleum service company estimates that its technicians on average find at least one skimmer per day. Some merchants and service technicians notify local law enforcement when a skimmer is located. Others, however, do not notify any law enforcement agency, but simply remove and discard the skimmer. Therefore, there is no way to know the full scope of the problem.

Depending on how long a skimmer is installed on a fuel dispenser, each skimmer can result in the victimization of hundreds or thousands of consumers. Each victim will have to spend time and effort to reverse fraudulent charges they incur and clear the negative impact that such charges can have on their credit report. Such efforts can sometimes take months. And the fraudulent charges themselves can cause severe harm, especially for consumers paying by debit card. Criminals often withdraw thousands of dollars from the victim's bank account before being detected. Even though the consumer's financial institution typically restores the consumer's money, this process can take weeks and the financial impact on consumers living paycheck to paycheck can be catastrophic.

Although skimmers cause significant harm to individual consumers, the entities that take the biggest financial loss from skimmers are generally the affected financial institutions. The Texas Bankers Association ("TBA") and the Independent Bankers Association of Texas ("IBAT") estimate that banks in Texas could be losing in excess of \$100 million per year in card fraud. This does not include losses to credit unions who are also being hit hard by motor fuel skimmers. While not all card fraud is attributable to skimmers, and most financial institutions do not have a way to specifically allocate losses attributable to skimming, banks responding to a survey conducted by TBA and IBAT estimated that anywhere from less than 10 percent of their card fraud losses to well over 50 percent of such losses were attributable to skimming on fuel dispensers.

Although the OAG recognizes that the proposed rules will not eliminate skimmers on fuel dispensers, the OAG does expect that compliance with the rules will significantly decrease both the number of skimmers installed on fuel dispensers and the length of time a skimmer may remain installed on a fuel dispenser, thereby minimizing the number of victims who experience financial harm as a result of such skimmers.

Although the proposed rules strive to minimize the impact they will have on the motor fuel merchant community, Ms. Jackson has determined that for each year of the first five-year period the proposed rules are in effect, there will be a probable economic cost to merchants who are required to comply with the rule.

The most significant economic impact the rule will have on merchants will come from the requirement in paragraph (2) of proposed §56.3 that all merchants install locks on their dispensers with a key unique to that location. Because the rule requires that locks be changed immediately, all expenses related to this requirement should come in the first year the rule is in effect.

Experts have recommended unique locks on fuel dispensers for several years. As a result, it is likely that approximately 35 percent of merchants have already installed locks with a unique key. Therefore, approximately 65 percent of merchants will be required to change their locks or to add new locks that meet the

specification. Merchants have wide discretion regarding how to comply with this proposed rule. For example, almost any locksmith can change or add a lock on a fuel dispenser. Similarly, merchants can call their service technician to install compliant locks. Finally, merchants can purchase locks online and either install the locks themselves or have a service technician install the locks. Locks purchased online are typically designed so that the merchant can install the locks without any assistance.

Fuel dispenser locks can be found online for as little as \$7.25 per lock. Most fuel dispenser locks, however, appear to be priced between \$25 - \$35 per lock. Many models of fuel dispensers contain four doors (two on each side of the dispenser) providing access to an interior portion of the dispenser from which the payment terminal or its electronic components may be accessed. Therefore, if a merchant buys the locks online and installs the locks itself, the merchant can comply with this proposed rule for as little as \$33 per fuel dispenser. Using the more common average price per lock of \$30, the cost for a merchant to comply with the rule could be \$130 per fuel dispenser. These costs include the cost of shipping the lock to the merchant's place of business and the cost of unique keys. This cost would be the same for any merchant in the state, whether the merchant is a small business, a micro-business, or a merchant in a rural community.

If a merchant is unable to change the locks itself, the merchant can have the locks changed by a locksmith or service technician. Depending on the type of lock chosen and the number of dispensers the merchant has, the OAG estimates that a merchant can have a locksmith or service technician change a merchant's dispenser locks for somewhere between \$90 to \$200 per fuel dispenser. For merchants in some remote rural communities, the cost to have a locksmith or service technician travel to the merchant's place of business could significantly increase these costs. However, as noted above, most of the fuel dispenser locks are designed to be installed easily, so merchants in remote rural communities should be able to install the locks themselves or should be able to find someone in the local community that could install the locks for a reasonable price.

Paragraph (4) of proposed §56.3 will also likely impose tangible costs on all merchants. This provision requires merchants to use tamper-evident security labels on its dispensers. Tamper-evident security labels can be purchased online, including from the merchant's own trade association, the Association for Convenience and Fuel Retailing (NACS), formerly known as the National Association of Convenience Stores. Labels purchased from NACS cost fourteen cents per label. Many fuel brands also offer compliant tamper-evident security labels at a similar price point. Generic, unbranded labels can also be purchased online for as little as 1 cent per label. The proposed rule requires the same doors that require unique locks to also be secured with a tamper-evident security label. For most dispensers, this means that four labels are required for each dispenser. In most cases, the doors on the dispenser only need to be opened to service the dispenser, to inspect the dispenser for skimmers, and to change the receipt paper on the dispenser. Most merchants probably only open some doors on each dispenser once every two weeks, at most. If a merchant opened every door on its dispensers once every two weeks, the merchant would incur costs of approximately \$15 per year, per dispenser. Even if merchants were diligent and conducted inspections of the interior of its pumps at least once per week, the merchant would incur costs of less than \$30 per year, per dispenser. Even if a merchant conducted daily inspections or changed its security labels every day, the merchant would incur costs of approximately \$200 per year, per

dispenser. These costs would be the same for any merchant, whether or not the merchant is a small business.

The obligation to protect dispensers using tamper-evident security labels only applies to dispensers that are not EMV compliant. Therefore, the cost that such requirement will impose on merchants in years two through five of proposed rule depends on how many merchants meet the April 17, 2021, deadline set by the card brands to be EMV compliant. If 100 percent of merchants meet the deadline, the proposed rule would not have any economic impact after the first year. The OAG hopes that all merchants meet the EMV compliance deadline and strongly encourages all merchants to meet the deadline. It is likely, however, that not all merchants will meet the deadline. Therefore, the obligation to protect dispensers using tamper-evident security labels will likely continue to have an economic impact on some merchants for at least the first couple of years after the rule takes effect.

Paragraph (1) of proposed §56.4, which requires electronic monitoring devices in some circumstances, could also impose a cost on some merchants. As noted above, the OAG considered requiring all merchants to install electronic monitoring devices on their dispensers. However, in order to minimize the costs imposed on small businesses, the application of proposed §56.4 is limited to only those merchants who meet the criteria of a medium-risk place of business. The expectation is that most merchants, if they comply with the requirements of proposed §56.3, will not meet the criteria of a medium-risk place of business. The costs imposed by the requirements of proposed §56.4, therefore, will only be borne by those merchants that are known to pose a higher risk of having skimmers installed on the merchants' dispensers. That elevated risk justifies the costs of the electronic monitoring devices.

In order to avoid creating a preference for any one company and in order to provide merchants multiple options and discretion, the OAG has drafted the proposed rule in a manner that ensures that merchants are able to select from any of several companies that sell electronic monitoring devices that meet the criteria set out in proposed §56.4. Based on its review of the products currently available on the market, most merchants should be able to install compliant electronic monitoring devices on their dispensers for approximately \$800 to \$1100 per dispenser. Depending on several factors, it is possible that merchants could comply with the rule for as little as \$500 per dispenser. But it is also possible that some merchants, especially if they have fewer than four dispensers, could pay more per dispenser.

Paragraph (1) of proposed §56.4 only requires merchants to install an electronic monitoring device on a dispenser that is not EMV compliant. Therefore, rather than spending money to install an electronic monitoring device, merchants could instead decide to invest in upgrading their dispensers to be EMV compliant. While in most cases it will cost merchants more to upgrade their dispensers to be EMV compliant, merchants are already under a separate obligation - or at least severe pressure - independent from this rule to be EMV compliant by April 17, 2021.

Proposed §56.5 may also impose costs on a small group of merchants. Proposed §56.5 only applies to merchants who meet the criteria of a high-risk place of business. This will likely apply to very few merchants because it is unlikely that a merchant complying with §§56.3 and 56.4 would meet the criteria of a high-risk place of business. For a merchant who must comply with the rule, the merchant is likely to incur costs to install or upgrade its security surveillance. The merchant may also have to install

or upgrade its forecourt lighting. The cost to upgrade a merchant's video surveillance and lighting is very difficult to estimate because there are many different factors that may affect the price, including the number of dispensers, the layout of the forecourt, and the availability and/or location of electrical connections. Nevertheless, the OAG believes that most merchants could install a new video surveillance system that meets the requirements of paragraph (1) of proposed §56.5 for approximately \$3,500 to \$4,500 per dispenser. The OAG calculated this estimate based on a proposed security camera configuration that includes two cameras per dispenser (one on each side of the dispenser) specially designed to capture the license plate, and one to two overhead dome cameras per dispenser to capture video of persons dispensing gas. Most merchants likely already have forecourt lighting that meets the minimum requirements of paragraph (2) of proposed §56.5. But even for merchants that have no lighting at all, the OAG estimates that merchants could install compliant lighting for \$600 to \$1000 per dispenser as long as electricity is readily accessible. The OAG calculated this estimate based on a proposed lighting configuration that included two to three light fixtures per dispenser, which should be sufficient to achieve a minimum horizontal illuminance of 10 footcandles.

The rules will also impose additional indirect costs on merchants who must comply with the rules. For example, the proposed rules require all merchants to implement written policies and procedures and to conduct training on those policies. Such requirements are not anticipated to impose significant costs on merchants. Most, if not all, merchants already have written policies and procedures covering various aspects of their businesses. The proposed rules do not prescribe specific content or length of the policies and procedures a merchant must adopt, making it relatively easy and inexpensive for merchants to adopt policies and procedures related to complying with the proposed rules. Similarly, virtually all merchants regularly train new employees on the operations of the business, so adding material specific to skimmers and compliance with the proposed rules should not significantly add to the cost of training new employees. It is also likely that merchants already have a method for communicating updated policies and procedures to employees and training them on such policies and procedures. The rules do not prescribe specific practices for notifying employees of updated policies related to skimmers and providing updated training. Merchants can use their current practices for informing employees of new policies or procedures to provide employees new information about skimmers and the merchants' policies to prevent, detect, and report the installation of skimmers on their fuel dispensers.

The proposed rules also require merchants to conduct daily inspections of the exterior of all fuel dispensers. The OAG estimates that someone who is familiar with a dispenser can conduct a thorough inspection of the exterior of the fuel dispenser in one to two minutes. Even when adding the few minutes needed for preparation, recordkeeping, and going to and from the dispensers, the OAG thinks that for most merchants such costs can likely be absorbed by current personnel.

The proposed rules also require merchants to conduct inspections of the interior of dispensers in several circumstances. For example, when daily inspections reveal signs of unauthorized access or tampering, when merchants detect suspicious payment card reader errors or are notified that they may be a common point of purchase for fraud, or when an electronic monitoring device is triggered, merchants must conduct an inspection that includes inspecting the interior of the dispenser. Merchants

who are subject to proposed §56.4 must also conduct monthly inspections of the interior of the dispenser. All of these inspections must be conducted by a person who has been specifically trained in the identification and detection of skimmers. The OAG anticipates that most merchants will rely on employees to conduct these inspections. Persons trained to inspect the interior of fuel dispensers can generally conduct such an inspection in five to ten minutes, although some types of pumps may take longer. And the type of training required to conduct such inspections can likely be accomplished in one to two hours. Therefore, it is unlikely that the required inspections will impose a significant cost on merchants.

It should also be noted that H.B. 2945 and the proposed rules only apply to merchants with unattended payment terminals on fuel dispensers. Merchants, including those that qualify as small businesses and micro-businesses, could avoid the rules and any associated costs imposed by the rules by disabling all payment terminals located on their fuel dispensers and by requiring consumers to pay inside. Similarly, merchants could limit costs by reducing the number of dispensers with a payment terminal.

#### IMPACT ON LOCAL EMPLOYMENT OR ECONOMY

There is no reasonably forecasted effect on local economies for the first five years that the proposed rules are in effect. Therefore, no local employment impact statement is required under Tex. Gov't Code §2001.022.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Ms. Jackson has also determined that for each year of the first five years the proposed rules are in effect, there will be no reasonably forecasted adverse economic effect on rural communities as a result of implementing these rules.

Ms. Jackson has determined, however, that for each year of the first five years the proposed rules are in effect, there will be a forecasted adverse economic effect on small and micro-businesses. Based on the Texas Comptroller's calculation of the number of small businesses in each North American Industry Classification System, there are 4,715 small businesses in the categories of gasoline stations to whom the proposed rules likely apply. Accordingly, approximately 95 percent of the merchants to whom the proposed rules apply are small businesses, and many are likely micro-businesses. The economic impact on small businesses and micro-businesses will be the same as the impact on all merchants as outlined above. In particular, in the first year, merchants who qualify as small businesses may incur the cost of changing the locks or adding locks on their fuel dispensers. In the first year, such merchants will also incur the costs necessary to apply tamper-evident security labels on their fuel dispensers. Those merchants who do not upgrade their dispensers to be EMV compliant will continue to incur the costs related to tamper-evident security labels in subsequent years. Some merchants who qualify as small businesses may also meet the criteria of a medium-risk place of business. Those merchants may also incur the cost to install electronic monitoring devices on their dispensers, unless they choose to upgrade their dispensers to be EMV compliant. Some merchants who qualify as small businesses may meet the criteria of a high-risk place of business, in which case they would likely incur the costs of installing appropriate video surveillance equipment and proper lighting. Merchants who qualify as small businesses would also incur the indirect costs described above, such as costs to revise the merchant's

policies and procedures, costs to train employees, and costs to conduct the required dispenser inspections.

In drafting the rules, the OAG has sought to minimize the impact on small businesses. To accomplish that, the OAG conducted a regulatory flexibility analysis, which is presented throughout the rule proposal notice and which has resulted in proposed rules that employ a three-tiered approach to compliance. Each tier represents an alternative method to achieve the purpose of the rules. The three tiers of compliance are based on risk factors, and lower-tier compliance is less expensive than higher-tier compliance. As a result, a small business with lower risk would be required to implement only the low-cost first-tier measures, and most small businesses would avoid the more costly measures of the second and third tiers by implementing the first-tier measures. An example of the flexibility analysis the OAG applied appears in the following discussion concerning the proposed requirements that a merchant install certain devices and conduct frequent inspections: Many experts recommend electronic monitoring devices and video surveillance as the two most effective measures that can be taken to prevent and detect skimmers on fuel dispensers. The OAG considered making one or the other of such measures mandatory for all merchants. In order to reduce the impact on small businesses, however, the OAG decided not to make them mandatory for all merchants, but rather only require them if less costly alternatives prove ineffective. Similarly, many experts argue that adoption of EMV will dramatically lower the incidences of skimmer breaches. The OAG, therefore, considered mandating adoption of EMV on fuel dispensers no later than April 17, 2021. This would have coincided with the deadline set by the card brands but would have made upgrading mandatory, rather than a merchant's business decision regarding liability shift. Because upgrading to EMV may be cost prohibitive for some small businesses, the OAG decided not to mandate compliance with EMV. Moreover, because upgrading to EMV can be costly for small businesses and because EMV provides similar protection from skimmers, the OAG has drafted the rule such that if a merchant upgrades to EMV, the merchant is not required to install an electronic monitoring device, one of the more costly measures required by the proposed rule. Nor would the merchant be required to use tamper-evident security tape, further limiting the burden on the merchant. The OAG also considered requiring that all inspections of the interior of the dispenser be conducted by licensed service technicians. However, the OAG decided that such a requirement may unduly burden small businesses and provided discretion for merchants to use employees that have been specifically trained in the identification and detection of skimmers. The OAG also considered requiring inspections of the exterior of all fuel dispensers three times per day as recommended by many experts. However, because of the burden such a requirement could pose to small businesses, the proposed rule only requires inspections once a day. The OAG also considered whether there were suitable alternatives to the requirements imposed by the proposed rule, especially alternatives for locks with unique keys. After considering alternatives, however, the proposed rules reflect the minimum practices necessary to accomplish the mandates of the statute while also protecting the economic welfare of the state.

The proposed rules present alternative ways for small businesses to comply with the rules by allowing for a range of actions and materials at different price points that the merchant may take or use to comply with the requirements for procuring and installing unique locks, for maintaining logs, for training employees, and for securing fuel dispensers that have been

breached. Also, if a small business ends up in a higher risk category and is then required to implement more expensive, second-tier measures, including the installation of certain equipment, the rules allow for use of different types of equipment that vary in price.

#### GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with Tex. Gov't Code §2001.0221, the OAG has prepared a government growth impact statement. For the first five years that the rules will be in effect:

- (1) The proposed rules will not create or eliminate a government program;
- (2) The proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) The proposed rules will not require an increase or decrease in future legislative appropriations to the OAG;
- (4) The proposed rules will not lead to an increase or decrease in the fees paid to the OAG, but could lead to an increase in penalties paid to the OAG if merchants do not comply;
- (5) The proposed rules will create new regulations;
- (6) The proposed rules will not expand, limit, or repeal an existing regulation;
- (7) The proposed rules will increase the number of individuals subject to the proposed rules' applicability; and
- (8) The proposed rules will likely positively affect this state's economy by reducing crime and fraudulent charges.

#### TAKINGS IMPACT ASSESSMENT

No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore, the proposed rules do not constitute a taking under Tex. Gov't Code §2007.043.

#### NO MAJOR ENVIRONMENTAL RULE

The proposed new rules do not constitute major environmental rules because the proposal does not have the specific intent to protect the environment or reduce risks to human health from environmental exposure and does not have the potential to adversely affect the economy, productivity, competition, jobs, the environment, or the public health and safety of the state. A draft impact analysis, therefore, is not required under Tex. Gov't Code §2001.0225.

#### REQUEST FOR PUBLIC COMMENT

Written comments on the proposed rules may be submitted in writing to Brad Schuelke, Special Litigation Counsel, Office of the Attorney General, Consumer Protection Division, P.O. Box 12548, Austin, Texas 78711-2548, or via email at Skimmer-RuleComments@oag.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register*.

#### STATUTORY AUTHORITY

The rules are proposed pursuant to Tex. Bus. & Com. Code §607.052, which requires the OAG to adopt rules that establish reasonable policies and procedures that identify best practices

for merchants to use to comply with Tex. Bus. & Com. Code §607.051.

#### STATUTORY SECTIONS AFFECTED

The statutory provisions affected by the proposed rules are found at Tex. Bus. & Com. Code Chapter 607.

##### §56.1. Definitions.

In addition to the definitions set out in Texas Business and Commerce Code, Chapter 607, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Electronic Monitoring Device" means an alarm system that is installed on a motor fuel dispenser to monitor panels and doors to prevent unauthorized entry.

(2) "EMV compliant" means that each payment terminal on the motor fuel dispenser utilizes secure EMV technology that meets the security, interoperability, and functionality specifications issued by EMVCo, LLC, and processes EMV transactions end-to-end in compliance with EMVCo, LLC and payment brand standards.

(3) "Forecourt" means the outside area of a merchant's place of business where the merchant's motor fuel dispensers are present.

(4) "Insert skimmer" means a type of skimmer that is hidden in the card acceptance slot of a payment terminal.

(5) "Overlay skimmer" means a type of skimmer designed to be placed over the top of the card acceptance slot and/or the PIN pad of a payment terminal.

(6) "Place of business" means the location at which a merchant sells motor fuel to retail customers. For purposes of this rule, each separate physical address at which a merchant sells motor fuel to retail customers is a separate place of business.

(7) "Shimmer" means a type of skimmer that targets chip-based payment cards.

(8) "Skimmer breach" means the installation of a skimmer on the interior or exterior of a motor fuel dispenser with an unattended payment terminal. An incident is not considered a skimmer breach if, at the time the skimmer was installed, the dispenser and payment terminal were disabled and neither the dispenser nor the payment terminal were operational at any point in time while the skimmer was installed on the dispenser.

(9) "Tamper-evident security label" means a label or tape that, once applied to a surface, cannot be removed without self-destructing or otherwise leaving a clear indication (e.g., VOID marking) that the label or tape has been removed.

##### §56.2. Policies, Procedures, and Training.

(a) A merchant that has an unattended payment terminal on a motor fuel dispenser at the merchant's place of business shall implement and maintain written policies and procedures for complying with these rules. The written policies and procedures shall include documented and detailed procedures that the merchant will follow to prevent the installation of skimmers on the merchant's payment terminals and steps that the merchant will take if the merchant is notified or otherwise becomes aware that a skimmer is installed or is likely to have been installed on one of the merchant's payment terminals.

(b) A merchant that has an unattended payment terminal on a motor fuel dispenser at the merchant's place of business shall conduct training for all of its employees who are involved in any capacity in the merchant's fuel operations to ensure that such employees understand the merchant's procedures for complying with these rules, their



responsibilities in executing those procedures, and how to meet those responsibilities. The training shall:

(1) Include background information on skimmers, including information about the harm skimmers can cause to customers and to the business, information about the different types of skimmers and how to identify them, and information about the types of suspicious activity or warning signs that may suggest someone is attempting to install or has installed a skimmer, including:

(A) Vehicles parked at a motor fuel dispenser for a long time or returning to the same dispenser frequently;

(B) Large vehicles blocking the view of dispensers;

(C) Attempts by one customer to distract store personnel while a partner remains at the dispenser;

(D) Technicians purporting to perform unscheduled work on dispensers; and

(E) High levels of invalid card read errors or other problems with dispensers accepting cards;

(2) Include details on the merchant's procedures to prevent the installation of skimmers;

(3) Include details on the merchant's procedures for when a skimmer is detected, whether such skimmer is detected by the merchant or reported to the merchant by a third party; and

(4) Be provided to new employees as part of the merchant's regular training program for new employees. If the merchant does not have a regular training program for new employees, or if the employee was previously employed in a position that did not require training regarding skimmers, the training shall be provided no later than seven days after the employee's first day of employment in a position that is involved in the merchant's fuel operations in any capacity. Merchants shall thereafter provide employees ongoing training sufficient to ensure that employees are aware of any new procedures adopted by the merchant and aware of any new types of skimmers or warning signs for which employees must watch.

#### §56.3. Minimum Practices for Prevention of Skimmers.

A merchant that has an unattended payment terminal on a motor fuel dispenser at the merchant's place of business shall implement the following practices to prevent the installation of a skimmer on the dispenser:

(1) The merchant shall implement and maintain written policies and procedures and shall conduct training as detailed in §56.2 of this title (relating to Policies, Procedures, and Training).

(2) For each motor fuel dispenser with an unattended payment terminal, the merchant shall affix to or install onto the exterior of each door that provides access to an interior portion of the motor fuel dispenser from which the payment terminal or any electronic component connected to the payment terminal may be accessed, a locking device that requires an access key unique to that place of business.

(3) The merchant shall maintain a forecourt maintenance log that documents all work performed on the forecourt within the calendar year. The merchant shall require every person working on or accessing a dispenser to perform maintenance to sign in and present appropriate identification before any work is done on a dispenser or a payment terminal on a dispenser. The merchant shall retain the forecourt maintenance log for a minimum of 12 months after the end of the calendar year for which the log was maintained. The maintenance log shall include at a minimum:

(A) the name of the person working on or accessing the dispenser;

(B) the name of the company with which the person is employed;

(C) the person's service technician's license number, if applicable;

(D) the time at which the person began maintenance on the dispenser;

(E) the time at which the person finished maintenance on the dispenser; and

(F) an identification of the dispenser or other equipment where work was performed.

(4) The merchant shall use tamper-evident security labels to restrict unauthorized access to any unattended payment terminal on a motor fuel dispenser that is not EMV compliant and that is not protected by an electronic monitoring device. The merchant's use of tamper-evident security labels shall meet the following requirements:

(A) A tamper-evident security label must be placed over each panel opening that provides access to an interior portion of the dispenser from which the payment terminal or any electronic component connected to the payment terminal may be accessed;

(B) Each tamper-evident security label shall contain a serial number. Each tamper-evident security label used within a 12-month period must have a different serial number; and

(C) The merchant shall keep an annual log documenting the serial number of each currently installed label. Each time a label is changed, the merchant shall document the new serial number and reason for the change. The serial label log may be maintained electronically (e.g., through the use of a mobile application or software program). The merchant shall retain such logs for a minimum of 12 months after the end of the calendar year for which the log was maintained and shall regularly review the logs to ensure that they do not reveal a pattern of suspicious conduct.

(5) The merchant shall, at least daily, conduct a thorough inspection of the exterior of each motor fuel dispenser with an unattended payment terminal. In conducting such inspections, the merchant shall:

(A) Inspect the exterior of each motor fuel dispenser for signs that the dispenser has been opened or tampered with, including, for example, by confirming all locks are secured, and that there are no signs of scratches, pry marks, drilled holes, or other indications that a door has been compromised;

(B) Inspect the exterior of each motor fuel dispenser for signs of skimmers, shimmers, insert skimmers, overlay skimmers, hidden cameras, wireless antennas, new stickers or decals that might be hiding a hole, or other foreign objects;

(C) If tamper-evident security labels are required by paragraph (4) of this section or are otherwise used by the merchant, inspect each serialized, tamper-evident label to ensure that the serial number matches the serial number log and that the label has not been cut or tampered with;

(D) Maintain a current photograph of the merchant's motor fuel dispensers, and make the dispenser photograph easily accessible to employees inspecting dispensers so that they can use the photograph to identify unauthorized stickers, decals, leaflet holders, and other materials that may have been added to hide holes or other alterations made to a dispenser. If all of the merchant's motor fuel

dispensers are substantially similar, the merchant is only required to maintain one photograph that can serve as an exemplar for all substantially similar dispensers;

(E) Maintain an annual log of each inspection conducted and retain such log for a minimum of 12 months after the end of the calendar year for which the log was maintained. Such logs shall include:

- (i) the date and time of the inspection;
- (ii) the name of person who did the inspection; and
- (iii) an identification of the dispensers inspected;

and

(F) If an inspection reveals any sign that a motor fuel dispenser has been opened or tampered with or that a skimmer has been installed, disable the dispenser and take appropriate steps to prevent customers from inserting a payment card into the payment terminal until someone who has been properly trained in the identification and detection of skimmers in motor fuel dispensers has inspected the dispenser. The merchant shall maintain a current photograph of the interior of the dispenser that was taken at a time when the merchant is confident that there was no skimmer installed that can be used by the inspector to compare for unauthorized items installed inside the dispenser. If all of the merchant's motor fuel dispensers are substantially similar, the merchant is only required to maintain one photograph that can serve as an exemplar for all substantially similar dispensers.

(6) The merchant shall monitor its dispensers and payment terminals for high levels of invalid payment card read errors or other indications of problems accepting payment cards which may indicate the presence of a skimmer. If the merchant detects such suspicious behavior, or if the merchant is notified by a card brand, a payment processor, a financial institution, law enforcement, or the Center that the merchant's place of business or a dispenser at the merchant's place of business is a common point of purchase for fraudulent activity, the merchant shall take reasonable steps to investigate whether a skimmer has been installed on one of its dispensers. If a merchant receives or observes credible evidence that a skimmer has been installed on a specific motor fuel dispenser, the merchant shall immediately disable the suspected dispenser until someone who has been properly trained in the identification and detection of skimmers in motor fuel dispensers has inspected the dispenser.

(7) If disabling a motor fuel dispenser as required by paragraph (5)(F) or paragraph (6) of this section would cause a hardship on the merchant or substantially disrupt the merchant's business, the merchant may continue to allow the dispenser to operate but shall disable the payment terminal or take other steps to prevent customers from using the payment terminal or inserting a payment card into the payment terminal.

(8) The merchant shall maintain an annual log of all inspections conducted pursuant to paragraph (5)(F) or paragraph (6) of this section and shall retain such logs for a minimum of 12 months after the end of the calendar year for which the log was maintained. The log shall include:

- (A) the date and time of the inspection;
- (B) the name of person doing the inspection;
- (C) the name of the company with which the person doing the inspection is employed, if different from the merchant;
- (D) the person's service technician's license number, if applicable; and
- (E) an identification of the dispenser inspected.

#### §56.4. Additional Practices for the Prevention of Skimmers at Medium-risk Places of Business.

(a) A merchant that has an unattended payment terminal on a motor fuel dispenser at the merchant's place of business, and whose place of business meets the definition of a medium-risk place of business in accordance with subsection (b) of this section, shall implement the following additional practices to prevent the installation of a skimmer on dispensers at that place of business:

(1) As soon as practical, but not later than 90 days after the date on which the merchant's place of business meets the definition of a medium-risk place of business, the merchant shall implement a program to electronically monitor motor fuel dispensers by installing an electronic monitoring device on each dispenser at the place of business with an unattended payment terminal that is not EMV compliant. The merchant's electronic monitoring program must meet the following criteria:

(A) Whenever any door on the motor fuel dispenser is opened without authorization, the electronic monitoring device must:

(i) Immediately shut down power to the dispenser or otherwise prevent the dispenser from dispensing fuel; and

(ii) Sound an alarm that emits an audible alert continuously or at least every 30 seconds until deactivated by the merchant or send a notification to the merchant, including notification to the owner, an executive of the merchant, or someone with supervisory responsibility who has been designated by the owner or an executive of the merchant to receive such notifications;

(B) The electronic monitoring device must create a log of every event (e.g., each time the device is armed, disarmed, triggered, etc.). Such log shall be retained for a minimum of 12 months after the end of the period for which the log was maintained and the merchant shall monitor the logs for suspicious activity, including, for example, that the device was disarmed at unexpected times, that certain employees disarmed the device on a recurring basis, or that the device lost power at unexpected times; and

(C) After the electronic monitoring device has been triggered, the motor fuel dispenser shall remain inoperable until someone that has been properly trained in the identification and detection of skimmers in motor fuel dispensers has inspected the dispenser.

(2) The merchant shall conduct, at least once a month, a thorough inspection of the interior of each motor fuel dispenser with an unattended payment terminal for evidence of tampering or that a skimmer has been installed. Such inspections shall be conducted by a qualified person who has been specifically trained in the identification and detection of skimmers in motor fuel dispensers.

(3) The merchant shall maintain an annual log of all inspections conducted pursuant to paragraph (1)(C) or paragraph (2) of this section and shall retain such logs for a minimum of 12 months after the end of the calendar year for which the log was maintained. The log shall include:

- (A) the date and time of the inspection;
- (B) the name of person doing the inspection;
- (C) the name of the company with which the person doing the inspection is employed, if different from the merchant;
- (D) the person's service technician's license number, if applicable; and
- (E) an identification of the dispenser inspected.

(b) A merchant's place of business is defined as a medium-risk place of business if it meets the following criteria:

(1) A merchant's place of business containing one to ten motor fuel dispensers shall be considered a medium-risk place of business if it has suffered a skimmer breach on more than two separate occasions in the previous 24 months at that place of business;

(2) A merchant's place of business containing eleven to twenty motor fuel dispensers shall be considered a medium-risk place of business if it has suffered a skimmer breach on more than four separate occasions in the previous 24 months at that place of business; or

(3) A merchant's place of business containing more than twenty motor fuel dispensers shall be considered a medium-risk place of business if it has suffered a skimmer breach on more than seven separate occasions in the previous 24 months at that place of business.

§56.5. Additional Practices for the Prevention of Skimmers at High-risk Places of Business.

(a) A merchant that has an unattended payment terminal on a motor fuel dispenser at the merchant's place of business, and whose place of business meets the definition of a high-risk place of business in accordance with subsection (b) of this section, shall implement the following additional practices to prevent the installation of a skimmer on dispensers at that place of business:

(1) As soon as practical, but not later than 90 days after the date on which the merchant's place of business meets the definition of a high-risk place of business, the merchant shall install and thereafter maintain high resolution video cameras at the place of business, positioned to record the license plate of each vehicle that approaches or leaves the merchant's motor fuel dispensers, and to record persons dispensing gas at the dispensers. Video cameras shall be placed so that images of vehicle license plates and of persons dispensing gas at the dispenser are captured at a minimum resolution of 60 pixels per foot. All video footage shall be retained for at least 31 days after the date on which the footage was recorded; and

(2) As soon as practical, but not later than 90 days after the date on which the merchant's place of business meets the definition of a high-risk place of business, the merchant shall install and thereafter maintain proper lighting on the station forecourt at the place of business. Areas around each dispenser island and under all canopies shall be illuminated so that the minimum horizontal illuminance at grade level is 10 footcandles.

(b) A merchant's place of business is defined as a high-risk place of business if it meets the following criteria:

(1) A merchant's place of business containing one to ten motor fuel dispensers shall be considered a high-risk place of business if it has suffered a skimmer breach on more than four separate occasions in the previous 24 months at that place of business;

(2) A merchant's place of business containing eleven to twenty motor fuel dispensers shall be considered a high-risk place of business if it has suffered a skimmer breach on more than seven separate occasions in the previous 24 months at that place of business; or

(3) A merchant's place of business containing more than twenty motor fuel dispensers shall be considered a high-risk place of business if it has suffered a skimmer breach on more than eleven separate occasions in the previous 24 months at that place of business.

§56.6. Detection, Reporting, and Removal of Skimmers.

A merchant that has an unattended payment terminal on a motor fuel dispenser at the merchant's place of business shall do the following

when the merchant detects a skimmer on one of the merchant's motor fuel dispensers or receives a report of a skimmer on one of the merchant's motor fuel dispensers:

(1) The merchant shall not touch the skimmer;

(2) The merchant shall immediately disable both sides of the motor fuel dispenser on which the skimmer was discovered;

(3) The merchant shall immediately notify a law enforcement agency with jurisdiction to investigate the matter;

(4) The merchant shall protect the motor fuel dispenser from tampering until law enforcement arrives by taking appropriate steps, including:

(A) Covering the nozzle;

(B) Covering the payment terminal on the dispenser;

(C) Blocking access to dispenser (e.g., by using cones, tape, etc.);

(5) The merchant shall report the skimmer to the Department within 24 hours;

(6) The merchant shall run a receipt for the last transaction on the fuel dispenser to timestamp the event;

(7) The merchant shall cooperate with law enforcement, the Department, and the Center in the investigation of the skimmer, including by providing access to the motor fuel dispenser for removal of the skimmer;

(8) The merchant shall preserve all video surveillance and access logs related to the compromised motor fuel dispenser and provide a copy to law enforcement, the Department, or the Center upon request. Notwithstanding any other retention period mandated by this chapter, the merchant shall retain all video surveillance and access logs related to the compromised dispenser until a copy has been provided to law enforcement, the Department, or the Center, or until the merchant has been advised by law enforcement, the Department, or the Center that the material may be destroyed; and

(9) If neither law enforcement nor the Department has arrived or contacted the merchant within 24 hours after the merchant reports the skimmer to the Department, the merchant may:

(A) While wearing sterile gloves, carefully remove the skimmer;

(B) Place the skimmer in a clear plastic bag, seal the bag, and label the sealed bag with the date and time the skimmer was removed and bagged, along with the initials of the person removing and bagging the skimmer;

(C) Take a picture of the skimmer in the bag; and

(D) Place the bag in a secured area (e.g., locked file cabinet) for pick-up by law enforcement.

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

Filed with the Office of the Secretary of State on October 20, 2020.

TRD-202004424



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER J. PURCHASED HEALTH SERVICES

#### DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

##### 1 TAC §355.8201

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8201, concerning Waiver Payments to Hospitals for Uncompensated Care.

##### BACKGROUND AND PURPOSE

The purpose of the proposal is to revise the secondary reconciliation process applied to hospitals that requested an adjustment to their interim hospital-specific limit (HSL) for purposes of calculating uncompensated care (UC) payments in demonstration years 6 through 8 (October 1, 2016 to September 30, 2019), and to describe the methodology HHSC will use to redistribute recouped funds. The amendment to the secondary reconciliation process is in response to a petition for rulemaking.

##### Secondary Reconciliation

As part of the UC application process, a hospital can submit a request for an adjustment to cost and payment data to reflect increases or decreases in costs resulting from changes in operation or circumstance. If a hospital requested an adjustment on its UC application that impacted its interim HSL (now referred to as the state payment cap), it would be subject to an additional reconciliation. The purpose of this secondary reconciliation is to ensure that a hospital that inaccurately adjusts its interim HSL does not benefit from that inaccuracy.

Under the current secondary reconciliation process, HHSC compares a hospital's adjusted interim HSL for the demonstration year to its final HSL for the demonstration year. If the final HSL is less than the adjusted interim HSL, the hospital's UC payment is recalculated for the demonstration year using the final HSL instead of the adjusted interim HSL, with no other changes being made to the data used in the original calculation of the hospital's UC payment. HHSC then recoups any payment received by the hospital that is greater than the recalculated payment.

The interim HSL is defined by HHSC and is calculated in the payment year for hospitals that participate in the Disproportionate Share Hospital (DSH) and UC programs. The final HSL is governed by federal law and is calculated two years after the payment year using actual program year data. HHSC's understanding of the federal regulation governing the final HSL has changed since HHSC calculated the adjusted interim HSL for UC

payments in demonstration years 6 through 8 and will require a different methodology to be used to calculate the final HSL for those years.

As a result, there is a risk that a hospital that submitted a request on its UC application to adjust its interim HSL in demonstration years 6 through 8 could have a final HSL that is less than its adjusted interim HSL due only to the change in HSL methodology. Under the current secondary reconciliation provision, HHSC would recoup any payment received by the hospital that is greater than the recalculated UC payment.

HHSC proposes to amend §355.8201(i)(3) to revise the secondary reconciliation process applied to hospitals that adjusted their interim HSL in demonstration years 6 through 8. This proposed change is in response to a petition for rulemaking from Texas Children's Hospital and is intended to prevent recoupments from hospitals that are solely the result of the change in the federal regulation related to the final HSL calculation. For demonstration years 6 through 8, HHSC proposes to compare a hospital's adjusted interim HSL for the demonstration year to a proxy-final HSL for the demonstration year. The proxy-final HSL will be calculated using the methodology described in §355.8066(c)(2) for the demonstration year, except that it will not offset third-party and Medicare payments for claims and encounters where Medicaid was a secondary payer. If the proxy-final HSL is less than the adjusted interim HSL, HHSC will recalculate the hospital's UC payment for the demonstration year using the proxy-final HSL.

HHSC also proposes other clarifying changes to indicate which demonstration years are subject to the secondary reconciliation process.

##### Redistribution of Recouped Funds

Under the terms of the Texas Healthcare Transformation and Quality Improvement Program 1115 Medicaid demonstration waiver, HHSC may redistribute recouped funds identified in the reconciliation process to eligible providers if there is available UC funding for the demonstration year. HHSC proposes to amend §355.8201(k) to describe the methodology HHSC will use to redistribute recouped funds to providers eligible for additional payments. A provider is eligible for an additional payment if it has allowable uncompensated costs that were not reimbursed through its initial UC payment for the demonstration year.

Recouped funds from state providers will be redistributed proportionately to eligible state providers based on the percentage that each eligible state provider's remaining final uncompensated cost of care (UCC) calculated in the reconciliation described in §355.8201(i) is of the total remaining final UCC of all eligible state providers.

Recouped funds from non-state providers will be redistributed proportionately to eligible non-state providers, except for in demonstration years 7 and 8 (October 1, 2017 to September 30, 2019). First, HHSC will return the non-federal share portion of the recouped funds to the governmental entity that provided it during the program year for the eligible providers. Then, the federal share portion of the recouped funds will be redistributed proportionately among all eligible providers that have a source of the non-federal share for the additional payment. If a payment does not have a source of the non-federal share, then the federal share will be returned to the Centers for Medicare & Medicaid Services (CMS).

For demonstration years 7 and 8, recouped funds from non-state providers will be redistributed to eligible non-state providers using a weighted allocation methodology. First, HHSC will calculate a weight that will be applied to all non-state providers. The weight is calculated based on the provider's final remaining UCC with and without the offset of payments for third-party and Medicare claims and encounters where Medicaid was a secondary payer to determine how significantly the provider's UCC was impacted by not offsetting these payments. Providers who did not have a significant change in their UCC will receive a larger weight.

After calculating the weighting factor, HHSC will make a first pass allocation by multiplying the weight by the provider's final remaining UCC with the offset of payments for third-party and Medicare claims and encounters where Medicaid was a secondary payer. HHSC will divide the product by the total remaining UCCs for all non-state providers and multiply the quotient by the total amount of recouped dollars available for redistribution. HHSC will limit a provider's payment to the amount of the provider's final remaining UCC. If a provider is allocated a payment amount that is higher than its remaining UCC, HHSC will make a second pass allocation to redistribute the excess funds using the remaining UCC for all non-state providers without applying the weight.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8201(i)(3) revises the secondary reconciliation process applied to hospitals that requested an adjustment to their interim HSL in demonstration years 6 through 8. The proposed amendment also includes other clarifying changes to indicate which demonstration years are subject to the secondary reconciliation process.

The proposed amendment to §355.8201(k) adds new language to describe the methodology HHSC will use to redistribute recouped funds. The previous language contained in subsection (k) is moved to new §355.8201(l).

#### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, there are no fiscal implications for state government as a result of enforcing or administering the proposed amendment.

The proposed amendment will have both a positive and negative impact on local governments, depending on the amount of Medicare and third-party payments the local governmental hospital received. The fiscal impact will not be known until the final UC reconciliation is completed for each of the affected demonstration years.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will not expand, limit, or repeal existing rule;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There are no Texas hospitals participating in Medicaid that qualify as small businesses or micro-businesses. The proposed rule does not impose any additional fees or costs on rural communities required to comply.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public benefit will be that certain hospitals will be able to retain UC payments that might otherwise have been recouped solely due to a change in the federal regulation governing the final HSL calculation.

Trey Wood has also determined that for the first five years the rule is in effect, there is no anticipated economic cost to persons who are required to comply with the proposed rule because the proposed rule does not impose any additional costs or fees on persons required to comply.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC HEARING

Details for the public hearing will be published as a notice in the *Texas Register* at a later date.

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Mail Code H400, P.O. Box 13247, Austin, Texas 78711-3247, or by email to RAD\_1115\_Waiver\_Finance@hhsc.state.tx.us.

During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. Therefore, please submit comments by email if possible.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 21R012" in the subject line.

## STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32.

The amendment affects Texas Human Resources Code Chapter 32 and Texas Government Code Chapter 531.

### *§355.8201. Waiver Payments to Hospitals for Uncompensated Care.*

(a) Introduction. Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver payments are available under this section for services provided between October 1, 2017 and September 30, 2019, by eligible hospitals described in subsection (c) of this section. Waiver payments to hospitals for uncompensated charity care provided beginning October 1, 2019, are described in §355.8212 of this division (relating to Waiver Payments to Hospitals for Uncompensated Charity Care). Waiver payments to hospitals must be in compliance with the Centers for Medicare & Medicaid Services approved waiver Program Funding and Mechanics Protocol, HHSC waiver instructions and this section.

#### (b) Definitions.

(1) Affiliation agreement--An agreement, entered into between one or more privately-operated hospitals and a governmental entity that does not conflict with federal or state law. HHSC does not prescribe the form of the agreement.

(2) Aggregate limit--The amount of funds approved by the Centers for Medicare & Medicaid Services for uncompensated-care payments for the demonstration year that is allocated to each uncompensated-care provider pool, as described in subsection (f)(2) of this section.

(3) Anchor--The governmental entity identified by HHSC as having primary administrative responsibilities on behalf of a Regional Healthcare Partnership (RHP).

(4) Centers for Medicare & Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(5) Clinic--An outpatient health care facility, other than an Ambulatory Surgical Center or Hospital Ambulatory Surgical Center, that is owned and operated by a hospital but has a nine-digit Texas Provider Identifier (TPI) that is different from the hospital's nine-digit TPI.

(6) Data year--A 12-month period that is described in §355.8066 of this title (relating to Hospital-Specific Limit Methodology) and from which HHSC will compile cost and payment data to determine uncompensated-care payment amounts. This period corresponds to the Disproportionate Share Hospital data year.

(7) Delivery System Reform Incentive Payments (DSRIP)--Payments related to the development or implementation of a program of activity that supports a hospital's efforts to enhance access to health care, the quality of care, and the health of patients and families it serves. These payments are not considered patient-care revenue and are not

offset against the hospital's costs when calculating the hospital-specific limit as described in §355.8066 of this title.

(8) Demonstration year--The 12-month period beginning October 1 for which the payments calculated under this section are made. This period corresponds to the Disproportionate Share Hospital program year.

(9) Disproportionate Share Hospital (DSH)--A hospital participating in the Texas Medicaid program that serves a disproportionate share of low-income patients and is eligible for additional reimbursement from the DSH fund.

(10) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(11) HHSC--The Texas Health and Human Services Commission or its designee.

(12) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

(13) Intergovernmental transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(14) Large public hospital--An urban public hospital - Class one as defined in §355.8065 of this title (relating to Disproportionate Share Hospital Reimbursement Methodology).

(15) Mid-Level Professional--Medical practitioners which include only these professions: Certified Registered Nurse Anesthetists, Nurse Practitioners, Physician Assistants, Dentists, Certified Nurse Midwives, Clinical Social Workers, Clinical Psychologists, and Optometrists.

(16) Private hospital--A hospital that is not a large public hospital as defined in paragraph (14) of this subsection, a small public hospital as defined in paragraph (21) of this subsection or a state-owned hospital.

(17) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(18) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform. Regional Healthcare Partnerships will support coordinated, efficient delivery of quality care and a plan for investments in system transformation that is driven by the needs of local hospitals, communities, and populations.

(19) RHP plan--A multi-year plan within which participants propose their portion of waiver funding and DSRIP projects.

(20) Rural hospital--A hospital enrolled as a Medicaid provider that is:

(A) located in a county with 60,000 or fewer persons according to the 2010 U.S. Census; or

(B) designated by Medicare as a Critical Access Hospital (CAH) or a Sole Community Hospital (SCH); or

(C) designated by Medicare as a Rural Referral Center (RRC) and is not located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget, or is located in an MSA but has 100 or fewer beds.

(21) Small public hospital--An urban public hospital - Class two or a non-urban public hospital as defined in §355.8065 of this title.

(22) Transition payment--Payments available only during the first demonstration year to hospitals that previously participated in a supplemental payment program under the Texas Medicaid State Plan. For a hospital participating in the 2012 DSH program, the maximum amount a hospital may receive in transition payments is the lesser of:

(A) the hospital's 2012 DSH room; or

(B) the amount the hospital received in supplemental payments for claims adjudicated between October 1, 2010, and September 30, 2011.

(23) Uncompensated-care application--A form prescribed by HHSC to identify uncompensated costs for Medicaid-enrolled providers.

(24) Uncompensated-care payments--Payments intended to defray the uncompensated costs of services that meet the definition of "medical assistance" contained in §1905(a) of the Social Security Act that are provided by the hospital to Medicaid eligible or uninsured individuals.

(25) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for services, as defined by CMS.

(26) Urban rural referral center--A hospital designated by Medicare as a Rural Referral Center (RRC) that is located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget, and that has more than 100 beds.

(27) Waiver--The Texas Healthcare Transformation and Quality Improvement Program Medicaid demonstration waiver under §1115 of the Social Security Act.

(c) Eligibility. A hospital that meets the requirements described in this subsection may receive payments under this section.

(1) Generally. To be eligible for any payment under this section:

(A) a hospital must have a source of public funding for the non-federal share of waiver payments; and

(B) if it is a hospital not operated by a governmental entity, it must have filed with HHSC an affiliation agreement and the documents described in clauses (i) and (ii) of this subparagraph.

(i) The hospital must certify on a form prescribed by HHSC:

(I) that it is a privately-operated hospital;

(II) that no part of any payment to the hospital under this section will be returned or reimbursed to a governmental entity with which the hospital affiliates; and

(III) that no part of any payment under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the hospital's receipt of the supplemental funds.

(ii) The governmental entity that is party to the affiliation agreement must certify on a form prescribed by HHSC:

(I) that the governmental entity has not received and has no agreement to receive any portion of the payments made to any hospital that is party to the agreement;

(II) that the governmental entity has not entered into a contingent fee arrangement related to the governmental entity's participation in the waiver program;

(III) that the governmental entity adopted the conditions described in the certification form prescribed by or otherwise approved by HHSC pursuant to a vote of the governmental entity's governing body in a public meeting preceded by public notice published in accordance with the governmental entity's usual and customary practices or the Texas Open Meetings Act, as applicable; and

(IV) that all affiliation agreements, consulting agreements, or legal services agreements executed by the governmental entity related to its participation in this waiver payment program are available for public inspection upon request.

(iii) Submission requirements.

(I) Initial submissions. The parties must initially submit the affiliation agreements and certifications described in this subsection to the HHSC Rate Analysis Department on the earlier of the following occurrences after the documents are executed:

(-a-) The date the hospital submits the uncompensated-care application that is further described in paragraph (2) of this subsection; or

(-b-) Thirty days before the projected deadline for completing the IGT for the first payment under the affiliation agreement. The projected deadline for completing the IGT is posted on HHSC Rate Analysis' website for each payment under this section.

(II) Subsequent submissions. The parties must submit revised documentation as follows:

(-a-) When the nature of the affiliation changes or parties to the agreement are added or removed, the parties must submit the revised affiliation agreement and related hospital and governmental entity certifications.

(-b-) When there are changes in ownership, operation, or provider identifiers, the hospital must submit a revised hospital certification.

(-c-) The parties must submit the revised documentation thirty days before the projected deadline for completing the IGT for the first payment under the revised affiliation agreement. The projected deadline for completing the IGT is posted on HHSC Rate Analysis' website for each payment under this section.

(III) A hospital that submits new or revised documentation under subclause (I) or (II) of this clause must notify the Anchor of the RHP in which the hospital participates.

(IV) The certification forms must not be modified except for those changes approved by HHSC prior to submission.

(-a-) Within 10 business days of HHSC Rate Analysis receiving a request for approval of proposed modifications, HHSC will approve, reject, or suggest changes to the proposed certification forms.

(-b-) A request for HHSC approval of proposed modifications to the certification forms will not delay the submission deadlines established in this clause.

(V) A hospital that fails to submit the required documentation in compliance with this subparagraph will not receive a payment under this section.

(2) Uncompensated-care payments. For a hospital to be eligible to receive uncompensated-care payments, in addition to the requirements in paragraph (1) of this subsection, the hospital must:

(A) submit to HHSC an uncompensated-care application for the demonstration year, as is more fully described in subsection (g)(1) of this section, by the deadline specified by HHSC;

(B) submit to HHSC documentation of:

(i) its participation in an RHP; or

(ii) approval from CMS of its eligibility for uncompensated-care payments without participation in an RHP;

(C) be actively enrolled as a Medicaid provider in the State of Texas at the beginning of the demonstration year; and

(D) have submitted, and be eligible to receive payment for, a Medicaid fee-for-service or managed-care inpatient or outpatient claim for payment during the demonstration year.

(3) Changes that may affect eligibility for uncompensated-care payments.

(A) If a hospital closes, loses its license, loses its Medicare or Medicaid eligibility, withdraws from participation in an RHP, or files bankruptcy before receiving all or a portion of the uncompensated-care payments for a demonstration year, HHSC will determine the hospital's eligibility to receive payments going forward on a case-by-case basis. In making the determination, HHSC will consider multiple factors including whether the hospital was in compliance with all requirements during the demonstration year and whether it can satisfy the requirement to cooperate in the reconciliation process as described in subsection (i) of this section.

(B) A hospital must notify HHSC Rate Analysis Department in writing within 30 days of the filing of bankruptcy or of changes in ownership, operation, licensure, Medicare or Medicaid enrollment, or affiliation that may affect the hospital's continued eligibility for payments under this section.

(d) Source of funding. The non-federal share of funding for payments under this section is limited to timely receipt by HHSC of public funds from a governmental entity.

(e) Payment frequency. HHSC will distribute waiver payments on a schedule to be determined by HHSC and posted on HHSC's website.

(f) Funding limitations.

(1) Payments made under this section are limited by the maximum aggregate amount of funds allocated to the provider's uncompensated-care pool for the demonstration year. If payments for uncompensated care for an uncompensated-care pool attributable to a demonstration year are expected to exceed the aggregate amount of funds allocated to that pool by HHSC for that demonstration year, HHSC will reduce payments to providers in the pool as described in subsection (g)(5) of this section.

(2) HHSC will establish the following seven uncompensated-care pools: a state-owned hospital pool; a large public hospital pool; a small public hospital pool; a private hospital pool; a physician group practice pool; a governmental ambulance provider pool; and a publicly owned dental provider pool as follows:

(A) The state-owned hospital pool.

(i) The state-owned hospital pool funds uncompensated-care payments to state-owned teaching hospitals, state-owned IMDs and state chest hospitals.

(ii) HHSC will determine the allocation for this pool at an amount less than or equal to the total annual maximum uncom-

pensated-care payment amount for these hospitals as calculated in subsection (g)(2) of this section.

(B) Set-aside amounts. HHSC will determine set-aside amounts as follows:

(i) For small public hospitals:

(I) that are also rural hospitals:

(-a-) Divide the amount of funds approved by CMS for uncompensated-care payments for the demonstration year by the amount of funds approved by CMS for uncompensated-care payments for the 2013 demonstration year and round the result to four decimal places.

(-b-) Determine the small rural public hospital set-aside amount by multiplying the value from item (-a-) of this subclause by the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all small rural public hospitals that are eligible to receive uncompensated-care payments under this section and that meet the definition of a small public hospital from subsection (b)(21) of this section. Truncate the resulting value to zero decimal places.

(II) that are also urban RRCs, for DY 7 only, determine the small public urban RRC set-aside amount by multiplying by 54% the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all small public urban RRCs that are eligible to receive uncompensated-care payments under this section and that meet the definition of an urban RRC from subsection (b)(26) of this section. Truncate the resulting value to zero decimal places.

(ii) For private hospitals:

(I) that are also rural hospitals:

(-a-) Divide the amount of funds approved by CMS for uncompensated-care payments for the demonstration year by the amount of funds approved by CMS for uncompensated-care payments for the 2013 demonstration year and round the result to four decimal places.

(-b-) Determine the private rural hospital set-aside amount by multiplying the value from item (-a-) of this subclause by the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all private rural hospitals that are eligible to receive uncompensated-care payments under this section and that meet the definition of a small public hospital from subsection (b)(21) of this section. Truncate the resulting value to zero decimal places.

(II) that are also urban RRCs, for DY 7 only, determine the private urban RRC set-aside amount by multiplying by 54% the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all private urban RRCs that are eligible to receive uncompensated-care payments under this section and that meet the definition of an urban RRC from subsection (b)(26) of this section. Truncate the resulting value to zero decimal places.

(iii) Determine the total set-aside amount by summing the results of subclauses (i)(I), (i)(II), (ii)(I), and (ii)(II) of this subparagraph.

(C) Non-state-owned provider pools. HHSC will allocate the remaining available uncompensated-care funds, if any, and the set-aside amount among the non-state-owned provider pools as described in this subparagraph. The remaining available uncompensated-care funds equal the amount of funds approved by CMS for uncompensated-care payments for the demonstration year less the sum of funds allocated to the state-owned hospital pool under subparagraph (A) of this paragraph and the set-aside amount from subparagraph (B) of this paragraph.



(i) HHSC will allocate the funds among non-state-owned provider pools based on the following amounts:

(I) Large public hospitals:

(-a-) The sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all large public hospitals, as defined in subsection (b)(14) of this section, eligible to receive uncompensated-care payments under this section; plus

(-b-) An amount equal to the IGTs transferred to HHSC by large public hospitals to support DSH payments to themselves and private hospitals for the same demonstration year.

(II) Small public hospitals:

(-a-) The sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all non-rural and non-urban RRC small public hospitals, as defined in subsection (b)(21) of this section, eligible to receive uncompensated-care payments under this section; plus

(-b-) An amount equal to the IGTs transferred to HHSC by small public hospitals to support DSH payments to themselves for Pass One and Pass Two payments for the same demonstration year.

(III) Private hospitals: The sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all non-rural and non-urban RRC private hospitals, as defined in subsection (b)(16) of this section, eligible to receive uncompensated-care payments under this section.

(IV) Physician group practices: The sum of the unreimbursed uninsured costs and Medicaid shortfall for physician group practices, as described in §355.8202(g)(2)(A) of this title (relating to Waiver Payments to Physician Group Practices for Uncompensated Care).

(V) Governmental ambulance providers: The sum of the uncompensated care costs multiplied by the federal medical assistance percentage (FMAP) in effect during the cost reporting period for governmental ambulance providers, as described in §355.8600 of this title (relating to Reimbursement Methodology for Ambulance Services). Estimated amounts may be used if actual data is not available at the time calculations are performed.

(VI) Publicly-owned dental providers: The sum of the total allowable cost minus any payments for publicly owned dental providers, as described in §355.8441 of this title (relating to Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services). Estimated amounts may be used if actual data is not available at the time calculations are performed.

(ii) HHSC will sum the amounts calculated in clause (i) of this subparagraph.

(iii) HHSC will calculate the aggregate limit for each non-state-owned provider pool as follows:

(I) To determine the large public hospital pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds, from this subparagraph, by the amount calculated in clause (i)(I) of this subparagraph; and

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places.

(II) To determine the small public hospital pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(II) of this subparagraph;

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places; and

(-c-) add the result from item (-b-) of this subclause to the amount calculated in subparagraph (B)(ii) of this paragraph.

(III) To determine the private hospital pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(III) of this subparagraph;

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places; and

(-c-) add the result from item (-b-) of this subclause to the amount calculated in subparagraph (B)(iii) of this paragraph.

(IV) To determine the physician group practice pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(IV) of this subparagraph; and

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places.

(V) To determine the maximum aggregate amount of the estimated uncompensated care costs for all governmental ambulance providers:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(V) of this subparagraph; and

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places.

(VI) To determine the publicly owned dental providers pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(VI) of this subparagraph; and

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places.

(3) Payments made under this section are limited by the availability of funds identified in subsection (d) of this section. If sufficient funds are not available for all payments for which a hospital is eligible, HHSC will reduce payments as described in subsection (h)(2) of this section.

(g) Uncompensated-care payment amount.

(1) Application.

(A) Cost and payment data reported by the hospital in the uncompensated-care application is used to calculate the annual maximum uncompensated-care payment amount for the applicable demonstration year, as described in paragraph (2) of this subsection.

(B) Unless otherwise instructed in the application, the hospital must base the cost and payment data reported in the application on its applicable as-filed CMS 2552 Cost Report(s) For Electronic

Filing Of Hospitals corresponding to the data year and must comply with the application instructions or other guidance issued by HHSC.

(i) When the application requests data or information outside of the as-filed cost report(s), the hospital must provide all requested documentation to support the reported data or information.

(ii) For a new hospital, the cost and payment data period may differ from the data year, resulting in the eligible uncompensated costs based only on services provided after the hospital's Medicaid enrollment date. HHSC will determine the data period in such situations.

(2) Calculation. A hospital's annual maximum uncompensated-care payment amount is the sum of the components below. In no case can the sum of payments made to a hospital for a demonstration year for DSH and uncompensated-care payments, less the payments described in paragraph (3) of this subsection, exceed a hospital's specific limit as determined in §355.8066 of this title after modifications to reflect the adjustments described in paragraph (4) of this subsection.

(A) The interim hospital specific limit, calculated as described in §355.8066 of this title, except that an IMD may not report cost and payment data in the uncompensated-care application for services provided during the data year to Medicaid-eligible and uninsured patients ages 21 through 64, less any payments to be made under the DSH program for the same demonstration year, calculated as described in §355.8065 of this title;

(B) Other eligible costs for the data year, as described in paragraph (3) of this subsection;

(C) Cost and payment adjustments, if any, as described in paragraph (4) of this subsection; and

(D) For each hospital eligible for payments under subsection (f)(2)(C)(i)(I) of this section, the amount transferred to HHSC by that hospital's affiliated governmental entity to support DSH payments for the same demonstration year.

(3) Other eligible costs.

(A) In addition to cost and payment data that is used to calculate the hospital-specific limit, as described in §355.8066 of this title, a hospital may also claim reimbursement under this section for uncompensated care, as specified in the uncompensated-care application, that is related to the following services provided to Medicaid-eligible and uninsured patients:

(i) direct patient-care services of physicians and mid-level professionals;

(ii) pharmacy services; and

(iii) clinics.

(B) The payment under this section for the costs described in subparagraph (A) of this paragraph are not considered inpatient or outpatient Medicaid payments for the purpose of the DSH audit described in §355.8065 of this title.

(4) Adjustments. When submitting the uncompensated-care application, hospitals may request that cost and payment data from the data year be adjusted to reflect increases or decreases in costs resulting from changes in operations or circumstances.

(A) A hospital:

(i) may request that costs not reflected on the as-filed cost report, but which would be incurred for the demonstration year, be included when calculating payment amounts;

(ii) may request that costs reflected on the as-filed cost report, but which would not be incurred for the demonstration year, be excluded when calculating payment amounts.

(B) Documentation supporting the request must accompany the application. HHSC will deny a request if it cannot verify that costs not reflected on the as-filed cost report will be incurred for the demonstration year.

(C) In addition to being subject to the reconciliation described in subsection (i)(1) of this section which applies to all uncompensated-care payments for all hospitals, uncompensated-care payments for hospitals that submitted a request as described in subparagraph (A)(i) of this paragraph that impacted the interim hospital-specific limit described in paragraph (2)(A) of this subsection will be subject to the reconciliation described in subsection (i)(2) of this section.

(D) Notwithstanding the availability of adjustments impacting the interim hospital-specific limit described in this paragraph, no adjustments to the interim hospital-specific limit will be considered for purposes of Medicaid DSH payment calculations described in §355.8065 of this title.

(5) Reduction to stay within uncompensated-care pool aggregate limits. Prior to processing uncompensated-care payments for any payment period within a waiver demonstration year for any uncompensated-care pool described in subsection (f)(2) of this section, HHSC will determine if such a payment would cause total uncompensated-care payments for the demonstration year for the pool to exceed the aggregate limit for the pool and will reduce the maximum uncompensated-care payment amounts providers in the pool are eligible to receive for that period as required to remain within the pool aggregate limit.

(A) Calculations in this paragraph will be applied to each of the uncompensated-care pools separately.

(B) HHSC will calculate the following data points:

(i) For each provider, prior period payments to equal prior period uncompensated-care payments for the demonstration year.

(ii) For each provider, a maximum uncompensated-care payment for the payment period to equal the sum of:

(I) the portion of the annual maximum uncompensated-care payment amount calculated for that provider (as described in this section and the sections referenced in subsection (f)(2)(C) of this section) that is attributable to the payment period; and

(II) the difference, if any, between the portions of the annual maximum uncompensated-care payment amounts attributable to prior periods and the prior period payments calculated in clause (i) of this subparagraph.

(iii) The cumulative maximum payment amount to equal the sum of prior period payments from clause (i) of this subparagraph and the maximum uncompensated-care payment for the payment period from clause (ii) of this subparagraph for all members of the pool combined.

(iv) A pool-wide total maximum uncompensated-care payment for the demonstration year to equal the sum of all pool members' annual maximum uncompensated-care payment amounts for the demonstration year from paragraph (2) of this subsection.

(v) A pool-wide ratio calculated as the pool aggregate limit from subsection (f)(2) of this section divided by the

pool-wide total maximum uncompensated-care payment amount for the demonstration year from clause (iv) of this subparagraph.

(C) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is less than the aggregate limit for the pool, each provider in the pool is eligible to receive their maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph without any reduction to remain within the pool aggregate limit.

(D) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is more than the aggregate limit for the pool, HHSC will calculate a revised maximum uncompensated-care payment for the payment period for each provider in the pool as follows:

(i) HHSC will calculate a capped payment amount equal to the product of the provider's annual maximum uncompensated-care payment amount for the demonstration year from paragraph (2) of this subsection and the pool-wide ratio calculated in subparagraph (B)(v) of this paragraph.

(ii) If the payment period is not the final payment period for the demonstration year, the revised maximum uncompensated-care payment for the payment period equals the lesser of:

(I) the maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph; or

(II) the difference between the capped payment amount from clause (i) of this subparagraph and the prior period payments from subparagraph (B)(i) of this paragraph.

(iii) If the payment period is the final payment period for the demonstration year:

(I) HHSC will calculate an IGT-supported maximum uncompensated-care payment for the payment period equal to the amount of the maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph that is supported by an IGT commitment.

(-a-) For hospitals and physician group practices, HHSC will obtain from each RHP anchor a current breakdown of IGT commitments from all governmental entities, including governmental entities outside of the RHP, that will be providing IGTs for uncompensated-care payments for each hospital and physician group practice within the RHP that is eligible for such payments for the payment period.

(-b-) Ambulance and dental providers will be assumed to have commitments for 100 percent of the non-federal share of their payments. The non-federal share for ambulance providers is provided through certified public expenditures (CPEs); for ambulance providers, references to IGTs in this subsection should be read as references to CPEs.

(II) HHSC will calculate an IGT-supported maximum uncompensated-care payment for the demonstration year to equal the IGT-supported maximum uncompensated-care payment for the payment period from subclause (I) of this clause plus the provider's prior period payments from subparagraph (B)(i) of this paragraph.

(III) For providers with an IGT-supported maximum uncompensated-care payment amount for the demonstration year from subclause (II) of this clause that is less than or equal to their capped payment amount from clause (i) of this subparagraph, the provider's revised maximum uncompensated-care payment for the payment period equals the IGT-supported maximum uncompensated-care payment amount for the payment period from subclause (I) of this clause. For these providers, the difference between their

capped payment amount from clause (i) of this subparagraph and their IGT-supported maximum uncompensated-care payment amount for the demonstration year from subclause (II) of this clause is their unfunded cap room.

(IV) HHSC will sum all unfunded cap room from subclause (III) of this clause to determine the total unfunded cap room for the pool.

(V) For providers with an IGT-supported maximum uncompensated-care payment amount for the demonstration year from subclause (II) of this clause that is greater than their capped payment amount from clause (i) of this subparagraph, the provider's revised maximum uncompensated-care payment amount for the payment period is calculated as follows:

(-a-) For each provider, HHSC will calculate an overage amount to equal the difference between the IGT-supported maximum uncompensated-care payment amount for the demonstration year from subclause (II) of this clause and their capped payment amount for the demonstration year from clause (i) of this subparagraph. Unfunded cap room from subclause (IV) of this clause will be distributed to these providers based on each provider's overage as a percentage of the pool-wide overage.

(-b-) For each provider, the provider's revised maximum uncompensated-care payment amount for the payment period is equal to the sum of its capped payment amount from clause (i) of this subparagraph and its portion of its pool's unfunded cap room from item (-a-) of this subclause less its prior period payments from subparagraph (B)(i) of this paragraph.

(E) Once reductions to ensure that uncompensated-care expenditures do not exceed the aggregate limit for the demonstration year for the pool are calculated, HHSC will not re-calculate the resulting payments for any provider for the demonstration year, including if the IGT commitments upon which the reduction calculations were based are different than actual IGT amounts.

(F) Notwithstanding the calculations described in subparagraphs (A) - (E) of this paragraph, if the payment period is the final payment period for the demonstration year, to the extent the payment is supported by IGT, each rural hospital is guaranteed a payment at least equal to its interim hospital specific limit from paragraph (2)(A) of this subsection multiplied by the value from subsection (f)(2)(B)(i)(I) of this section for the demonstration year less any prior period payments. If this guarantee will cause payments for a pool to exceed the aggregate pool limit, the reduction required to stay within the pool limit will be distributed proportionally across all non-rural and non-urban RRC providers in the pool based on each provider's resulting payment from subparagraphs (A) - (E) of this paragraph as compared to the payments to all non-rural and non-urban RRC hospitals in the pool resulting from subparagraphs (A) - (E) of this paragraph.

(G) Notwithstanding the calculations described in subparagraphs (A) - (E) of this paragraph, if the payment period is the final payment period for the demonstration year, to the extent the payment is supported by IGT, each urban RRC is guaranteed a payment at least equal to its interim hospital specific limit from paragraph (2)(A) of this subsection multiplied by 54% for the demonstration year less any prior period payments. If this guarantee will cause payments for a pool to exceed the aggregate pool limit, the reduction required to stay within the pool limit will be distributed proportionally across all non-rural and non-urban RRC providers in the pool based on each provider's resulting payment from subparagraphs (A) - (E) of this paragraph as compared to the payments to all non-rural and non-urban RRC hospitals in the pool resulting from subparagraphs (A) - (E) of this paragraph.

(6) Prohibition on duplication of costs. Eligible uncompensated-care costs cannot be reported on multiple uncompensated-care applications, including uncompensated-care applications for other programs. Reporting on multiple uncompensated-care applications is duplication of costs.

(7) Advance payments.

(A) In a demonstration year in which uncompensated-care payments will be delayed pending data submission or for other reasons, HHSC may make advance payments to hospitals that meet the eligibility requirements described in subsection (c)(2) of this section and submitted an acceptable uncompensated-care application for the preceding demonstration year from which HHSC calculated an annual maximum uncompensated-care payment amount for that year.

(B) The amount of the advance payments will be a percentage, to be determined by HHSC, of the annual maximum uncompensated-care payment amount calculated by HHSC for the preceding demonstration year.

(C) Advance payments are considered to be prior period payments as described in paragraph (5)(B)(i) of this subsection.

(D) A hospital that did not submit an acceptable uncompensated-care application for the preceding demonstration year is not eligible for an advance payment.

(E) If a partial year uncompensated-care application was used to determine the preceding demonstration year's payments, data from that application may be annualized for use in computation of an advance payment amount.

(8) Payments of unspent funds.

(A) HHSC will use the methodology described in this paragraph to calculate payment amounts to hospitals for uncompensated-care payments that are made after July 31, 2020, using any remaining funding for uncompensated-care program years beginning before October 1, 2017.

(B) The basis for each hospital's payment allocation will be the total amount of payments received by the hospital in the data year that are from a third-party payor for a Medicaid-enrolled patient and associated with third-party coverage as defined in §355.8066 of this subchapter (relating to Hospital-Specific Limit Methodology).

(C) All hospitals' payment allocations will be based on 100 percent of the amount described in subparagraph (B) of this paragraph, except:

(i) Children's hospitals as defined in §355.8065 of this subchapter (related to Disproportionate Share Hospital Reimbursement Methodology) will receive a payment allocation based on 150 percent of the amount described in subparagraph (B) of this paragraph.

(ii) State-owned teaching hospitals, state-owned IMDs, state chest hospitals, physician group practices, ambulance providers, and dental providers will not receive a payment allocation under the methodology described in this paragraph.

(D) Each hospital's payment amount will be allocated by:

(i) applying the appropriate percentage described in subparagraph (C) of this paragraph to the amount described in subparagraph (B) of this paragraph;

(ii) dividing the amount calculated in clause (i) of this subparagraph by the total amount of payments described in subparagraph (B) of this paragraph for all participating hospitals; and

(iii) multiplying the amount in clause (ii) of this subparagraph by the remaining uncompensated-care funding for the program year.

(E) Each payment amount will be compared to actual costs incurred by the hospital as determined by the reconciliation calculated for the demonstration year, as described in subsection (i) of this section.

(i) A hospital will receive the lesser of its actual costs, as determined by the reconciliation calculated for the demonstration year under subsection (i) of this section, or the hospital's allocation described in subparagraph (D) of this paragraph.

(ii) If, following the determination described in clause (i) of this subparagraph, there is funding remaining in the UC program year, the remaining funding amounts will be placed into a second pool.

(iii) The second pool will be allocated to hospitals that have not received UC payments that exceed their actual costs, as determined by the reconciliation calculated for the demonstration year under subsection (i) of this section after accounting for any additional payment the hospital is receiving under the methodology described in this paragraph. Any distribution under this subparagraph will be allocated by:

(I) Dividing the hospital's total uncompensated-care costs, as determined by the reconciliation calculated for the demonstration year under subsection (i) of this section, by the total uncompensated-care costs for all participating hospitals, as determined by the reconciliation calculated for the demonstration year under subsection (i) of this section; and

(II) Multiplying the amount described in subclause (I) of this clause by the funding remaining in the uncompensated-care program year after the distribution described in subparagraph (D) of this paragraph.

(h) Payment methodology.

(1) Notice. Prior to making any payment described in subsection (g) of this section, HHSC will give notice of the following information:

(A) the payment amount for the payment period (based on whether the payment is made quarterly, semi-annually, or annually);

(B) the maximum IGT amount necessary for a hospital to receive the amount described in subparagraph (A) of this paragraph; and

(C) the deadline for completing the IGT.

(2) Payment amount. The amount of the payment to a hospital will be determined based on the amount of funds transferred by the affiliated governmental entity or entities as follows:

(A) If the governmental entity transfers the maximum amount referenced in paragraph (1) of this subsection, the hospital will receive the full payment amount calculated for that payment period.

(B) If a governmental entity does not transfer the maximum amount referenced in paragraph (1) of this subsection, HHSC will determine the payment amount to each hospital owned by or affiliated with that governmental entity as follows:

(i) At the time the transfer is made, the governmental entity notifies HHSC, on a form prescribed by HHSC, of the share of the IGT to be allocated to each hospital owned by or affiliated with that entity and provides the non-federal share of uncompensated-care

payments for each entity with which it affiliates in a separate IGT transaction; or

(ii) In the absence of the notification described in clause (i) of this subparagraph, each hospital owned by or affiliated with the governmental entity will receive a portion of its payment amount for that period, based on the hospital's percentage of the total payment amounts for all hospitals owned by or affiliated with that governmental entity.

(C) For a hospital that is affiliated with multiple governmental entities, in the event those governmental entities transfer more than the maximum IGT amount that can be provided for that hospital, HHSC will calculate the amount of IGT funds necessary to fund the hospital to its payment limit and refund the remaining amount to the governmental entities identified by HHSC.

(3) Final payment opportunity. Within payments described in this section, a governmental entity that does not transfer the maximum IGT amount described in paragraph (1) of this subsection during a demonstration year will be allowed to fund the remaining payments at the time of the final payment for that demonstration year. The IGT will be applied in the following order:

(A) To the final payment up to the maximum amount;

(B) To remaining balances for prior payment periods in the demonstration year.

(i) Reconciliation. HHSC will reconcile actual costs incurred by the hospital for the demonstration year with uncompensated-care payments, if any, made to the hospital for the same period:

(1) If a hospital received payments in excess of its actual costs, the overpaid amount will be recouped from the hospital, as described in subsection (j) of this section.

(2) If a hospital received payments less than its actual costs, and if HHSC has available waiver funding for the demonstration year in which the costs were accrued, the hospital may receive reimbursement for some or all of those actual documented unreimbursed costs.

(3) ~~If [Except in demonstration year 2 (October 1, 2012, to September 30, 2013); if] a hospital submitted a request as described in subsection (g)(4)(A)(i) of this section that impacted its interim hospital-specific limit, HHSC [that hospital] will conduct [be subject to] an additional reconciliation for certain demonstration years as follows:~~

(A) For demonstration years 3-5 (October 1, 2013 - September 30, 2016), HHSC will compare the hospital's adjusted interim hospital-specific limit from subsection (g)(4)(A)(i) of this section for the demonstration year to its final hospital-specific limit as described in §355.8066(c)(2) of this title for the demonstration year.

(B) For demonstration years 6-8 (October 1, 2016 - September 30, 2019), HHSC will compare the hospital's adjusted interim hospital-specific limit from subsection (g)(4)(A)(i) of this section for the demonstration year to a proxy-final hospital-specific limit that is described in §355.8066(c)(2) of this title for the demonstration year, except this proxy-final hospital-specific limit will not offset third-party and Medicare payments for claims and encounters where Medicaid was a secondary payer.

(C) [(B)] If the final hospital-specific limit for demonstration years 3-5 or proxy-final hospital-specific limit for demonstration years 6-8 limit is less than the adjusted interim hospital-specific limit, HHSC will recalculate the hospital's uncompensated-care payment for the demonstration year substituting the final hospital-specific limit for demonstration years 3-5 or proxy-final hospital-specific limit for demonstration years 6-8 for the adjusted interim hospital-specific

limit with no other changes to the data used in the original calculation of the hospital's uncompensated-care payment other than any necessary reductions to the original IGT amount and will recoup any payment received by the hospital that is greater than the recalculated uncompensated-care payment. Recouped funds may be redistributed to other hospitals that received payments less than their actual costs using the methodology described in subsection (k) of this section.

(4) Each hospital that received an uncompensated-care payment during a demonstration year must cooperate in the reconciliation process by reporting its actual costs and payments for that period on the form provided by HHSC for that purpose, even if the hospital closed or withdrew from participation in the uncompensated-care program. If a hospital fails to cooperate in the reconciliation process, HHSC may recoup the full amount of uncompensated-care payments to the hospital for the period at issue.

(j) Recoupment.

(1) In the event of an overpayment identified by HHSC or a disallowance by CMS of federal financial participation related to a hospital's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the overpayment or disallowance. The non-federal share of any funds recouped from the hospital will be returned to the entity that owns or is affiliated with the hospital.

(2) Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debts), 42 CFR Part 455, and Chapter 403, Texas Government Code. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the hospital against which any overpayment was made or disallowance was directed.

(B) If, within 30 days of the hospital's receipt of HHSC's written notice of recoupment, the hospital has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future Medicaid payments from the hospital until HHSC has recovered an amount equal to the amount overpaid or disallowed.

(k) Redistribution of Recouped Funds. Following the recoupments described in subsection (j) of this section, HHSC will redistribute the recouped funds to eligible providers. For purposes of this subsection, an eligible provider is a provider who has room remaining in their final remaining uncompensated cost of care (UCC) calculated in the reconciliation described in subsection (i) of this section after considering all uncompensated-care payments made for that program year. Recouped funds from state providers will be redistributed proportionately to eligible state providers based on the percentage that each eligible state provider's remaining final UCC calculated in the reconciliation described in subsection (i) of this section is of the total remaining final UCC calculated in the reconciliation described in subsection (i) of this section of all eligible state providers. Recouped funds from non-state providers will be redistributed proportionately to eligible non-state providers as follows:

(1) For demonstration years 1-6 (October 1, 2011 - September 30, 2017), HHSC will use the following methodology to redistribute recouped funds:

(A) the non-federal share will be returned to the governmental entity that provided it during the program year;

(B) the federal share will be distributed proportionately among all non-state providers eligible for additional payments that have a source of the non-federal share of the payments; and

(C) the federal share that does not have a source of non-federal share will be returned to CMS.

(2) For demonstration years 7-8 (October 1, 2017 - September 30, 2019), HHSC will use the following methodology to redistribute recouped funds:

(A) To calculate a weight that will be applied to all non-state providers, HHSC will divide the final hospital-specific limit described in §355.8066(c)(2) of this title by the final hospital-specific limit described in §355.8066(c)(2) of this title that has not offset payments for third-party and Medicare claims and encounters where Medicaid was a secondary payer. HHSC will add 1 to the quotient. Any non-state provider who has a resulting weight of less than 1 will receive a weight of 1.

(B) HHSC will make a first pass allocation by multiplying the weight described in subsection (k)(2)(A) of this section by the final remaining UCC calculated in the reconciliation described in subsection (i) of this section. HHSC will divide the product by the total remaining UCCs for all non-state providers. HHSC will multiply the quotient by the total amount of recouped dollars available for redistribution described in subsection (j)(1) of this section.

(C) After the first pass allocation, HHSC will cap non-state providers at their final remaining UCC. A second pass allocation will occur in the event non-state providers were paid over their final remaining UCC after the weight in subsection (k)(2)(A) of this section was applied. HHSC will calculate the second pass by dividing the final remaining UCC calculated in the reconciliation described in subsection (i) of this section by the total remaining UCCs for all non-state providers after accounting for first pass payments. HHSC will multiply the quotient by the total amount of funds in excess of total UCCs for non-state providers capped at their total UCC.

(l) [(k)] Penalty for failure to complete Category 4 reporting requirements for Regional Healthcare Partnerships. Hospitals must comply with all Category 4 reporting requirements set out in Chapter 354 of this title, Subchapter D (relating to Texas Healthcare Transformation and Quality Improvement Program). If a hospital fails to complete required Category 4 reporting measures by the last quarter of a demonstration year:

(1) the hospital will forfeit its uncompensated-care payments for that quarter; or

(2) the hospital may request from HHSC a six-month extension from the end of the demonstration year to report any outstanding Category 4 measures.

(A) The fourth-quarter payment will be made upon completion of the outstanding required Category 4 measure reports within the six-month period.

(B) A hospital may receive only one six-month extension to complete required Category 4 reporting for each demonstration year.

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

Filed with the Office of the Secretary of State on October 26, 2020.

TRD-202004464

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 407-3285



## **TITLE 7. BANKING AND SECURITIES**

### **PART 7. STATE SECURITIES BOARD**

#### **CHAPTER 107. TERMINOLOGY**

##### **7 TAC §107.2**

The Texas State Securities Board proposes an amendment to §107.2, concerning Definitions. The proposed amendment would align the definitions of individual accredited investor, institutional accredited investor, and qualified institutional buyer with the definitions of accredited investor and qualified institutional buyer used by the Securities and Exchange Commission (SEC). The SEC recently adopted amendments to these terms, which become effective December 8, 2020. The proposed amendment would also move the definitions of qualified institutional buyer set forth elsewhere in the rules to this section, change the definition of Form D to reference the current SEC Form D, and expand the definition of the EFD System from accepting only Form D filings to include additional types of electronic filings as permitted by Board Rule.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be to coordinate the definitions in the rule with federal standards and requirements and to facilitate the Agency's ability to accept additional types of electronic filings via the EFD system in the future. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-5, 581-7, 581-12, and 581-12-1.

*§107.2. Definitions.*

The following words and terms, when used in Part 7 of this title (relating to the State Securities Board), shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (40) (No change.)

(41) Individual accredited investor--~~A natural~~ [Natural] person [as] described in Rule 501(a), [501(a)(5) and (6)] promulgated by the SEC under the Securities Act of 1933 (17 CFR §230.501, as amended) [as made effective in SEC Release Number 33-6389, as amended in Release Numbers 33-6758, 33-6825, and 33-9287].

(42) Institutional accredited investor--~~An entity (not a natural person)~~ described in Rule 501(a), [501(a)(4) - (4), (7) and (8)] promulgated by the SEC under the Securities Act of 1933 (17 CFR §230.501, as amended) [as made effective in SEC Release Number 33-6389, as amended in Release Numbers 33-6758 and 33-6825].

(43) Form D--

(A) For paper filings--Form D, Notice of Exempt Offering of Securities, [as effective on September 23, 2013] (referenced in 17 CFR [Code of Federal Regulations] §239.500).

(B) For electronic filings made through the EFD System--The information, relating to a filing designated to be made in Texas, that is submitted through the EFD System in connection with a Form D filing made with the SEC. It includes all information made available to the Securities Commissioner through the EFD System in connection with the Texas filing.

(44) EFD System--The Electronic Filing Depository system provided by the North American Securities Administrators Association (NASAA) that is used for making an electronic filing [of Form D] with the Securities Commissioner of Form D and such other filings as permitted by Board rule.

(45) Qualified institutional buyer--An entity described in Rule 144A, as promulgated by the SEC under the Securities Act of 1933 (17 CFR §230.144A, as amended).

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

Filed with the Office of the Secretary of State on October 26, 2020.

TRD-202004472

Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 305-8303



## CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

### 7 TAC §§109.4 - 109.6

The Texas State Securities Board proposes amendments to §109.4, concerning Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors; §109.5, concerning Dealer Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors; and §109.6, concerning Investment Adviser Registration Exemption for Investment Advice to Financial Institutions and Certain Institutional Investors. The Securities and Exchange Commission (SEC) recently amended its definitions of accredited investors and qualified institutional buyers, which become effective December 8, 2020. The proposed amendments would replace detailed definitions relating to accredited investors and qualified institutional buyers in these sections with cross-references to §107.2, concerning Definitions, which is being concurrently proposed for amendment to incorporate the SEC's amendments to these definitions. These amendments would allow the Board to update the definitions in §107.2, without having to also update the definitions in these sections, each time the SEC alters these definitions in the future.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendments are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendments are in effect the public benefit expected as a result of adoption of the proposed amendments will be to coordinate the rules with federal standards and requirements. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendments will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendments are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed amend-

ments do not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under Texas Civil Statutes, Articles 581-5.T, 581-12.C, and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-5, 581-7, 581-12, and 581-12-1.

*§109.4. Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors.*

(a) (No change.)

(b) Sales to certain institutional investors. The State Securities Board, pursuant to the Act, §5.T, exempts from the securities registration requirements of the Act, §7, the offer and sale of any securities to any of the following persons:

(1) (No change.)

(2) any "qualified institutional buyer" (as that term is defined in §107.2 of this title (relating to Definitions) [Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as made effective in SEC Release Number 33-6862, and amended in Release Number 33-6963]); and

(3) (No change.)

(c) (No change.)

*§109.5. Dealer Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors.*

(a) (No change.)

(b) Sales to certain institutional investors. The State Securities Board, pursuant to the Act, §5.T and §12.C, exempts a person from the dealer and agent registration requirements of the Act, when the person sells or offers for sale any securities to any of the following persons:

(1) (No change.)

(2) any "qualified institutional buyer" (as that term is defined in §107.2 of this title (relating to Definitions) [Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as made effective in SEC Release Number 33-6862, and amended in Release Number 33-6963]); and

(3) (No change.)

(c) (No change.)

*§109.6. Investment Adviser Registration Exemption for Investment Advice to Financial Institutions and Certain Institutional Investors.*

(a) (No change.)

(b) Investment advice rendered to certain institutional investors. The State Securities Board, pursuant to the Act, §5.T and §12.C, exempts from the investment adviser and investment adviser representative registration requirements of the Act, persons who render investment advisory services to any of the following:

(1) an "institutional accredited investor," [(c) as that term is defined in §107.2 of this title (relating to Definitions) [Rule 501(a)(1)-(3), (7), and (8) promulgated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933, as amended (1933 Act), as made effective in SEC Release Number 33-6389, as amended in Release Numbers 33-6437, 33-6663, 33-6758, and 33-6825)];

(2) any "qualified institutional buyer," [(c) as that term is defined in §107.2 of this title (relating to Definitions) [Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as made effective in SEC Release Number 33-6862, and amended in Release Number 33-6963]]; and

(3) (No change.)

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

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

Filed with the Office of the Secretary of State on October 26, 2020.

TRD-202004473

Travis J. Iles

Securities Commissioner

State Securities Board

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 305-8303



## 7 TAC §109.15

The Texas State Securities Board proposes the repeal of §109.15, concerning Designated Matching Services. The proposal would repeal this rule, as it is no longer in use and has become obsolete. There are currently no entities operating as a designated matching service under this rule. A related form, §133.35, Application for Designation of Matching Services Under §109.15, is also concurrently proposed for repeal.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed repeal is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed repeal.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the repeal is in effect the public benefit expected as a result of adoption of the proposed repeal will be that a rule that is no longer needed will be eliminated. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed repeal will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no an-



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

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed repeal is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed repeal does not create a new regulation; and it does not limit or expand an existing regulation. The proposal repeals a rule that is obsolete and no longer in use.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed repeal in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711 3167 or faxed to (512) 305 8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The repeal is proposed under Texas Civil Statutes, Articles 581-12.C and 581-28-1. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeal affects Texas Civil Statutes, Articles 581 12 and 581-18.

*§109.15. Designated Matching Services.*

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

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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



## CHAPTER 133. FORMS

### 7 TAC §133.35

The Texas State Securities Board proposes the repeal of §133.35, which adopts by reference the Application for Designation of Matching Services Under §109.15 form, which is used

to apply to become a designated matching service pursuant to §109.15, which is concurrently being proposed for repeal. The form and rule are being repealed because they are no longer in use and have become obsolete.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed repeal is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed repeal.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the repeal is in effect the public benefit expected as a result of adoption of the proposed repeal will that a form that is no longer needed will be eliminated. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed repeal will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed repeal of the rule adopting by reference the form is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed repeal does not create a new regulation; and it does not limit or expand an existing regulation. The proposal repeals an existing form used under a rule that has also been proposed for repeal.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed repeal in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711 3167 or faxed to (512) 305 8336. Comments may also be submitted electronically to [proposal@ssb.texas.gov](mailto:proposal@ssb.texas.gov). In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The repeal is proposed under Texas Civil Statutes, Articles 581-12.C and 581-28-1. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeal affects Texas Civil Statutes, Articles 581 12 and 581-18.

*§133.35. Application for Designation as Matching Service under §109.15.*

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

Filed with the Office of the Secretary of State on October 26, 2020.

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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



## **TITLE 16. ECONOMIC REGULATION**

### **PART 1. RAILROAD COMMISSION OF TEXAS**

#### **CHAPTER 12. COAL MINING REGULATIONS**

The Railroad Commission of Texas (Commission) proposes to amend, in Subchapter A, General, Division 1, General, §12.3 and §12.4, relating to Definitions; and Petitions to Initiate Rule-making.

In Subchapter G, Surface Coal Mining and Reclamation Operations, Permits, and Coal Exploration Procedures Systems, Division 1, General Requirements for Permit and Exploration Procedure Systems under Regulatory Programs, the Commission proposes to amend §12.100, relating to Responsibilities.

In Subchapter G, Division 2, General Requirements for Permits and Permit Applications, the Commission proposes to amend §12.106 and §12.108, relating to Permit Application Filing Deadlines; and Permit Fees.

In Subchapter G, Division 4, Surface Mining Permit Applications--Minimum Requirements for Legal, Financial, Compliance, and Related Information, the Commission proposes a change in the Division title and amendments to §12.121, relating to Identification of Other Licenses and Permits.

In Subchapter G, Division 5, Surface Mining Permit Applications--Minimum Requirements for Information on Environmental Resources, the Commission proposes amendments to §12.126 and §12.137, relating to Description of Hydrology and Geology: General Requirements; and Cross Sections, Maps, and Plans.

In Subchapter G, Division 6, Surface Mining Permit Applications--Minimum Requirements for Reclamation and Operation Plan, the Commission proposes amendments to §§12.142, 12.146, 12.148, and 12.154, relating to Operation Plan: Maps and Plans; Reclamation Plan: Protection of Hydrologic Balance; Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments; and Road Systems and Support Facilities.

In Subchapter G, Division 7, Underground Mining Permit Applications--Minimum Requirements for Legal, Financial, Compliance, and Related Information, the Commission proposes changes to the Division title and amendments to §12.161, relating to Identification of Other Licenses and Permits.

In Subchapter G, Division 8, Underground Mining Permit Applications--Minimum Requirements for Information on Environmental Resources, the Commission proposes amendments to

§12.172 and §12.183, relating to Description of Hydrology and Geology: General Requirements; and Cross Sections, Maps, and Plans.

In Subchapter G, Division 9, Underground Mining Permit Applications--Minimum Requirements for Reclamation and Operation Plan, the Commission proposes amendments to §§12.188, 12.190, 12.197, and 12.198, relating to Reclamation Plan: Protection of Hydrologic Balance; Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments; Operation Plan: Maps and Plans; and Road Systems and Support Facilities.

In Subchapter G, Division 11, Review, Public Participation, and Approval of Permit Applications and Permit Terms and Conditions, the Commission proposes amendments to §§12.207, 12.211, and 12.215, relating to Public Notices of Filing of Permit Applications; Public Hearing on Application; and Review of Permit Applications.

In Subchapter G, Division 13, Permit Reviews, Revisions, and Renewals, and Transfers, Sale, and Assignment of Rights Granted Under Permits, the Commission proposes amendments to §12.225, relating to Commission Review of Outstanding Permits.

In Subchapter K, Permanent Program Performance Standards, Division 2, Permanent Program Performance Standards--Surface Mining Activities, the Commission proposes amendments to §§12.341, 12.344, 12.347, 12.363, 12.366, 12.368, 12.369, 12.373, 12.376, 12.382, 12.398, 12.399, and 12.401, relating to Hydrologic Balance: Diversions; Hydrologic Balance: Siltation Structures; Hydrologic Balance: Permanent and Temporary Impoundments; Disposal of Excess Spoil: General Requirements; Disposal of Excess Spoil: Durable Rock Fills; Coal Processing Waste Banks: General Requirements; Coal Processing Waste Banks: Site Inspection; Coal Processing Waste: Burned Waste Utilization; Coal Mine Waste: Dams and Embankments: General Requirements; Pipelines; Cessation of Operations: Permanent; Postmining Land Use; and Primary Roads.

In Subchapter K, Division 3, Permanent Program Performance Standards--Underground Mining Activities, the Commission proposes amendments to §§12.511, 12.514, 12.517, 12.531, 12.534, 12.535, 12.536, 12.540, 12.543, 12.549, 12.567, 12.568, and 12.570, relating to Hydrologic Balance: Diversions; Hydrologic Balance: Siltation Structures; Hydrologic Balance: Permanent and Temporary Impoundments; Disposal of Underground Development Waste and Excess Spoil: General Requirements; Disposal of Underground Development Waste and Excess Spoil: Durable Rock Fills; Coal Mine Waste Banks: General Requirements; Coal Mine Waste Banks: Site Inspection; Coal Mine Waste: Burned-Waste Utilization; Coal Mine Waste: Dams and Embankments: General Requirements; Pipelines; Cessation of Operations: Permanent; Postmining Land Use; and Primary Roads.

In Subchapter L, Permanent Program Inspection and Enforcement Procedures, Division 1, Commission Inspection and Enforcement, the Commission proposes amendments to §12.676, relating to Alternative Enforcement, and in Division 2, Enforcement, the Commission proposes amendments to §12.679, relating to Suspension or Revocation of Permits.

The Commission proposes the amendments in order to better organize and clarify certain procedures, conform Commission rules to federal regulations and guidance such as the United States Department of Agriculture (USDA) Technical Release 60, update references to statutes or editions of external documents,

update references to professional engineers and professional geoscientists, and make other nonsubstantive clarifying amendments such as making rules gender neutral and correcting internal cross-references.

Proposed amendments to §§12.100, 12.108, 12.121, 12.146, 12.161, 12.188, 12.225, 12.398, and 12.567 result from Commission staff recommendations to update, reorganize, or clarify certain procedures. The proposed amendments in §12.100 correspond to other proposed amendments in §12.398 and §12.567 to require operators to notify the Commission of the intent to permanently cease and abandon operations. In §12.108, the proposed amendments state that the annual fee for each acre of land within a permit area covered by a reclamation bond on December 31st of a year will be based on the number of bonded acres of land identified by the applicant on the map included in the permit and approved by the Commission. The amendments will require that, by December 31st of any given year, the permit bond map is updated to incorporate any releases of reclamation acreage that were approved during that year. On December 31st of each year, Commission staff will use the approved bond map on file to calculate the fee. In §12.121 and §12.161, the proposed amendments add the permit expiration date to list of information required to be submitted with an application to conduct the proposed surface mining activities. In §12.146 and §12.188, proposed amendments reorganize certain requirements for ease of reading and to assist Commission staff in checking that the requirements have been met; the proposed amendments in new subsection(d)(6) in both rules are made to ensure consistency with the corresponding federal rule.

Proposed amendments to §§12.344, 12.347, 12.376, 12.514, 12.517, and 12.543 update references to the United States Department of Agriculture's Technical Release 60 which was revised in 2005. Previously, the rules referenced the 1985 edition of Technical Release 60. In the 2005 version, several terms have been updated and those terms are proposed to be updated in the Commission's rules as well. For example, these proposed amendments replace the term "emergency spillways" with "auxiliary spillways" and change references to "Class B or C" criteria to "significant or high hazard class."

Certain amendments are proposed to update the terms "registered professional engineer" and "professional geologist" to "professional engineer" and "professional geoscientist," respectively. The updates ensure consistency with terms used by professional licensing boards. These amendments are proposed in the definitions of those terms in §12.3(132) and (133) with conforming amendments proposed in §§12.137, 12.142, 12.148, 12.154, 12.183, 12.190, 12.197, 12.198, 12.341, 12.363, 12.366, 12.368, 12.369, 12.373, 12.399, 12.401, 12.511, 12.531, 12.534, 12.535, 12.536, 12.540, 12.568, and 12.570.

Finally, other proposed nonsubstantive clarifying amendments to §§12.3(89), 12.4, 12.106, 12.126, 12.172, 12.207, 12.211, 12.215, 12.382, 12.549, 12.676, and 12.679 correct internal cross-references or references to statutes or editions of external documents, ensure consistency with state statutes, make rule wording gender neutral, or make grammatical corrections. For example, proposed amendments in §12.4 remove outdated requirements for petitions for rulemaking, which required that the Commission respond to a petition within 90 days of receipt. The proposed changes reference the Texas Administrative Procedure Act and the Commission's corresponding rule of practice and procedure, which require a response within 60

days of receipt. Proposed amendments in §12.106 change the required permit renewal application date to 120 days before the expiration of the permit to match the timeline in Texas Natural Resources Code §134.078.

Brent Elliott, Director, Surface Mining and Reclamation Division, has determined that during each year of the first five years the proposed amendments would be in effect, the fiscal effect on state government as a result of enforcing the proposed amendments would be zero. There are no fiscal impacts on local governments.

Mr. Elliott has determined that during each year of the first five years the proposed amendments would be in effect the fiscal impact on those required to comply with the proposed amendments would be minimal postage costs associated with the new notice requirement in §12.398 and §12.567.

Mr. Elliott has determined that the public benefit resulting from the proposed amendments is consistency with governing state statutes and federal rules, use of correct references, and updated rule language.

In accordance with Texas Government Code §2006.002, the Commission has determined that there will be no adverse economic effects on rural communities or small or micro-businesses resulting from the proposed amendments. The Commission notes there are no small businesses or micro-businesses, as those terms are defined in Texas Government Code §2006.001, holding coal mining permits from the Commission. Therefore, the Commission has not prepared the economic impact statement or regulatory flexibility analysis required under §2006.002(c).

The proposed amendments also will not affect a local economy; therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

During the first five years that the rules would be in effect, the proposed amendments would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; create a new regulation; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; or affect the state's economy. As described above, the Commission proposes the amendments to better organize and clarify certain procedures, conform Commission rules to federal regulations and guidance, update references, and make other nonsubstantive clarifying amendments.

Lastly, the Commission has determined that the proposed rule does not meet the statutory definition of a major environmental rule as set forth in Texas Government Code §2001.0225; therefore, a regulatory analysis pursuant to that section is not required.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings](http://www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings); or by electronic mail to [rulescoordinator@rrc.texas.gov](mailto:rulescoordinator@rrc.texas.gov). The Commission will accept comments until 5:00 p.m. on Monday, November 23, 2020. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to *Texas Register* publication of the proposal, giving in-

interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Elliott at (512) 305-8840. The status of pending Commission rulemakings is available at [www.rrc.texas.gov/general-counsel/rules/proposed-rules](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules).

## SUBCHAPTER A. GENERAL

### DIVISION 1. GENERAL

#### 16 TAC §12.3, §12.4

The Commission proposes the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

#### *§12.3. Definitions.*

The following words and terms, when used in this Chapter (relating to Coal Mining Regulations), shall have the following meanings unless the context clearly indicates otherwise:

(1) - (88) (No change.)

(89) Imminent danger to the health and safety of the public--The existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practices giving rise to the peril, would not expose that person [himself] to the danger during the time necessary for abatement.

(90) - (121) (No change.)

(122) Permit area--The area of land and water indicated on the map submitted by the operator with the [his] application, as approved by the Commission, which area shall be covered by the operator's bond as required by §§134.121 - 134.127 of the Act and shall be readily identifiable by appropriate markers on the site. This area shall include, at a minimum, all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit.

(123) - (131) (No change.)

(132) Professional engineer--A person who is duly licensed by the Texas Board of Professional Engineers and Land Surveyors to engage in the practice of engineering in this state.

(133) Professional geoscientist--A person who is duly licensed by the Texas Board of Professional Geoscientists to engage in the practice of geoscience in this state.

(134) [(132)] Professional specialist--A person whose training, experience, and professional certification or licensing are acceptable to the Commission for the limited purpose of performing certain specified duties under this chapter.

(135) [(133)] Prohibited financial interest--Any direct or indirect financial interest in any coal mining operation.

(136) [(134)] Property to be mined--Both the surface estates and mineral estates within the permit area and the area covered by underground workings.

(137) [(135)] Public building--Any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(138) [(136)] Publicly-owned park--A public park that is owned by a federal, state or local governmental entity.

(139) [(137)] Public office--A facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(140) [(138)] Public park--An area or portion of an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

(141) [(139)] Public road--Any thoroughfare open to the public for passage of vehicles.

(142) [(140)] Qualified jurisdiction--A state or federal mining regulatory authority that has a blaster certification program approved by the U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, in accordance with the Federal Act.

(143) [(141)] Qualified laboratory--A designated public agency, private firm, institution, or analytical laboratory that can provide the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at §12.236 and §12.240 of this title (relating to Program Services, and Data Requirements), and that meets the standards of §12.241 of this title (relating to Qualified Laboratories).

(144) [(142)] Rangeland--Land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grass lands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

(145) [(143)] Recharge capacity--The ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(146) [(144)] Reciprocity--The conditional recognition by the Commission of a blaster certificate issued by another qualified jurisdiction.

(147) [(145)] Reclamation--Those actions taken to restore mined land as required by this chapter to a postmining land use approved by the Commission.

(148) [(146)] Recurrence interval--The interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year, 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in 10 years.

(149) [(147)] Reference area--A land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the Commission. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

(150) [(148)] Regional Director--A Regional Director of the Office or a Regional Director's representative.

(149) ~~Registered professional engineer--A person who is duly licensed by the Texas State Board of Registration for Professional Engineers to engage in the practice of engineering in this state.~~

(151) ~~[(450)]~~ Remining--Surface coal mining and reclamation operations that affect previously mined areas.

(152) ~~[(454)]~~ Renewable resource lands--Aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands. With respect to Subchapter F of this chapter (relating to Lands Unsuitable for Mining), geographic areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

(153) ~~[(452)]~~ Replacement of water supply--With respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water-delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(A) Upon agreement by the permittee and the water-supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water-supply owner.

(B) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water-supply owner.

(154) ~~[(453)]~~ Road--A surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal-hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

(155) ~~[(454)]~~ Safety factor--The ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(156) ~~[(455)]~~ Secretary--The Secretary of the U.S. Department of the Interior, or the Secretary's representative.

(157) ~~[(456)]~~ Sedimentation pond--A primary sediment control structure designed, constructed and maintained in accordance with §12.344 or §12.514 of this title (relating to Hydrologic Balance: Siltation Structures) and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(158) ~~[(457)]~~ Significant forest cover--An existing plant community consisting predominantly of trees and other woody vegetation.

(159) ~~[(458)]~~ Significant, imminent environmental harm to land, air or water resources--Determined in the following context:

(A) An environmental harm is an adverse impact on land, air, or water resources, which resources include, but are not limited to, plant and animal life.

(B) An environmental harm is imminent, if a condition, practice, or violation exists which:

(i) is causing such harm; or

(ii) may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under §134.162 of the Act.

(C) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(160) ~~[(459)]~~ Significant recreational, timber, economic, or other values incompatible with surface coal mining operations--Those significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their significance include:

(A) recreation, including hiking, boating, camping, skiing or other related outdoor activities;

(B) timber management and silviculture;

(C) agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce; and

(D) scenic, historic, archaeologic, esthetic, fish, wildlife, plants or cultural interests.

(161) ~~[(460)]~~ Siltation structure--A sedimentation pond, a series of sedimentation ponds, or other treatment facility.

(162) ~~[(464)]~~ Slope--Average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of horizontal distance to a given number of units of vertical distance (e.g., 5h:1v). It may also be expressed as a percent or in degrees.

(163) ~~[(462)]~~ Soil horizons--Contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons are:

(A) A horizon. The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest;

(B) E horizon. The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequence by color of higher value or lower chroma, by coarser texture, or by a combination of these properties;

(C) B horizon. The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and

(D) C horizon. The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(164) [(163)] Soil survey--A field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey.

(165) [(164)] Spoil--Overburden that has been removed during surface coal mining operations.

(166) [(165)] Stabilize--To control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(167) [(166)] Steep slope--Any slope of more than 20 degrees or such lesser slope as may be designated by the Commission after consideration of soil, climate, and other characteristics of a region or state.

(168) [(167)] Subirrigation--With respect to alluvial valley floors, the supplying of water to plants from underneath or from a semi-saturated or saturated subsurface zone where water is available for use by vegetation. Subirrigation may be identified by:

(A) diurnal fluctuation of the water table, due to the differences in nighttime and daytime evapotranspiration rates;

(B) increasing soil moisture from a portion of the root zone down to the saturated zone, due to capillary action;

(C) mottling of the soils in the root zones;

(D) existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or

(E) an increase in streamflow or a rise in ground-water levels, shortly after the first killing frost on the valley floor.

(169) [(168)] Substantial legal and financial commitments in a surface coal mining operation--Significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

(170) [(169)] Substantially disturb--For purposes of coal exploration, to significantly impact land, air or water resources by such activities as blasting; mechanical excavation; drilling or altering coal or water exploratory holes or wells; removal of vegetation, topsoil, or overburden; construction of roads or other access routes; placement of structures, excavated earth, or waste material on the natural surface of land; or by other such activities; or to remove more than 250 tons of coal.

(171) [(170)] Successor in interest--Any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(172) [(171)] Surface coal mining and reclamation operations--Surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal mining operations.

(173) [(172)] Surface coal mining operations--Includes:

(A) activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of §134.015 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; the cleaning, concentrating, or other processing or preparation of coal; and the loading of coal for interstate commerce at or near the mine-site. Provided, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16 2/3% of the tonnage of minerals removed annually from all sites operated by a person on contiguous tracts of land for purposes of commercial use or sale, or coal exploration subject to §134.014 and §134.031(d) of the Act; and provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(B) areas upon which the activities described in subparagraph (A) of this definition occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are site structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

(174) [(173)] Surface mining activities--Those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

(175) [(174)] Surface operations and impacts incident to an underground coal mine--All activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in §134.004(19) of the Act and the definition of surface coal mining operations contained in this section.

(176) [(175)] Suspended solids or nonfilterable residue--Expressed as milligrams per liter, organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. Environmental Protection Agency regulations for wastewater and analyses (40 CFR 136).

(177) [(176)] Temporary diversion--A diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the Commission to remain after reclamation as part of the approved postmining land use.

(178) [(177)] Temporary impoundment--An impoundment used during surface coal mining and reclamation operations, but not approved by the Commission to remain as part of the approved postmining land use.

(179) [(178)] Thick overburden--More than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. More than

sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

(A) closely resemble the surface configuration of the land prior to mining; or

(B) blend into and complement the drainage pattern of the surrounding terrain.

(180) [(179)] Thin overburden--Insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

(A) closely resemble the surface configuration of the land prior to mining; or

(B) blend into and complement the drainage pattern of the surrounding terrain.

(181) [(180)] Ton--2,000 pounds avoirdupois (0.90718 metric ton).

(182) [(181)] Topsoil--The A and E soil-horizon layers of the four master soil horizons.

(183) [(182)] Toxic-forming materials--Earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(184) [(183)] Toxic mine drainage--Water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(185) [(184)] Transfer, assignment, or sale of rights--A change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the Commission.

(186) [(185)] Unconsolidated streamlaid deposits holding streams--With respect to alluvial valley floors, all flood plains and terraces located in the lower portions of topographic valleys which contain perennial or other streams with channels that are greater than 3 feet in bankfull width and greater than 0.5 feet in bankfull depth.

(187) [(186)] Underground development waste--Waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of during development and preparation of areas incident to underground mining activities.

(188) [(187)] Underground mining activities--Includes:

(A) surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(B) underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

(189) [(188)] Undeveloped rangeland--For purposes of alluvial valley floors, lands where the use is not specifically controlled and managed.

(190) [(189)] Unwarranted failure to comply--The failure of the permittee to prevent the occurrence of any violation of the permit or any requirement of the Act, due to the indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act, due to indifference, lack of diligence, or lack of reasonable care.

(191) [(190)] Upland areas--With respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

(192) [(191)] Valid existing rights--A set of circumstances under which a person may, subject to Commission approval, conduct surface coal mining operations on lands where §134.022 of the Act and §12.71(a) of this title (relating to Areas Where Surface Coal Mining Operations are Prohibited or Limited) would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of §12.71(a) of this title and §134.022 of the Act. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the Act and this chapter.

(A) Property rights demonstration. Except as provided in subparagraph (C) of this paragraph, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of §12.71(a) of this title or §134.022 of the Act. Applicable state statutory or case law will govern interpretation of documents relied upon to establish property rights. If no applicable state law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

(B) Additional demonstrations. Except as provided in subparagraph (C) of this paragraph, a person claiming valid existing rights must also demonstrate compliance with one of the following standards:

(i) Good faith/all permits standard. All permits and other authorizations required to conduct surface coal mining operations have been obtained, or a good faith effort to obtain all necessary permits and authorizations has been made, before the land came under the protection of §12.71(a) of this title or §134.022 of the Act. At a minimum, an application must have been submitted for any permit required under Subchapter G of this chapter (relating to Surface Coal Mining and Reclamation Operations, Permits, and Coal Exploration Procedure Systems); or

(ii) Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations have been obtained, or a good faith attempt to obtain all permits and authorizations has been made, before the land came under the protection of §12.71(a) of this title or §134.022 of the Act. To meet this standard, a person must demonstrate that prohibiting

expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of §12.71(a) of this title or §134.022 of the Act. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits have been made before August 3, 1977, this standard does not apply to lands already under the protection of §12.71(a) of this title or §134.022 of the Act when the Commission approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the Commission may consider factors such as:

(I) the extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of §12.71(a) of this title or §134.022 of the Act depend upon use of that land for surface coal mining operations;

(II) the extent to which plans used to obtain financing for the operation before the land came under the protection of §12.71(a) of this title or §134.022 of the Act rely upon use of that land for surface coal mining operations;

(III) the extent to which investments in the operation before the land came under the protection of §12.71(a) of this title or §134.022 of the Act rely upon use of that land for surface coal mining operations; and

(IV) whether the land lies within the area identified on the life-of-mine map submitted under §12.136(3) of this title (relating to Maps: General Requirements) or §12.182(3) of this title (relating to Maps: General Requirements) before the land came under the protection of §12.71(a) of this title.

(C) Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by §12.71(a) of this title or §134.022 of the Act must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in this section:

(i) the road existed when the land upon which it is located came under the protection of §12.71(a) of this title or §134.022 of the Act, and the person has a legal right to use the road for surface coal mining operations;

(ii) a properly recorded right of way or easement for a road in that location existed when the land came under the protection of §12.71(a) of this title or §134.022 of the Act, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations;

(iii) a valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of §12.71(a) of this title or §134.022 of the Act; or

(iv) valid existing rights exist under subparagraphs (A) and (B) of this paragraph.

(193) [(192)] Valley fill--A fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than 20 degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

(194) [(193)] Violation--When used in the context of the permit application information or permit eligibility requirements of the Act and this chapter:

(A) a failure to comply with an applicable provision of a Federal or state law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

(B) a noncompliance for which the Commission has provided one or more of the following types of notice, or another state's regulatory authority has provided equivalent notice under corresponding provisions of that state's regulatory program:

(i) a notice of violation under §12.678 of this title (relating to Notices of Violation);

(ii) a cessation order under §12.677 of this title (relating to Cessation Orders);

(iii) a final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under Subchapter L of this chapter (relating to Permanent Program Inspection and Enforcement Procedures);

(iv) a bill or demand letter pertaining to delinquent reclamation fees owed under 30 CFR, Part 870; or

(v) a notice of bond forfeiture under §12.314(d) of this title (relating to Forfeiture of Bonds) when:

(I) one or more violations upon which the forfeiture was based have not been abated or corrected; or

(II) the amount forfeited and collected is insufficient for full reclamation under §12.314 of this title, the Commission orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order.

(195) [(194)] Violation, failure, or refusal--With respect to §§12.696 - 12.699 of this title, a violation of or a failure or refusal to comply with any order of the Commission including, but not limited to, a condition of a permit, notice of violation, failure-to-abate cessation order, imminent harm cessation order, order to show cause why a permit should not be suspended or revoked, and order in connection with a civil action for relief, except an order incorporated in a decision issued under §134.175 of the Act.

(196) [(195)] Violation notice--Any written notification from a regulatory authority or other governmental entity, as specified in the definition of "violation" in this section.

(197) [(196)] Water table--The upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

(198) [(197)] Willful or willfully--With respect to §§12.696 - 12.699 of this title, an individual that authorized, ordered, or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted:

(A) intentionally, voluntarily, or consciously; and

(B) with intentional disregard or plain indifference to legal requirements.

(199) [(198)] Willful violation--An act or omission which violates the Act, state, or federal laws or regulations, or any permit condition required by the Act or this chapter, committed by a person who intends the result which actually occurs.

#### §12.4. *Petitions to Initiate Rulemaking.*

[(a)] Any person may petition the Commission to initiate a proceeding for the issuance, amendment, or repeal of any regulation [under the Act]. The petition shall be submitted in accordance with §1.301 of this title, relating to Petition for Adoption of Rules, and the



APA [to the Surface Mining and Reclamation Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711].

[(b) The petition shall be a concise statement of the facts, technical justification, and law which require issuance, amendment, or repeal of a regulation under the Act and shall indicate whether the petitioner desires a public hearing.]

[(c) Upon receipt of the petition, the Commission shall determine if the petition sets forth facts, technical justification and law which may provide a reasonable basis for issuance, amendment or repeal of a regulation. Facts, technical justification or law previously considered in a petition or rulemaking on the same issue shall not provide a reasonable basis. If a reasonable basis is shown, a notice shall be published in the Texas Register asking for public comments on the proposed change.]

[(d) Within 90 days from receipt of the petition, the Commission shall issue a written decision either granting or denying the petition.]

[(1) If the petition is granted, the Commission shall initiate a rulemaking proceeding in accordance with the APA.]

[(2) If the petition is denied, the Commission shall notify the petitioner in writing, setting forth the reasons for denial.]

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

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For further information, please call: (512) 475-1295



## SUBCHAPTER G. SURFACE COAL MINING AND RECLAMATION OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS

### DIVISION 1. GENERAL REQUIREMENTS FOR PERMIT AND EXPLORATION PROCEDURE SYSTEMS UNDER REGULATORY PROGRAMS

#### 16 TAC §12.100

The Commission proposes the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

§12.100. Responsibilities.

(a) Persons seeking to engage in surface coal mining and reclamation operations must submit an application for and obtain a permit for those operations in accordance with this subchapter (relating to Surface Coal Mining and Reclamation Operations, Permits, and Coal Exploration Procedures Systems). Persons seeking to conduct coal exploration must first file the notice of intention or obtain approval of the Commission as required under §§12.109 - 12.115 of this title (relating to General Requirements for Coal Exploration). A permit and the obligations established therein (to include payment of annual fees associated with the permit as required in §12.108 of this title, relating to Permit Fees) shall continue until all surface coal mining and reclamation operations are completed, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

(b) A permittee will not be required to submit an application to renew a permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be completed. The permittee will provide written notification to the Director the Surface Mining and Reclamation Division of permanent cessation of mining operations as required under §12.398 and §12.567 of this title, both relating to Cessation of Operations: Permanent. [A permit and the obligations established therein (to include payment of annual fees associated with the permit as required in §12.108 of this title, relating to Permit Fees) shall continue until all surface coal mining and reclamation operations are completed, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.]

(c) [(b)] The Commission shall review each application for exploration approval and for a permit, approve or disapprove each permit application or exploration application, and issue, condition, suspend, or revoke exploration approval, permits, renewals, or revised permits under an approved regulatory program.

(d) [(e)] The applicant for a permit or revision of a permit shall have the burden of establishing that the application is in compliance with all of the requirements of the Commission.

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

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### DIVISION 2. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

#### 16 TAC §12.106, §12.108

The Commission proposes the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

*§12.106. Permit Application Filing Deadlines.*

- (a) (No change.)
- (b) Filing deadlines after initial implementation.
  - (1) (No change.)

(2) Renewal of valid permits. An application for renewal of a permit shall be filed with the Commission at least 120 [~~180~~] days before the expiration of the permit involved.

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

*§12.108. Permit Fees.*

- (a) (No change.)
- (b) Annual Fees. In addition to application fees required by this section, each permittee shall pay to the Commission the following annual fees due and payable not later than March 15th of the year following the calendar year for which these fees are applicable:

(1) a fee of \$12.85 for each acre of land within a permit area covered by a reclamation bond on December 31st of the year, based on the number of bonded acres of land identified by the applicant [as shown] on the map included in the permit as required by §12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans) and approved by the Commission; and

(2) a fee of \$6,170 for each permit in effect on December 31st of the year.

- (c) (No change.)

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

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## DIVISION 4. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION[, PART I]

### 16 TAC §12.121

The Commission proposes the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

*§12.121. Identification of Other Licenses and Permits.*

Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

- (1) type of permit or license;
- (2) name and address of issuing authority;
- (3) identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and
- (4) if a decision has been made, the date of approval or disapproval by each issuing authority and permit expiration date.

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

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## DIVISION 5. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

### 16 TAC §12.126, §12.137

The Commission proposes the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

*§12.126. Description of Hydrology and Geology: General Requirements.*

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

(d) All water-quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the 23rd [~~15th~~] edition of the American Public Health Association's Standard Methods for the Examination of Water and Wastewater [Standard Methods for the Examination of Water and Wastewater], which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434.

*§12.137. Cross Sections, Maps, and Plans.*

- (a) (No change.)

(b) Maps, plans, and cross sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified [~~registered~~] professional engineer or qualified professional geoscientist [~~geologist~~], with assistance

from experts in related fields such as land surveying and landscape architecture and shall be updated as required by the Commission.

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

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## DIVISION 6. SURFACE MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

### 16 TAC §§12.142, 12.146, 12.148, 12.154

The Commission proposes the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

§12.142. *Operation Plan: Maps and Plans.*

Each application shall contain maps and plans of the proposed permit and adjacent areas as follows:

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

(3) Except as provided in §12.148(a)(2) and (3) of this title, §12.153(a) of this title (relating to Disposal of Excess Spoil), §12.363(b) of this title (relating to Disposal of Excess Spoil: General Requirements), §12.366(b)(1) of this title (relating to Disposal of Excess Spoil: Durable Rock Fills), and §12.368(c) of this title (relating to Coal Processing Waste Banks: General Requirements), maps, plans, and cross-sections required under paragraph (2)(D), (E), (F), (J), and (K) of this section shall be prepared by, or under the direction of, and certified by a qualified ~~registered~~ professional engineer, or qualified professional geoscientist ~~geologist~~, with assistance from experts in related fields such as land surveying and landscape architecture.

(4) (No change.)

§12.146. *Reclamation Plan: Protection of Hydrologic Balance.*

(a) General requirements. The application shall include a hydrologic reclamation plan, with appropriate maps and descriptions, indicating how the relevant requirements of this chapter (relating to Coal Mining Regulations), including §§12.339-12.341, 12.346, 12.348 and 12.349, and 12.350-12.354 of this title (relating to Hydrologic Balance: General Requirements, to Hydrologic Balance: Water-Quality Standards and Effluent Limitations, to Hydrologic Balance: Diversions, to Hydrologic Balance: Acid-Forming and Toxic-Forming Spoil, to Hydrologic Balance: Ground-Water Protection, to Hydrologic Balance: Surface-Water Protection, to Hydrologic Balance: Surface and Ground-Water Monitoring, to Hydrologic Balance: Transfer of Wells,

to Hydrologic Balance: Water Rights and Replacement, to Hydrologic Balance: Discharge of Water Into an Underground Mine, and to Hydrologic Balance: Postmine Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities), will be met. The plan shall be specific to the local hydrologic conditions.

(1) The plan [H] shall contain the steps to be taken during mining and reclamation through bond release;

(A) to minimize disturbances to the hydrologic balance within the permit and adjacent areas;

(B) to prevent material damage outside the permit area;

(C) to meet applicable federal and state water-quality laws and regulations; and

(D) to protect the rights of present water users.

(2) The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under §§12.139-12.154 of this title (relating to Surface Mining Permit Applications--Minimum Requirements for Reclamation and Operation Plan) and shall include preventive and remedial measures. The plan shall identify the measures to be taken to:

(A) ~~[(4)]~~ protect the quality of surface- and ground-water systems, both within the proposed permit and adjacent areas, from the adverse effects of the proposed surface mining activities, or to provide alternative sources of water in accordance with §12.130 and §12.352 of this title (relating to Alternative Water Supply Information, and to Hydrologic Balance: Water Rights and Replacement), where the protection of quality cannot be ensured;

(B) ~~[(2)]~~ protect or replace the rights of present users of surface and ground water;

(C) ~~[(3)]~~ protect the quantity of surface and ground water both within the proposed permit area and adjacent area from adverse effects of the proposed surface mining activities, or to provide alternative sources of water in accordance with §12.130 and §12.352 of this title (relating to Alternative Water Supply Information, and to Hydrologic Balance: Water Rights and Replacement), where the protection of quantity cannot be ensured;

(D) ~~[(4)]~~ avoid acid or toxic drainage;

(E) ~~[(5)]~~ prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow;

(F) ~~[(6)]~~ provide water-treatment facilities when needed;

(G) ~~[(7)]~~ control drainage; and

(H) ~~[(8)]~~ restore approximate premining recharge capacity.

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

(d) Probable hydrologic consequences determination.

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

(3) The PHC determination shall include findings on:

(A) whether adverse impacts may occur to the hydrologic balance;

(B) whether acid-forming ~~or toxic-forming~~ materials are present that could result in the contamination of ground- or surface-water supplies;

(C) whether toxic-forming materials are present that could result in the contamination of ground- or surface-water supplies;

(D) ~~[(E)]~~ whether the proposed operation may proximately result in contamination[, diminution, or interruption] of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or other legitimate purpose; [and]

(E) whether the proposed operation may proximately result in diminution of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or other legitimate purpose;

(F) whether the proposed operation may proximately result in interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or other legitimate purpose;

(G) ~~[(H)]~~ what impact the proposed operation will have on:

- (i) sediment yield from the disturbed area;
- (ii) acidity, total suspended and dissolved solids, and other important water-quality parameters of local impact;
- (iii) flooding or streamflow alteration;
- (iv) ground- and surface-water availability; and
- (v) other characteristics as required by the Commission.

(4) An application for a permit revision shall be reviewed by the Commission to determine whether a new or updated PHC determination shall be required.

(5) If the PHC determination [of the probable hydrologic consequences (PHC)] required by this subsection indicates adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under §12.128 and §12.129 of this title (relating to Ground-Water Information, and to Surface-Water Information) shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality and quantity characteristics. Information shall be provided on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses.

(6) If the PHC determination required by this subsection indicates that the proposed mining operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose, then the Commission may require that the applicant provide information supplemental to that required under §12.130 (relating to Alternative Water Supply Information).

(e) Cumulative hydrologic impact assessment.

(1) The Commission shall provide a [an assessment of the] probable cumulative hydrologic impacts assessment (CHIA) of the proposed operation and all anticipated mining upon surface- and ground-water systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the

hydrologic balance outside the permit area. The Commission may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

(2) An application for a permit revision shall be reviewed by the Commission to determine whether a new or updated CHIA shall be required.

*§12.148. Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments.*

(a) General. Each application shall include a general plan for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall:

(A) be prepared by or under the direction of, and certified by a qualified [registered] professional engineer, or by a qualified professional geoscientist [geologist], with assistance from experts in related fields such as land surveying and landscape architecture;

(B) - (E) (No change.)

(2) Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), shall:

(A) be prepared by or under the direction of, and certified by a qualified [registered] professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

(B) - (D) (No change.)

(3) Each detailed design plan for a structure that does not meet the size or other criteria of 30 CFR 77.216(a) shall:

(A) be prepared by or under the direction of, and certified by a qualified [registered] professional engineer;

(B) - (D) (No change.)

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

(e) Coal processing waste dams and embankments. Coal mine waste dams and embankments shall be designed to comply with the requirements of §§12.376 - 12.378 of this title (relating to Coal Mine Waste: Dams and Embankments: General Requirements, to Coal Mine Waste: Dams and Embankments: Site Preparation, and to Coal Mine Waste: Dams and Embankments: Design and Construction). Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by a qualified professional [an] engineer or qualified professional geoscientist [engineering geologist], according to the following:

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

(f) (No change.)

*§12.154. Road Systems and Support Facilities.*

(a) (No change.)

(b) Primary road certification. The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified [registered] professional engineer with experience in the design and construction of roads as meeting the requirements of this chapter (relating to Coal Mining Regulations), current,

prudent engineering practices; and any design criteria established by the Commission.

(c) (No change.)

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

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## DIVISION 7. UNDERGROUND [SURFACE] MINING PERMIT APPLICATIONS-- MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION[, PART II]

### 16 TAC §12.161

The Commission proposes the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

*§12.161. Identification of Other Licenses and Permits.*

Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by:

- (1) type of permit or license;
- (2) name and address of issuing authority;
- (3) identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and
- (4) if a decision has been made, the date of approval or disapproval by each issuing authority and permit expiration date.

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## DIVISION 8. UNDERGROUND MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

### 16 TAC §12.172, §12.183

The Commission proposes the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

*§12.172. Description of Hydrology and Geology: General Requirements.*

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

(d) All water-quality analyses performed to meet the requirements of this chapter [~~relating to Coal Mining Regulations~~] shall be conducted according to the methodology in the 23rd [15th] edition of the American Public Health Association's Standard Methods for the Examination of Water and Wastewater, ["~~Standard Methods for the Examination of Water and Wastewater~~,"] which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434.

*§12.183. Cross Sections, Maps, and Plans.*

(a) (No change.)

(b) Maps, plans and cross sections included in a permit application and required by this shall be prepared by, or under the direction of and certified by a qualified [registered] professional engineer or qualified professional geoscientist [geologist], with assistance from experts in related fields such as land surveying and landscape architecture and shall be updated as required by the Commission.

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## DIVISION 9. UNDERGROUND MINING PERMIT APPLICATIONS--MINIMUM

# REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

## 16 TAC §§12.188, 12.190, 12.197, 12.198

The Commission proposes the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

### §12.188. *Reclamation Plan: Protection of Hydrologic Balance.*

(a) General requirements. The application shall include a hydrologic reclamation plan, with appropriate maps and descriptions, indicating how the relevant requirements of this chapter (relating to Coal Mining Regulations), including §§12.509-12.511, 12.516, 12.518 and 12.519, and 12.520-12.524 of this title (relating to Hydrologic Balance: General Requirements, to Hydrologic Balance: Water-Quality Standards and Effluent Limitations, to Hydrologic Balance: Diversions, to Hydrologic Balance: Acid-Forming and Toxic-Forming Spoil, to Hydrologic Balance: Ground-Water Protection, to Hydrologic Balance: Surface-Water Protection, to Hydrologic Balance: Surface and Ground-Water Monitoring, to Hydrologic Balance: Transfer of Wells, to Hydrologic Balance: Water Rights and Replacement, to Hydrologic Balance: Discharge of Water Into an Underground Mine, and to Hydrologic Balance: Postmine Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities), will be met. The plan shall be specific to the local hydrologic conditions.

(1) The plan ~~[H]~~ shall contain the steps to be taken during mining and reclamation through bond release:

(A) to minimize disturbances to the hydrologic balance within the permit and adjacent areas;

(B) to prevent material damage outside the permit area;

(C) to meet applicable federal and state water-quality laws and regulations; and

(D) to protect the rights of present water users.

(2) The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under §§12.185-12.198 of this title (relating to Underground Mining Permit Applications--Minimum Requirements for Reclamation and Operation Plan) and shall include preventive and remedial measures. The plan shall identify the measures to be taken to:

(A) ~~[(4)]~~ protect the quality of surface- and ground-water systems, both within the proposed permit area and adjacent areas, from the adverse effects of the proposed underground mining activities, or to provide alternative sources of water, in accordance with §12.176 and §12.521 of this title (relating to Alternative Water Supply Information, and to Hydrologic Balance: Water Rights and Replacement), where the protection of quality cannot be ensured;

(B) ~~[(2)]~~ protect or replace the rights of present users of surface and ground water;

(C) ~~[(3)]~~ protect the quantity of surface and ground water both within the proposed permit area and adjacent area from adverse effects of the proposed underground mining activities, or to provide alternative sources of water, in accordance with §12.176 and §12.521 of this title (relating to Alternative Water Supply Information, and to

Hydrologic Balance: Water Rights and Replacement), where the protection of quantity cannot be ensured;

~~(D)~~ ~~[(4)]~~ avoid acid or toxic drainage;

~~(E)~~ ~~[(5)]~~ prevent, to the extent possible using the best technology currently available, additional contributions of sediment to streamflows;

~~(F)~~ ~~[(6)]~~ provide water-treatment facilities when needed;

~~(G)~~ ~~[(7)]~~ control drainage;

~~(H)~~ ~~[(8)]~~ restore approximate premining recharge capacity; and

~~(I)~~ ~~[(9)]~~ protect the quality of water by locating openings for mines in accordance with §12.518 of this title (relating to Hydrologic Balance: Underground Mine Entry and Access Discharges).

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

(d) Probable hydrologic consequences determination.

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

(3) The PHC determination shall include findings on:

(A) whether adverse impacts may occur to the hydrologic balance;

(B) whether acid-forming ~~[or toxic-forming]~~ materials are present that could result in contamination of surface- or ground-water supplies;

(C) whether toxic-forming materials are present that could result in contamination of surface- or ground-water supplies;

(D) ~~[(C)]~~ whether the proposed operation may proximately result in contamination~~;~~ ~~diminution~~, or interruption] of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or other legitimate purpose; ~~[and]~~

(E) whether the proposed operation may proximately result in diminution of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or other legitimate purpose;

(F) whether the proposed operation may proximately result in interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or other legitimate purpose; and

(G) ~~[(D)]~~ what impact the proposed operation will have on:

(i) sediment yield from the disturbed area;

(ii) acidity, total suspended and dissolved solids, and other important water-quality parameters of local impact;

(iii) flooding or streamflow alteration;

(iv) ground- and surface-water availability; and

(v) other characteristics as required by the Commission.

(4) An application for a permit revision shall be reviewed by the Commission to determine whether a new or updated PHC determination shall be required.

(5) If the PHC determination [of the probable hydrologic consequences (PHC)] required by this subsection indicates adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under §12.174 and §12.175 of this title (relating to Ground-Water Information, and to Surface-Water Information), shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality and quantity characteristics. Information shall be provided on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses.

(6) If the PHC determination required by this subsection indicates that the proposed mining operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose, then the Commission may require that the applicant provide information supplemental to that required under §12.176 (relating to Alternative Water Supply Information).

(e) Cumulative hydrologic impact assessment.

(1) The Commission shall provide a [an assessment of the] probable cumulative hydrologic impacts assessment (CHIA) of the proposed operation and all anticipated mining upon surface- and ground-water systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The Commission may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

(2) (No change.)

(f) (No change.)

*§12.190. Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments.*

(a) General. Each application shall include a general plan for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall:

(A) be prepared by or under the direction of[;] and certified by[;] a qualified [registered] professional engineer or by a qualified professional geoscientist [geologist] with assistance from experts in related fields such as land surveying and landscape architecture;

(B) - (E) (No change.)

(2) Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a) shall:

(A) be prepared by or under the direction of[;] and certified by[;] a qualified [registered] professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

(B) - (D) (No change.)

(3) Each detailed design plan for a structure that does not meet the size or other criteria of 30 CFR 77.216(a) shall:

(A) be prepared by[;] or under the direction of[;] and certified by a qualified [registered] professional engineer;

(B) (No change.)

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

(e) Coal mine waste dams and embankments. Coal mine waste dams and embankments shall be designed to comply with the requirements of §12.543 and §12.544 of this title (relating to Coal Mine Waste: Dams and Embankments: General Requirements, and to Coal Mine Waste: Dams and Embankments: Site Preparation). Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by a qualified professional [an] engineer or qualified professional geoscientist [engineering geologist], according to the following:

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

(f) (No change.)

*§12.197. Operation Plan: Maps and Plans.*

Each application shall contain maps, plans, and cross sections of the proposed permit and adjacent areas as follows:

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

(3) except as provided in §§12.190(a)(2) and (3), 12.193(a), 12.531(b), 12.534(b)(1), and 12.535(c) of this title (relating to Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments, to Underground Development Waste/Return of Coal Processing Waste to Underground Workings, to Disposal of Underground Development Waste and Excess Spoil: General Requirements, to Disposal of Underground Development Waste and Excess Spoil: Durable Rock Fills, and to Coal Mine Waste Banks: General Requirements), maps, plans, and cross-sections required under paragraph (2)(D)-(F), (J), and (K) of this subsection shall be prepared by, or under the direction of, and certified by a qualified [registered] professional engineer, or qualified professional geoscientist [geologist], with assistance from experts in related fields such as land surveying and landscape architecture; and

(4) (No change.)

*§12.198. Road Systems and Support Facilities.*

(a) (No change.)

(b) Primary road certification. The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified [registered] professional engineer as meeting the requirements of this chapter (relating to Coal Mining Regulations); current, prudent engineering practices; and any design criteria established by the Commission.

(c) (No change.)

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

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**DIVISION 11. REVIEW, PUBLIC PARTICIPATION, AND APPROVAL OF PERMIT APPLICATIONS AND PERMIT TERMS AND CONDITIONS**

**16 TAC §§12.207, 12.211, 12.215**

The Commission proposes the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

*§12.207. Public Notices of Filing of Permit Applications.*

(a) An applicant for a permit shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operations at least once a week for four consecutive weeks. The applicant shall place the advertisement in the newspaper at the same time the complete permit application is filed with the Commission. The advertisement shall contain, at a minimum, the following information:

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

(3) the location where a copy of the application is available for public inspection under subsection (d)(1) [(e)] of this section;

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

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

*§12.211. Public Hearing on Application.*

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

(c) Any person having a valid legal interest or an interest which is or may be adversely affected by any Commission action taken or proposed on any application or existing permit, may request informal consideration or disposition of the matter in accordance with §§2001.051, 2001.052, 2001.056, 2001.057, 2001.059, [2001.056-2001.060] and 2001.141 of the APA [(relating to Opportunity for Hearing and Participation; Notice of Hearing; to Contents of Notice; to Informal Disposition of Contested Case; to Continuances; to Hearing Conducted by State Office of Administrative Hearings; to Transcript; to Record; and to Form of Decision; Findings of Fact and Conclusions of Law)].

*§12.215. Review of Permit Applications.*

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

(g) After an application is approved, but before the permit is issued, the Commission shall review and consider any new compliance information submitted pursuant to §12.116(a)(2) [§12.116(a)(3)] of this title under the criteria of subsection (e)(1) of this section. If the applicant fails or refuses to respond as required by the Commission to provide new compliance information, or the new compliance information

shows that the applicant, anyone who owns or controls the applicant, or the operator is in violation, the Commission shall deny the permit.

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

(j) Based on reviews of the applicant's and any operator's organizational structure and ownership or control relationships provided in the application as required under subsections (h) and (i) of this section, the Commission shall determine whether an applicant is eligible for a permit under §134.068 and §134.069 of the Act (relating to Schedule of Notices of Violations, and to Effect of Past or Present Violation).

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

(3) After approval of the permit under §12.216 of this title (relating to Criteria for Permit Approval or Denial), the Commission shall not issue the permit until the information updates and certification requirements of §12.116(a)(2) or §12.156(a)(2) [§12.116(a)(3) ~~or §12.156(a)(3)~~] of this title are met. After the applicant completes this requirement, the Commission shall again request a compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect permit eligibility under paragraphs (1) and (2) of this subsection. The Commission shall request this report no more than five business days before permit issuance under §12.218 and §12.219 of this title (relating to Permit Approval or Denial Actions, and Permit Terms).

(4) (No change.)

(k) - (l) (No change.)

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

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**DIVISION 13. PERMIT REVIEWS, REVISIONS, AND RENEWALS, AND TRANSFERS, SALE, AND ASSIGNMENT OF RIGHTS GRANTED UNDER PERMITS**

**16 TAC §12.225**

The Commission proposes the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

*§12.225. Commission Review of Outstanding Permits.*

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



(g) Suspension and rescission. If the Commission elects to rescind an improvidently issued permit, it shall serve on the permittee a written notice of the proposed suspension and rescission which includes the reasons for the findings of the Commission under subsection (e) of this section and states that:

(1) after a specified period of time not to exceed 60 days, the permit will automatically become suspended, and not to exceed 60 days thereafter rescinded, unless within those periods the permittee submits proof, and the Commission finds that:

(A) the finding of the Commission under subsection (e) of this section was erroneous;

(B) the permittee or operator has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

(C) the violation, penalty, or fee is the subject of a good-faith appeal, or of an abatement plan or payment schedule with which the permittee or operator is complying to the satisfaction of the responsible agency; or

(D) since the finding was made, the permittee has severed any ownership or control link with the person responsible for[; ~~and does not continue to be responsible for;~~] the violation, penalty, or fee and the permittee is no longer responsible for the violation, penalty, or fee.

(2) (No change.)

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

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For further information, please call: (512) 475-1295



## SUBCHAPTER K. PERMANENT PROGRAM PERFORMANCE STANDARDS

### DIVISION 2. PERMANENT PROGRAM PERFORMANCE STANDARDS--SURFACE MINING ACTIVITIES

**16 TAC §§12.341, 12.344, 12.347, 12.363, 12.366, 12.368,  
12.369, 12.373, 12.376, 12.382, 12.398, 12.399, 12.401**

The Commission proposes the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

§12.341. *Hydrologic Balance: Diversions.*

(a) (No change.)

(b) Diversions of Perennial and Intermittent Streams.

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

(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified [registered] professional engineer as meeting the performance standards of this part and any design criteria set by the Commission.

(c) (No change.)

§12.344. *Hydrologic Balance: Siltation Structures.*

(a) (No change.)

(b) General requirements.

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

(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area, and upon construction shall be certified by a qualified [registered] professional engineer to be constructed as designed and as approved in the reclamation plan.

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

(c) Sedimentation ponds.

(1) (No change.)

(2) A sedimentation pond shall include either a combination of principal and auxiliary [emergency] spillways or single spillway configured as specified in §12.347(a)(9) of this title (relating to Hydrologic Balance: Permanent and Temporary Impoundments).

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

§12.347. *Hydrologic Balance: Permanent and Temporary Impoundments.*

(a) General Requirements. The requirements of this subsection apply to both temporary and permanent impoundments.

(1) Impoundments meeting the significant or high hazard class [Class B or C] criteria of dams in the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, July 2005 [Oct. 1985]), Earth Dams and Reservoirs, shall comply with the table of Minimum Auxiliary [Emergency] Spillway Hydrologic Criteria [table] in Technical Release No. 60 (TR-60), which is incorporated by reference, [TR-60] and the requirements of this section. [Technical Release No. 60 is hereby incorporated by reference. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, Order No. PB 87-157509/AS.] Copies may be obtained on the USDA website [can be inspected at the Commission's Surface Mining and Reclamation Division Office at 1701 N. Congress Avenue, Austin, Texas].

(2) An impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and of this section.

(3) The design of impoundments shall be certified in accordance with §12.148(a) of this title (relating to Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments) as designed to meet the requirements of this part using current, prudent, engineering practices and any design criteria established by the Commission. The qualified[, registered] professional engineer shall be experienced in the design and construction of impoundments.

(4) Stability.

(A) An impoundment meeting the significant or high hazard class [Class B or C] criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), shall have a minimum static factor of 1.5 for a normal pool with steady-state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(B) (No change.)

(5) Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the significant or high hazard class [Class B or C] criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the Minimum Auxiliary [Emergency] Spillway Hydrologic Criteria table in TR-60.

(6) Foundations.

(A) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the significant or high hazard class [Class B or C] criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

(B) (No change.)

(7) - (8) (No change.)

(9) An impoundment shall include either a combination of principal and auxiliary [emergency] spillways or a single spillway configured as specified in subparagraph (A) of this paragraph, designed and constructed to safely pass the applicable design precipitation event specified in subparagraph (B) of this paragraph.

(A) (No change.)

(B) Except as specified in subsection (c)(2) of this section, the required design precipitation event for an impoundment meeting the spillway requirements of this paragraph is:

(i) for an impoundment meeting the significant or high hazard class [Class B or C] criteria for dams in TR-60, the auxiliary [emergency] spillway hydrograph criteria in the Minimum Emergency Spillway Hydrologic Criteria table in TR-60, or greater event as specified by the Commission;

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

(10) (No change.)

(11) A qualified [registered] professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in subparagraph (A) of this paragraph. The professional engineer or specialist shall be experienced in the construction of impoundments.

(A) (No change.)

(B) The qualified [registered] professional engineer shall promptly after each inspection required in subparagraph (A) of this paragraph, provide the Commission a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. The report shall include discussion of any appearance of instability, structural weakness or other hazard condition, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

(C) (No change.)

(12) Impoundments meeting the NRCS significant or high hazard class [Class B or C] criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3. Impoundments not meeting the NRCS significant or high hazard class [Class B or C] criteria for dams in TR-60, or subject to 30 CFR 77.216, shall be examined at least quarterly. A qualified person designated by the operator shall examine impoundments for the appearance of structural weakness and other hazardous conditions.

(13) (No change.)

(b) (No change.)

(c) Temporary Impoundments.

(1) (No change.)

(2) In lieu of meeting the requirements of subsection (a)(9)(A) of this section, the Commission may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified [registered] professional engineer that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(A) impoundments meeting the NRCS significant or high hazard class [Class B or C] criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the Commission; and

(B) (No change.)

#### *§12.363. Disposal of Excess Spoil: General Requirements.*

(a) (No change.)

(b) The fill shall be designed using recognized professional standards, certified by a qualified [registered] professional engineer, and approved by the Commission.

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

(j) The fill shall be inspected for stability by a qualified [registered] professional engineer, or other qualified professional specialist under the direction of the professional engineer, experienced in the construction of earth and rockfill embankments, at least quarterly throughout construction and during the following critical construction periods:

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

(k) The qualified [registered] professional engineer shall provide to the Commission a certified report, within 2 weeks after each inspection, that the fill has been constructed as specified in the design approved by the Commission. The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately. A copy of the report shall be retained at the minesite.

(l) - (q) (No change.)

#### *§12.366. Disposal of Excess Spoil: Durable Rock Fills.*

(a) In lieu of the requirements of §§12.364 and 12.365 of this title (relating to Disposal of Excess Spoil: Valley Fills, and to Disposal

of Excess Spoil: Head-of-Hollow Fills), the Commission may approve alternate methods for disposal of hard rock spoil, including fill placement of dumping in a single lift, on a site specific basis, provided the services of a qualified [registered] professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this section and §12.363 of this title (relating to Disposal of Excess Spoil: General Requirements) are met. For this section, "hard rock spoil" shall be defined as rockfill consisting of at least 80% by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the Commission.

(b) Spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(1) (No change.)

(2) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. Such materials shall comprise no more than 20% of the fill volume as determined by tests performed by a qualified professional [registered] engineer and approved by the Commission.

(c) Requirements for design of earth and rockfill embankments shall include the following:

(1) stability analyses shall be made by the qualified [registered] professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including borings, and laboratory tests; and

(2) (No change.)

(d) - (h) (No change.)

*§12.368. Coal Processing Waste Banks: General Requirements.*

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

(c) The disposal facility shall be designed using current, prudent engineering practices and shall meet any design criteria established by the Commission. A qualified [registered] professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.

*§12.369. Coal Processing Waste Banks: Site Inspection.*

(a) All coal processing waste banks shall be inspected by a qualified [registered] professional engineer, or other qualified professional specialist under the direction of the professional engineer. The professional engineer or specialist shall be experienced in the construction of similar earth and waste structures.

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

(4) The qualified [registered] professional engineer shall provide a certified report to the Commission promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and this chapter (relating to Coal Mining Regulations). The report shall include any appearance of instability, structural weakness, and other hazardous conditions.

(5) - (6) (No change.)

(b) (No change.)

*§12.373. Coal Processing Waste: Burned Waste Utilization.*

Before any burned coal processing waste, other materials, or refuse is removed from a disposal area, approval shall be obtained from the

Commission. A plan for the method of removal, with maps and appropriate drawings to illustrate the proposed sequence of the operation and method of compliance with §§12.330 - 12.372, this section, and §§12.374 - 12.403 of this title (relating to Permanent Program Performance Standards--Surface Mining Activities), shall be submitted to the Commission. Consideration shall be given in the plan to potential hazards, which may be created by removal, to persons working or living in the vicinity of the structure. The plan shall be certified by a qualified [registered] professional engineer.

*§12.376. Coal Mine Waste: Dams and Embankments: General Requirements.*

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

(d) If an impounding structure constructed of coal mine waste or intended to impound coal mine waste meets the criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), the combination of principal and auxiliary [emergency] spillways shall be able to safely pass the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the Commission.

*§12.382. Pipelines.*

With respect to pipelines transmitting crude oil, liquid petroleum, natural gas, toxic or flammable substances:

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

(6) comply with [rules and regulations pursuant to TEXAS REVISED CIVIL STATUTES ANNOTATED, ARTICLE 6053-4;] Railroad Commission of Texas[;] Pipeline Safety Rules (16 Texas Administrative Code, Chapter 8) and [§§7.70 et seq.;] 49 CFR 191, 192, and 199; and

(7) (No change.)

*§12.398. Cessation of Operations: Permanent.*

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

(c) Persons who conduct surface mining activities shall submit to the Commission a written notice of intent to permanently cease and abandon mining operations as soon as the intent is finalized.

*§12.399. Postmining Land Use.*

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

(c) Alternative land uses. Prior to the release of lands from the permit area in accordance with §12.313 of this title (relating to Criteria and Schedule for Release of Performance Bond), the permit area shall be restored, in a timely manner, either to conditions capable of supporting the uses they were capable of supporting before any mining, or to conditions capable of supporting approved alternative land uses. Alternative land uses may be approved by the Commission after consultation with the landowner or the land management agency having jurisdiction over the lands, if the following criteria are met:

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

(5) plans for the postmining land use are designed under the general supervision of qualified [registered] professional engineer, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover, and aesthetic design appropriate for the postmining use of the site;

(6) - (9) (No change.)

*§12.401. Primary Roads.*

Primary roads shall meet the requirements of §12.400 of this title (relating to Roads: General) and the additional requirements of this section.

(1) Certification. The construction or reconstruction of primary roads shall be certified in a report to the Commission by a qualified [registered] professional engineer. The report shall indicate that

the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

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

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

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Rules Attorney, Office of General Counsel

Railroad Commission of Texas

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### DIVISION 3. PERMANENT PROGRAM PERFORMANCE STANDARDS--UNDERGROUND MINING ACTIVITIES

**16 TAC §§12.511, 12.514, 12.517, 12.531, 12.534 - 12.536, 12.540, 12.543, 12.549, 12.567, 12.568, 12.570**

The Commission proposes the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

*§12.511. Hydrologic Balance: Diversions.*

(a) (No change.)

(b) Diversions of Perennial and Intermittent Streams.

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

(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified [registered] professional engineer as meeting the performance standards of §§12.500 - 12.572 of this title (relating to Permanent Program Performance Standards--Underground Mining Activities) and any design criteria set by the Commission.

(c) (No change.)

*§12.514. Hydrologic Balance: Siltation Structures.*

(a) (No change.)

(b) General requirements.

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

(3) Siltation structures for an area shall be constructed before beginning any underground mining activities in that area, and upon construction shall be certified by a qualified [registered] professional engineer to be constructed as designed and as approved in the reclamation plan.

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

(c) Sedimentation ponds.

(1) (No change.)

(2) A sedimentation pond shall include either a combination of principal and auxiliary [emergency] spillways or single spillway configured as specified in §12.517(a)(9) of this title (relating to Hydrologic Balance: Permanent and Temporary Impoundments).

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

*§12.517. Hydrologic Balance: Permanent and Temporary Impoundments.*

(a) General Requirements. The requirements of this subsection apply to both temporary and permanent impoundments.

(1) Impoundments meeting the significant or high hazard class [Class B or C] criteria of dams in the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, July 2005 [Oct. 1985]), Earth Dams and Reservoirs, shall comply with the table of Minimum Auxiliary [Emergency] Spillway Hydrologic Criteria [table] in Technical Release No. 60 (TR-60), which is incorporated by reference, [TR-60] and the requirements of this section. [The Technical Release No. 60 is hereby incorporated by reference. Copies may be obtained from the National Technical Information Service (NTIS); 5285 Port Royal Road, Springfield, Virginia 22161, Order No. PB 87-157509/AS.] Copies may be obtained on the USDA website [can be inspected at the Commission's Surface Mining and Reclamation Division Office at 1701 North Congress Avenue, Austin, Texas].

(2) (No change.)

(3) The design of impoundments shall be certified in accordance with §12.190(a) of this title (relating to Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments) as designed to meet the requirements of this part using current, prudent, engineering practices and any design criteria established by the Commission. The qualified[, registered] professional engineer shall be experienced in the design and construction of impoundments.

(4) Stability.

(A) An impoundment meeting the significant or high hazard class [Class B or C] criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(B) (No change.)

(5) Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the significant or high hazard class [Class B or C] criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the Minimum Auxiliary [Emergency] Spillway Hydrologic Criteria table in TR-60.

(6) Foundations.

(A) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the significant or high hazard class [Class B or C] criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

(B) (No change.)

(7) - (8) (No change.)

(9) An impoundment shall include either a combination of principal and auxiliary ~~[emergency]~~ spillways or a single spillway configured as specified in subparagraph (A) of this paragraph, designed and constructed to safely pass the applicable design precipitation event specified in subparagraph (B) of this paragraph.

(A) (No change.)

(B) Except as specified in subsection (c)(2) of this section, the required design precipitation event for an impoundment meeting the spillway requirements of this paragraph is:

(i) for an impoundment meeting the significant or high hazard class [Class B or C] criteria for dams in TR-60, the auxiliary ~~[emergency]~~ spillway hydrograph criteria in the Minimum Emergency Spillway Hydrologic Criteria table in TR-60, or greater event as specified by the Commission;

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

(10) (No change.)

(11) A qualified ~~[registered]~~ professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in subparagraph (A) of this paragraph. The professional engineer or specialist shall be experienced in the construction of impoundments.

(A) (No change.)

(B) The qualified ~~[registered]~~ professional engineer shall promptly after each inspection required in subparagraph (A) of this paragraph provide the Commission a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. The report shall include discussion of any appearance of instability, structural weakness or other hazard condition, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

(C) (No change.)

(12) Impoundments meeting the NRCS significant or high hazard class [Class B or C] criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3. Impoundments not meeting the NRCS Class B or C criteria for dams in TR-60, or subject to 30 CFR 77.216, shall be examined at least quarterly. A qualified person designated by the operator shall examine impoundments for the appearance of structural weakness and other hazardous conditions.

(13) (No change.)

(b) (No change.)

(c) Temporary Impoundments.

(1) (No change.)

(2) In lieu of meeting the requirements of subsection (a)(9)(A) of this section, the Commission may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified ~~[registered]~~ professional engineer that the impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

(A) impoundments meeting the NRCS significant or high hazard class [Class B or C] criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the Commission; and

(B) impoundments not included in subparagraph (A) of this paragraph shall be designed to control the precipitation of the 100-year, 6-hour event, or greater event as specified by the Commission.

*§12.531. Disposal of Underground Development Waste and Excess Spoil: General Requirements.*

(a) (No change.)

(b) The fill shall be designed using recognized professional standards, certified by a qualified ~~[registered]~~ professional engineer, and approved by the Commission.

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

(j) The fill shall be inspected for stability by a qualified [registered] professional engineer experienced in the construction of earth and rockfill embankments at least quarterly throughout construction, and during the following critical construction periods:

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

(k) The qualified [registered] professional engineer shall provide to the Commission a certified report, within two weeks after each inspection that the fill has been constructed as specified in the design approved by the Commission. The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately. A copy of the report shall be retained at the minesite.

(l) - (q) (No change.)

*§12.534. Disposal of Underground Development Waste and Excess Spoil: Durable Rock Fills.*

(a) In lieu of the requirements of §12.532 and §12.533 of this title (relating to Disposal of Underground Development Waste and Excess Spoil: Valley Fills, and to Disposal of Underground Development Waste and Excess Spoil: Head-of-Hollow Fills), the Commission may approve alternate methods for disposal of hard rock spoil, including fill placement by dumping in a single lift, on a site-specific basis, provided the services of a qualified [registered] professional engineer experienced in the design and construction of earth and rockfill embankments are utilized, and provided the requirements of this section and §12.531 of this title (relating to Disposal of Underground Development Waste and Excess Spoil: General Requirements) are met. For this section, hard rock spoil shall be defined as rockfill consisting of at least 80% by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock waste or spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the Commission.

(b) Waste or spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(1) (No change.)

(2) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock waste spoil in a controlled manner to limit, on a unit basis, concentrations of noncemented clay shale and clay in the fill. Such materials will comprise no more than 20% of the fill volume as determined by tests performed by a qualified professional [registered] engineer and approved by the Commission.

(c) Requirements for design of earth and rockfill embankments shall include the following:

(1) stability analyses shall be made by the qualified ~~[registered]~~ professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations including borings, and laboratory tests; and

(2) (No change.)

(d) - (h) (No change.)

*§12.535. Coal Mine Waste Banks: General Requirements.*

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

(c) The disposal facility shall be designed using current, prudent engineering practices and shall meet any design criteria established by the Commission. A qualified ~~[registered]~~ professional engineer experienced in the design of similar earth and waste structures shall certify the design of the disposal facility.

*§12.536. Coal Mine Waste Banks: Site Inspection.*

(a) All coal mine waste banks shall be inspected, on behalf of the person conducting underground mining activities, by a qualified professional ~~[registered]~~ engineer or other person approved by the Commission.

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

(b) (No change.)

*§12.540. Coal Mine Waste: Burned-Waste Utilization.*

Before any burned coal mine waste or other materials or refuse is removed from a disposal area, approval shall be obtained from the Commission. A plan for the method of removal, with maps and appropriate drawings to illustrate the proposed sequence of the operation and methods of compliance with §§12.500 - 12.539, this section, and §§12.541 - 12.572 of this title (relating to Permanent Program Performance Standards--Underground Mining Activities), shall be submitted to the Commission. Consideration shall be given in the plan to potential hazards, which may be created by removal, to persons working or living in the vicinity of the structure. The plan shall be certified by a qualified ~~[registered]~~ professional engineer.

*§12.543. Coal Mine Waste: Dams and Embankments: General Requirements.*

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

(d) If an impounding structure constructed of coal mine waste or intended to impound coal mine waste meets the criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), the combination of principal and auxiliary ~~[emergency]~~ spillways shall be able to safely pass the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the Commission.

*§12.549. Pipelines.*

With respect to pipelines transmitting crude oil, liquid petroleum, natural gas, toxic or flammable substances:

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

(6) comply with ~~[rules and regulations pursuant to TEXAS REVISED CIVIL STATUTES ANNOTATED, ARTICLE 6053-4;]~~ Railroad Commission of Texas~~;~~ Pipeline Safety Rules (16 Texas Administrative Code, Chapter 8) and ~~[§§7.70 et seq.];~~ 49 CFR 191, 192, and 199; and

(7) (No change.)

*§12.567. Cessation of Operations: Permanent.*

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

(c) Persons who conduct underground mining activities shall submit to the Commission a written notice of intent to permanently cease and abandon mining operations as soon as the intent is finalized.

*§12.568. Postmining Land Use.*

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

(c) Prior to the release of lands from the permit area in accordance with §12.313 of this title (relating to Criteria and Schedule for Release of Performance Bond), the permit area shall be restored in a timely manner, either to conditions capable of supporting the uses they were capable of supporting before any mining or to conditions capable of supporting approved alternative land uses. Alternative land uses may be approved by the Commission after consultation with the landowner or the land management agency having jurisdiction over the lands, if the following criteria are met:

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

(5) plans for the postmining land use shall have been designed under the general supervision of a qualified ~~[registered]~~ professional engineer, or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover, and aesthetic design appropriate for the postmining use of the site;

(6) - (9) (No change.)

*§12.570. Primary Roads.*

Primary roads shall meet the requirements of §12.569 of this title (relating to Roads: General) and the additional requirements of this section.

(1) Certification. The construction or reconstruction of primary roads shall be certified in a report to the Commission by a qualified ~~[registered]~~ professional engineer with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

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

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

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Haley Cochran

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SUBCHAPTER L. PERMANENT PROGRAM  
INSPECTION AND ENFORCEMENT  
PROCEDURES  
DIVISION 1. COMMISSION INSPECTION  
AND ENFORCEMENT

## 16 TAC §12.676

The Commission proposes the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

§12.676. *Alternative Enforcement.*

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

(c) Civil actions for relief.

(1) Under §134.173 of the Act, the Commission may request the Texas Attorney General to institute a civil action for relief whenever the permittee or an agent of the permittee:

(A) ~~fails or refuses to comply with or violates [or fail or refuse to comply with]~~ any order or decision issued [issues] by the Commission under the Act or regulatory program;

(B) - (F) (No change.)

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

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

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Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 475-1295



## DIVISION 2. ENFORCEMENT

### 16 TAC §12.679

The Commission proposes the amendments under Texas Natural Resources Code §134.011 and §134.013, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory Authority: Texas Natural Resources Code §134.011 and §134.013.

Cross-reference to statute: Texas Natural Resources Code §134.011 and §134.013.

§12.679. *Suspension or Revocation of Permits.*

(a) Pattern of violations.

(1) Except as provided in subsection (b) of this section, the Director of the Surface Mining and Reclamation Division shall issue an order to a permittee requiring the permittee [him] to show cause why the [his] permit and right to mine under the Act should not be suspended or revoked[;] if the Director of the Surface Mining and Reclamation Division [he] determines that a pattern of violations of any requirements of the Act, this chapter (relating to Coal Mining Regulations), or any permit condition required by the Act exists or has existed, and

that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

(2) The Director of the Surface Mining and Reclamation Division may determine that a pattern of violations exists or has existed, based on two or more inspections of the permit area within any 12-month period, after considering the circumstances, including:

(A) (No change.)

(B) the number of violations, cited on more than one occasion, of different requirements of the Act, this chapter [~~relating to Coal Mining Regulations~~], the applicable program, or the permit; and

(C) (No change.)

(3) The Director of the Surface Mining and Reclamation Division shall determine that a pattern of violations exists, if the Director [he] finds that there were violations of the same or related requirements of the Act, this chapter [~~relating to Coal Mining Regulations~~], or the permit during three or more inspections of the permit area within any 12-month period.

(b) Discretion of the Division Director. The Director of the Surface Mining and Reclamation Division may decline to issue a show cause order, or may vacate an outstanding show cause order, if the Director of the Surface Mining and Reclamation Division [he] finds that, taking into account exceptional factors present in the particular case, it would be demonstrably unjust to issue or to fail to vacate the show cause order. The basis for this finding shall be fully explained and documented in the records of the case. [;]

(c) - (f) (No change.)

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

Filed with the Office of the Secretary of State on October 20, 2020.

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Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 475-1295



## CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)

The Railroad Commission of Texas (Commission) proposes amendments, new rules, and repeals in 16 TAC Chapter 13, relating to Regulations for Compressed Natural Gas (CNG). In Subchapter A, Scope and Definitions, the Commission proposes amendments to §13.1, Applicability, Severability, and Retroactivity; the repeal of §13.2, Retroactivity; amendments to §13.3, Definitions; §13.4, CNG Forms; and §13.15, Penalty Guidelines and Enforcement.

In Subchapter B, General Rules for Compressed Natural Gas (CNG) Equipment Qualifications, the Commission proposes amendments to §13.21, Applicability; and §13.22, Odorization; new §13.23, Installation and Maintenance; amendments

to §13.24, School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections; and §13.25, Filings Required for Stationary CNG Installations; the repeal of §13.26, Design and Construction of Cylinders, Pressure Vessels, and Vapor Recovery Receivers; new §13.26, Notice of, Objections to, and Hearings on Proposed Stationary CNG Installations; the repeal of §§13.27 - 13.33, Pressure Relief Devices; Pressure Gauges; Pressure Regulators; Piping; Valves; Hose and Hose Connections; and Compression Equipment; amendments to §13.34, Vehicle Fueling Connection; §13.35, Application for an Exception to a Safety Rule; and §13.36, Report of CNG Incident/Accident; new §13.37, Appurtenances and Equipment; amendments to §13.38, Removal from CNG Service; §13.39, Filling Unapproved Containers Prohibited; and §13.40, Manufacturer's Nameplates and Markings on ASME Containers.

In Subchapter C, Classification, Registration, and Examination, the Commission proposes amendments to §13.61, License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals; §13.62, Insurance Requirements; §13.63, Self-Insurance Requirements; §13.64, Irrevocable Letter of Credit; the repeal of §13.65, Statements in Lieu of Insurance Certificates; amendments to §13.67, Changes in Ownership, Form of Dealership, or Name of Dealership; the repeal of §13.68, Dealership Name Change; amendments to §13.69, Registration and Transfer of CNG Cargo Tanks or Delivery Units; §13.70, Examination and Exempt Registration Requirements and Renewals; §13.71, Hearings for Denial, Suspension, or Revocation of Licenses, Manufacturer Registrations, or Certificates; §13.72, Designation and Responsibilities of Company Representatives and Operations Supervisors; §13.73, Employee Transfers; §13.75, Franchise Tax Certification and Assumed Name Certificate; and §13.80, Requests for CNG Classes.

In Subchapter D, CNG Compression, Storage, and Dispensing Systems, the Commission proposes the repeal of §13.92, System Component Qualification; amendments to §13.93, System Protection Requirements; the repeal of §§13.94 - 13.105, Location of Installations; Installation of Cylinders and Cylinder Appurtenances; Installation of Pressure Relief Devices; Installation of Pressure Regulators; Installation of Pressure Gauges; Installation of Piping and Hoses; Testing; Installation of Emergency Shutdown Equipment; Installation of Electrical Equipment; Stray or Impressed Currents and Bonding; Operation; and Fire Protection; and amendments to §13.106, Maintenance; and §13.107, Dispenser Installation.

In Subchapter E, Engine Fuel Systems, the Commission proposes the repeal of §13.132, System Component Qualification; amendments to §13.133, Installation of Fuel Supply Containers; the repeal of §§13.134 - 13.141, Installation of Venting Systems; Installation of Piping; Installation of Valves; Installation of Pressure Gauges; Installation of Pressure Regulators; Installation of Fueling Connection; Labeling; and System Testing; amendments to §13.142, Maintenance and Repair; and §13.143, Venting of CNG to the Atmosphere.

In Subchapter F, Residential Fueling Facilities, the Commission proposes the repeal of §13.182, Scope; amendments to §13.183, System Component Qualifications; the repeal of §§13.184 - 13.186, General; Installation; and Outdoor Installations; amendments to §13.187, Installation of Pressure Relief Devices; the repeal of §13.188 and §13.189, Installation of Pressure Gauges; and Pressure Regulation; amendments to

§13.190, Piping and Hose; and the repeal of §§13.191 - 13.194, Testing; Installation of Emergency Shutdown Equipment; Operation; and Maintenance and Inspection.

The Commission proposes new Subchapter G, Adoption by Reference of NFPA 52 (Vehicular Gaseous Fuel Systems Code) to include new §13.201, Adoption by Reference of NFPA 52; §13.202, Clarification of Certain Terms Used in NFPA 52; and §13.203, Sections in NFPA 52 Adopted with Additional Requirements or Not Adopted.

The Commission proposes new Subchapter H, Adoption by Reference of NFPA 55 (Compressed Gases and Cryogenic Fluids Code) to include new §13.301, Adoption by Reference of NFPA 55; §13.302, Clarification of Certain Terms Used in NFPA 55; and §13.303, Sections in NFPA 55 Adopted with Additional Requirements or Not Adopted. The Commission proposes to adopt the two NFPA standards to establish requirements for Texas CNG licensees and consumers consistent with most other states in the United States. Because NFPA 52 and 55 have been adopted in whole or in part by many states, the Texas CNG industry would benefit from their adoption because Texas companies would be held to the same standards.

The Commission proposes the amendments, new rules, and repeals to update and clarify the Commission's CNG rules. The main purpose of the proposal is to adopt by reference NFPA 52 and 55 in the proposed new rules in Subchapters G and H. In addition to the proposed new rules, the Commission proposes amendments to certain rules to incorporate or update references to sections in the NFPA standards, as well as other nonsubstantive clarifications. Rules proposed with these types of amendments include §§13.3, 13.4, 13.23, 13.25, 13.36, 13.37, 13.61, and 13.70.

Several rules are proposed for repeal; with the proposed adoption by reference of NFPA 52 and 55, these rules are no longer necessary. Rules proposed for repeal include §§13.2, 13.26 - 13.33, 13.68, 13.92, 13.94 - 13.105, 13.132, 13.134 - 13.141, 13.182, 13.184 - 13.186, 13.188, 13.189, and 13.191 - 13.194.

Other rules with proposed amendments to add references to NFPA sections and make other clarifying changes include §§13.22, 13.34, 13.35, 13.38, 13.40, 13.93, 13.107, 13.133, 13.143, 13.183, 13.187, and 13.190.

The second purpose for the proposed amendments, new rules, and repeals is to implement changes from the 86th Legislative Session. House Bill 2127 removed the requirement that manufacturers of CNG containers obtain a license from the Commission and instead requires registration with the Commission. Proposed changes to reflect this statutory change are found in §§13.3, 13.15, 13.61 - 13.63, 13.67, 13.70, 13.71, and 13.75. Operators will not be required to comply with changes directly related to manufacturer registrations until approximately February 15, 2021. Upon adoption, the Commission will specify the effective date relating to requirements for manufacturer registration.

These rules also include proposed nonsubstantive amendments to clarify existing language, correct outdated language such as incorrect division and department names, update references to other Commission rules, and ensure language throughout Chapter 13, and throughout the Commission's alternative fuels regulations, is consistent. Clarifying changes include amendments to improve readability such as removing repetitive language, adding internal cross references, and including lan-



guage from a referenced section (e.g., a fee amount) to give the reader better access to applicable requirements.

Proposed amendments in §13.1 clarify that the requirements of Chapter 13 apply to the operation of CNG compression and dispensing systems in addition to their design and installation. Proposed subsections (b) and (c) are moved from §13.21. Proposed subsection (d) is moved from §13.2, which is proposed for repeal.

Proposed amendments to §13.3 remove definitions of terms that no longer appear in Chapter 13 or are only used within one section and, therefore, do not need to be defined. The proposed amendments add definitions of "certificate holder," "certified," "licensed," "licensee," "operations supervisor," "registered manufacturer," "rules examination," "trainee," and "transfer system" as those terms are now used throughout the chapter. The proposed amendments also clarify several existing definitions.

Proposed amendments in §13.4 remove the list of official forms from the rule language to ensure consistency with other chapters. All Commission forms are now located on the Commission's website. The proposed amendments also specify the form amendment and adoption process, which is consistent with forms referenced in other Commission chapters.

Proposed new §13.23, relating to Installation and Maintenance, is added to ensure consistency among the Commission's alternative fuels regulations. It requires all CNG containers, valves, dispensers, accessories, piping, transfer equipment, and gas utilization equipment to be installed and maintained in safe working order according to the manufacturer's instructions and the rules in Chapter 13.

Proposed amendments in §13.24, in addition to general updates and clarifications, clarify existing filing requirements for registering a CNG transport.

In addition to incorporating NFPA requirements, proposed amendments to §13.25 make minor updates for clarity and change requirements to ensure consistency among the Commission's alternative fuels regulations. The amendments also reorganize the rule; several subsections are moved within §13.25 and subsection (l) was removed and relocated to §13.37.

Proposed new §13.26 specifies the process for notice of, objections to, and hearings on proposed stationary installations. The Commission's other alternative fuels regulations contain this process and it is added here for consistency.

Proposed amendments to §13.36 clarify existing requirements and align the rules with the accident and incident reporting procedures in Chapter 9 of this title.

Proposed amendments in §13.61 include changes to implement the registration requirement from House Bill 2127. "Manufacturer registration" is included alongside references to applications for license and exemptions, and the license categories are updated to include licenses currently offered by the Commission, including Categories 1A and 1B. Proposed new subsection (k) requires a new form, CNG Form 1001M, and specifies that a container manufacturer registration authorizes the manufacture, assembly, repair, testing and sale of CNG containers. The original registration fee is \$1,000; the renewal fee is \$600. Other proposed wording generally clarifies license requirements and reflects the proposed adoption of NFPA 52 and 55.

Proposed amendments to §13.67 specify the requirements for any changes in ownership, form of dealership, or name of deal-

ership. The new rule incorporates existing procedures and reflects the process from the corresponding rule in Chapter 9 of this title.

Proposed amendments to §13.69 clarify requirements for registration and transfer of CNG cargo tanks or delivery units and conform the rule to similar provisions in Chapter 9 of this title.

Proposed amendments in §13.70 include requirements for individuals who perform work, directly supervise CNG activities, or are employed in any capacity requiring contact with CNG, in addition to certain NFPA-related amendments previously discussed. The proposed amendments also ensure "certificate" and "certificate holder" are used throughout instead of using "certificate," "certificate holder," "certified," and "certification" inconsistently. Proposed wording clarifies requirements for certificate renewal and steps to renew a lapsed certificate. Proposed new wording specifies that an individual who passes the applicable examination with a score of at least 75% will become a certificate holder, clarifies where and when examinations are available, and states what an examinee must bring to the exam site. Further, the proposed wording incorporates the examinations and their descriptions, which were previously included in a table, and clarifies the process for obtaining a management-level certificate.

Proposed amendments in §13.72 clarify filing requirements for company representatives, operations supervisors, and outlets, in addition to NFPA-related amendments previously discussed. The proposed amendments specify the requirements for designating company representatives and operations supervisors, and change wording from "termination" to "conclusion of employment" to better communicate AFS's intent for when a licensee must notify AFS of a company representative's or operations supervisor's departure.

Amendments proposed in §13.73 update the process for licensees who hire certificate holders, including allowing notification to the Commission to include only the last four digits of the employee's Social Security Number.

Proposed amendments in §13.93 include updates due to NFPA changes and also require uprights, braces, and cornerposts to be anchored in concrete a minimum of 12 inches below the ground. This change ensures consistency among the Commission's alternative fuels regulations.

Proposed amendments in §13.107 include updates due to NFPA changes and also add language previously found in other sections of the chapter. New language proposed in subsection (b) was moved from subsection (d) of §13.93 (relating to System Protection Requirements) and new language proposed in subsection (d) of §13.107 was moved from §13.104(i) (relating to Operation).

Proposed amendments in §13.142 remove specific requirements related to damaged supply lines and pressure relief devices and add a provision requiring removal of a vehicle from CNG service if any component is not in safe working order.

Other proposed amendments are nonsubstantive clarifications or updates such as correcting Commission department or division names, reorganization of the rule text, or other similar revisions. These types of amendments are proposed in §§13.21, 13.39, 13.64, 13.71, 13.73, 13.80, and 13.106.

April Richardson, Director, Alternative Fuels Safety Department, has determined that there will be a one-time cost to the Commission of approximately \$23,275 in programming costs based on 490 hours of programming to implement changes required

by HB 2127. This cost will be covered using the Commission's existing budget. Further, AFS will have a one-time cost to purchase copies of NFPA 52 and 55. The copies of NFPA standards will be provided to all inspectors, to managers at the AFS Austin office, and to examinees and instructors across the state. The total estimated cost to replace these books is \$9,912. This cost will also be covered using AFS's existing budget. There are no anticipated fiscal implications for local governments as a result of enforcing the amendments and new rules.

Ms. Richardson has determined that there will be minimal costs for those required to comply with the proposed amendments. Any cost stems from the need to purchase the new copies of NFPA 52 and/or NFPA 55 if a person required to comply does not already own a copy. The softbound copies of NFPA 52 and NFPA 55 total \$125.50. Manufacturers who are no longer required to obtain a license will save \$20 per company representative per year, as the certificate renewal requirements will not apply to these employees.

Ms. Richardson has also determined that the public benefit anticipated as a result of enforcing or administering the amendments will be compliance with recent changes to the Texas Natural Resources Code and increased public safety due to new NFPA standards.

In accordance with Texas Government Code, §2006.002, the Commission has determined there will be no adverse economic effect on rural communities, small businesses or micro-businesses resulting from the proposed amendments and new rule; therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis required under §2006.002.

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

The Commission has determined that the proposed amendments and new rule do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the rules would be in effect, the proposed amendments would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; increase fees paid to the agency; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; or effect the state's economy. The amendments are proposed to align Commission rules with governing state statutes and national standards. The amendments would decrease fees paid to the agency because due to HB 2127, manufacturers no longer require a license. Thus, a registered manufacturer is not required to pay \$20 per company representative for annual certificate renewal.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings](http://www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings); or by electronic mail to [rulescoordinator@rrc.texas.gov](mailto:rulescoordinator@rrc.texas.gov). The Commission will accept comments until 12:00 noon on Monday, December 14, 2020.

The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Richardson at (512) 463-6935. The status of Commission rulemakings in progress is available at [www.rrc.texas.gov/general-counsel/rules/proposed-rules](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules).

## SUBCHAPTER A. SCOPE AND DEFINITIONS

### 16 TAC §§13.1, 13.3, 13.4, 13.15

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

#### §13.1. *Applicability, Severability, and Retroactivity [Scope].*

(a) This chapter applies to the design, ~~and~~ installation, and operation of compressed natural gas (CNG) compression and dispensing systems; the design and installation of CNG engine fuel systems on vehicles of all types and their associated fueling facilities; and the construction and operation of equipment for the ~~;~~ CNG systems used ~~for compression,~~ storage, handling, and ~~[sale,~~ transportation~~],~~ delivery, or distribution~~]~~ of CNG ~~[for any purpose; and all CNG mobile fuel systems].~~

(b) If any term, clause, or provision of these rules is for any reason declared invalid, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

(c) Nothing in these rules shall be construed as requiring, allowing, or approving the unlicensed practice of engineering or any other professional occupation requiring licensure.

(d) Unless otherwise stated, the rules in this chapter are not retroactive. Any installation of a CNG system shall meet the requirements of this chapter at the time of installation.

(e) ~~[(b)]~~ This chapter shall not apply to:

(1) the production, transportation, storage, sale, or distribution of natural gas that is subject to Commission jurisdiction under Subtitle A or B, Title 3, Texas Utilities Code;

(2) pipelines, fixtures, equipment, or facilities to the extent that they are subject to the safety regulations promulgated and enforced by the Railroad Commission of Texas pursuant to Natural Resources Code, Chapter 117, or Subchapter E, Chapter 121, Texas Utilities Code; or

(3) the design and installation of any CNG system in ships, barges, sailboats, or other types of watercraft. Such installation is subject to the American Board and Yacht Council (ABYC) and any other applicable standards.

(f) ~~[(e)]~~ This ~~[Subchapters A, B, C, D, E, and F of this]~~ chapter shall not apply to vehicles and fuel supply containers that:

(1) are manufactured or installed by original equipment manufacturers; and

(2) comply with Title 49, Code of Federal Regulations, the Federal Motor Vehicle Safety Standards, ; and

~~[(3) comply with the National Fire Protection Association (NFPA) Code 52, *Compressed Natural Gas (CNG) Vehicular Systems Code*.]~~

(g) ~~[(d)]~~ Vehicles and fuel supply containers excluded from the requirements ~~[of subchapters A through F]~~ of this chapter pursuant to subsection ~~(f) [(e)]~~ of this section shall comply with the requirements of §13.24 of this title (relating to School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections) ~~;~~ relating to Filings Required for School Bus, Mass Transit, and Special Transit Installations].

### §13.3. Definitions.

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

(1) AFS ~~[AED]~~--The Commission's Alternative Fuels Safety department within the Commission's Oversight and Safety ~~[Energy]~~ Division.

~~[(2) AFRED--The organizational unit of the AED that administers the Commission's alternative fuels research and education program, including CNG certification, exempt registration, and training.]~~

(2) ~~[(3)]~~ ANSI--American National Standards Institute.

(3) ~~[(4)]~~ ASME--American Society of Mechanical Engineers.

(4) ~~[(5)]~~ ASME Code--ASME Boiler and Pressure Vessel Code.

(5) ~~[(6)]~~ ASTM--ASTM International (formerly American Society for Testing and Materials).

(6) ~~[(7)]~~ Automatic dispenser--A CNG dispenser which is operated by a member of the general public and which requires transaction authorization.

(7) ~~[(8)]~~ Building--A structure with walls and a roof resulting in the structure being totally enclosed.

(8) ~~[(9)]~~ Cascade storage system--Storage in multiple cylinders.

(9) Certificate holder--An individual:

(A) who has passed the required management-level or employee-level examination pursuant to §13.70 of this title (relating to Examination and Exempt Registration Requirements and Renewal) and paid applicable fees; or

(B) who holds a current examination exemption pursuant to §13.70 of this title.

(10) Certified--An individual who is authorized by the Commission to perform the CNG activities covered by the certification issued under §13.70 of this title.

~~[(11) [(10)] CNG--See "Compressed natural gas" in this section.~~

~~[(12) [(11)] CNG cargo tank--A container which complies with ASME or DOT specifications used to transport CNG for delivery.~~

~~[(13) [(12)] CNG cylinder--A cylinder or other container designed for use or used as part of a CNG system.~~

~~[(14) [(13)] CNG system--A system of safety devices, cylinders, piping, fittings, valves, compressors, regulators, dryers, gauges, relief devices, vents, installation fixtures, and other CNG equipment intended for use or used in any building or public place by the general public ~~[commercial installation]~~, or used in conjunction with a motor vehicle or mobile fuel system fueled by CNG, and ~~[or]~~ any system or facilities designed to be used or used in the compression, sale, storage, transportation for delivery, or distribution of CNG in portable CNG cylinders, but does not include ~~[not including]~~ natural gas facilities, equipment, or pipelines located upstream of the outlet of the natural gas meter ~~[inlet of a compressor devoted entirely to CNG]~~.~~

~~[(15) [(14)] Commercial installation--Any CNG installation located on premises other than a single family dwelling used as a residence, or a private agricultural installation, including but not limited to a retail business establishment, school, convalescent home, hospital, retail CNG cylinder filling/exchange operation, service station, forklift refueling facility, or private motor/mobile fuel cylinder filling operation.~~

~~[(16) [(15)] Commission--The Railroad Commission of Texas.~~

~~[(17) [(16)] Company representative--The individual designated to the Commission by a license applicant or a licensee as the principal individual in authority and actively supervising the conduct of the licensee's CNG activities ~~[An owner or employee of a licensee designated by that licensee to take any required examinations and to actively supervise CNG operations of the licensee]~~.~~

~~[(18) [(17)] Compressed natural gas--Natural gas primarily ~~[which is a mixture of hydrocarbon gases and vapors]~~ consisting ~~[principally]~~ of methane ( $\text{CH}_4$ ) ~~[(CH<sub>4</sub>)]~~ in gaseous state ~~[form]~~ that is compressed and used, stored, sold, transported, or distributed for use by or through a CNG system.~~

~~[(19) [(18)] Container--A pressure vessel cylinder or cylinders permanently manifolded together used to store CNG.~~

~~[(20) [(19)] Cylinder service valve--A hand-wheel operated valve connected directly to a CNG cylinder.~~

~~[(21) [(20)] Director--The director of the AFS ~~[AED]~~ or the director's delegate.~~

~~[(22) [(21)] Dispensing ~~[area or dispensing]~~ installation--A CNG installation that dispenses CNG from any source by any means into fuel supply cylinders installed on vehicles or into portable cylinders.~~

~~[(23) [(22)] DOT--The United States Department of Transportation.~~

~~[(24) [(23)] Flexible metal hose--Metal hose made from continuous tubing that is corrugated for flexibility and, if used for pressurized applications, has an external wire braid.~~

~~[(25) [(24)] Fuel supply cylinder--A cylinder mounted upon a vehicle for storage of CNG as fuel supply to an internal combustion engine.~~

(26) [(25)] Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of a CNG installation.

(27) Licensed--Authorized by the Commission to perform CNG activities through the issuance of a valid license.

(28) Licensee--A person which has applied for and been granted a CNG license by the Commission.

[(26) Location--A site operated by a CNG licensee at which the licensee carries on an essential element of its CNG activities, but where the activities of the site alone do not qualify the site as an outlet.]

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

[(28) Manifold--The assembly of piping and fittings used to connect cylinders.]

(29) Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county and primarily used in the conveyance of the general public.

(30) Metallic hose--Hose in which the strength of the hose depends primarily on the strength of metallic parts, including liners or covers.

(31) Mobile fuel container--A CNG container mounted on a vehicle to store CNG as the fuel supply for uses other than the engine to propel the vehicle, including use in an auxiliary engine [motor fuel].

(32) Mobile fuel system--A CNG system which supplies natural gas fuel to an auxiliary engine other than the engine used to propel the vehicle or for other uses on the vehicle.

(33) Motor fuel container--A CNG container mounted on a vehicle to store CNG as the fuel supply to an engine used to propel the vehicle.

(34) Motor fuel system--A CNG system [excluding the container which supplies CNG] to supply natural gas as a fuel for an engine used to propel the vehicle.

(35) Motor vehicle--A self-propelled vehicle licensed for highway use or used on a public highway.

(36) Operations supervisor--The individual who is certified by the Commission to actively supervise a licensee's CNG activities and is authorized by the licensee to implement operational changes.

(37) [(36)] Outlet--A site operated by a CNG licensee from which any regulated CNG activity is performed [at which the business conducted materially duplicates the operations for which the licensee is initially granted a license].

(38) [(37)] Person--An individual, [sole proprietor,] partnership, firm, joint venture, association, corporation, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee.

(39) [(38)] Point of transfer--The point where the fueling connection is made.

[(39) Pressure-filled--A method of transferring CNG into cylinders by using pressure differential.]

(40) Pressure relief device [valve]--A device designed to provide a means of venting excess pressure to prevent rupture of a normally charged cylinder.

(41) Public transportation vehicle--A vehicle for hire to transport persons, including but not limited to taxis, buses (excluding school buses, mass transit, or special transit vehicles), or airport courtesy cars.

(42) Pullaway--The accidental separation of a hose from a cylinder, container, transfer equipment, or dispensing equipment, which could occur on a cylinder, container, transfer equipment, or dispensing equipment whether or not they are protected by a pullaway or breakaway device.

(43) Registered manufacturer--A person who has applied for and been granted a registration to manufacture CNG containers by the Commission.

[(43) Representative--The individual designated by an applicant or licensee as the principal individual in authority who is responsible for actively supervising the licensee's CNG activities.]

(44) Residential fueling facility--An assembly and its associated equipment and piping at a residence used for the compression and delivery of natural gas into vehicles.

(45) Rules examination--The Commission's written examination that measures an examinee's working knowledge of Texas Natural Resources Code, Chapter 116, and the rules in this chapter.

(46) [(45)] School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(47) [(46)] School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

[(47) Settled pressure--The pressure in a container at 70 degrees Fahrenheit, which cannot exceed the marked service or design pressure of the cylinder.]

(48) Special transit vehicle--A vehicle designed with limited passenger capacity which is used by a [school or] mass transit authority for special transit purposes, such as transport of mobility impaired persons.

(49) Trainee--An individual who has not yet taken and passed an employee-level rules examination.

(50) Transfer system--All piping, fittings, valves, pumps, compressors, meters, hoses, and equipment used in transferring CNG between containers.

(51) [(49)] Transport--Any vehicle or combination of vehicles and CNG cylinders designed or adapted for use or used principally as a means of moving or delivering CNG from one place to another, including but not limited to any truck, trailer, semitrailer, cargo tank, or other vehicle used in the distribution of CNG.

(52) [(50)] Ultimate consumer--The person controlling CNG immediately prior to its ignition.

#### §13.4. CNG Forms.

Forms required to be filed with AFS shall be those prescribed by the Commission. A complete set of all required forms shall be posted on the Commission's web site. Notice of any new or amended forms shall be issued by the Commission. A person may file the prescribed form on paper or use any electronic filing process. Any form filed with the Commission shall be completed in its entirety. The Commission may at its discretion accept an earlier version of a prescribed form provided

that it contains all required information. [Under the provisions of the Texas Natural Resources Code, Chapter 116, the Railroad Commission of Texas has designated the following forms for use:]  
[Figure: 16 TAC §13.4]

*§13.15. Penalty Guidelines and Enforcement [for CNG Safety Violations].*

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging licensees, [and] certificate holders, and registered manufacturers to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank CNG-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

(b) Guidelines [Only guidelines]. This section complies with the requirements of Texas Natural Resources Code, §81.0531. The penalty amounts contained in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations [of provisions] of Texas Natural Resources Code, [Title 3,] Chapter 116[; relating to compressed natural gas]; of rules, orders, licenses, permits, or certificates relating to CNG safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to assess administrative penalties. The typical minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, [Title 3,] Chapter 116[; relating to compressed natural gas]; of rules, orders, licenses, registrations, permits, or certificates relating to CNG safety adopted or issued under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

- (1) the person's history of previous violations;
- (2) the seriousness of the previous violations;
- (3) any hazard to the health or safety of the public; and
- (4) the demonstrated good faith of the person charged.

(e) Typical penalties. Regardless of the method by which the typical penalty amount is calculated, the total penalty amount will be within the statutory limit [maximum]. Typical penalties for violations [of provisions] of Texas Natural Resources Code, [Title 3,] Chapter 116[; relating to compressed natural gas]; of rules, orders, licenses, registrations, permits, or certificates relating to CNG safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, are set forth in Table 1.

Figure: 16 TAC §13.15(e)  
[Figure: 16 TAC §13.15(e)]

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual safety hazards, or that result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty. The enhancement may be in any amount in the range shown for each type of violation, as shown in Table 2.

Figure: 16 TAC §13.15(f) (No change.)

(g) Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.

Figure 1: 16 TAC §13.15(g) (No change.)

Figure 2: 16 TAC §13.15(g) (No change.)

(h) Penalty reduction for settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(i) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

(j) Other sanctions. Depending upon the nature of and the consequences resulting from a violation of the rules in this chapter, the Commission may impose a non-monetary penalty, such as requiring attendance at a safety training course, or may issue a warning.

(k) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.

Figure: 16 TAC §13.15(k)

[Figure: 16 TAC §13.15(k)]

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

Filed with the Office of the Secretary of State on October 20, 2020.

TRD-202004395

Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 475-1295

◆ ◆ ◆  
**16 TAC §13.2**

The Commission proposes the repeal under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

*§13.2. Retroactivity.*

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

Filed with the Office of the Secretary of State on October 20, 2020.

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Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: December 6, 2020

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**SUBCHAPTER B. GENERAL RULES FOR  
COMPRESSED NATURAL GAS (CNG)  
EQUIPMENT QUALIFICATIONS**

**16 TAC §§13.21 - 13.26, 13.34 - 13.40**

The Commission proposes the amendments and new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

*§13.21. Applicability [and Severability].*

[(a)] The provisions of this subchapter apply to pressurized components of a CNG [~~compressed natural gas (CNG)~~] system, and are applicable to both engine fuel systems and compression, storage, and dispensing systems.

[(b)] If any item, clause, or provision of these rules is for any reason declared invalid, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.]

[(e)] Nothing in these rules shall be construed as requiring, allowing, or approving the unlicensed practice of engineering or any other professional occupation requiring licensure.]

*§13.22. Odorization.*

[(a)] Compressed natural gas shall have a distinctive odor potent enough for its presence to be detected down to a concentration in air of not over one-fifth of the lower limit of flammability.]

(a) [(b)] In addition to NFPA 52 §5.2.1.1, compressed [~~Compressed~~] natural gas shall be odorized according to the provisions of Texas Utilities Code, §§121.251 and 121.252[; in effect at the time the gas is odorized].

(b) Containers installed in accordance with NFPA 55 that will contain unodorized CNG shall be legibly marked "NON-ODORIZED" or "NOT ODORIZED" on two opposing sides of the container.

*§13.23. Installation and Maintenance.*

In addition to NFPA 52 §6.13.2, all CNG containers, valves, dispensers, accessories, piping, transfer equipment, and gas utilization equipment shall be installed and maintained in safe working order according to the manufacturer's instructions and the rules in this chapter. If any one of the CNG storage containers, valves, dispensers, accessories, piping, transfer equipment, gas utilization equipment, and appliances is not in safe working order, AFS may require that the installation be immediately removed from CNG service and not be operated until the necessary repairs have been made.

*§13.24. [Filings Required for] School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections.*

(a) After the manufacture of or the conversion to a CNG system on any vehicle to be used in Texas as a school bus, mass transit, public transportation, or special transit vehicle, the manufacturer, licensee, or ultimate consumer making the installation or conversion shall notify AFS [~~LP-Gas Operations~~] in writing on CNG Form 1503 that the applicable CNG-powered vehicles are ready for a complete inspection to determine compliance with the rules in this chapter.

(b) AFS shall conduct the inspection within a reasonable time to ensure the vehicles are operating in compliance with the rules in this chapter.

(1) If AFS [~~LP-Gas Operations~~] initial complete inspection finds the vehicle in compliance with the rules in this chapter and the statutes, the vehicle may be placed into CNG service. For fleet installations of identical design, an initial inspection shall be conducted prior to the operation of the first vehicle, and subsequent vehicles of the same design may be placed into service without prior inspections. [Subsequent inspections shall be conducted within a reasonable time frame to ensure the vehicles are operating in compliance with the rules in this chapter.]

(2) If violations exist at the time of the initial complete inspection, the vehicle shall not be placed into CNG service and the manufacturer, licensee, or ultimate consumer making the installation

or conversion shall correct the violations. The manufacturer, licensee, or ultimate consumer shall file with AFS ~~[LP-Gas Operations]~~ documentation demonstrating compliance with the rules in this chapter, or AFS ~~[LP-Gas Operations]~~ shall conduct another complete inspection before the vehicle may be placed into CNG service.

(3) For public transportation vehicles only, if AFS does not conduct the initial inspection within 30 business days of receipt of CNG Form 1503, the vehicle may be operated in CNG service if it complies with the rules in this chapter.

(c) The manufacturer, licensee, or ultimate consumer making the installation or conversion shall be responsible for compliance with the rules in this chapter, statutes, and any other local, state, or federal requirements.

(d) If the requested AFS ~~[LP-Gas Operations]~~ inspection identifies violations requiring modifications by the manufacturer, licensee, or ultimate consumer, AFS ~~[LP-Gas Operations]~~ shall consider the assessment of an inspection fee to cover the costs associated with any additional inspection, including mileage and per diem rates set by the legislature.

*§13.25. Filings Required for Stationary CNG Installations.*

(a) General requirements. In addition to NFPA 52 §7.3.1, and NFPA 55 §4.1, ~~no [No]~~ CNG container shall be placed into CNG service or an installation operated or used in CNG service until the requirements of this section, as applicable, are met and the facility is in compliance with the rules in this chapter and all applicable statutes, in addition to any applicable requirements of the municipality or the county where an installation is or will be located.

(b) Installations with an aggregate ~~[Aggregate]~~ storage capacity ~~[in excess]~~ of 84,500 standard cubic feet or more ~~[240 standard cubic feet water volume]~~. The storage capacity of each container is based on the container's operating pressure.

(1) For installations with an aggregate storage capacity ~~[in excess]~~ of 84,500 standard cubic feet or more ~~[240 standard cubic feet water volume]~~, the licensee shall submit the following information to AFS ~~[LP-Gas Operations]~~ at least 30 days prior to construction:

(A) ~~[(4)]~~ CNG Form 1500;

(B) ~~[(2)]~~ CNG Form 1500A with all applicable documents;

(C) ~~[(3)]~~ a plat drawing from the appropriate appraisal district identifying:

~~(i)~~ the facility's property boundaries;

~~(ii)~~ the names of all real property owners within 500 feet; and

~~(iii)~~ a 500-foot radius measured from the proposed container location on the site;

(D) ~~[(4)]~~ a site plan of sufficient scale that identifies:

~~(i)~~ ~~[(A)]~~ the location, types, and sizes of all CNG containers and compression and dispensing equipment already on site or proposed to be on site;

~~(ii)~~ ~~[(B)]~~ the distances from the containers, compression equipment, dispensing equipment, and material handling equipment to ~~[the]~~ property lines, buildings on the same property, any electric transmission lines, and railroads ~~[and railroad, pipeline, or roadway rights-of-way; and]~~. If the area where the container and/or compression equipment will be installed is a leased area or utility easement, the site plan shall indicate the boundaries of the leased area

or utility easement, regardless of the size of the property in which the lease or easement lies;

~~(iii)~~ ~~[(C)]~~ any known potential hazards; ~~[-]~~

~~(iv)~~ location of CNG dispensers and their distance from any proposed container (the nearest container if more than one), property lines, buildings on the same property, roadways, and railroad track centerlines;

~~(v)~~ location of the nearest public sidewalk, highway, street, or road and its distance to containers and equipment;

~~(vi)~~ location of all sources of ignition;

~~(vii)~~ location of other types of aboveground fuel containers, the type of fuel stored, and the distance to CNG containers and dispensing equipment; and

~~(viii)~~ the location of other types of fuel dispensers, the type of fuel dispensed, and the distance to CNG containers and dispensing equipment.

(E) ~~[(5)]~~ a nonrefundable fee of \$50 for the initial application, or a nonrefundable fee of \$30 for a resubmission; and ~~[- A nonrefundable fee of \$30 shall be required for any resubmission.]~~

(F) if the facility is accessed by cargo tanks from a public highway under the jurisdiction of the Texas Department of Transportation, a statement or permit from the Texas Department of Transportation showing that the driveway is of proper design and construction to allow safe entry and egress of the CNG cargo tanks.

(2) Printed copies of site plans with a legend must be printed to the correct size for the legend or distance provided.

(3) Prior to the installation of any individual CNG container, AFS shall determine whether the proposed installation constitutes a danger to the public health, safety, and welfare. The Commission does not consider public health, safety, and welfare to include such factors as the value of property adjacent to the installation, the esthetics of the proposed installation, or similar considerations. The applicant shall provide additional information if requested by AFS. AFS may impose restrictions or conditions on the proposed CNG installation based on one or more of the following factors:

(A) nature and density of the population or occupancy of structures within 500 feet of the proposed or existing container locations;

(B) nature of use of property located within 500 feet of the CNG installation;

(C) type of activities on the installation's premises;

(D) potential sources of ignition that might affect a CNG leak;

(E) existence of dangerous or combustible materials in the area that might be affected by an emergency situation;

(F) any known potential hazards or other factors material to the public health, safety, and welfare.

(4) ~~[(e)]~~ AFS ~~[LP-Gas Operations]~~ shall notify the applicant in writing outlining its findings.

(A) When AFS notifies an applicant of an incomplete CNG Form 1500 or CNG Form 1500A, the applicant has 120 calendar days from the date of the notification letter to resubmit the corrected application or the application will expire. After 120 days, the applicant shall file a new application to reactivate AFS review of the proposed installation.

(B) The applicant may request in writing an extension of the 120-day time period. The request shall be postmarked or physically delivered to AFS before the expiration date. AFS may extend the application period for up to an additional 90 days.

(5) If the application is administratively denied:

(A) AFS shall specify the deficiencies in the written notice required in paragraph (3) of this subsection.

(B) The [; the] applicant shall [may] modify the submission and resubmit it for approval or [may] request a hearing on the matter in accordance with [the general rules of practice and procedure of the Railroad Commission of Texas in] Chapter 1 of this title (relating to Practice and Procedure). If the Commission finds after a public hearing that the proposed installation complies with the rules in this chapter and the statutes of the State of Texas, and does not constitute a danger to the public health, safety, and welfare, the Commission shall issue an interim approval order. The construction of the installation and the setting of the container shall not proceed until the applicant has received written notification of the interim approval order. Any interim approval order shall include a provision that such approval may be suspended or revoked if:

(i) the applicant has introduced CNG into the system prior to final approval;

(ii) a physical inspection of the installation indicates that it is not installed in compliance with the submitted plat drawing for the installation, the rules in this chapter, or the statutes of the State of Texas; or

(iii) the installation constitutes a danger to the public health, safety, and welfare.

(6) The licensee shall not commence construction until notice of approval is received from AFS.

(A) If the subject installation is not completed within one year from the date AFS has granted construction approval, the application will expire.

(B) Prior to the date of expiration, the applicant may request in writing an extension of time of up to 90 days to complete the installation.

(C) If the applicant fails to request an extension of time within the time period prescribed in this paragraph, the applicant shall submit a new application before the installation can be completed.

(7) The applicant shall submit to AFS written notice of completed construction and the Commission shall complete the field inspection as specified in subsection (e) of this section. After the Commission has completed the inspection, the operator, pending the inspection findings, may commence CNG activities at the facility.

(8) A licensee shall not be required to submit CNG Form 1500, CNG Form 1500A, or a site plan prior to the installation of dispensers, equipment, piping, or when maintenance and improvements are being made at an existing CNG installation.

(9) If a licensee is replacing a container with a container of the same or less overall diameter and length or height, and is installing the replacement container in the identical location of the existing container, the licensee shall file CNG Form 1500.

(10) AFS may request CNG Form 1008, a Manufacturer's Data Report, or any other documentation or information pertinent to the installation in order to determine compliance with the rules in this chapter.

(11) For an installation that is a licensee outlet, the licensee shall submit CNG Form 1001A within 30 days of installation, in accordance with §13.61(j) of this title (relating to License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals).

{(d) If the Railroad Commission finds after a public hearing that the proposed installation complies with the rules in this chapter and the statutes of the State of Texas, and does not constitute a danger to the public health, safety, and welfare, the Railroad Commission shall issue an interim approval order. The construction of the installation and the setting of the container shall not proceed until the applicant has received written notification of the interim approval order. Any interim approval order shall include a provision that such approval may be suspended or revoked if:}

{(1) the applicant has introduced CNG into the system prior to final approval; or}

{(2) a physical inspection of the installation indicates that it is not installed in} compliance with the submitted plat drawing for the installation, the rules in this chapter, or the statutes of the State of Texas; or}

{(3) the installation constitutes a danger to the public health, safety, and welfare.}

{(e) If a CNG stationary installation, equipment, or appurtenances not specifically covered by the rules in this chapter has been or will be installed, LP-Gas Operations shall apply and require any reasonable safety provisions to ensure the CNG installation is safe for CNG service. If the affected entity disagrees with LP-Gas Operations' determination, the entity may request a hearing. The installation shall not be placed in CNG operation until LP-Gas Operations has determined the installation is safe for CNG service.}

(c) [(f)] Commercial installations with an aggregate [Aggregate] storage capacity of less than 240 standard cubic feet water volume. The storage capacity of each container is based on the container's operating pressure.

(1) Within 10 calendar days following the completion of a commercial container installation, the licensee shall submit CNG Form 1501 to AFS [LP-Gas Operations] stating:

(A) the installation fully complies with the statutes and the rules in this chapter;

(B) all necessary Commission [CNG] licenses, [and] certificates, and permits have been issued; and

(C) the date the installation has been placed into [in] CNG service.

(2) The licensee shall pay [Pay] a nonrefundable fee of \$10 for each [ASME] container, [or DOT cylinder] cascade, and compressor listed on the form. One fee is required for each cascade regardless of the number of cylinders in the cascade. [A nonrefundable fee of \$20 shall be required for any resubmission.]

(A) AFS shall review the submitted information and shall notify the applicant in writing of any deficiencies.

(B) A nonrefundable fee of \$20 shall be required for any resubmission.

(3) CNG activities may commence prior to the submission of CNG Form 1501 if the facility is in compliance with the rules in this chapter.

{(g) Notice of complete or incomplete form. LP-Gas Operations shall review all applications within 21 business days of receipt of



all required information and shall notify the applicant in writing of any deficiencies.]

[(h) Expiration of application; extension.]

[(1) When LP-Gas Operations notifies an applicant of an incomplete CNG Form 1500, the applicant has 120 calendar days from the date of the notification letter to resubmit the corrected application or the application will expire. After 120 days, a new application shall be filed should the applicant wish to reactivate LP-Gas Operations review of the proposed installation.]

[(2) If the applicant requests an extension of the 120-day time period in writing, postmarked or physically delivered to LP-Gas Operations before the expiration date, the application may be renewed for up to 90 days as determined by LP-Gas Operations.]

[(3) If the subject installation is not completed within one year from the date of LP-Gas Operations' completed review, the applicant shall resubmit the application for LP-Gas Operations' review.]

(d) [(i)] Physical inspection of stationary installations.

(1) Aggregate storage capacity [in excess] of 240 standard cubic feet water volume or more. The applicant shall notify AFS in writing [LP-Gas Operations] when the installation is ready for inspection.

(A) If any non-compliance items are cited at the time of AFS' initial inspection, the installation shall not be placed into CNG service until the non-compliance items are corrected, as determined at the time of inspection, depending on the nature of the non-compliance items cited.

(B) If AFS [LP-Gas Operations] does not physically inspect the facility within 30 calendar days of receipt of notice that the facility is ready for inspection, the facility [applicant] may operate [the facility] conditionally until the initial [complete] inspection is completed [made]. [If any safety rule violations exist at the time of the initial inspection, the applicant may be required to cease CNG operation until the applicant corrects the violations.]

(2) Aggregate storage capacity of less than 240 standard cubic feet water volume. After receipt of CNG Form 1501, AFS [LP-Gas Operations] shall conduct an inspection as soon as possible to verify the installation described complies with the rules in this chapter. The facility may be operated [The applicant may operate the facility] prior to inspection if the facility fully complies with the rules in this chapter. If [any CNG statute or safety rule violations exist at the time of] the initial inspection at a commercial installation results in the citation of non-compliance items, AFS may require that [LP-Gas Operations may immediately remove] the subject container, including any piping, appliances, appurtenances, or equipment connected to it be immediately removed from CNG service until the applicant corrects the non-compliance items [violations].

(3) [(j)] Material variances. If AFS [LP-Gas Operations] determines the completed installation varies materially from the application originally accepted, correction of the variance and notification to AFS [the applicant shall correct the variance and notify LP-Gas Operations of the correction of the variance] or resubmittal of [resubmit] the application is required. AFS [LP-Gas Operations'] review of such resubmitted application shall comply with subsection (b)(3) of [the procedure described in] this section.

(4) [(k)] In the event an applicant has requested an inspection and AFS [LP-Gas Operations'] inspection identifies non-compliance items [violations] requiring modifications by the applicant, AFS [LP-Gas Operations] may assess an inspection fee to cover the costs

associated with any additional inspection, including mileage and per diem rates set by the legislature.

[(l) Appurtenances and equipment.]

[(1) All appurtenances and equipment placed into CNG service shall be certified, marked, or listed by a nationally recognized laboratory such as Underwriters Laboratory (UL), Factory Mutual (FM), CSA International, or such other laboratories approved by LP-Gas Operations unless:]

[(A) it is specifically prohibited for use by another section of this chapter; or]

[(B) there is no test specification or procedure developed by the testing laboratory for the appurtenance or equipment.]

[(2) Appurtenances and equipment that cannot be listed but are not prohibited for use by the rules in this chapter shall be acceptable for CNG service provided the appurtenances and equipment are installed in compliance with the applicable rules in this chapter.]

[(3) The licensee or operator of the appurtenances or equipment shall maintain documentation sufficient to substantiate any claims made regarding the safety of any valves, fittings, and equipment and shall, upon request, furnish copies to LP-Gas Operations.]

[(4) Compliance under this section does not ensure conformity with other state and federal regulations, such as those of the Texas Commission on Environmental Quality or its successor agencies.]

§13.26. Notice of, Objections to, and Hearings on Proposed Stationary CNG Installations.

(a) Notice of proposed stationary CNG installations.

(1) For a proposed installation with an aggregate storage capacity of 84,500 standard cubic feet or more, an applicant shall send a copy of the filings required under §13.25 of this title (relating to Filings Required for Stationary CNG Installations) by certified mail, return receipt requested or otherwise delivered, to all owners of real property situated within 500 feet of any proposed container location at the same time the originals are filed with AFS.

(A) AFS shall consider the notice to be sufficient when the applicant has provided evidence that copies of a complete application have been mailed or otherwise delivered to all real property owners.

(B) The applicant or licensee may obtain names and addresses of owners from current county tax rolls.

(2) An applicant shall notify owners of real property situated within 500 feet of the proposed container location if:

(A) the current aggregate storage capacity of the installation is more than doubled in a 12-month period; or

(B) the resulting aggregate storage capacity of the installation will be more than 1,014,000 standard cubic feet.

(b) Objections to proposed stationary CNG installations.

(1) Each owner of real property receiving notice of a proposed installation pursuant to subsection (a) of this section shall have 18 calendar days from the date the notice is postmarked to file a written objection with AFS using the CNG Form 1500A sent to them by the applicant. An objection is considered timely filed when it is actually received by the Commission. AFS shall review all objections within 10 business days of receipt. An objection shall be in writing and shall include a statement of facts showing that the proposed installation:

(A) does not comply with the rules in this chapter, specifying which rules are violated;

(B) does not comply with the statutes of the State of Texas, specifying which statutes are violated; or

(C) constitutes a danger to the public health, safety, and welfare, specifying the exact nature of the danger. For purposes of this section, "danger" means an imminent threat or an unreasonable risk of bodily harm, but does not mean diminished property or esthetic values in the area.

(2) Upon review of the objection, AFS shall:

(A) request a public hearing as specified in §13.71 of this title (relating to Hearing for Denial, Suspension, or Revocation of Licenses, Manufacturer Registrations, or Certificates); or

(B) notify the objecting party in writing within 10 business days of receipt requesting further information for clarification and stating why the objection is not valid. The objecting entity shall have 10 calendar days from the postmark of AFS' letter to file its corrected objection. Clarification of incomplete or non-substantive objections shall be limited to two opportunities. If new objections are raised in the objecting party's clarification, the new objections shall be limited to one notice of correction.

(c) Hearings on stationary CNG installations.

(1) Reason for hearing. AFS shall call a public hearing if:

(A) AFS receives an objection that complies with subsection (b) of this section; or

(B) AFS determines that a hearing is necessary to investigate the impact of the installation.

(2) Notice of public hearing. The Hearings Division shall give notice of the public hearing at least 21 calendar days prior to the date of the hearing to the applicant and to all real property owners who were required to receive notice of the proposed installation under subsection (a) of this section.

(3) Procedure at hearing. The public hearing shall be conducted pursuant to Chapter 1 of this title (relating to Practice and Procedure).

(4) Hearing findings. If the Railroad Commission finds after a public hearing that the proposed installation complies with the rules in this chapter and the statutes of the State of Texas, and does not constitute a danger to the public health, safety, and welfare, the Railroad Commission shall issue an interim approval order. The construction of the installation and the setting of the container shall not proceed until the applicant has received written notification of the interim approval order. Any interim approval order shall include a provision that such approval may be suspended or revoked if:

(A) the applicant has introduced CNG into the system prior to final approval; or

(B) a physical inspection of the installation indicates that it is not installed in compliance with the submitted drawing for the installation, the rules in this chapter, or the statutes of the State of Texas; or

(C) the installation constitutes a danger to the public health, safety, and welfare.

#### *§13.34. Vehicle Fueling Connection.*

[(a) A vehicle fueling connection shall provide for the reliable and secure connection of the fuel system cylinders to a source of compressed natural gas (CNG).]

[(b) The fueling connection shall be suitable for the pressure expected under normal conditions and corrosive conditions which might be encountered.]

[(e) The fueling connection shall prevent escape of gas when the connector is not properly engaged or becomes separated.]

[(d)] In addition to NFPA 52 §6.9.3, the [The] refueling connection on an engine fuel system shall be firmly supported, and shall:

(1) receive the fueling connector and accommodate the service pressure of the vehicle fuel system;

(2) incorporate a means to prevent the entry of dust, water, and other foreign material. If the means used is capable of sealing system pressure, it shall be capable of being depressurized before removal; and

(3) have a [different] fueling connection appropriate for the [each] pressure of the [base] vehicle fuel system.

[(e) Any vehicle that will be fueled by an automatic dispenser shall be equipped with a fueling connection that complies with ANSI/AGA NGV1, Requirements for Natural Gas Vehicles (NGV) Refueling Connection Devices, Requirement 1-90.]

#### *§13.35. Application for an Exception to a Safety Rule.*

(a) In addition to NFPA 52 §4.3 and for any alternate design used for installations subject to NFPA 55 requirements, a [A] person may apply for an exception to the provisions of this chapter by filing CNG Form 1025 along with supporting documentation and a \$50 filing fee with AFS [LP-Gas Operations].

(b) The application shall contain the following:

(1) the section number of any [applicable] rules for which an exception is being requested;

(2) the type of relief desired, including the exception requested and any information which may assist AFS [LP-Gas Operations] in comprehending the requested exception;

(3) a concise statement of facts which supports the applicant's request for the exception, such as the reason for the exception, the safety aspects of the exception, and the social and/or economic impact of the exception;

(4) for all stationary installations, regardless of size, a description of the acreage and/or address upon which the subject of the exception will be located. The description shall be in writing and shall include:

(A) a site drawing;

(B) sufficient identification of the site so that determination of property boundaries may be made;

(C) a plat from the applicable appraisal district indicating the ownership of the land; and

(D) the legal authority under which the applicant, if not the owner, is permitted occupancy; [.]

(5) the name, business address, and telephone number of the applicant and of the authorized agent, if any; and

[(6) an original signature, in ink, by the party filing the application or by the authorized representative;]

(6) [(7)] a list of the names and addresses of all interested entities as defined in subsection (c) of this section.

(c) Notice of the application for an exception to a safety rule.

(1) The applicant shall send a copy of CNG Form 1025 by certified mail, return receipt requested, to all affected entities as specified in paragraphs (2), (3), and (4) of this subsection on the same date on which the form is filed with or sent to AFS [LP-Gas Operations]. The applicant shall include a notice to the affected entities that any objection shall be filed with AFS [LP-Gas Operations] within 18 calendar days of the date of postmark. The applicant shall file all return receipts with AFS [LP-Gas Operations] as proof of notice.

(2) If an exception is requested on a stationary site, the affected entities to whom the applicant shall give notice shall include but not be limited to:

(A) persons and businesses owning or occupying property adjacent to the site;

(B) the city council or fire marshal, if the site is within municipal limits; and

(C) the county Commission, if the site is not within any municipal limits.

(3) If an exception is requested on a nonstationary site, affected entities to whom the applicant shall give notice include but are not limited to:

(A) the Texas Department of Public Safety; and

(B) all CNG loading and unloading facilities utilized by the applicant.

(4) AFS [LP-Gas Operations] may require an applicant to give notice to persons in addition to those listed in paragraphs (2) and (3) of this subsection if doing so will not prejudice the rights of any entity.

(d) Objections to the requested exception shall be in writing, filed with AFS [LP-Gas Operations] within 18 calendar days of the postmark of the application, and shall be based on facts that tend to demonstrate that, as proposed, the exception would have an adverse effect on public health, safety, or welfare. AFS [LP-Gas Operations] may decline to consider objections based solely on claims of diminished property or esthetic values in the area.

(c) AFS [LP-Gas Operations] shall review the application within 21 business days of receipt of the application.

(1) If AFS [LP-Gas Operations] does not receive any objections from any affected entities as defined in subsection (c) of this section, the AFS [LP-Gas Operations] director may administratively grant the exception if the AFS [LP-Gas Operations] director determines that the installation, as proposed, does not adversely affect the health or safety of the public. AFS [LP-Gas Operations] shall notify the applicant in writing by the end of the 21-day review period and, if approved, the installation shall be installed within one year from the date of approval. AFS [LP-Gas Operations] shall also advise the applicant at the end of the objection period as to whether any objections were received and whether the applicant may proceed.

(2) If the AFS [LP-Gas Operations] director denies the exception, AFS [LP-Gas Operations] shall notify the applicant in writing, outlining the reasons and any specific deficiencies.

(3) The applicant may modify the application to correct the deficiencies and resubmit the application along with a \$30 resubmission fee, or may request a hearing on the matter.

(A) To be granted a hearing, the applicant shall file a written request for hearing within 14 calendar days of receiving notice of the administrative denial.

(B) [(f)] A hearing shall be held when AFS [LP-Gas Operations] receives an objection as set out in subsection (d) of this section from any affected entity, or when the applicant requests one following an administrative denial. AFS [LP-Gas Operations] shall forward the request for hearing to the Hearings Division [mail the notice of hearing to the applicant and all objecting entities by certified mail, return receipt requested; at least 21 calendar days prior to the date of the hearing. Hearings will be held in accordance with the Texas Government Code, Chapter 2001, et seq., Chapter 4 of this title (relating to Practice and Procedure); and this chapter].

(f) [(g)] Applicants intentionally submitting incorrect or misleading information are subject to penalties in the Texas Natural Resources Code, §116.142, and the filing of incorrect or misleading information shall be grounds for dismissing the application with prejudice.

(g) [(h)] After hearing, exceptions to this chapter may be granted by the Commission if the Commission finds that granting the exception for the installation, as proposed, will not adversely affect the safety of the public.

[(i) Temporary exception. For good cause shown, LP-Gas Operations may grant a temporary exception, which shall not exceed 30 days, to the examination requirements for representatives and operations supervisors. Good cause shall include the death of a sole proprietor or partner. An applicant for a temporary exception shall comply with all applicable safety requirements and LP-Gas Operations shall obtain information showing that the exception will not be hazardous to the public.]

(h) [(j)] A request for an exception shall expire if it is inactive for three months [90 calendar days] after the date of the letter in which the applicant was notified by AFS [LP-Gas Operations] of an incomplete request. Additional time may be granted upon request if needed to generate engineering results or calculations. The applicant may restart the application process [resubmit an exception request].

#### *§13.36. Report of CNG Incident/Accident.*

(a) At the earliest practical moment or within two hours following discovery, a licensee owning, operating, or servicing equipment or an installation shall notify AFS by telephone of any event involving CNG which:

(1) caused a death or personal injury requiring hospitalization;

(2) required taking an operating facility out of service;

(3) resulted in unintentional gas ignition requiring emergency response;

(4) meets the requirements of subsection (c) of this section;

(5) caused an estimated damage to the property of the operator, others or both totaling \$50,000 or more, including gas loss;

(6) involves a [In case of an incident involving] single release of CNG [compressed natural gas (CNG)] during or following CNG transfer or during container transportation; or an accident at any location where CNG is the cause or is suspected to be the cause, the licensee owning, operating, or servicing the equipment or the installation shall notify LP-Gas Operations by telephone within two hours of discovery after the licensee has knowledge of the incident or accident]. Any loss of CNG which is less than 1.0% of the gross amount delivered, stored, or withdrawn need not be reported. However, any loss occurring as a result of a pullaway shall be reported; [- Any individual reporting shall leave his or her name, and telephone number where he or she can be reached for further information.]

(7) could reasonably be judged as significant because of rerouting of traffic, evacuation of buildings, or media interest, even though it does not meet paragraphs (1) - (6) of this subsection; or

(8) is required to be reported to any other state or federal agency (such as the Texas Department of Public Safety or the United States Department of Transportation).

(b) The telephonic notice [telephone notification] required by this section shall be made to the Railroad Commission's 24-hour emergency line at (512) 463-6788 or (844) 773-0305 and shall include the following [information]:

(1) date and time of the incident [or accident];

[(2) type of structure or equipment involved;]

(2) [(3) resident's or operator's] name of reporting operator;

(3) phone number of operator;

(4) [physical] location of leak or incident;

(5) personal [number of] injuries and/or fatalities;

(6) whether fire, explosion, or gas leak has occurred;

(7) status of [whether] gas leak or other immediate hazards [is leaking]; [and]

(8) other significant facts relevant to the incident; and

(9) [(8)] whether immediate assistance from AFS [LP-Gas Operations] is requested.

(c) Any transport unit required to be registered with AFS [LP-Gas Operations] in accordance with §13.69 of this title (relating to Registration and Transfer of CNG Cargo Tanks and Delivery Units [Transports and CNG Form 1004 Decal or Letter of Authority]) which is involved in an accident where there is damage to the tank, piping or appurtenances, or any release of CNG resulting from an accident shall be reported to AFS [LP-Gas Operations] in accordance with this section regardless of the accident location. Any CNG powered motor vehicle used for school transportation or mass transit including any state owned vehicle which is involved in an accident resulting in a substantial release of CNG or damage to the CNG conversion equipment shall be reported to AFS [LP-Gas Operations] in accordance with this section regardless of accident location.

(d) Following the initial telephone report, the licensee who made the telephonic report shall submit [a] CNG Form 1020 to AFS [Report of CNG Incident/Accident, shall be submitted to LP-Gas Operations]. The form [report] shall be postmarked within 14 calendar days of the date of initial notification to AFS, or within five business days of receipt of the fire department report, whichever occurs first, unless AFS grants authorization for a longer period of time when additional investigation or information is necessary [LP-Gas Operations].

(e) Within five business days of receipt, AFS shall review CNG Form 1020 and notify in writing the person submitting CNG Form 1020 if the report is incomplete and specify in detail what information is lacking or needed. Incomplete reports may delay the resumption of CNG activities at the involved location.

#### §13.37. Appurtenances and Equipment.

(a) In addition to NFPA 52 §5.3.1, all appurtenances and equipment placed into CNG service shall be certified, marked, or listed by a nationally recognized laboratory such as Underwriters Laboratory (UL), Factory Mutual (FM), CSA International, or such other laboratories approved by AFS unless:

(1) it is specifically prohibited for use by another section of this chapter; or

(2) there is no test specification or procedure developed by the testing laboratory for the appurtenance or equipment.

(b) In addition to NFPA 52 §1.4.1, appurtenances and equipment that cannot be listed but are not prohibited for use by the rules in this chapter shall be acceptable for CNG service provided the appurtenances and equipment are installed in compliance with the applicable rules in this chapter.

(c) In addition to NFPA 52 §1.4.1.2, the licensee or operator of the appurtenances or equipment shall maintain documentation sufficient to substantiate any claims made regarding the safety of any valves, fittings, and equipment and shall, upon request, furnish copies to AFS.

(d) Compliance under this section does not ensure conformity with other state and federal regulations, such as those of the Texas Commission on Environmental Quality or its successor agencies.

(e) Components of CNG stationary installations which are not specifically covered by the rules in this chapter shall not be placed into service until AFS has determined the installation complies with the rules in this chapter. AFS may require any change to a proposed stationary installation which the Commission may consider necessary to ensure the CNG installation is safe for CNG service. If the affected party disagrees with AFS' determination, the party may request a hearing as described in §13.15 of this title (relating to Penalty Guidelines and Enforcement). However, the installation shall not be placed into CNG operation until the Commission has determined the installation complies with the rules of this chapter.

#### §13.38. Removal from CNG Service.

(a) In addition to NFPA 55 §§7.1.14 and 7.1.15 and for any installations subject to NFPA 52 requirements, if AFS [If LP-Gas Operations] determines that any CNG [compressed natural gas (CNG)] cylinder or installation constitutes an immediate danger to the public health, safety, and welfare, AFS [LP-Gas Operations] shall require the immediate removal of all [the] CNG and/or the immediate disconnection by a properly licensed company to the extent necessary to eliminate the danger. This may include [If LP-Gas Operations determines that any CNG appliance,] equipment[,] or any part of the system including the service container. A warning tag shall be attached by AFS until the unsafe condition is remedied. Once the unsafe condition is remedied, the tag may be removed by an AFS inspector or by the licensee if authorized by AFS [constitutes an immediate danger to the public health, safety, and welfare, LP-Gas Operations shall require the immediate disconnection by a properly licensed company of such appliance, equipment, or system from the CNG cylinder it services].

(b) If the affected entity disagrees with the removal from service and/or placement of a warning tag[, or with LP-Gas Operations' findings in subsection (a) of this section], the entity may request a review of AFS' decision within 10 calendar days [an investigation into the matter]. Within 10 business days, AFS [LP-Gas Operations] shall notify such entity of its finding in writing, stating the deficiencies. If the entity disagrees, the entity may request or AFS [LP-Gas Operations] on its own motion may request [each] a hearing. Such installation shall be brought into compliance or removed from service until such time as the final decision is rendered by the Commission.

#### §13.39. Filling Unapproved Containers Prohibited.

A [No] licensee or the licensee's employees shall not introduce CNG [compressed natural gas (CNG)] into any container if the licensee or employee [he] has knowledge or reason to believe [notice] that such [CNG] container, cylinder, piping, or system is unsafe or is [was] not installed in accordance with Texas Natural Resources Code, Chapter 116, or [the statutes of the State of Texas, and with] the rules in this chapter [and regulations in effect at the time of installation.]

[Exception:] This section does not apply to motor fuel or mobile fuel containers and systems installed on vehicles licensed in states other than Texas.

*§13.40. Manufacturer's Nameplates and Markings on ASME Containers.*

(a) In addition to NFPA 52 §5.4.5.1 and NFPA 55 §7.1.6.1, compressed [Compressed] natural gas (CNG) shall not be introduced into any American Society of Mechanical Engineers (ASME) container which is not equipped with a manufacturer's original or replacement nameplate [or a manufacturer's replacement nameplate] permanently attached to the container or has the required information stamped directly on the vessel. No ASME container manufactured on or after November 1, 1994, shall be used in the State of Texas unless it has attached to it a stainless steel manufacturer's nameplate or the required information is visibly stamped directly on the vessel. If the nameplate is attached, it [The nameplate] shall be attached in a manner that will minimize corrosion of the nameplate or its attachments or that will not contribute to the corrosion of the container.

(b) If the nameplate is attached directly to the container, the nameplate thickness shall be sufficient to resist distortion due to the application of markings and fusion welding.

(c) Container nameplates shall be stamped or etched with the following information in legible characters:

(1) the mark or symbol approved by ASME indicating compliance with the provisions of the ASME Pressure Vessel Code;

(2) the name and address of the manufacturer;

(3) the capacity of the container in standard cubic feet;

(4) the maximum allowable working pressure of the container in pounds per square inch (psi);

~~[(5) the wording "This container shall not contain a product having a vapor pressure in excess of \_\_\_\_\_ pounds per square inch at a temperature of 100 degrees Fahrenheit];~~

~~(5) [(6)] the thickness of the material used in both the shell and heads;~~

~~(6) [(7)] the overall length of the container, the outside diameter of the container, and the dish radius of the heads;~~

~~(7) [(8)] the serial number of the container; and~~

~~(8) [(9)] the date of manufacture.~~

(d) Nameplates attached to or markings on ~~[shall be attached to]~~ the container shall ~~[so as to]~~ remain visible after installation of the containers.

(e) Containers manufactured prior to November 1, 1994, which may have corroded or rusted nameplates shall have the following minimum information readable on the manufacturer's nameplate:

(1) name of the container manufacturer;

(2) manufacturer's serial number;

(3) working pressure; and

(4) ~~[water]~~ capacity.

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

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Railroad Commission of Texas

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For further information, please call: (512) 475-1295



## 16 TAC §§13.26 - 13.33

The Commission proposes the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

*§13.26. Design and Construction of Cylinders, Pressure Vessels, and Vapor Recovery Receivers.*

*§13.27. Pressure Relief Devices.*

*§13.28. Pressure Gauges.*

*§13.29. Pressure Regulators.*

*§13.30. Piping.*

*§13.31. Valves.*

*§13.32. Hose and Hose Connections.*

*§13.33. Compression Equipment.*

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

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Rules Attorney, Office of General Counsel

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## SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

### 16 TAC §§13.61 - 13.64, 13.67, 13.69 - 13.73, 13.75, 13.80

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

general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

*§13.61. License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals [Licenses, Related Fees, and Licensing Requirements].*

(a) A prospective licensee may apply to AFS [LP-Gas Operations] for one or more licenses specified in subsection (b)(1) - (7) [(6)] of this section. Fees required to be paid by subsection (b)(1) - (7) of this section [shall be those established by the Commission and in effect at the time of licensing or renewal] shall be paid at the time of application or renewal. [A person shall not engage in CNG activities unless that person has obtained a license as specified in this section. If a license expires or lapses, the person shall immediately cease CNG operations.]

(b) The license categories and fees are as follows.

(1) A Category 1 license for container assembly and repair [manufacturers of CNG cylinders] authorizes the [manufacture,] assembly, repair, testing, sale, installation, and [or] subframing of ASME or DOT CNG containers [cylinders]. A Category 1 license includes all activities covered by both the Category 1A and 1B licenses. The original license fee is \$1,000; the renewal fee is \$600.

(2) A Category 1A license for ASME container assembly and repair authorizes the assembly, repair, testing, sale and installation of ASME containers. The original license fee is \$1,000; the renewal fee is \$600.

(3) A Category 1B license for U.S. Department of Transportation (DOT) container assembly and repair authorizes the assembly, repair, testing, sale, installation, and subframing, of CNG DOT containers. The original license fee is \$1,000; the renewal fee is \$600.

(4) [(2)] A Category 2 license for general installers and repairmen authorizes the sale, installation, service, or repair of CNG systems, including cylinders. The original license fee is \$300; the renewal fee is \$150.

(5) [(3)] A Category 3 license for retail and wholesale dealers authorizes the sale, storage, transportation for delivery, or dispensing of CNG for use other than by an ultimate consumer, and the sale, installation, service, or repair of CNG systems as set out in Categories 2, 5, and 6. The original license fee is \$750; the renewal fee is \$300.

(6) [(4)] A Category 4 license for testing laboratories authorizes the testing of CNG cylinders. The original license fee is \$400; the renewal fee is \$200.

(7) [(5)] A Category 5 license for service stations or cylinder exchangers authorizes the operation of a CNG service station, including filling CNG cylinders, or the operation of a cylinder exchange dealership, including filling CNG cylinders, the sale of CNG in cylinders, the sale of CNG cylinders, and the replacement of cylinder valves. The original license fee is \$150; the renewal fee is \$70.

[(6) A Category 6 license for equipment dealers authorizes the sale of CNG cylinders or systems. The original license fee is \$100; the renewal fee is \$50.]

(c) A military service member, military veteran, or military spouse shall be exempt from the original license fee specified in subsection (b) of this section pursuant to the requirements in §13.76 of this title (relating to Military Fee Exemption). An individual who receives a military fee exemption is not exempt from the renewal or transport registration fees specified in subsection (n) of this section and §13.69 of this title (relating to Registration and Transfer of CNG Cargo Tanks or Delivery Units).

(d) In addition to NFPA 55 §7.1.12, no person may engage in CNG activities until that person has obtained a license from the Commission authorizing that activity, except as follows:

(1) A state agency or institution, county, municipality, school district or other governmental subdivision is exempt from licensing requirements as provided in Texas Natural Resources Code, §116.031(d), if the entity is performing CNG activities on its own behalf, but is required to obtain a license to perform CNG activities for or on behalf of a second party.

(2) [(e)] An ultimate consumer is not subject to the licensing requirements of this chapter [title] in order to perform those CNG activities dealing only with the ultimate consumer; however, a license is required to register a transport or cylinder delivery unit. An ultimate consumer's license does not require a fee or a company representative.

(3) [(d)] An original manufacturer of a new motor vehicle powered by CNG or a subcontractor of a manufacturer who produces a new CNG powered motor vehicle for the manufacturer is not subject to the licensing requirements of this chapter, but shall comply with all other rules [regulations for compressed natural gas] in this chapter.

(e) A license obtained by an individual, partnership, corporation, or other legal entity shall extend to the entity's employees who are performing CNG activities [work], provided that each employee is properly certified as required by this chapter.

(f) An applicant for license shall not engage in CNG activities until it has employed a company representative who meets the requirements of §13.72 of this title (relating to Designation and Responsibilities of Company Representative and Operations Supervisor).

(g) [(f)] Licensees, registered manufacturers, company representatives, and operations supervisors at each outlet shall have copies of all current licenses and/or manufacturer registrations and certification cards for employees at that location available for inspection during regular business hours. In addition, licensees and registered manufacturers shall maintain a current version of the rules in this chapter and any adopted codes covering CNG activities performed by the licensee or manufacturer, and shall provide at least one copy of all publications to each company representative and operations supervisor. The copies shall be available to employees during business hours [shall maintain a copy of the current Regulations for Compressed Natural Gas and shall provide at least one copy to each company representative and operations supervisor. The copies shall be available to employees during business hours].

[(g) Licensees shall have copies of all current licenses and examination identification cards for employees at each location available for inspection during regular business hours.]

(h) Licenses or manufacturer registrations issued under this chapter expire one year after issuance at midnight on the last day of the month previous to the month in which they are issued.

(i) If a license or registration expires, the person shall immediately cease CNG activities.

[(ii) For license renewals, LP-Gas Operations shall notify the licensee in writing at the address on file with LP-Gas Operations of the impending license expiration at least 30 calendar days before the date the license is scheduled to expire. Renewals shall be submitted to LP-Gas Operations along with the license renewal fee specified in subsection (b) of this section on or before the last day of the month in which the license expires in order for the licensee to continue CNG activities. Failure to meet the renewal deadline set forth in this section shall result in expiration of the license. If a person's license expires, that person shall immediately cease performance of any CNG activities.]

[(1) If a person's license has been expired for 90 calendar days or fewer, the person shall submit a renewal fee that is equal to 1 1/2 times the renewal fee required in subsection (b) of this section. Upon receipt of the renewal fee, LP-Gas Operations shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, LP-Gas Operations shall renew the license, and the person may resume CNG activities.]

[(2) If a person's license has been expired for more than 90 calendar days but less than one year, the person shall submit a renewal fee that is equal to two times the renewal fee required in subsection (b) of this section. Upon receipt of the renewal fee, LP-Gas Operations shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, LP-Gas Operations shall renew the license, and the person may resume CNG activities.]

[(3) If a person's license has been expired for one year or longer, that person may not renew, but shall comply with the requirements for issuance of an original license.]

[(4) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application, may obtain a new license without reexamination. The person shall pay to LP-Gas Operations a fee that is equal to two times the renewal fee required by subsection (b) of this section.]

[(A) As a prerequisite to licensing pursuant to this provision, the person shall submit, in addition to an application for licensing, proof of having been in practice and licensed in good standing in another state continuously for the two years immediately preceding the filing of the application:]

[(B) A person licensed under this provision shall be required to comply with all requirements of licensing other than the examination requirement, including but not limited to the insurance requirements as specified in §13.62 of this title (relating to Insurance Requirements).]

(j) Applicants for a new license [or license renewal] shall file with AFS: [LP-Gas Operations]

(1) a properly completed CNG Form 1001 listing all names under which CNG related activities requiring licensing are to be conducted and the applicant's properly qualified [designating a] company representative, and the following forms or documents as applicable: [who shall be an owner or employee of the licensee, and shall be directly responsible for actively supervising CNG operations of the licensee. A licensee may have more than one company representative.]

(A) CNG Form 1001A if the applicant will operate any outlets pursuant to subsection (j) of this section;

(B) CNG Form 1007 and any information requested in §13.69 of this title if the applicant intends to register any CNG cargo tanks or container delivery units;

(C) CNG Form 1019 if the applicant will be transferring the operation of one or more existing retail service stations;

(D) any form required to comply with §13.62 of this title (relating to Insurance Requirements);

(E) a copy of current certificate of account status if required by §13.75 of this title (relating to Franchise Tax Certification and Assumed Name Certificate); and/or

(F) copies of the assumed name certificates if required by §13.75 of this title; and

[(1) An applicant for license shall not engage in CNG activities governed by the Texas Natural Resources Code, Chapter 116, and the Regulations for Compressed Natural Gas, until its company representative has successfully completed the management examination administered by AFRED.]

(2) payment for all applicable fees.

(A) If the applicant submits the payment by mail, the payment shall be in the form of a check, money order or printed copy of an online receipt.

(B) If the applicant pays the applicable fee online, the applicant shall submit a copy of an online receipt via mail, email, or fax.

[(2) The licensee shall notify LP-Gas Operations in writing upon termination of its company representative of record and shall at the same time designate a replacement by submitting a new CNG Form 1001.]

[(3) The licensee shall cease operations if, at the termination of its company representative, there is no other qualified company representative of the licensee who has complied with the Commission's requirements. The licensee shall not resume CNG activities until such time as it has a properly qualified company representative.]

(k) A licensee shall submit CNG Form 1001A listing all outlets operated by the licensee.

(1) Each outlet shall employ an operations supervisor who meets the requirements of §13.72 of this title.

(2) Each outlet shall be listed on the licensee's renewal specified in subsection (l) of this section.

[(k) In addition to complying with other licensing requirements set out in the Texas Natural Resources Code and the Regulations for Compressed Natural Gas, applicants for license or license renewal in the following categories shall comply with the specified additional requirements.]

[(1) An applicant for a Category 1 license or renewal shall file with LP-Gas Operations for each of its outlets legible copies of:]

[(A) its current DOT authorization. A licensee shall not continue to operate after the expiration date of the DOT authorization; and/or]

[(B) its current ASME Code, Section VIII certificate of authorization or "R" certificate. If ASME is unable to issue a renewed certificate of authorization prior to the expiration date, the licensee may request in writing an extension of time not to exceed 60 calendar days past the expiration date. The licensee's request for extension shall be received by LP-Gas Operations prior to the expiration date of the ASME certificate of authorization referred to in this section, and shall include

a letter or statement from ASME that the agency is unable to issue the renewal certificate of authorization prior to expiration and that a temporary extension will be granted for its purposes. A licensee shall not continue to operate after the expiration date of an ASME certificate of authorization until the licensee files a current ASME certificate of authorization with LP-Gas Operations, or LP-Gas Operations grants a temporary exception.}]

[(2) An applicant for a Category 4 license or renewal shall file a properly completed CNG Form 1505 with LP-Gas Operations, certifying that the applicant will follow the testing procedures indicated. CNG Form 1505 shall be signed by the appropriate CNG company representative designated on CNG Form 1001.}]

(l) Beginning February 15, 2021, a prospective container manufacturer may apply to AFS to manufacture CNG containers in the state of Texas. Beginning February 15, 2021, a person shall not engage in the manufacture of CNG containers in this state unless that person has obtained a container manufacturer's registration as specified in this subsection.

(1) Applicants for container manufacturer registration shall file with AFS CNG Form 1001M, and the following forms or documents as applicable:

(A) any form required by §13.62 of this title;

(B) a copy of current certificate of account status if required by §13.75 of this title;

(C) copies of the assumed name certificates if required by §13.75 of this title;

(D) a copy of current DOT authorization. A registered manufacturer shall not continue to operate after the expiration date of the DOT authorization; and/or

(E) a copy of current ASME Code, Section VIII certificate of authorization or "R" certificate. If ASME is unable to issue a renewed certificate of authorization prior to the expiration date, the manufacturer may request in writing an extension of time not to exceed 60 calendar days past the expiration date. The request for extension shall be received by AFS prior to the expiration date of the ASME certificate of authorization referred to in this section, and shall include a letter or statement from ASME that the agency is unable to issue the renewal certificate of authorization prior to expiration and that a temporary extension will be granted for its purposes. A registered manufacturer shall not continue to operate after the expiration date of an ASME certificate of authorization until the manufacturer files a current ASME certificate of authorization with AFS or AFS grants a temporary exception.

(2) By filing CNG Form 1001M, the applicant certifies that it has read the requirements of this chapter and shall comply with all applicable rules, regulations and adopted standards.

(3) The required fee shall accompany CNG Form 1001M. An original registration fee is \$1,000; the renewal fee is \$600.

(A) If submitted by mail, payment shall be by check, money order, or printed copy of an online receipt.

(B) If submitted by email or fax, payment shall be a copy of an online receipt.

(4) If a manufacturer registration expires or lapses, the person shall immediately cease the manufacture, assembly, repair, testing and sale of CNG containers in Texas.

[(4) A military service member, military veteran, or military spouse shall be exempt from the original license fee specified in subsection (b) of this section pursuant to the requirements in §13.76 of this

title (relating to Military Fee Exemption). An individual who receives a military fee exemption is not exempt from renewal or transport registration fees specified in subsection (i) of this section and §13.69 of this title (relating to Registration and Transfer of CNG Transports and CNG Form 1004 Decal or Letter of Authority).]

(m) AFS will review an application for license or registration to verify all requirements have been met.

(1) If errors are found or information is missing in the application or other documents, AFS will notify the applicant of the deficiencies in writing.

(2) The applicant must respond with the required information and/or documentation within 30 days of the written notice. Failure to respond by the deadline will result in withdrawal of the application.

(3) If all requirements have been met, AFS will issue the license or manufacturer registration and send the license or registration to the licensee or manufacturer, as applicable.

(n) For license and manufacturer registration renewals:

(1) AFS shall notify the licensee or registered manufacturer in writing at the address on file with AFS of the impending license or manufacturer registration expiration at least 30 calendar days before the date the license or registration is scheduled to expire.

(2) The renewal notice shall include copies of applicable CNG Forms 1001, 1001A, and 1007, or CNG Form 1001M showing the information currently on file.

(3) The licensee or registered manufacturer shall review and return all renewal documentation to AFS with any necessary changes clearly marked on the forms. The licensee or registered manufacturer shall submit any applicable fees with the renewal documentation.

(4) Failure to meet the renewal deadline set forth in this section shall result in expiration of the license or manufacturer registration.

(5) If a person's license or manufacturer registration expires, that person shall immediately cease performance of any CNG activities authorized by the license or registration.

(6) If a person's license or manufacturer registration has been expired for 90 calendar days or fewer, the person shall submit a renewal fee that is equal to 1 1/2 times the renewal fee in subsections (a) and (k) of this section, respectively.

(7) If a person's license or manufacturer registration has been expired for more than 90 calendar days but less than one year, the person shall submit a renewal fee that is equal to two times the renewal fee.

(8) If a person's license or manufacturer registration has been expired for one year or longer, that person shall not renew, but shall comply with the requirements for issuance of an original license or manufacturer registration under subsections (i) or (k) of this section.

(9) After verification that the license or registered manufacturer has met all requirements for licensing or manufacturer registration, AFS shall renew the license or registration and send the applicable authorization to the licensee or manufacturer.

(o) Applicants for license or license renewal in the following categories shall comply with these additional requirements.

(1) An applicant for a Category 4 license or renewal shall file with AFS a completed CNG Form 1505, certifying that the applicant will follow the testing procedures indicated. CNG Form 1505 shall



be signed by the appropriate CNG company representative designated on CNG Form 1001.

(2) An applicant for Category 1 or 4 license or renewal who tests tanks, subframes CNG cargo tanks, or performs other activities requiring DOT registration shall file with AFS a copy of any applicable current DOT registrations. Such registration shall comply with Title 49, Code of Federal Regulations, Part 107 (Hazardous Materials Program Procedures), Subpart F (Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers and Repairers and Cargo Tank Motor Vehicle Assemblers).

*§13.62. Insurance Requirements.*

(a) A licensee or registered manufacturer shall not perform any activity authorized by its license or registration under §13.61 of this title (relating to License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals) unless insurance coverage required by this section is in effect. CNG licensees, registered manufacturers, or applicants for license or manufacturer registration shall comply with the minimum amounts of insurance specified in Table 1 of this section, with the self-insurance requirements in §13.63 of this title (relating to Self-Insurance Requirements), or the irrevocable letter of credit requirements in §13.64 of this title (relating to Irrevocable Letter of Credit), if applicable. Registered manufacturers are not eligible for self-insurance. Before AFS grants or renews a manufacturer registration, an applicant for manufacturer registration shall submit the documents required by paragraph (1) of this subsection. Before AFS grants or renews a license, an applicant for license shall submit:

Figure: 16 TAC §13.62(a)

[Figure: 16 TAC §13.62(a)]

[(b)] [Before LP-Gas Operations grants or renews a license, the applicant shall submit either:]

(1) an [An] insurance Acord™ form[;] or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information. The forms must be issued by an insurance company authorized or accepted by the Texas Department of Insurance; [or]

(2) properly completed documents demonstrating the applicant's compliance with the self-insurance requirements in §13.63 of this title; or [(relating to Qualification as Self-Insured)]

(3) properly completed documents demonstrating the applicant's compliance with the irrevocable letter of credit requirements in §13.64 of this title.

[(c)] A licensee shall not perform any licensed activity under §13.61 of this title (relating to Licenses, Related Fees, and Licensing Requirements) unless insurance coverage required by this section is in effect.]

[(d)] Except as provided in the column relating to Statements in Lieu of Required Insurance Filing in Table 1, subsection (a) of this section, and paragraphs (1) - (5) of this subsection, the types and amounts of insurance specified in subsection (a) of this section are required while engaging in any of the activities set forth in this section or any activity incidental thereto.]

(b) [(4)] A [Category 3] licensee, [or] applicant for license, or an ultimate consumer that does not operate or contemplate operating [the operation of] a motor vehicle equipped with a CNG cargo container or [transport and] does not transport or contemplate transporting [the delivery of] CNG [eylinders] by vehicle in any manner may file [a] CNG Form 1997B in lieu of filing motor vehicle bodily injury and property damage [liability] insurance form, if this certificate is not otherwise required. The licensee or applicant for a license shall [must] file

the required insurance form with AFS [LP-Gas Operations] before operating a motor vehicle equipped with a CNG cargo container or transporting CNG by vehicle in any manner.

(c) [(2)] A licensee, registered manufacturer, or applicant for a license or manufacturer registration that does not engage in or contemplate engaging in any activities that [operations which] would be covered by general liability insurance may file [a] CNG Form 1998B in lieu of filing a general liability insurance form. The licensee, registered manufacturer, or applicant for a license or manufacturer registration shall [must] file the required insurance form with AFS [LP-Gas Operations] before engaging in any activities [operations] that require general liability insurance.

(d) [(3)] A licensee or applicant for license that does not employ or contemplate employing anyone [the hiring of an employee or employees] to be engaged in CNG related activities in Texas may file [a] CNG Form 1996B in lieu of filing a workers' compensation insurance form, including employer's liability insurance or alternative accident and health insurance coverage. The licensee or applicant for a license shall [must] file the required insurance form with AFS [LP-Gas Operations] before hiring any person as an employee engaged in CNG related work.

(e) [(4)] A licensee, registered manufacturer, or applicant for a license or manufacturer registration that does not engage in or contemplate engaging in any CNG activities [operations] that would be covered by completed operations or products liability insurance, or both, may file CNG Form 1998B in lieu of a completed operations and/or products liability insurance form. The licensee, registered manufacturer, or applicant for a license or manufacturer registration shall file the required insurance form with AFS [LP-Gas Operations] before engaging in any activities [operations] that require completed operations and/or products liability insurance.

(f) [(5)] A licensee may protect its employees by obtaining accident and health insurance coverage from an insurance company authorized to write such policies in this state as an alternative to workers' compensation coverage. The alternative coverage shall be in the amounts specified in Table 1 of this section.

[(e)] As evidence that required insurance has been secured and is in force, insurance forms which are approved by the Texas Department of Insurance shall be filed with LP-Gas Operations before licensing, license renewal, and during the entire period that the license is in effect. Any document filed with LP-Gas Operations in a timely manner which is not completed in accordance with the instructions indicated on the insurance forms supplied by LP-Gas Operations, but which complies with the substantive requirements of this section and with the rules adopted under this section, may be considered by LP-Gas Operations to be evidence that required insurance has been secured and is in force for a temporary period not to exceed 45 days. During this temporary period, a licensee shall file with LP-Gas Operations an amended certificate of insurance which complies with all procedural and substantive requirements of this section and this chapter.]

[(f)] All certificates filed under this section shall be continuous in duration and shall remain on file with LP-Gas Operations during the entire period that the license is in effect.]

(g) Each licensee or registered manufacturer shall file CNG Form 1999 or other written notice with AFS [LP-Gas Operations] at least 30 calendar days before the cancellation of any insurance coverage. The 30-day period commences on the date the notice is actually received by AFS [LP-Gas Operations].

[(h)] A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements

relating to general liability and/or motor vehicle liability insurance or workers' compensation coverage by filing CNG Form 1995 with LP-Gas Operations as evidence of self-insurance, if permitted by the Texas Labor Code, Title 5, Subtitle C, and Texas Natural Resources Code, §116.036.]

(h) [(+) Each licensee or registered manufacturer shall promptly notify AFS [LP-Gas Operations] of any change in insurance coverage or insurance carrier by filing a [properly completed] revised Acordif" form; other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information; or documents demonstrating the applicant's compliance with the self-insurance requirements set forth in §13.63 of this title [(relating to Qualification as Self-Insured)]. Failure to promptly notify AFS [LP-Gas Operations] of a change in the status of insurance coverage or insurance carrier may result in an enforcement action and an administrative penalty.

(i) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements of this section for workers' compensation, general liability and/or motor vehicle liability insurance. The requirements may be met by submitting evidence of self-insurance that complies with the requirements of §13.63 or §13.64 of this title. CNG Form 1995 may be filed as evidence of self-insurance, if self-insurance is permitted by the Texas Labor Code, Title 5, Subtitle C, and Texas Natural Resources Code, §116.036.

*§13.63. Self-Insurance Requirements [Qualification as Self-Insured].*

(a) General qualifications. AFS [LP-Gas Operations] may approve the application of a CNG licensee to qualify as a self-insurer if such licensee furnishes a true and accurate statement of its financial condition and other evidence which establishes to the satisfaction of AFS [LP-Gas Operations] the ability of such licensee to satisfy its obligations for the minimum insurance requirements specified in §13.62 of this title (relating to Insurance Requirements). Registered manufacturers are not eligible for self-insurance. This section shall not apply to AFS' [LP-Gas Operations] licensing requirements for worker's compensation insurance, including employer's liability coverage.

(b) Applicant guidelines. In addition to filing [a] CNG Form 1027, Application for Qualification as Self-Insurer, an applicant applying for self-insurer status covering general liability, including premises and operations coverage, shall submit materials that will allow AFS [LP-Gas Operations] to determine whether:

(1) the net worth of the applicant is adequate in relationship to the size of operations and the extent of its request for self-insurance authority. The applicant should demonstrate that it will maintain a net worth sufficient to ensure that it will be able to meet its statutory obligations to the public to pay all claims relating to general liability, including premises and operations coverage in the event of a claim;

(2) the applicant has a sound self-insurance program. The applicant shall demonstrate that it has established, and will maintain an insurance program that will protect the public against all claims involving CNG activities to the same extent as the minimum limits applicable pursuant to Table 1 in §13.62(a) [§13.64(a)(6) and (7)] of this title (relating to Insurance Requirements [Licensing]). Such a program may include, but not be limited to, one or more of the following:

- (A) reserves;
- (B) sinking funds;
- (C) third party financial guarantees;
- (D) parent company or affiliate sureties;
- (E) excess insurance coverage; or

(F) other similar arrangements; and

(3) the applicant presents evidence that it meets the requirements for motor carrier self-insurance promulgated by the Texas Department of Transportation.

(c) Other securities or agreements. AFS [LP-Gas Operations] may consider applications for approval of other securities or agreements, or may require any other document(s) which may be necessary to ensure such application satisfies that the security or agreement offered will afford adequate security for protection of the public.

(d) Periodic reports. The applicant shall file with semiannual [Semiannual] reports and annual statements reflecting the applicant's financial condition and status of its self-insurance program [shall be filed] with AFS [LP-Gas Operations] during the period of its self-insurer status by March 10 and September 10 of each year.

(e) Duration of self-insurer status. AFS [LP-Gas Operations] may approve the applicant as a self-insurer for any specific time period, or for an indefinite period until revoked by AFS [LP-Gas Operations].

(f) Revocation of a self-insurer status. AFS [LP-Gas Operations] may at any time, upon 10 days notice to the applicant, require the applicant to appear and demonstrate that it continues to have adequate financial resources to pay all general liability, including premises and operations coverage claims, and that it remains in compliance with the other requirements of this section. If the applicant fails to so demonstrate, its self-insurer status shall be revoked and it may be ineligible for self-insurance in the future.

(g) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements for general liability and/or motor vehicle liability insurance or workers' compensation coverage of §13.62 of this title if permitted by the Texas Workers' Compensation Act, Texas Labor Code, Title 5, Subtitle A; and the Texas Natural Resources Code, §116.036, by submitting [a] CNG Form 1995 to AFS [LP-Gas Operations].

*§13.64. [Qualification by] Irrevocable Letter of Credit.*

When an applicant submits [a] CNG Form 1028, Application to use Irrevocable Letter of Credit, as an alternative to insurance, letters of credit shall be subject to the following conditions:

(1) the letter may only be issued by a federally chartered and federally insured bank authorized to do business in the United States;

(2) the letter of credit must be irrevocable during their terms;

(3) the letter must be payable to the Commission in part or in full upon demand and receipt from the Commission of a notice of forfeiture;

(4) this section shall not apply to AFS' [LP-Gas Operations] licensing requirements for worker's compensation insurance, including employer's liability coverage.

*§13.67. Changes in Ownership, [and/or] Form of Dealership, or Name of Dealership.*

(a) Changes in ownership which require a new license or manufacturer registration.

(1) Transfer of dealership outlet or location by sale, lease, or gift.

[(+) [Licensing.] The purchaser, lessee, or donee of any dealership or outlet shall have a current and valid license or manufacturer registration authorizing the CNG activities to be performed at the dealership or outlet or [location] shall apply for and be issued a [notice

of tentative] CNG license or manufacturer registration [approval,] prior to engaging in any CNG activities which require a license or manufacturer registration. The purchaser, lessee, or donee shall notify AFS by filing a properly completed CNG Form 1001 or CNG Form 1001M prior to engaging in any CNG activities at that dealership or outlet which require a CNG license or manufacturer registration [the transfer of such an entity. Such tentative CNG license approval, when issued, shall be valid for a period not to exceed 90 days from the date of issue. During this 90-day period, the licensee and the recipient of the tentative CNG license approval shall be allowed to conduct business under this subchapter. Any applicable licensing fees shall be prorated to cover this period of tentative approval and shall be payable at the time of application for tentative approval. Any portion of the licensing fees unused during this 90-day period shall be applied on a prorated basis to the licensing fee required of the new purchaser, lessee, or donee of such dealership or outlet].

{(2) Notice. After the transfer of any dealership outlet or location, the new operator/owner or the authorized representative thereof, shall notify LP-Gas Operations of the completed transfer of such dealership by certified mail immediately upon the completion of said transfer, and file with LP-Gas Operations all forms of application for licensing or registration required by this subchapter.}

(2) [(b)] Other changes in ownership.

[(4)] [Licensing.] A change in members of a partnership occurs upon the death, withdrawal, expulsion, or addition of a partner. Upon the death of a sole proprietor or partner, the dissolution of a corporation or partnership, any changes in the members of a partnership, or other changes in ownership not specifically provided for [elsewhere] in this section, an authorized representative of the previously existing dealership or of the successor in interest shall notify AFS in writing and shall immediately cease all CNG activities of the previously existing dealership which require a CNG license or manufacturer registration and shall not resume until AFS issues a CNG license or manufacturer registration to the successor in interest [; the CNG operation shall continue for no longer than 30 days, unless a CNG license is issued to the successor in interest and the notice requirements of paragraph (2) of this subsection have been satisfied. This 30-day period shall be allowed only when the licensee meets all other pertinent requirements of this subchapter, specifically those regarding the licensee's representative].

{(2) Notice. The successor in interest shall notify LP-Gas Operations by certified mail of the death of a sole proprietorship or partner, the dissolution of a corporation or partnership, any change in partnership members, or other changes in ownership not specifically provided for in this section.}

{(3) Change in partnership members. A change in partnership members occurs upon the death, withdrawal, expulsion, or addition of a partner.}

[(4) Transfer of stock. Notwithstanding, the provisions of paragraphs (1) - (3) of this subsection, a change in ownership does not occur, for the purpose of this section, when shares of stock in a corporation are transferred, exchanged, sold, or alienated, unless such action creates a new controlling interest in such corporation.}

(b) [(e)] Changes in dealership business entity [form].

[(4)] [Licensing.] When a dealership converts from one business entity into [to] a different kind of business entity, the resulting [newly formed] entity shall have a valid license or manufacturer registration authorizing the CNG activities to be performed or shall apply for and be issued a [notice of tentative CNG] license or manufacturer registration before [approval, prior to] engaging in any CNG activities

which require a CNG license or manufacturer registration and shall immediately notify AFS in writing of the change in business entity [the conversion. Such tentative CNG license approval, when issued, shall be valid for a period not to exceed 90 days from the date of issue. During this 90-day period, the licensee (regardless of form) shall be allowed to conduct business under this subchapter. Any applicable licensing fees shall be paid or maintained to cover this period of tentative approval and shall be paid or payable at the time of application for tentative approval. Any fees paid by this original entity shall be credited on a prorated basis to the account of the new entity].

{(2) Notice. An authorized representative of the original entity or of the new entity shall notify LP-Gas Operations by certified mail of an accomplished change in business form immediately upon the completion of such conversion, and shall cause to be filed with LP-Gas Operations all forms of applications for licensing or registration required by this subchapter.}

(c) Dealership name change. A licensee or registered manufacturer which changes its name shall not be required to obtain a new license or manufacturer registration but shall immediately notify AFS as follows prior to engaging in any CNG activities under the new name. The licensee or registered manufacturer shall file:

(1) an amended CNG Form 1001 or CNG Form 1001M;

(2) an amended CNG Form 1001A, if outlet names will change;

(3) a copy of the licensee's or registered manufacturer's business documents reflecting the name change, such as amendments to the articles of incorporation or assumed name filings;

(4) certificates of insurance or affidavits in lieu of insurance if permitted by §13.63 of this title (relating to Self-Insurance Requirements) or both; and

(5) any other forms required by AFS.

(d) Company representative and operations supervisor. In all changes of ownership, form of dealership, or name of dealership, the resulting entity shall have a properly certified company representative for the license and an operations supervisor, if required, at each outlet and as specified in §13.72 of this title (relating to Designation and Responsibilities of Company Representative and Operations Supervisor).

(e) For good cause shown, the AFS director may grant a temporary exception of 30 days or less to the examination requirements for company representatives and operations supervisors. Good cause includes but is not limited to the death of a sole proprietor or partner. An applicant for a temporary exception shall comply with applicable safety requirements and submit to AFS information showing the exception will not be hazardous to the public.

§13.69. *Registration and Transfer of CNG Cargo Tanks or Delivery Units [Transports and CNG Form 1004 Decal or Letter of Authority].*

(a) All CNG cargo tanks shall comply with US DOT Code of Federal Regulations (CFR) or Transport Canada (TC) Transportation of Dangerous Goods (TDG).

(b) [(a)] A person who operates a transport [equipped with CNG cargo tanks or any cylinder delivery] unit, regardless of who owns the [transport or] unit, shall register such [transport or] unit with AFS [LP-Gas Operations] in the name or names under which the operator conducts business in Texas prior to the [transport or] unit being used in CNG service.

(1) To register a unit previously unregistered in Texas, the operator of the unit shall:

(A) pay to AFS [LP-Gas Operations] the \$270 registration fee for each [bobtail truck, semitrailer, cylinder delivery] unit; [; or other motor vehicle equipped with CNG cargo tanks; and]

(B) file a properly completed CNG Form 1007; [-]

(C) file a copy of the manufacturer's data report;

(D) file a copy of the US DOT special permit under which the container is built; and

(E) file a copy of the most recent test required by the US DOT special permit under which the container was built.

(2) To register a [specification] unit which was previously registered in Texas but for which the registration has expired, the operator of the unit shall:

(A) pay to AFS [LP-Gas Operations] the \$270 registration fee;

(B) file a properly completed CNG Form 1007; and

(C) file a copy of the latest test results if an expired unit has not been used in the transportation of CNG for over one year, or if a current test has not been filed with AFS.

(3) To transfer a currently registered unit, the new operator [owner] of the unit [transport] shall:

(A) pay the \$100 transfer fee for each unit; and

(B) file a properly completed CNG Form 1007.

(4) To re-register a currently registered unit, the licensee operating the unit shall pay a \$270 annual registration fee.

[(b) LP-Gas Operations may also request that an operator registering or transferring any unit to file a copy of the Manufacturer's Data Report.]

(c) When all registration or transfer requirements have been met, AFS [LP-Gas Operations] shall issue CNG Form 1004 [or letter of authority] which shall be properly affixed in accordance with the placement instructions on the form [as instructed on the decal or letter or maintained on the bobtail or transport trailer]. CNG Form 1004 [or letter of authority] shall authorize the licensee or ultimate consumer to whom it has been issued and no other person to operate such unit in the transportation of CNG and to fill the transport containers.

(1) A person shall not operate a CNG transport [unit] or cylinder delivery unit [or introduce CNG into a transport container] in Texas unless the CNG Form 1004 [or letter of authority] has been properly affixed [as instructed on the decal or the letter or maintained on the bobtail or transport trailer] or unless its operation has been specifically approved by AFS [LP-Gas Operations].

(2) A person shall not introduce CNG into a transport container unless that unit bears a CNG Form 1004 or unless specifically approved by AFS.

(3) [(2)] CNG Form 1004 [or letter of authority] shall not be transferable by the person to whom it has been issued, but shall be registered by any subsequent licensee or ultimate consumer prior to the unit being placed into CNG service.

(4) [(3)] This subsection shall not apply to:

(A) a container manufacturer/fabricator who introduces [from introducing] a reasonable amount of CNG into a newly constructed container in order to properly test the vessel, piping system, and appurtenances prior to the initial sale of the container. The CNG shall be removed from the transport container prior to the transport leaving the manufacturer's or fabricator's premises; or

(B) a person who introduces a maximum of 500 cubic feet of CNG into a newly constructed transport container when such container will provide the motor fuel to the chassis engine for the purpose of allowing the unit to reach its destination.

(5) [(4)] AFS [LP-Gas Operations] shall not issue a CNG Form 1004 [or letter of authority] if AFS [LP-Gas Operations] or a Category 1 or 4 licensee determines that the transport is unsafe for CNG service.

(6) [(5)] If a CNG Form 1004 decal [or letter of authority] on a unit currently registered with AFS [LP-Gas Operations] is destroyed, lost, or damaged, the operator of that vehicle shall obtain a replacement by filing CNG Form 1018B and a \$50 replacement fee with AFS [LP-Gas Operations].

*\$13.70. Examination and Exempt Registration Requirements and Renewals.*

(a) Requirements and application for a new certificate [Examination general provisions].

(1) In addition to NFPA 52 §§1.4.3 and 4.2, and NFPA 55 §4.7, no person shall perform work, directly supervise CNG activities, [No individual may work] or be employed in any capacity requiring [which requires] contact with CNG unless [or CNG systems until] that individual is employed by a licensee and:

(A) is a certificate holder who is in compliance with renewal requirements in subsection (h) of this section;

(B) is a trainee who complies with subsection (f) of this section; or

(C) holds a current examination exemption pursuant to subsection (g) of this section [has submitted to and successfully completed an examination which measures the competency of that individual to perform the CNG related activities anticipated, and tests working knowledge of the Texas Natural Resources Code and the regulations for compressed natural gas related to the type of CNG work anticipated. Table 1 of this section sets forth specific requirements for examination for each category of license. This section applies to all licensees and their employees who perform CNG related activities, and also applies to any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined as a CNG transport by this chapter and any employee of such ultimate consumer if that employee drives or in any way operates such a CNG transport. Driving a motor vehicle powered by CNG or fueling of motor vehicles for an ultimate consumer by the ultimate consumer or its employees do not in themselves constitute CNG related activities. Only paragraph (2) of this subsection applies to an employee of an ultimate consumer or a state agency or institution, county, municipality, school district, or other governmental subdivision].

[Figure: 16 TAC §13.70(a)(1)]

(2) Any person transporting CNG on a public roadway must be properly certified, even if the unit is operated by an ultimate consumer.

(b) Rules examination.

(1) An individual who passes the applicable rules examination with a score of at least 75% will become a certificate holder. AFS will mail a certificate to the licensee listed on the CNG Form 1016. If a licensee is not listed on the form, the certificate will be mailed to individual's personal address.

(A) Successful completion of any required examination shall be credited to and accrue to the individual.

(B) An individual who has been issued a certificate shall make it readily available and shall present the certificate to any Commission employee or agent who requests proof of certification.

(2) An applicant for examination shall bring to the exam site:

(A) a completed CNG Form 1016; and

(B) payment of the applicable fee specified in this subsection;

(3) An individual who files CNG Form 1016 and pays the applicable nonrefundable examination fee may take the rules examination.

(A) Dates and locations of available Commission CNG examinations may be obtained in the Austin offices of AFS and on the Commission's web site, and shall be updated at least monthly. Examinations may be conducted at the Commission's AFS Training Center in Austin between the hours of 8:00 a.m. and 12:00 noon, Monday through Friday, except for state holidays, and at other designated times and locations around the state. Individuals or companies may request in writing that examinations be given in their area. AFS shall schedule its examinations and locations at its discretion.

(B) Exam fees.

(i) [(A)] The [Individuals wishing to take a management-level rules examination (for company representatives or operations supervisors) shall pay a] nonrefundable management-level rules examination fee is \$70 [of \$70 before taking any such examination].

(ii) [(B)] The [Individuals wishing to take an employee-level rules examination (for employees other than company representatives or operations supervisors) shall pay a] nonrefundable employee-level rules examination fee is \$40 [of \$40 before taking any such examination].

(iii) [(C)] The nonrefundable examination fees shall be paid each time an individual takes an [are nonrefundable and, if an applicant fails an examination, the applicant shall pay the full examination fee for each subsequent] examination.

(iv) [(D)] A military service member, military veteran, or military spouse shall be exempt from the examination fee pursuant to the requirements in §13.76 of this title (relating to Military Fee Exemption). An individual who receives a military fee exemption is not exempt from renewal fees specified in subsection (h) [(d)] of this section.

(C) Time limits.

(i) An applicant shall complete the examination within two hours.

(ii) The examination proctor shall be the official timekeeper.

(iii) An examinee shall submit the examination and the answer sheet to the examination proctor before or at the end of the established time limit for an examination.

(iv) The examination proctor shall mark any answer sheet that was not completed within the time limit.

(D) [(2)] Each individual who performs CNG activities as an employee of an ultimate consumer or a state agency, county, municipality, school district, or other governmental subdivision shall be properly supervised by his or her employer. Any such individual who is not certified by AFS [AFRED] to perform such CNG activities shall

be properly trained by a competent person in the safe performance of such CNG activities.

[(3) Each person wishing to submit to examination shall file a CNG Form 1016 with AFRED.]

[(4) An individual who has filed CNG Form 1016 and the applicable nonrefundable examination fee may take the rules examination at the Commission's AFRED Training Center, 6506 Bolm Road, Austin, Texas, between the hours of 8:00 a.m. and 12:00 noon, Monday through Friday, except for state holidays, and at other designated times and locations around the state. Tuesdays and Thursdays are the preferred days for examinations at the AFRED Training Center. Dates and locations of available Commission CNG examinations may be obtained in the Austin offices of AFRED and on the Commission's web site, and shall be updated at least monthly. Examinations shall be conducted in Austin and in other locations around the state. Individuals or companies may request in writing that examinations be given in their area. AFRED shall schedule its examinations and locations at its discretion.]

(c) The following examinations are offered by the Commission.

(1) Employee-level examinations:

(A) The Service and Installation Technician examination qualifies an individual to perform all CNG activities related to stationary CNG systems, including CNG containers, piping, and equipment. The Service and Installation examination does not authorize an individual to fill containers or operate a CNG transport.

(B) The Delivery Truck Driver examination qualifies an individual to operate a cargo tank or cylinder deliver unit, load and unload CNG and connect and disconnect transfer hoses, operate a cylinder delivery unit, perform all activities related to stationary CNG systems, including CNG containers, piping and equipment, and inspect, fill, disconnect, and connect CNG cylinders.

(C) The Cylinder Filler examination qualifies an individual to inspect, fill, disconnect, and connect CNG cylinders.

(2) Management-level examinations:

(A) Category 1 examination qualifies an individual to assemble, repair, test, sell, install, and subframe ASME and DOT containers.

(B) Category 1A examination qualifies an individual to assemble, repair, test, sell, install, and subframe ASME containers.

(C) Category 1B examination qualifies an individual to assemble, repair, test, sell, install, and subframe DOT containers.

(D) Category 2 examination qualifies an individual to sell, install, service, and repair CNG systems, including cylinders.

(E) Category 3 examination qualifies an individual to sell, store, transport for delivery and dispense CNG for use other than by an ultimate consumer, and to sell, install, service, and repair CNG systems as described in Category 2 and 5 examinations.

(F) Category 4 examination qualifies an individual to test CNG cylinders.

(G) Category 5 examination qualifies an individual to operate a CNG service station, including filling CNG cylinders, or operate a cylinder exchange dealership, including filling CNG cylinders, selling CNG in cylinders, selling CNG cylinders, and replacing cylinder valves.

(d) [(5)] Within 15 calendar days of the date an individual takes an examination, AFS [AFRED] shall notify the individual of the results of the examination.

(1) [(A)] If the examination is graded or reviewed by a testing service, AFS [AFRED] shall notify the individual of the examination results within 14 days of the date AFS [AFRED] receives the results from the testing service.

(2) If the notice of the examination results will be delayed for longer than 90 days after the examination date, AFS [AFRED] shall notify the individual of the reason for the delay before the 90th day. AFS [AFRED] may require a testing service to notify an individual of the individual's examination results.

[(B) Successful completion of any required examination shall be credited to and accrue to the individual.]

(c) [(C)] Failure of any [Any individual who fails an] examination shall [be] immediately disqualify the individual [disqualified] from performing any CNG related activities covered by the examination which is failed, except for activities covered by a separate examination which the individual has passed.

(1) Any individual who fails an examination administered by the Commission [AFRED] at the Austin location [only] may retake the same examination [only] one additional time during a business day.

(2) Any subsequent examinations shall be taken on another business day, unless approved by the AFS [AFRED] director.

(3) An [If requested by an] individual who fails an examination may request [failed the examination; AFRED shall furnish the individual with] an analysis of the individual's performance on the examination.

[(6) Time limits.]

[(A) Effective June 1, 2008, an applicant shall complete the examination within two hours.]

[(B) The examination proctor shall be the official time-keeper.]

[(C) An examinee shall submit the examination and the answer sheet to the examination proctor before or at the end of the established time limit for an examination.]

[(D) The examination proctor shall mark any answer sheet that was not completed within the time limit.]

(f) Trainees.

(1) A licensee or ultimate consumer may employ an individual as a trainee for a period not to exceed 45 calendar days without that individual having successfully completed the rules examination, as specified in subsection (b) of this section or registered as specified in subsection (g) of this section, subject to the following conditions:

(A) In addition to NFPA 52 §4.2, the trainee shall be directly and individually supervised at all times by an individual who has successfully completed the Commission's rules examination for the areas of work being performed by the trainee.

(B) A trainee who has been in training for a total period of 45 calendar days, in any combination and with any number of employers, shall cease to perform any CNG activities for which the trainee is not certified until the trainee successfully completes the rules examination.

(2) A trainee who fails the rules examination shall immediately cease to perform any CNG related activities covered by the examination failed.

(g) [(b)] General installers and repairmen exemption.

(1) Any individual who is currently licensed as a master or journeyman plumber by the Texas State Board of Plumbing Examiners or who is currently licensed with a Class A or B Air Conditioning and Refrigeration Contractors License [air conditioning and refrigeration contractors license] issued by the Texas Department of Licensing and Regulation may register with AFS [apply for] and be granted an exemption to the [Category 2 and 3] service and installation technician employee-level [employee] examination requirements provided the applicant [by submitting to AFRED the following information]:

(A) holds an active license in compliance with Texas Occupations Code, §1302.260, relating to Issuance and Term of License, and §1301.351, relating to License, Endorsement, or Registration Required;

(B) [(A)] submits a completed CNG Form 1016B;

(C) [(B)] submits the required [a] \$30 original filing fee, except as described in paragraph (8) [(7)] of this subsection; [and]

[(C) any information AFRED may reasonably require.]

(D) submits a legible copy of a current Air Conditioning and Refrigeration Contractors License or Master/Journeyman Plumbers certificate; and

(E) submits a legible copy of a current picture state-issued identification card or driver's license.

(2) This exemption does not become effective until the examination exemption card is issued by AFS [AFRED].

(3) The examination exemption accrues to the individual and is nontransferable. An exemption does not allow other individuals to perform CNG related activities under the supervision of the registered individual. Each individual performing CNG related activities must be registered or certified by examination in accordance with subsection (a) of this section.

(4) Any individual granted such exemption shall maintain registered [certified] status at all times. Upon failure to maintain registered [certified] status, the individual shall immediately cease all affected CNG activities [all affected CNG operations shall cease immediately] until proper status has been regained.

(5) In order to maintain an exemption, each individual issued an examination exemption card must maintain a valid master or journeyman plumbers license or Class A or B Air Conditioning and Refrigeration Contractors license. Each individual shall also pay a \$20 annual renewal fee to AFS [AFRED] on or before May 31 of each year. Failure to pay the annual renewal fee by May 31 shall result in a lapsed exemption. If an individual's exemption lapses, that individual shall cease [performing] all CNG [related] activities [granted by this exemption] until [that individual renews] the exemption has been renewed. To renew a lapsed exemption, the individual shall pay the \$20 annual renewal fee plus a \$20 late-filing fee. Failure to do so shall result in the expiration of the examination exemption. If the individual's examination exemption has been expired for more than two years [one year or longer], the individual shall complete all requirements necessary to apply for a new exemption.

(6) Individuals issued an exemption must maintain a valid master or journeyman plumbers license or ACR Contractors license to renew their Commission registration.

(7) [(6)] Any individual who is issued an [this] exemption under this subsection agrees to comply with the current edition of the rules in this chapter [regulations for compressed natural gas]. In the event the exempt individual surrenders, fails to renew, or has the li-

cense revoked either by the Texas State Board of Plumbing Examiners or Texas Department of Licensing and Regulation, that individual shall immediately cease performing any CNG activity granted by this section. [The examination exemption card shall be returned immediately to AFRED and all rights and privileges surrendered.]

(8) [(7)] A military service member, military veteran, or military spouse shall be exempt from the original registration fee pursuant to the requirements in §13.76 of this title. An individual who receives a military fee exemption is not exempt from renewal fees specified in subsection (h) [(d)] of this section.

[(e) Trainees.]

[(1) A licensee or ultimate consumer may employ an individual as a trainee for a period not to exceed 45 calendar days without that individual having successfully completed the rules examination subject to the following conditions.]

[(A) The trainee shall be directly and individually supervised at all times by an individual who has successfully completed the rules examination for the areas of work being performed by the trainee.]

[(B) The licensee or ultimate consumer shall ensure that CNG Form 1016 is on file with AFRED for each trainee at the time that trainee begins supervised CNG activities. The trainee shall then have 45 calendar days to pass the applicable rules examination.]

[(2) A trainee who fails the rules examination shall immediately cease to perform any CNG related activities covered by the examination failed.]

[(3) A trainee who has been in training for a total of 45 calendar days, in any combination and with any number of employers, shall cease to perform any CNG activities for which he or she is not certified.]

(h) [(d)] Requirements for certificate holder renewal [Renewal of certified status].

(1) In order to maintain active status, certificate holders shall renew their certificate or exemption annually as specified in this subsection.

(2) [(4)] AFS [AFRED] shall notify licensees of any of their employees' pending renewal deadlines and [renewals, or] shall notify the individual if not employed by a licensee, in writing, at the address on file with AFS [AFRED] no later than March 15 of a year for the May 31 renewal date of that year.

(3) [(2)] Certificate holders [In order to maintain active status, a certificate holder] shall pay the nonrefundable \$25 annual certificate renewal fee to AFS [AFRED] on or before May 31 of each year. Individuals who hold more than one certificate shall pay only one annual renewal fee.

(A) [(3)] Failure to pay the nonrefundable annual renewal fee by the deadline shall result in a lapsed certificate [lapse of certification unless the late filing fee in paragraph (4) of this subsection is paid].

(i) To renew a lapsed certificate, the individual shall pay the nonrefundable \$25 annual renewal fee plus a nonrefundable \$20 late-filing fee. Failure to do so shall result in the expiration of the certificate.

(ii) If an individual's certificate lapses or expires, that individual shall immediately cease performance of any CNG activities authorized by the certificate.

(iii) If an individual's certificate [certification] has been expired for more than two years from May 31 of the year in which the certificate lapsed [one year or longer], that individual shall comply with the requirements of subsection (a) of this section. [If an individual's certification lapses or expires, that individual shall immediately cease performance of any CNG activities that require certification. Certified status shall be regained only by successfully completing the examination requirement for certification and meeting the requirements of paragraph (4) of this subsection.]

(B) [(4)] [Any lapsed renewals submitted after May 31st of each year shall include a \$20 late filing fee in addition to the renewal fee, proof of successful completion of the examination required for certification, and be received in AFRED's Austin office no later than close of business on August 31 or, if August 31 falls on a weekend or state holiday, close of business on the last business day before August 31 of each year.] Upon receipt of the annual renewal fee and late filing fee [penalty], AFS [AFRED] shall verify that all applicable requirements have been met [the individual's certification has not been suspended, revoked, or expired for one year or longer]. After verification, AFS [AFRED] shall renew the certificate [certification] and send a copy of the certificate, and the individual may continue or resume CNG activities authorized by that certificate.

[(e) Expired certification(s). Any renewal submitted after the August 31 deadline shall be considered expired. If an individual wishes to renew a certification that has been expired for less than one year, that individual shall submit the annual renewal fee and late filing fee, and proof of successful completion of the examination required for certification. Upon verification that the individual's certification has not been suspended, revoked, or expired for one year or longer, AFRED shall renew the individual's certification and the individual may resume CNG activities.]

§13.71. *Hearings for Denial, Suspension, or Revocation of Licenses, Manufacturer Registrations, or Certificates [or Certifications].*

(a) The Commission may deny, suspend, or revoke a license, registration, or certificate for any person [individual] who fails to comply with this chapter.

(1) If AFS [LP-Gas Operations] determines that an applicant for license, manufacturer registration, certificate, or [license] renewal has not met the requirements of this chapter, AFS [LP-Gas Operations] shall notify the applicant in writing of the reasons for the proposed denial. In the case of an applicant for license, manufacturer registration, or certificate, the notice shall advise the applicant that the application may be resubmitted within 30 calendar days of receipt of the denial with all cited deficiencies corrected, or, if the applicant disagrees with AFS' [LP-Gas Operations'] determination, the applicant may request a hearing in writing on the matter within 30 calendar days of receipt of the notice of denial.

(2) If the applicant resubmits the application [for license or license renewal] within 30 days of receipt of the denial with all deficiencies corrected, AFS [LP-Gas Operations] shall issue the license, manufacturer registration, certificate, or [license] renewal as applicable.

(b) Hearing regarding denial of license, manufacturer registration, certificate, or associated renewals [license renewal].

(1) An applicant receiving a notice of denial [of a license or license renewal] may request a hearing to determine whether the applicant did comply in all respects with the requirements for the [category or categories of] license, registration, or certificate sought. The request for hearing must be in writing, must refer to the specific requirements the applicant claims were met, and must be received in the Commis-

sion's Austin office within 30 days of the applicant's receipt of the notification of denial.

(2) Upon receipt of a request complying with paragraph (1) of this subsection, AFS [LP-Gas Operations] shall forward the request for a hearing to the Hearings Division [Office of General Counsel] for the purpose of scheduling a hearing within 30 calendar days following the receipt of the request for hearing to determine the applicant's compliance or noncompliance with applicable requirements [the licensing requirements for the category or categories of license sought].

(3) If, after hearing, the Commission finds the applicant's claim has been supported, the Commission may [enter an order] issue an order approving the license, manufacturer registration, or certificate and AFS shall issue the license, manufacturer registration, certificate, or associated renewal if applicable [in its records to that effect, noting the category or categories of license for which the applicant is entitled to be licensed, and the license(s) or renewal(s) shall be issued].

(4) If, after hearing, the Commission finds that the applicant does not comply with the requirements of this chapter, the Commission may issue an order denying the application or renewal [is not qualified for the license or license renewal in the category or categories of license sought, the Commission may enter an order in its records to that effect, and no license or renewal may be issued to the applicant].

(c) Suspension and revocation of licenses, manufacturer registrations, or certificates [and certifications].

(1) If AFS [LP-Gas Operations] finds by means including, but not limited to, inspection, review of required documents submitted, or complaint by a member of the general public or any other person, a probable or actual violation of or noncompliance with the Texas Natural Resources Code, Chapter 116, or this chapter, AFS [LP-Gas Operations] shall notify the licensee, registered manufacturer, or certificate holder [certified person] of the alleged violation or noncompliance in writing.

(2) The notice shall specify the acts, omissions, or conduct constituting the alleged violation or noncompliance and shall designate a date not less than 30 calendar days or more than 45 calendar days after the licensee, registered manufacturer, or certificate holder [certified person] receives the notice by which the violation or noncompliance must be corrected or discontinued. If AFS [LP-Gas Operations] determines the violation or noncompliance may pose imminent peril to the health, safety, or welfare of the general public, AFS [LP-Gas Operations] may notify the licensee, registered manufacturer, or certificate holder [certified person] orally with instruction to immediately cease the violation or noncompliance. When oral notice is given, AFS [LP-Gas Operations] shall follow it with written notification no later than five business days after the oral notification.

(3) The licensee, registered manufacturer, or certificate holder [certified person] shall either report the correction or discontinuance of the violation or noncompliance within the time frame specified in the notice or request an extension of time in which to comply. The request for extension of the time to comply must be received by AFS [LP-Gas Operations] within the same time frame specified in the notice for correction or discontinuance.

(d) Hearing regarding suspension or revocation of licenses, manufacturer registrations, and certificates [certifications].

(1) If a licensee, registered manufacturer, or certificate holder [certified individual] disagrees with the determination of AFS [LP-Gas Operations] under this section, that licensee or certified individual may request a public hearing on the matter to be conducted as specified in Chapter 1 of this title (relating to Practice and Procedure) [in compliance with the Texas Government Code, Chapter 2001,

Chapter 1 of this title (relating to Practice and Procedure), and any other applicable rules]. The request shall be in writing, shall refer to the specific rules or statutes the person [licensee or certified individual] claims were met, and shall be received by AFS [LP-Gas Operations] within 30 calendar days of the person's [licensee's or certified individual's] receipt of the notice of violation or noncompliance.

(2) AFS shall forward the request for hearing to the Hearings Division. [If, after hearing, the Commission finds that the licensee or certified individual may not comply within the specified time, the Railroad Commission of Texas may enter an order calling a public hearing to be conducted in compliance with the Texas Government Code, Chapter 2001, the general rules of practice and procedure of the Railroad Commission of Texas in Chapter 1 of this title, and any other applicable rules].

*§13.72. Designation and Responsibilities of Company Representatives and [eff] Operations Supervisors [Supervisor (Branch Manager)].*

(a) Each licensee shall have at least one company representative for the license and at least one operations supervisor for each outlet.

(1) A licensee maintaining one or more outlets shall file CNG Form 1001 with AFS listing the physical location of the first outlet and designating the company representative for the license and file CNG Form 1001A designating the physical location and operations supervisor for each additional outlet.

(2) A licensee may have more than one company representative.

(3) An individual may be an operations supervisor at more than one outlet provided that:

(A) each outlet has a designated CNG certified employee responsible for the CNG activities at that outlet;

(B) the certified employee's and/or operations supervisor's telephone number is posted at the outlet on a sign with lettering at least 3/4 inches high, visible and legible during normal business hours; and

(C) the certified employee and/or operations supervisor monitors the telephone number and responds to calls during normal business hours.

(4) The company representative may also serve as operations supervisor for one or more of the licensee's outlets provided that the person meets both the company representative and operations supervisor requirements in this section.

(5) A licensee shall immediately notify AFS in writing upon conclusion of employment, for whatever reason, of its company representative or any operations supervisor and shall at the same time designate a replacement.

(6) A licensee shall cease all CNG activities if it no longer employs a qualified company representative who complies with the Commission's requirements. A licensee shall not resume CNG activities until such time as it has a properly qualified company representative.

(7) A licensee shall cease CNG activities at an outlet if it no longer employs a qualified operations supervisor at that outlet who complies with the Commission's requirements. A licensee shall not resume CNG activities at that outlet until such time as it has a properly qualified operations supervisor.

{(a) The Commission shall designate whether a site is an outlet for the purpose of this chapter. Criteria used by the Commission in determining the designation of an outlet includes, but is not limited to:}



- [(1) distance from other CNG activities operated by the licensee;]
- [(2) whether the operation is a duplicate of the home office operation; and]
- [(3) whether the operation is directly supervised on a routine basis.]

(b) A company representative shall:

- (1) be an owner or employee of the licensed entity;
- (2) be the licensee's principal individual in authority and be responsible for actively supervising all CNG activities conducted by the licensee, including all equipment, container, product, and system activities;
- (3) have a working knowledge of the licensee's CNG activities to ensure compliance with the rules in this chapter and the Commission's administrative requirements;
- (4) pass the appropriate management-level rules examination;
- (5) be directly responsible for all employees performing their assigned CNG activities, unless an operations supervisor is fulfilling this requirement; and
- (6) submit any additional information as deemed necessary by AFS.

[(b) A licensee maintaining more than one outlet shall file CNG Form 1001A with LP-Gas Operations designating an operations supervisor (branch manager) at each outlet. The operations supervisor shall pass the management examination as administered by AFRED before commencing or continuing the licensee's operations at the outlet.]

(c) In addition to NFPA 52 §§1.4.3 and 4.2, an operations supervisor shall:

- (1) be an owner or employee of the licensee;
- (2) pass the applicable management-level rules examination; and
- (3) be directly responsible for actively supervising the CNG activities of the licensee at the designated outlet.

[(e) An operations supervisor (branch manager) may be a company representative of the licensee; however, unless specific approval is granted by LP-Gas Operations, an individual may be designated as an operations supervisor (branch manager) at each outlet.]

[(d) The operations supervisor (branch manager) shall be directly responsible for actively supervising CNG operations of the licensee at the designated outlet.]

#### *§13.73. Employee Transfers.*

(a) A licensee or [; an] ultimate consumer[; or a state agency, county, municipality, school district, or other governmental subdivision] shall notify AFS [AFRED] when a certificate holder or individual with an examination exemption [previously certified person] is hired[;] by filing CNG Form 1016A and a nonrefundable \$10 [along with a \$10 filing] fee with AFS, or in lieu of CNG Form 1016A, submit the \$10 fee and a written notice including[;]

- (1) [Notification must include] the employee's name as recorded with the Commission; and [on a current driver's license or Texas Department of Public Safety identification card,]
- (2) the last four digits of the employee's [employee] social security number[; name of previous and new licensee-employer, and

types of CNG work to be performed by the newly-hired certified employee. A state agency, county, municipality, school district, or other governmental subdivision is exempt from this subsection if such entity chooses not to certify its employees who perform CNG activities].

(b) Upon approval of the documents submitted under subsection (a) of this section and verification of the individual's active status, AFS will send a copy of the certificate or exemption card to the new employer.

#### *§13.75. Franchise Tax Certification and Assumed Name Certificate.*

(a) An applicant for an original or renewal license or registered manufacturer that is a corporation, limited partnership, or limited liability company shall be approved to transact business in Texas by [in good standing with] the Texas Comptroller of Public Accounts. The licensee or registered manufacturer [An original license applicant] shall provide a copy of the current Certificate of Account Status [Franchise Tax Statement] from the Texas Comptroller of Public Accounts, [showing "In Good Standing."]

(b) All applicants [Any applicant] for license or manufacturer registrations, or their corresponding renewals shall [must] list [all names] on CNG Form 1001 or CNG Form 1001M all names under which CNG related activities requiring licensing or registration as a container manufacturer are to be conducted. Any company performing CNG activities under an assumed name ("DBA" or "doing business as" [dba]) shall [must] file with AFS [LP-Gas Operations] copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the Office of the Secretary of State.

#### *§13.80. Requests for CNG Classes.*

Requests for Commission staff to conduct a CNG training class for CNG activities under the Commission's jurisdiction shall be submitted to the AFS [AFRED] training section. The AFS [AFRED] training section may conduct the requested class at its discretion. The non-refundable fee for a CNG training class is \$250 if no overnight expenses are incurred by the AFS [AFRED] training section, or \$500 if overnight expenses are incurred. AFS [AFRED] may waive the class fee in cases where the Commission recovers the cost of the class from another source, such as a grant.

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

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Railroad Commission of Texas

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For further information, please call: (512) 475-1295



#### **16 TAC §13.65, §13.68**

The Commission proposes the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as stan-

dards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

§13.65. *Statements in Lieu of Insurance Certificates.*

§13.68. *Dealership Name Change.*

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

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## SUBCHAPTER D. CNG COMPRESSION, STORAGE, AND DISPENSING SYSTEMS

### 16 TAC §§13.92, 13.94 - 13.105

The Commission proposes the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

§13.92. *System Component Qualification.*

§13.94. *Location of Installations.*

§13.95. *Installation of Cylinders and Cylinder Appurtenances.*

§13.96. *Installation of Pressure Relief Devices.*

§13.97. *Installation of Pressure Regulators.*

§13.98. *Installation of Pressure Gauges.*

§13.99. *Installation of Piping and Hoses.*

§13.100. *Testing.*

§13.101. *Installation of Emergency Shutdown Equipment.*

§13.102. *Installation of Electrical Equipment.*

§13.103. *Stray or Impressed Currents and Bonding.*

§13.104. *Operation.*

§13.105. *Fire Protection.*

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

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### 16 TAC §§13.93, 13.106, 13.107

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

§13.93. *System Protection Requirements [General].*

(a) In addition to NFPA 52 §7.3.2, and NFPA 55 §§4.11 and 7.1.9, equipment [Equipment] related to a compression, storage, or dispensing installation[; excluding automatic dispensers and residential fueling facilities], shall be protected from tampering and damage [and the protection shall be maintained in good condition at all times and] in accordance with subsections (b) and (c) of this section [one of the three standards set forth in paragraphs (1) - (3) of this subsection: Automatic dispensers for general public use shall be protected against collision damage in accordance with subsection (d) of this section]. These protections shall be maintained in good condition at all times.

(b) [(1)] Fencing at CNG stationary installations shall comply with the following.

(1) [(A)] Fencing material shall be chain link type with wire at least [no smaller than] 12-1/2 American wire gauge in size.

(2) [(B)] Fencing shall be at least [no less than] six feet in height at all points. Fencing may be five feet in height when topped with at least three strands of barbed wire, with the strands [no more than] four inches apart.

(3) [(C)] Uprights [All uprights], braces, and [and/or] cornerposts of the fence shall be composed of noncombustible material [if located within distances for sources of ignition or combustible materials required in Table 1 of §13.94 of this title (relating to Location of

Installations) of the enclosed CNG transfer system(s) or CNG cylinder(s)].

(4) Uprights, braces, and cornerposts of the fence shall be anchored in concrete a minimum of 12 inches below the ground.

(5) ~~[(D)]~~ All fenced enclosures shall have at least one gate suitable for ingress and egress. All gates shall be locked whenever the area enclosed is unattended.

(6) ~~[(E)]~~ A minimum clearance of two feet shall be maintained between the fencing and the compression equipment, cylinder cascade(s), or container(s), and the entire dispensing system(s).

(7) ~~[(F)]~~ Fencing which is located more than 25 feet from any point of a CNG dispensing system(s), container(s), or compression equipment is designated as perimeter fencing. If a CNG dispensing system(s), cylinder cascade(s), or compression equipment is located inside perimeter fencing and is subject to vehicular traffic, it shall be protected against damage according to the specifications set forth in subsection (c) of this section [paragraph (2) of this subsection].

(8) ~~[(G)]~~ The storage and compression area ~~[cylinder cascade containers, compression equipment, and the entire dispensing system]~~ must be completely enclosed by fencing.

(9) Where fencing is not used to protect the installation, then valve locks, a means of locking the electric control for the compressors, or other suitable means shall be provided to prevent unauthorized withdrawal of CNG.

(c) ~~[(2)]~~ Guardrails at CNG stationary installations shall comply with the following: ~~[-]~~

~~[(A) Where fencing is not used to protect the installation as provided in paragraph (1) of this subsection, then valve locks, a means of locking the electric control for the compressor(s), or other suitable means shall be provided to prevent unauthorized withdrawal of CNG.]~~

(1) ~~[(B)]~~ Vertical supports for guardrails shall be at least ~~[a minimum of]~~ three-inch Schedule 40 steel pipe, or other material with equal or greater strength. The vertical supports shall [must] be capped on the top or otherwise protected to prevent the entrance of water or debris into the guardpost, [and] anchored in concrete at least 18 inches below the ground, and rise at least [a minimum of 18 inches in concrete, with a minimum height of] 30 inches above the ground. Supports shall be spaced [no more than] four feet apart or less.

(2) ~~[(C)]~~ The top of the horizontal guardrail shall be secured to the vertical supports at least ~~[a minimum of]~~ 30 inches above the ground. The horizontal guardrail shall be at least ~~[no less than]~~ three-inch Schedule 40 steel pipe, or other material with equal or greater strength. The horizontal guardrail shall be capped on the ends or otherwise protected to prevent the entrance of water or debris into the guardpost, and welded or bolted to the vertical supports with bolts of sufficient size and strength to prevent damage to the protected equipment under normal conditions, including the nature of the traffic to which the protected equipment is subjected [displacement of the horizontal guardrail].

(3) ~~[(D)]~~ Openings ~~[No opening]~~ in ~~[the]~~ horizontal guardrail shall not [may] exceed 36 inches. Only one opening is allowed on each side of the guardrail. A means of temporarily removing the horizontal guardrail and/or vertical supports to facilitate the handling of heavy ~~[compression]~~ equipment may be incorporated into the horizontal guardrail and vertical supports. In no case shall the protection provided by the horizontal guardrail and vertical supports be decreased.

(4) ~~[(E)]~~ A minimum clearance of 24 inches shall be maintained between the railing and any part of the CNG compression equipment, cylinder cascade(s), container(s), or dispensing equipment.

(5) ~~[(F)]~~ The operating end of the container(s) and any part of the CNG compression equipment, piping, or cylinder cascade(s) which is exposed to collision damage or vehicular traffic shall [must] be protected from this type of damage [by the vehicular traffic]. [The protection shall extend at least 24 inches beyond any part of the CNG compression equipment, cylinder cascade(s), container(s), or dispensing equipment which is exposed to or vehicular traffic.]

(6) A minimum clearance of 24 inches shall be maintained between the railing and any part of the CNG compression equipment, cylinder cascades, containers, or dispensing equipment.

(d) ~~[(3)]~~ Dispenser protection [Protection]. Each ~~[automatic]~~ dispenser shall be secured to a concrete island a minimum of six inches above the normal grade and two inches above the grade of any other fuel dispenser(s). Each ~~[automatic]~~ dispenser shall be protected against collision damage. Support columns or other such protection installed at the approach end(s) of the concrete island shall prevent collision with the ~~[automatic]~~ dispenser. If such protection cannot be provided, then the requirements of subsection (c) of this section [paragraph (2) of this subsection] shall apply.

~~[(4) Fencing and guardrails. A combination of the protection standards authorized by paragraphs (1) and (2) of this subsection shall not result in less protection than either standard.]~~

(e) ~~[(5)]~~ The provisions of this section notwithstanding, AFS [LP-Gas Operations] may require an installation to be protected in accordance with ~~[subsection (a) of]~~ this section when evidence exists that because of exceptional circumstances, added safeguards are needed to adequately protect the health, safety, and welfare of the general public. If a person owning or operating such an installation disagrees with the determination of AFS [LP-Gas Operations] made under this subsection, then that person may request a public hearing on the matter. However, until a determination is issued subsequent to a hearing on the matter, the subject automatic dispenser(s) shall be either protected in the manner described by AFS [LP-Gas Operations] or removed from CNG service and/or all of the product withdrawn from it.

(f) At least two monitoring sensors shall be installed at all stationary installations where methane can be trapped to detect hazardous levels of methane. Sensors shall activate prior to the methane level exceeding 25% of the lower flammability limit (LFL). If the level exceeds 25% of the LFL, the sensor shall either shut the system down or activate an audible and visual alarm. The number of sensors to be installed shall comply with the area of coverage for each sensor and the size of the installation. The sensors shall be installed and maintained in accordance with the manufacturer's instructions.

~~[(b) Control devices shall be designed and installed so that internal or external icing or hydrate formation will not cause a malfunction.]~~

~~[(c) Authorized automatic dispenser(s) shall comply with §13.25(k) of this title (relating to Filings Required for Stationary CNG Installations). Existing dispensers may be modified, provided the modifications include only those components listed as approved by a laboratory as discussed in §13.25(k) of this title, and are installed in a workmanlike manner in accordance with industry standards.]~~

~~[(d) The authorized automatic dispenser shall have the following features:]~~

~~[(1) A key, card, or code system shall be used.]~~

[(2) All appurtenances, metering equipment, and other related equipment installed on an automatic dispenser shall meet all applicable requirements of the rules in this chapter.]

[(3) All dispensing equipment shall be fabricated of material suitable for CNG, and resistant to the action of CNG under service conditions. Pressure containing parts shall be of steel, ductile iron, forged steel, brass, or an equivalent material. Aluminum may be used for approved meters. All piping shall be Schedule 80, and all pipe fittings shall be forged steel stamped 6,000 psi or greater.]

[(4) The automatic dispensing system shall incorporate a cutoff valve with an opening and closing device which ensures the valve is in a closed position when the dispenser is deactivated.]

[(5) A device shall be installed in the CNG piping in such a manner that displacement of the dispenser will result in the displacement of such piping on the downstream side of the device.]

[(6) The transfer hose on an automatic dispenser shall incorporate a pull-away device. The pull-away device shall be installed so as to separate by a force not greater than 45 pounds when applied in any horizontal direction. The device shall stop the flow of CNG in the event of a separation.]

[(7) All electric installations within the automatic dispenser enclosure and the entire pit or open space beneath the dispenser shall comply with the National Electric Code, Class 1, Group D, Division 2, except for dispenser components located at least 48 inches above the dispenser base which are intrinsically safe according to the National Electric Code.]

[(8) The fueling connector shall be compatible with the fueling connection of the vehicle as specified in §13.34 of this title (relating to Vehicle Fueling Connection). The fueling connector shall have the following safety features:]

[(A) remote vapor discharge;]

[(B) a manual shut-off valve.]

(g) [(e)] In addition to NFPA 52 §§7.4.3.11, 7.11.5.2, and 7.14.12 and NFPA 55 §§4.10 and 7.1.8.3, all [AH] CNG storage installations, and installations protected by guardrails only, must comply with the sign and/or lettering requirements of Table 1 of this section.

Figure: 16 TAC §13.93(g)

[Figure: 16 TAC §13.93(e)]

### §13.106. Maintenance.

[(a) Cylinders and their appurtenances, piping systems, compression equipment, controls, vehicle fueling hose(s), and devices shall be maintained in proper operating condition at all times.]

(a) [(b)] While in transit, fueling hose and flexible metal hose on a cargo vehicle to be used in a transfer operation, including their connections, shall be depressurized and protected from wear and injury.

(b) [(e)] Pressure relief devices [valves] shall be maintained in proper operating condition.

(c) [(d)] As a precaution to keep pressure relief devices in reliable operating condition, care shall be taken in the handling or storing of CNG [compressed natural gas (CNG)] cylinders to avoid damage. Care shall also be exercised to avoid plugging by paint or other dirt accumulation of pressure relief device channels or other parts which could interfere with the functioning of the device.

### §13.107. Dispenser Installation [Accuracy].

(a) In addition to NFPA 52 §§7.14.4 and 7.14.5, dispensers shall comply with §13.37 of this title (relating to Appurtenances and

Equipment). Existing dispensers may be modified, provided the modifications include only those components listed as approved by a laboratory as specified in §13.37 of this title, and are installed in a workmanlike manner in accordance with industry standards.

(b) The dispenser shall have the following features.

(1) A key, card, or code system shall be used for automatic dispensers.

(2) All appurtenances, metering equipment, and other related equipment installed on a dispenser shall meet all applicable requirements of the rules in this chapter.

(3) All dispensing equipment shall be fabricated of material suitable for CNG, and resistant to the action of CNG under service conditions.

(4) The dispensing system shall incorporate a cutoff valve with an opening and closing device which ensures the valve is in a closed position when the dispenser is deactivated.

(5) The fueling connector shall be compatible with the fueling connection of the vehicle as specified in §13.34 of this title (relating to Vehicle Fueling Connection). The fueling connector shall have the following safety features:

(A) remote vapor discharge; and

(B) a manual shut-off valve.

(c) CNG dispensing systems utilizing automatic dispensers shall be limited to the filling of permanently mounted fuel containers on CNG-powered vehicles.

(d) Fuel dispensers, including automatic dispensers, may be operated only by an individual who has been properly trained.

(1) The licensee owning, operating, or servicing a CNG fuel dispensing facility shall ensure the safe operation of the system and provide training to users.

(2) Step-by-step operating instructions provided by the manufacturer shall be posted at or on each automatic dispenser, readily visible to the operator during transfer operations. The instructions shall describe each action necessary to operate the automatic dispenser and include the location of and procedure for activating emergency shutoff equipment.

(3) Each person or entity who operates a fuel dispenser, excluding an automatic dispenser, shall be provided with written instructions and safe operating procedures by the licensee. The person operating the dispenser should be cautioned to study and preserve such instructions and procedures.

(c) Each retail CNG [compressed natural gas (CNG)] dispenser shall comply with the applicable weights and measures requirements of the Texas Department of Agriculture, relating to dispensing accuracy.

(f) If automatic dispensers are to be used during hours of darkness, permanent adequate lighting shall be provided to facilitate proper operations.

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

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## SUBCHAPTER E. ENGINE FUEL SYSTEMS

### 16 TAC §§13.132, 13.134 - 13.141

The Commission proposes the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

§13.132. *System Component Qualification.*

§13.134. *Installation of Venting Systems.*

§13.135. *Installation of Piping.*

§13.136. *Installation of Valves.*

§13.137. *Installation of Pressure Gauges.*

§13.138. *Installation of Pressure Regulators.*

§13.139. *Installation of Fueling Connection.*

§13.140. *Labeling.*

§13.141. *System Testing.*

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

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### 16 TAC §§13.133, 13.142, 13.143

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

general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

§13.133. *Installation of Fuel Supply Containers [Cylinders].*

[(a) Fuel supply cylinders on vehicles other than school buses, mass transit, or other vehicles used in public transportation may be located within, below, or above the driver or passenger compartment, provided all connections to the cylinders are external to, or sealed and vented from those compartments.]

(a) [(b)] In addition to NFPA 52 §§6.3.2 and 6.3.3, fuel [Fuel] supply containers [eylinders] on school buses, mass transit, and other public transportation vehicles shall not be located [above or] within the driver or passenger compartment. The motor fuel containers installed on a special transit vehicle may be installed in the passenger compartment, provided all connections to the containers are external to, or sealed and vented from, those compartments [it complies with subsection (a) of this section].

[(c) Each fuel supply cylinder shall be mounted in a location to minimize damage from collision. No part of a cylinder or its appurtenances shall protrude beyond the sides or top of the vehicle at the point where it is installed.]

[(d) The fuel system shall be installed with as much road clearance as practical, but not less than the minimum road clearance of the vehicle when loaded to its gross vehicle weight rating. This minimum clearance shall be measured from the lowest part of the fuel system.]

[(e) No portion of a fuel supply cylinder or cylinder appurtenance shall be located ahead of the front axle or behind the rear bumper mounting face of a vehicle. Cylinder valves shall be protected from physical damage using the vehicle structure, valve protectors, or a suitable metal shield.]

[(f) Each cylinder bracket shall be secured to the vehicle body, bed, or frame with bolts, lock washers and nuts, or self-locking nuts of a size and strength capable of withstanding a static force in any direction of eight times the weight of a fully pressurized cylinder. The cylinder bracket shall be designed and manufactured by a cylinder manufacturer. Each specific mounting bracket manufactured on or after January 1, 1994, must have the manufacturer's name or logo on it in order to properly identify the bracket manufacturer. If self-locking nuts are installed, such nuts shall not be reused once they are removed. The container mounting brackets shall prevent the container from jarring loose, slipping, or rotating.]

[(g) Each fuel supply cylinder shall be secured in the mounting brackets by bolts, lock washers and nuts, or self-locking nuts of a size and strength capable of withstanding a static force applied in any direction eight times the weight of the fully pressurized cylinder. If self-locking nuts are installed, such nuts shall not be reused once they are removed.]

[(h) The cylinder weight shall not be supported by the outlet, service valves, manifolds, or other fuel connections.]

[(i) Fuel supply cylinders located less than eight inches from the exhaust system shall be shielded against direct heat.]

[(j) The mounting system shall minimize fretting corrosion between the cylinder and the mounting system by means of rubber insulators or other suitable means.]

[(k) Fuel supply cylinders shall not be installed so as to adversely affect the driving characteristics of the vehicle.]

[(l) Containers shall be secured to a school bus, mass transit, or special transit vehicle frame (not the floor) by container fastenings or mounting brackets described in subsection (f) of this section. The fastenings or brackets must be secured to the frame or securely mounted to a supporting structure so as not to compromise the strength of that structure (i.e., backing plates or other acceptable means may be used to accomplish this purpose). Container(s) which are currently installed on school buses or mass transit vehicles by means of strap mounting brackets may continue to be used.]

[(m) The motor fuel container(s) installed on a school bus or mass transit vehicle shall be installed on the underside of the vehicle.]

(b) [(n)] If necessary, a plumbing chamber door shall be provided in the sidewall of the school bus, mass transit, or special transit vehicle to allow easy access for filling or securing the service valve in the event of an emergency. The plumbing chamber door shall be hinged and latched, but not locked.

#### *§13.142. Maintenance and Repair.*

[(a) Damaged supply lines shall be replaced, not repaired.]

[(b) The owner or user, or both, shall maintain all cylinders, cylinder appurtenances, piping systems, venting systems, and other components in a safe condition.]

(a) [(e)] As a precaution to keep pressure relief devices in reliable operating condition, care shall be taken in the handling or storing of CNG [compressed natural gas (CNG)] cylinders to avoid damage. Care shall also be exercised to avoid plugging by paint or other dirt accumulation of pressure relief device channels or other parts which could interfere with the functioning of the device.

(b) If any component is not in safe working order, AFS may require that the vehicle be immediately removed from CNG service and not be operated until the necessary repairs have been made.

[(d) No repair or alteration will be permitted on pressure relief devices.]

#### *§13.143. Venting of CNG to the Atmosphere.*

In addition to NFPA 52 §6.14.1.1, all [AH] venting of CNG shall be done outdoors [only under conditions that will result in rapid dispersion of the product being released. Consideration shall be given to such factors as distance to buildings, terrain, wind direction and velocity, and use of a vent pipe or stack so that a flammable mixture will not reach a point of ignition. A vent pipe or stack shall have the open end suitably protected to prevent entrance of rain, snow, and solid material. Provision shall be made in vertical vent pipes and stacks for drainage. Prior to and during venting of the CNG cylinders, they shall be properly grounded so as to eliminate any possible static electrical charges].

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

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## SUBCHAPTER F. RESIDENTIAL FUELING FACILITIES

### 16 TAC §§13.182, 13.184 - 13.186, 13.188, 13.189, 13.191 - 13.194

The Commission proposes the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

§13.182. *Scope .*

§13.184. *General.*

§13.185. *Installation.*

§13.186. *Outdoor Installations.*

§13.188. *Installation of Pressure Gauges.*

§13.189. *Pressure Regulation.*

§13.191. *Testing.*

§13.192. *Installation of Emergency Shutdown Equipment.*

§13.193. *Operation.*

§13.194. *Maintenance and Inspection.*

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### 16 TAC §§13.183, 13.187, 13.190

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which

allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

*§13.183. System Component Qualifications.*

In addition to NFPA 52 §8.2.1, system ~~[System]~~ components shall comply with the appropriate provisions in Subchapter B of this chapter (relating to General Rules for Compressed Natural Gas (CNG) Equipment Qualifications).

*§13.187. Installation of Pressure Relief Devices [Valves].*

In addition to NFPA 52, §8.5, the ~~[Pressure relief valves shall be vented upwards to a safe area so as not to impinge on buildings, other equipment, or areas that could be occupied by the public (e.g., sidewalks). The]~~ discharge vent line shall be able to withstand the pressure from the relief vapor discharge when the relief device ~~[valve]~~ is in the full open position and shall permit sufficient pressure relief relieving capacity. A spring loaded or counterbalanced rain cap shall be provided on the discharge vent line. The rain cap shall permit the pressure relief device ~~[valve]~~ to operate at sufficient relieving capacity.

*§13.190. Piping and Hose.*

~~[(a)]~~ All piping and hose from the outlet of the compressor shall be supplied as part of the residential fueling facility.]

(a) ~~[(b)]~~ The use of hose in an installation is limited to:

(1) a vehicle refueling hose; the maximum length fueling hose is 12 feet and shall be supported;

(2) an inlet connection to compression equipment not exceeding 36 inches. This connector, if used, shall be supplied as part of the residential fueling appliance ~~[facility]~~;

(3) a section of metallic hose not exceeding 36 inches in length in a pipeline to provide flexibility where necessary. Each section shall be so installed that it will be protected against mechanical damage and be readily visible for inspection. The manufacturer's identification shall be retained in each section;

(4) hose used for pressure relief device channels may exceed 36 inches.

~~(b)~~ ~~[(e)]~~ The least possible number of connections shall be used in order to reduce the possibility of leakage in the residential fueling appliance ~~[facility]~~.

~~[(d)]~~ Bleed connections shall be provided in transfer systems to permit depressurizing the line before disconnection. These bleed connections shall be vented to a safe point of discharge.]

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## SUBCHAPTER G. ADOPTION BY REFERENCE OF NFPA 52 (VEHICULAR GASEOUS FUEL SYSTEMS CODE)

### 16 TAC §§13.201 - 13.203

The Commission proposes the new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

*§13.201. Adoption by Reference of NFPA 52.*

(a) Effective February 15, 2021, except as modified in this subchapter, the Commission adopts by specific reference the provisions established by the National Fire Protection Association in its 2013 edition of the Vehicular Gaseous Fuel Systems Code, commonly referred to as NFPA 52 or Pamphlet 52. Nothing in this section or subchapter shall prevent the Commission, after notice, from adopting additional requirements, whether more or less stringent, for individual situations to protect the health, safety, and welfare of the general public. Any documents or parts of documents incorporated by reference into these rules shall be a part of these rules as if set out in full.

(b) Effective February 15, 2021, the Commission also adopts by reference all other NFPA publications or portions of those publications referenced in NFPA 52 which apply to CNG activities only. The pamphlets adopted by reference in NFPA 52 are:

(1) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2012 edition;

(2) NFPA 37, Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines, 2010 edition;

(3) NFPA 51B, Standard for Fire Prevention During Welding, Cutting, and Other Hot Work, 2009 edition;

(4) NFPA 54, National Fuel Gas Code, 2012 edition;

(5) NFPA 59A, Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG), 2013 edition;

(6) NFPA 70, National Electrical Code, 2014 edition;

(7) NFPA 80, Standard for Fire Doors and Other Opening Protectives, 2013 edition;

(8) NFPA 101, Life Safety Code, 2012 edition;

(9) NFPA 259, Standard Test Method for Potential Heat of Building Materials, 2013 edition;

(10) NFPA 302, Fire Protection Standard for Pleasure and Commercial Motor Craft, 2010 edition;

(11) NFPA 303, Fire Protection Standard for Marinas and Boatyards, 2011 edition;

(12) NFPA 496, Standard for Purged and Pressurized Enclosures for Electrical Equipment, 2013 edition; and

(13) NFPA 5000, Building Construction and Safety Code, 2012 edition.

§13.202. Clarification of Certain Terms Used in NFPA 52.

(a) Authority having jurisdiction. As pertains to CNG activities in Texas, the phrase "authority having jurisdiction" defined in NFPA 52 §3.2 and referenced in other NFPA publications shall be the Railroad Commission of Texas or any of its divisions or employees, except with respect to the definitions of "approved," "labeled," and "listed" in NFPA 52 §3.2.

(b) Engineering. The Commission does not adopt language in any NFPA 52 rule such as "sound engineering practice," "accepted engineering practice," "good engineering practice," "sound engineering design," or similar language that might be understood to mean or refer to the practice of engineering. The omission of a specific NFPA 52 rule or other NFPA pamphlets containing such language from the exceptions listed in this subchapter is inadvertent and shall not be read or understood as requiring, allowing, or approving the unlicensed practice of engineering or any other professional occupation requiring a license.

§13.203. Sections in NFPA 52 Adopted with Additional Requirements or Not Adopted.

Table 1 of this section lists certain NFPA 52 sections which the Commission adopts with additional requirements or does not adopt in order to address the Commission's rules in this chapter.

Figure: 16 TAC §13.203

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

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## SUBCHAPTER H. ADOPTION BY REFERENCE OF NFPA 55 (COMPRESSED GASES AND CRYOGENIC FLUIDS CODE)

### 16 TAC §§13.301 - 13.303

The Commission proposes the new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows

the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the Commission in accordance with rules adopted by the Commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

§13.301. Adoption by Reference of NFPA 55.

(a) Effective February 15, 2021, except as modified in this subchapter, the Commission adopts by specific reference the provisions established by the National Fire Protection Association in its 2013 edition of the Compressed Gases and Cryogenic Fluids Code, commonly referred to as NFPA 55 or Pamphlet 55. Nothing in this section or subchapter shall prevent the Commission, after notice, from adopting additional requirements, whether more or less stringent, for individual situations to protect the health, safety, and welfare of the general public. Any documents or parts of documents incorporated by reference into these rules shall be a part of these rules as if set out in full.

(b) Effective February 15, 2021, the Commission also adopts by reference all other NFPA publications or portions of those publications referenced in NFPA 55 which apply to CNG activities only. The pamphlets adopted by reference in NFPA 55 are:

(1) NFPA 1, Fires Code, 2012 edition;

(2) NFPA 2, Hydrogen Technologies Code, 2011 edition;

(3) NFPA 10, Standard for Portable Fire Extinguishers, 2010 edition;

(4) NFPA 13, Standard for the Installation of Sprinkler Systems, 2013 edition;

(5) NFPA 16, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems, 2011 edition;

(6) NFPA 30, Flammable and Combustible Liquids Code, 2012 edition;

(7) NFPA 31, Standard for the Installation of Oil-Burning Equipment, 2011 edition;

(8) NFPA 45, Standard on Fire Protection for Laboratories Using Chemicals, 2011 edition;

(9) NFPA 51, Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes, 2013 edition;

(10) NFPA 52, Vehicular Gaseous Fuel Systems Code, 2010 edition;

(11) NFPA 54, National Fuel Gas Code, 2012 edition;

(12) NFPA 58, Liquefied Petroleum Gas Code, 2011 edition;

(13) NFPA 59A, Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG), 2013 edition;

(14) NFPA 68, Standard on Explosion Protection by Deflagration Venting, 2007 edition;

(15) NFPA 69, Standard on Explosion Prevention Systems, 2008 edition;



- (16) NFPA 70, National Electrical Code, 2011 edition;
- (17) NFPA 72, National Fire Alarm and Signaling Code, 2013 edition;
- (18) NFPA 79, Electrical Standard for Industrial Machinery, 2012 edition;
- (19) NFPA 80, Standard for Fire Doors and Other Opening Protectives, 2013 edition;
- (20) NFPA 90A, Standard for the Installation of Air-Conditioning and Ventilating Systems, 2012 edition;
- (21) NFPA 99, Health Care Facilities Code, 2012 edition;
- (22) NFPA 101, Life Safety Code, 2012 edition;
- (23) NFPA 110, Standard for Emergency and Standby Power Systems, 2013 edition;
- (24) NFPA 259, Standard Test Method for Potential Heat of Building Materials, 2008 edition;
- (25) NFPA 496, Standard for Purged and Pressurized Enclosures for Electrical Equipment, 2008 edition;
- (26) NFPA 505, Fire Safety Standard for Powered Industrial Trucks Including Type Designations, Areas of Use, Conversions, Maintenance, and Operations, 2011 edition;
- (27) NFPA 704, Standard System for the Identification of the Hazards of Materials for Emergency Response, 2012 edition;
- (28) NFPA 801, Standard for Fire Protection for Facilities Handling Radioactive Materials, 2008 edition; and
- (29) NFPA 853, Standard for the Installation of Stationary Fuel Cell Power Systems, 2010 edition.

§13.302. Clarification of Certain Terms Used in NFPA 55.

(a) Authority having jurisdiction. As pertains to CNG activities in Texas, the phrase "authority having jurisdiction" defined in NFPA 55 §3.2.2 and referenced in other NFPA publications shall be the Railroad Commission of Texas or any of its divisions or employees, except with respect to the definitions of "approved," "labeled," and "listed" in NFPA 55 §3.2.

(b) Engineering. The Commission does not adopt language in any NFPA 55 rule such as "sound engineering practice," "accepted engineering practice," "good engineering practice," "sound engineering design," or similar language that might be understood to mean or refer to the practice of engineering. The omission of a specific NFPA 55 rule or other NFPA pamphlets containing such language from the exceptions listed in this subchapter is inadvertent and shall not be read or understood as requiring, allowing, or approving the unlicensed practice of engineering or any other professional occupation requiring a license.

§13.303. Sections in NFPA 55 Adopted with Additional Requirements or Not Adopted.

Table 1 of this section lists certain NFPA 55 sections which the Commission adopts with additional requirements or does not adopt in order to address the Commission's rules in this chapter.

Figure: 16 TAC §13.303

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

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For further information, please call: (512) 475-1295



## CHAPTER 14. REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)

The Railroad Commission of Texas (Commission) proposes amendments, new rules, and repeals in 16 TAC Chapter 14. In Subchapter A, General Applicability and Requirements, the Commission proposes amendments to §14.2004, Applicability, Severability, and Retroactivity; §14.2007, Definitions; §14.2010, LNG Forms; and §14.2013, License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals; the repeal of §14.2014, Military Fee Exemption; new §14.2014, Application for License or Manufacturer Registration (New and Renewal); the repeal of §14.2015, Penalty Guidelines for LNG Safety Violations; new §14.2015, Military Fee Exemption; the repeal of §14.2016, Licensing Requirements; new §14.2016, Penalty Guidelines and Enforcement; amendments to §14.2019, Examination Requirements and Renewals; §14.2020, Employee Transfers; and §14.2021, Requests for LNG Classes; the repeal of §14.2022, Denial, Suspension, or Revocation of Licenses or Certifications, and Hearing Procedure; amendments to §14.2025, Designation and Responsibilities of Company Representatives and Operations Supervisors; and §14.2028, Franchise Tax Certification and Assumed Name Certificates; new §14.2029, Changes in Ownership, Form of Dealership, or Name of Dealership; amendments to §14.2031, Insurance Requirements; and §14.2034, Self-Insurance Requirements; the repeal of §14.2037, Components of LNG Stationary Installations Not Specifically Covered; amendments to §14.2040, Filings Required for Stationary LNG Installations; new §14.2041, Notice of, Objections to, and Hearings on Proposed Stationary LNG Installations; and new §14.2042, Physical Inspection of Stationary Installations; amendments to §14.2043, Temporary Installations; §14.2046, School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections; §14.2049, Report of LNG Incident/Accident; and §14.2052, Application for an Exception to a Safety Rule.

In Subchapter B, General Rules for All Stationary LNG Installations, the Commission proposes amendments to §14.2101, System Protection Requirements; new §14.2102, Installation and Maintenance; amendments to §14.2104, Testing of Containers; the repeal of §14.2107, Stationary LNG Storage Containers; amendments to §14.2110, LNG Container Installation Distance Requirements; the repeal of §14.2113, Maintenance Tanks; amendments to §14.2116, Venting of LNG; §14.2119, Transport Vehicle Loading and Unloading Facilities and Procedures; §14.2122, Pumps and Compressors Used for LNG and Refrigerants; and §14.2125, Hoses and Arms; the repeal of §14.2128, Communications and Lighting; amendments to §14.2131, Fire Protection; the repeal of §14.2134, Container Purging Procedures; amendments to §14.2137, Employee Safety and Training; and the repeal of §14.2140, Inspection and Maintenance.

In Subchapter D, General Rules for LNG Fueling Facilities, the Commission proposes amendments to §14.2304, General Fa-

cility Design; the repeal of §14.2307, Indoor Fueling; amendments to §14.2310, Emergency Refueling; and §14.2313, Fuel Dispensing Systems; new §14.2314, Removal from LNG Service; the repeal of §14.2316, Filings Required for Installation of Fuel Dispensers; amendments to §14.2319, Automatic Fuel Dispenser Safety Requirements; the repeal of §14.2322, Protection of Automatic and Other Dispensers; §14.2325, LNG Transport Unloading at Fueling Facilities; and §14.2328, Training, Written Instructions, and Procedures Required.

In Subchapter E, Piping Systems and Components for All Stationary LNG Installations, the repeal of §14.2404, Piping Materials; §14.2407, Fittings Used in Piping; §14.2410, Valves; and §14.2413, Installation of Piping; amendments to §14.2416, Installation of Valves; the repeal of §14.2419, Welding at Piping Installations; §14.2422, Pipe Marking and Identification; §14.2425, Pipe Supports; §14.2428, Inspection and Testing of Piping; §14.2431, Welded Pipe Tests; §14.2434, Purging of Piping Systems; §14.2437, Pressure and Relief Valves in Piping; and §14.2440, Corrosion Control.

In Subchapter F, Instrumentation and Electrical Services, the Commission proposes the repeal of all rules in the subchapter, including §14.2501, Liquid Level Gauging; §14.2504, Pressure Gauges; §14.2507, Vacuum Gauges; §14.2510, Emergency Failsafe; §14.2513, Electrical Equipment; and §14.2516, Electrical Grounding and Bonding.

In Subchapter G, Engine Fuel Systems, the Commission proposes amendments to §14.2604, System Component Qualification, the repeal of §14.2607, Vehicle Fuel Containers; amendments to §14.2610, Installation of Vehicle Fuel Containers; the repeal of §14.2613, Engine Fuel Delivery Equipment; and §14.2616, Installation of Venting Systems and Monitoring Sensors; amendments to §14.2619, Installation of Piping; the repeal of §14.2622, Installation of Valves; amendments to §14.2625, Installation of Pressure Gauges; the repeal of §14.2628, Installation of Pressure Regulators; and §14.2631, Wiring; amendments to §14.2634, Vehicle Fueling Connection; §14.2637, Signs and Labeling; and §14.2640, System Testing.

In Subchapter H, LNG Transports, the Commission proposes amendments to §14.2701, DOT Requirements; §14.2704, Registration and Transfer of LNG Transports; §14.2705, Replacement Decals; §14.2707, Testing Requirements; §14.2710, Markings; §14.2737, Parking of LNG Transports and Container Delivery Units, and Use of Chock Blocks; and §14.2746, Delivery of Inspection Report to Licensee; and the repeal of §14.2749, Issuance of LNG Form 2004 Decal.

The Commission proposes new Subchapter I, Adoption by Reference of NFPA 52 (Vehicular Gaseous Fuel Systems Code) to include new §14.2801, Adoption by Reference of NFPA 52; §14.2802, Clarification of Certain Terms Used in NFPA 52; and §14.2803, Sections in NFPA 52 Adopted with Additional Requirements or Not Adopted.

The Commission proposes new Subchapter J, Adoption by Reference of NFPA 59A (Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)) to include new §14.2901, Adoption by Reference of NFPA 59A; §14.2902, Clarification of Certain Terms Used in NFPA 59A; and §14.2903, Sections in NFPA 59A Adopted with Additional Requirements or Not Adopted. The Commission proposes to adopt the two NFPA standards to establish requirements for Texas LNG licensees and consumers consistent with most other states in the United States. Because NFPA 52 and 59A have been adopted in whole

or in part by many states, the Texas LNG industry would benefit from their adoption because Texas companies would be held to the same standards.

The Commission proposes the amendments, new rules, and repeals to update and clarify the Commission's LNG rules. The main purpose of the proposal is to adopt by reference NFPA 52 and 59A in the proposed new rules in Subchapters I and J. In addition, the Commission proposes amendments to certain rules to incorporate or update references to sections in the NFPA standards, as well as other nonsubstantive clarifications. Rules proposed with these types of amendments include §§14.2019, 14.2025, 14.2052, 14.2101, 14.2110, 14.2116, 14.2119, 14.2122, 14.2125, 14.2131, 14.2304, 14.2313, 14.2319, 14.2416, 14.2604, 14.2610, 14.2619, 14.2625, 14.2634, 14.2637, and 14.2640.

Several rules are proposed for repeal; with the proposed adoption by reference of NFPA 52 and 59A, these rules are no longer necessary. Rules proposed for repeal include §§14.2037, 14.2107, 14.2113, 14.2128, 14.2134, 14.2140, 14.2307, 14.2316, 14.2322, 14.2325, 14.2328, 14.2404, 14.2407, 14.2410, 14.2413, 14.2419, 14.2422, 14.2425, 14.2428, 14.2431, 14.2434, 14.2437, 14.2440, 14.2501, 14.2504, 14.2507, 14.2510, 14.2513, 14.2516, 14.2607, 14.2613, 14.2616, 14.2622, 14.2628, 14.2631, 14.2643, and 14.2749.

The second purpose for the proposed amendments, new rules, and repeals is to implement changes from the 86th Legislative Session. House Bill 2127 removed the requirement that manufacturers of LNG containers obtain a license from the Commission and instead requires registration with the Commission. Proposed changes to reflect this statutory change are found in §§14.2007, 14.2013, 14.2014, 14.2016, 14.2028, new 14.2029, and 14.2031. Operators will not be required to comply with changes directly related to manufacturer registrations until approximately February 15, 2021. Upon adoption, the Commission will specify the effective date relating to requirements for manufacturer registration.

These rules also include proposed nonsubstantive amendments to clarify existing language, correct outdated language such as incorrect division and department names, update references to other Commission rules, and ensure language within Chapter 14, and throughout the Commission's alternative fuels regulations, is consistent. Clarifying changes include amendments to improve readability such as removing repetitive language, adding internal cross references, and including language from a referenced section (e.g., a fee amount) to give the reader better access to applicable requirements.

Proposed amendments to §14.2007 remove definitions of terms that no longer appear in Chapter 14 or are only used within one section and, therefore, do not need to be defined. The proposed amendments add definitions of "certificate holder," "pullaway," "registered manufacturer," and "rule examination," as those terms are now used throughout the chapter. The proposed amendments also clarify several existing definitions.

Proposed amendments in §14.2010 remove the list of official forms from the rule language to ensure consistency with other chapters. All Commission forms are now located on the Commission's website. The proposed amendments also specify the form amendment and adoption process.

Proposed amendments in §14.2013 include changes to implement the registration requirement from House Bill 2127.

Proposed new §14.2014 contains language moved from current §14.2016. New language includes proposed subsection (h), which implements House Bill 2127 by requiring a new form, LNG Form 2001M, and specifying that a container manufacturer registration authorizes the manufacture, assembly, repair, testing and sale of LNG containers. The original registration fee is \$1,000; the renewal fee is \$600. Other proposed wording generally clarifies license requirements and reflects the proposed adoption of NFPA 52 and 59A.

Current §14.2014 is proposed to be repealed and the text is proposed as new §14.2015 with no changes other than the rule number.

Current §14.2015 is proposed to be repealed and most of its text moved to §14.2016. The tables in §14.2016(a)(5) and (a)(11) include some proposed changes from the existing tables in §14.2015. Most of these proposed changes are made to reference container manufacturer requirements and penalty amounts, as well as the adoption of the NFPA documents. Because the tables are proposed in new §14.2016 and therefore do not include any underlining or strike-outs, the Commission has provided a version of these tables showing the proposed changes on its website for comparison purposes. The remaining three tables moving from §14.2015 to new §14.2016 have no proposed changes other than the Figure heading indicating the rule number.

Proposed new §14.2016(b) is moved from current §14.2022, which is proposed to be repealed. Proposed new subsection (b) also incorporates references to registered manufacturers.

Proposed amendments in §14.2019 include requirements for individuals who perform work, directly supervise LNG activities, or are employed in any capacity requiring contact with LNG, in addition to certain NFPA-related amendments previously discussed. The proposed amendments also ensure "certificate" and "certificate holder" are used throughout instead of using "certificate," "certificate holder," "certified," and "certification" inconsistently. Proposed wording clarifies requirements for certificate renewal and steps to renew a lapsed certificate. Proposed new wording specifies that an individual who passes the applicable examination with a score of at least 75% will become a certificate holder and clarifies where and when examinations are available and what an examinee must bring to the exam site. Further, the proposed wording incorporates the examinations and their descriptions, which were previously included in a table, and clarifies the process for obtaining a management-level certificate. The examinations were previously listed in Figure 14.2019(a)(3) and are now proposed in §14.2019(c).

Amendments proposed in §14.2020 update the process for licensees who hire certificate holders, including allowing notification to the Commission to include only the last four digits of the employee's Social Security Number.

Proposed amendments in §14.2025 clarify filing requirements for company representatives, operations supervisors, and outlets, in addition to NFPA-related amendments previously discussed. The proposed amendments specify the requirements for designating company representatives and operations supervisors, and change wording from "termination" to "conclusion of employment" to better communicate AFS's intent for when a licensee must notify AFS of a company representative's or operations supervisor's departure.

Proposed new §14.2029, specifies the requirements for any changes in ownership, form of dealership, or name of deal-

ership. The new rule incorporates existing procedures and reflects the process from the corresponding rule in Chapter 9 of this title (relating to LP-Gas Safety Rules).

Amendments proposed in §14.2031 incorporate insurance requirements for registered manufacturers.

Proposed amendments to §14.2040 remove language related to local requirements to ensure consistency among the Commission's alternative fuels regulations. Proposed amendments reorganize the rule, make minor updates for clarity, and change requirements to ensure consistency among the Commission's alternative fuels regulations.

Existing §14.2040 (c) through (m) are proposed to be deleted from §14.2040 and moved to proposed new §§14.2041 and 14.2042 for better organization of the subject matter. Proposed wording in §14.2042 incorporates new terminology used by AFS such that a "safety rule violation" is now called a "non-compliance item."

Proposed amendments in §14.2046, in addition to general updates and clarifications, clarify existing filing requirements for registering an LNG transport.

Proposed amendments to §14.2049 clarify existing requirements and align the rules with the accident and incident reporting procedures in Chapter 9 of this title.

Proposed amendments in §14.2101 include updates due to NFPA changes. Proposed amendments also require uprights, braces, and cornerposts to be anchored in concrete a minimum of 12 inches below the ground. This provision is added to ensure consistency among the Commission's alternative fuels regulations.

Proposed amendments in new §14.2102 and §14.2314 ensure the rules match current Commission procedure as well as the corresponding rules in Chapter 9.

Proposed amendments in §14.2704 clarify requirements for registration and transfer of LNG cargo tanks or delivery units and conform the rule to similar provisions in Chapters 9 and 13 of this title.

Proposed amendments in §14.2710 clarify the requirements for markings on CNG transports. New language proposed in subsection (b) requires certain types of public transportation vehicles to mark the location of the manual shutoff valve.

Other proposed amendments are nonsubstantive clarifications or updates such as correcting Commission department or division names, reorganization of the rule text, or other similar revisions. These types of amendments are proposed in §§14.2004, 14.2021, 14.2034, 14.2043, 14.2104, 14.2137, 14.2310, 14.2701, 14.2704, 14.2705, 14.2707, 14.2710, 14.2737, and 14.2746.

April Richardson, Director, Alternative Fuels Safety Department, has determined that there will be a one-time cost to the Commission of approximately \$23,275 in programming costs based on 490 hours of programming to implement changes required by HB 2127. This cost will be covered using the Commission's existing budget. Further, AFS will have a one-time cost to purchase copies of NFPA 52 and 59A. The copies of NFPA standards will be provided to all inspectors, to managers at the AFS Austin office, and to examinees and instructors across the state. The total estimated cost to replace these books is \$4,408. This cost will also be covered using AFS's existing budget. There are no an-

anticipated fiscal implications for local governments as a result of enforcing the amendments and new rule.

Ms. Richardson has determined that there will be minimal costs for those required to comply with the proposed amendments. Any cost stems from the need to purchase copies of NFPA 52 and/or NFPA 59A if a person required to comply does not already own a copy. The softbound copies of NFPA 52 and NFPA 59A total \$116. Manufacturers who are no longer required to obtain a license will save \$20 per company representative per year, as the certificate renewal requirements will not apply to these employees.

Ms. Richardson has also determined that the public benefit anticipated as a result of enforcing or administering the amendments will be compliance with recent changes to the Texas Natural Resources Code and increased public safety due to new NFPA standards.

In accordance with Texas Government Code, §2006.002, the Commission has determined there will be no adverse economic effect on rural communities, small businesses or micro-businesses resulting from the proposed amendments and new rule; therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis required under §2006.002.

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

The Commission has determined that the proposed amendments and new rule do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the rules would be in effect, the proposed amendments would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; increase or decrease fees paid to the agency; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; or effect the state's economy. The amendments are proposed to align Commission rules with governing state statutes and national standards. The amendments would decrease fees paid to the agency because due to HB 2127, manufacturers no longer require a license. Thus, a registered manufacturer is not required to pay \$20 per company representative for annual certificate renewal.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings](http://www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings); or by electronic mail to [rulescoordinator@rrc.texas.gov](mailto:rulescoordinator@rrc.texas.gov). The Commission will accept comments until 12:00 noon on Monday, December 14, 2020. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to Texas Register publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that

comments submitted after the deadline will be considered. For further information, call Ms. Richardson at (512) 463-6935. The status of Commission rulemakings in progress is available at [www.rrc.texas.gov/general-counsel/rules/proposed-rules](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules).

## SUBCHAPTER A. GENERAL APPLICABILITY AND REQUIREMENTS

**16 TAC §§14.2004, 14.2007, 14.2010, 14.2013 - 14.2016, 14.2019 - 14.2021, 14.2025, 14.2028, 14.2029, 14.2031, 14.2034, 14.2040 - 14.2043, 14.2046, 14.2049, 14.2052**

The Commission proposes the amendments and new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

*§14.2004. Applicability, Severability, and Retroactivity.*

(a) This chapter is intended to apply to the design, installation, and operation of liquefied natural gas (LNG) dispensing systems, the design and installation of LNG engine fuel systems on vehicles of all types and their associated fueling facilities, and the construction and operation of equipment for the storage, handling, and transportation of LNG.

(b) This chapter shall [does] not apply to:

(1) locomotives, railcar tenders, marine terminals; [; or to]

(2) the transportation, loading, or unloading of LNG on ships, barges, or other types of watercraft which are subject to the American Boat and Yacht Council and any other applicable standards; [; or to]

(3) any fuel cell approved by the Federal Aviation Administration and intended to be used solely as a fuel cell for aircraft, including hot air balloons; [; or to]

(4) an installation or connection that is part of a distribution or pipeline system that is covered by Title 49, Code of Federal Regulations, Part 192;[.]

(5) [From the point at which] LNG in a system that has been vaporized and converted to compressed natural gas (CNG), in which case the equipment and components must comply with the Commission's Regulations for Compressed Natural Gas in Chapter 13 of this title (relating to Regulations for Compressed Natural Gas (CNG)); and[.]

(6) liquefaction plants under the jurisdiction of DOT and the requirements of Chapter 8 of this title (relating to Pipeline Safety Regulations).

(c) [(b)] If any term, clause, or provision of these rules is for any reason declared invalid, the remainder of the provisions shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

(d) [(e)] Nothing in these rules shall be construed as requiring, allowing, or approving the unlicensed practice of engineering or any other professional occupation requiring licensure.

(e) [(d)] Unless otherwise stated, the rules in this chapter are not retroactive. Any installation of an LNG system, containers, and equipment shall meet the requirements of this chapter at the time of installation[; however, the Railroad Commission of Texas has jurisdiction over all LNG installations in Texas and installations placed into operation after October 1, 1996, shall comply with this chapter. All other LNG installations in operation prior to October 1, 1996, shall be maintained and operated in a safe manner as determined by the Railroad Commission of Texas. Persons engaged in LNG activities on the effective date of this chapter shall comply with licensing and examination requirements by February 1, 1997].

(f) [(e)] This chapter [The requirements of 16 TAC Chapter 14] shall not apply to vehicles and fuel supply containers that:

(1) are manufactured or installed by original equipment manufacturers; and

(2) comply with Title 49, Code of Federal Regulations, the Federal Motor Vehicle Safety Standards, [; and]

[(3) comply with the National Fire Protection Association (NFPA) Code 57, *Liquefied Natural Gas (LNG) Fuel Systems Code*.]

(g) [(f)] Vehicles and fuel supply containers excluded from the requirements of this chapter pursuant to subsection (f) [(e)] of this section shall comply with the requirements of §14.2046 of this title[; (relating to [Filings Required for] School Bus, Public Transportation, Mass Transit and Special Transit Vehicle Installations and Inspections) [Vehicles].

#### §14.2007. Definitions.

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

(1) AFS [AED]--The Commission's Alternative Fuels Safety department within the Commission's Oversight and Safety [Energy] Division.

[(2) AFRED--The organizational unit of the AED that administers the Commission's alternative fuels research and education program, including LNG certification, exempt registration, and training.]

(2) [(3)] Aggregate water capacity (AWC)--The sum of all individual container capacities as measured by weight or volume of water which are placed at a single installation location [when the containers in a battery at an installation are full].

(3) [(4)] ANSI--American National Standards Institute.

(4) [(5)] API--American Petroleum Institute.

(5) [(6)] ASME--American Society of Mechanical Engineers.

(6) [(7)] ASME Code--The American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section I, Section IV, Section VIII, and Section IX.

(7) [(8)] Automatic fuel dispenser--A fuel dispenser which requires transaction authorization.

(8) Certificate holder--An individual who has passed the required management-level or employee-level examination pursuant to §14.2019 of this title (relating to Examination Requirements and Renewals) and paid the applicable fees.

[(9) Branch manager--See "Operations supervisor."]

(9) [(10)] Certified--An individual who is authorized by the Commission [Authorized] to perform the LNG activities covered by the certification issued under §14.2019 of this title [under the direction of a licensee as set forth in the Texas Natural Resources Code. Certification alone does not allow an employee to perform those activities which require licensing].

(10) [(11)] Combustible material--A solid material which, in the form in which it is used and under the conditions anticipated, can be ignited and will burn, support combustion, or release flammable vapors when subjected to fire or heat.

(11) [(12)] Commercial installation--An LNG equipment installation located on premises other than a single-family dwelling used primarily as a residence.

(12) [(13)] Commission--The Railroad Commission of Texas.

(13) [(14)] Company representative--The individual [An owner or employee of a licensee] designated to the Commission by a license applicant or a [by that] licensee as the principal individual in authority [to take any required examinations] and actively supervising the conduct of the licensee's LNG activities [to actively supervise LNG operations of the licensee].

(14) [(15)] Container--Any LNG vessel manufactured to the applicable sections of the API Code, ASME Code, or DOT requirements in effect at the time of manufacture.

(15) [(16)] Container appurtenances--Components installed in container openings, including but not limited to pressure relief devices, shutoff valves, backflow check valves, excess flow check valves, internal valves, liquid level gauges, pressure gauges, and plugs.

(16) [(17)] Conversion--The changes made to a vehicle to allow it to use LNG as a motor fuel.

[(18) Design pressure--The pressure for which a system or portion of that system is designed.]

(17) [(19)] Dike--A structure used to establish an impounding area.

(18) [(20)] Director--The director of AFS [the AED] or the director's delegate.

(19) [(21)] Dispensing system--That combination of valves, meters, hoses, piping, electrical connections, and fuel connections used to distribute LNG to mobile or motor fuel containers.

(20) [(22)] DOT--The United States Department of Transportation.

(21) [(23)] Employee--Any individual who renders or performs any services or labor for compensation, including individuals hired on a part-time or temporary basis, full-time or permanent basis, [; independent contractors, [; and owner-employees.

[(24) Failsafe--Design features which provide for safe conditions in the event of a malfunction of control devices or an interruption of an energy source or an emergency shutdown.]

(22) [(25)] Final approval--The authority issued by AFS [LP-Gas Operations] allowing the introduction of LNG into a container and system.

(23) [(26)] Fired equipment--Any equipment in which the combustion of fuels takes place.

[(27)] Fixed-length dip tube--A pipe with a fixed open end positioned inside a container at a designated elevation to measure a liquid level.]

(24) [(28)] Ignition source--Any item, substance, or event having adequate temperature and energy release of the type and magnitude sufficient to ignite any flammable mixture of gases or vapors that could occur at a site.

(25) [(29)] Impounding area--An area defined through the use of dikes or the topography at the site for the purpose of containing any accidental spill of LNG.

[(30)] Individual--One human being. (See also "Person".)]

(26) [(31)] Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of an LNG installation.

(27) [(32)] Labeled--The attachment to equipment or materials of a label, symbol, or other identifying mark of a nationally recognized testing laboratory or a Category 50 licensee which conducts product evaluation, periodically inspects production of listed equipment or materials, and which publishes its findings in a list indicating that the equipment either meets appropriate standards or has been tested and found suitable for use in a specified manner.

[(33)] LFL--Lower flammability limit.]

(28) [(34)] Licensed--Authorized by the Commission to perform LNG activities through the issuance of a valid license by AFS [LP-Gas Operations].

(29) [(35)] Licensee--A person which has applied for and [An applicant that has] been granted an LNG license by the Commission [LP-Gas Operations].

[(36)] Listed--The inclusion of equipment or materials in a list published by a nationally recognized testing laboratory or a Category 50 licensee which conducts product evaluation, periodically inspects production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.]

(30) [(37)] LNG--Natural gas, consisting primarily of methane in liquid or semisolid state [, that has been condensed to liquid by cooling].

(31) [(38)] LNG system--A system of safety devices, containers, piping, fittings, valves, regulators, and other LNG equipment intended for use or used with a motor vehicle fueled by LNG and any system or other facilities designed to be used or used [installed at a facility or on a vehicle and designed for use] in the sale, storage, transportation for delivery, or distribution of LNG.

(32) [(39)] LNG transport--Any vehicle or combination of vehicles and LNG containers designed or adapted for use or used principally as a means of moving or delivering LNG from one place to another, including but not limited to any truck, trailer, semi-trailer, cargo tank, or other vehicle used in the distribution of LNG.

[(40)] LP-Gas Operations--The organizational unit of the AED that administers the LNG safety program, including licensing, truck registration, installation approvals, complaint and accident inves-

tigations, inspections of stationary installations and vehicles, and code enforcement.]

(33) [(41)] Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county, and which is used primarily in the conveyance of the general public.

(34) [(42)] Maximum allowable working pressure--The maximum gauge pressure permissible at the top of completed equipment, containers, or vessels in their operating position for a design temperature.

(35) [(43)] Mobile fuel container--An LNG container mounted on a vehicle [and used] to store LNG as the fuel supply for uses other than the engine to propel the vehicle, including use in an auxiliary engine [motor fuel].

(36) [(44)] Mobile fuel system--An LNG system to supply natural gas fuel to an auxiliary engine other than the engine used to propel the vehicle or for other uses on the vehicle.

(37) [(45)] Motor fuel container--An LNG container mounted on a vehicle and used to store LNG as the fuel supply to an engine used to propel the vehicle.

(38) [(46)] Motor fuel system--An LNG system to supply natural gas [LNG] as a fuel for an engine used to propel the vehicle.

(39) [(47)] NEC--National Electrical Code (NFPA 70).

(40) [(48)] NFPA--National Fire Protection Association.

(41) [(49)] Noncombustible material--A solid material which in no conceivable form or combination with other material will ignite.

[(50)] Nonlicensee--A person not required to be licensed, but which shall comply with all other applicable rules in this chapter.]

(42) [(51)] Operations supervisor--An individual who is certified by the Commission to actively supervise a licensee's LNG activities and who is authorized by the licensee to implement operational changes [supervises LNG operations at an outlet].

(43) [(52)] Outlet--A site operated by an LNG licensee from which any regulated LNG activity is performed [at which the business conducted materially duplicates the operation for which the licensee is initially granted a license].

(44) [(53)] Person--An individual, [sole proprietor,] partnership, firm, joint venture, corporation, association, or any other business entity, a state agency or institution, county, municipality, school district, [or] other governmental subdivision, or licensee.

(45) [(54)] Point of transfer--The point at which a connection is made to transfer LNG from one container to another.

(46) [(55)] Pressure relief device [valve]--A device, including a pressure relief valve, which is designed both to open automatically to prevent a continued rise of internal fluid pressure in excess of a specified value (set pressure) and to close when the internal fluid pressure is reduced below the set pressure.

(47) [(56)] Pressure vessel--A container or other component designed in accordance with the ASME Code.

(48) [(57)] Property line--The [That] boundary which designates the point at which one real property interest ends and another begins.

(49) [(58)] PSIG--Pounds per square inch gauge.

(50) [(59)] Public transportation vehicle--A vehicle for hire to transport persons, [or service to the general public] including but not

limited to taxis, buses (excluding school buses, mass transit or special transit vehicles), and airport courtesy cars.

(51) Pullaway--The accidental separation of a hose from a cylinder, container, transfer equipment, or dispensing equipment, which could occur on a cylinder, container, transfer equipment, or dispensing equipment whether or not they are protected by a pullaway or breakaway device.

(52) Registered manufacturer--A person who has applied for and been granted a registration to manufacture LNG containers by the Commission.

(53) [(60)] Repair to container--The correction of damage or deterioration to an LNG container, the alteration of the structure of such a container, or the welding on such a container in a manner which causes the temperature of the container to rise above 400 degrees Fahrenheit.

(54) Rules examination--The Commission's written examination that measures an examinee's working knowledge of Texas Natural Resources Code, Chapter 116, and the rules in this chapter.

(55) [(61)] School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(56) [(62)] School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(57) [(63)] Special transit vehicle--A vehicle designed with limited passenger capacity which is primarily used by a [school or] mass transit authority for special transit purposes such as transport of mobility impaired individuals.

(58) [(64)] Temporary installation--A stationary installation at which LNG activities are performed for 12 months or less pursuant to §14.2043 of this title (relating to Temporary Installations) [dispensing station, either skid-mounted or on a transport unit, that is intended to be used for a finite period of time].

[(65)] Tentative approval--The authority issued by LP-Gas Operations without a hearing allowing construction of an LNG installation.]

[(66)] Thermal expansion relief valve--A pressure relief valve that is activated by pressure created by a fluid temperature rise.]

(59) [(67)] Trainee--An individual who has not yet taken and passed an employee-level rules examination [employed by a licensee for a period not to exceed 45 days without that individual having successfully completed the required examinations for the LNG activities to be performed].

(60) [(68)] Transfer area--That portion of an LNG refueling station where LNG is introduced into or dispensed from a stationary installation.

(61) [(69)] Transfer system--All piping, fittings, valves, pumps, meters, hoses, bulkheads, and equipment used in transferring LNG between containers.

[(70)] Transition joint--A connector fabricated of two or more metals used to join piping sections of two different materials.]

(62) [(71)] Transport--Any container built in accordance with ASME or DOT specifications and used to transport LNG for delivery [bobtail or semi-trailer equipped with one or more containers].

(63) [(72)] Transport system--Any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(64) [(73)] Ultimate consumer--The person controlling LNG immediately prior to its ignition.

[(74)] Vaporizer--A device other than a container that receives LNG in liquid form and adds sufficient heat to convert the liquid to a gaseous state.]

(65) [(75)] Water capacity--The amount of water in gallons required to fill a container.

§14.2010. LNG [Report] Forms.

Forms required to be filed with AFS shall be those prescribed by the Commission. A complete set of all required forms shall be posted on the Commission's web site. Notice of any new or amended forms shall be issued by the Commission. Any form filed with the Commission shall be completed in its entirety. A person may file the prescribed form on paper or use any electronic filing process. The Commission may at its discretion accept an earlier version of a prescribed form, provided that it contains all required information. [Under the provisions of the Texas Natural Resources Code, Chapter 116, the Commission has designated the following forms for use.]  
[Figure: 16 TAC §14.2010]

§14.2013. License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals.[Licenses and Fees.]

(a) A prospective licensee may apply to AFS [LP-Gas Operations] for one or more licenses specified in subsection (b)(1) - (8) of this section. A prospective container manufacturer may apply to AFS for a container manufacturer registration specified in subsection (d) of this section. Fees required to be paid shall be those established by the Commission and in effect at the time of application [licensing] or renewal and shall be paid at the time of application or renewal.

(b) The license categories and fees are as follows:

(1) A Category 15 license for container assembly and repair [manufacturers and/or fabricators] authorizes the [manufacture, fabrication,] assembly, repair, installation, subframing, testing, and sale of LNG containers, including LNG motor or mobile fuel containers and systems, and the repair and installation of transport and transfer systems [for use in Texas]. The original license fee is \$1,000; the renewal fee is \$600.

(2) A Category 20 license for transport outfitters authorizes the subframing, testing, and sale of LNG transport containers; the testing of LNG storage containers; the installation, testing, and sale of LNG motor or mobile fuel containers and systems; and the installation and repair of transport systems and motor or mobile fuel systems [for use in Texas]. The original license fee is \$400; the renewal fee is \$200.

(3) A Category 25 license for carriers authorizes the transportation of LNG by transport, including the loading and unloading of LNG. The original license fee is \$1,000; the renewal fee is \$300.

(4) A Category 30 license for general installers and repairmen authorizes the sale, repair, service, and installation of stationary containers and LNG systems. The original license fee is \$100; the renewal fee is \$70.

(5) A Category 35 license for retail and wholesale dealers authorizes the storage, sale, transportation, and distribution of LNG and all other activities included in this section, except the manufacture, fabrication, assembly, repair, subframing, and testing of LNG containers. The original license fee is \$750; the renewal fee is \$300.

(6) A Category 40 license for general public dispensing stations authorizes the storage, sale, and dispensing of LNG into motor

and mobile fuel containers. The original license fee is \$150; the renewal fee is \$70.

(7) A Category 45 license for engine and mobile ~~motor~~ fuel authorizes the sale and installation of LNG motor or mobile fuel containers, and the sale, repair, and installation of LNG motor or mobile fuel systems. The original license fee is \$100; the renewal fee is \$50.

(8) A Category 50 license for testing laboratories authorizes the testing of LNG containers, LNG motor fuel systems or mobile fuel systems, transfer systems, and transport systems for the purpose of determining the safety of the containers or systems for LNG service, including the necessary installation, disconnection, reconnection, testing, and repair of LNG motor fuel systems or mobile fuel systems, transfer systems, and transport systems involved in the testing of containers. The original license fee is \$200; the renewal fee is \$100.

~~[(e) An original manufacturer of a new motor vehicle powered by LNG; or a subcontractor of a manufacturer who produces a new LNG powered motor vehicle for the manufacturer, is not subject to the licensing requirements of this title, but shall comply with all other rules in this chapter.]~~

~~[(d) Public or private entities performing LNG activities for their own vehicles are not required to be licensed. Public or private entities performing any LNG activities for the general public are required to be licensed.]~~

(c) ~~[(e)]~~ A military service member, military veteran, or military spouse shall be exempt from the original license fee specified in subsection (b) of this section pursuant to the requirements in §14.2015 ~~§14.2014~~ of this title (relating to Military Fee Exemption). An individual who receives a military fee exemption is not exempt from renewal or transport registration fees specified in §14.2014 ~~§14.2016~~ and §14.2704 of this title (relating to Application for License or Manufacturer Registration (New and Renewal) [Licensing Requirements]; and Registration and Transfer of LNG Transports), respectively~~[])~~.

(d) A container manufacturer registration authorizes the manufacture, assembly, repair, testing and sale of LNG containers. An original registration fee is \$1,000; the renewal fee is \$600.

§14.2014. Application for License or Manufacturer Registration (New and Renewal).

(a) No person may engage in any LNG activities until that person has obtained a license from the Commission authorizing the LNG activities, except as follows:

(1) A state agency or institution, county, municipality, school district, or other governmental subdivision is exempt from licensing requirements as provided in Texas Natural Resources Code, §116.031(d) if the entity is performing LNG activities on its own behalf but is required to obtain a license to perform LNG activities for or on behalf of a second party.

(2) An original manufacturer of a new motor vehicle powered by LNG, or a subcontractor of a manufacturer who produces a new LNG powered motor vehicle for the manufacturer is not subject to the licensing requirements of this chapter, but shall comply with all other rules in this chapter.

(3) An ultimate consumer is not subject to the licensing requirements of this chapter in order to perform those LNG activities dealing only with the ultimate consumer; however, a license is required to register a transport or cylinder delivery unit. An ultimate consumer's license does not require a fee or a company representative.

(b) An applicant for license shall not engage in LNG activities until it has employed a company representative who meets the require-

ments of §14.2025 of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors).

(c) Licensees, registered manufacturers, company representatives, and operations supervisors at each outlet shall have copies of all current licenses and/or manufacturer registration certificates and certification cards for employees at that location available for inspection during regular business hours. In addition, licensees and registered manufacturers shall maintain a current version of the rules in this chapter and any adopted codes covering LNG activities performed by the licensee or manufacturer, and shall provide at least one copy of all publications to each company representative and operations supervisor. The copies shall be available to employees during business hours.

(d) Licenses and manufacturer registrations issued under this chapter expire one year after issuance at midnight on the last day of the month prior to the month in which they are issued.

(e) If a license or registration expires, the person shall immediately cease LNG activities.

(f) Applicants for a new license shall file with AFS:

(1) a properly completed LNG Form 2001 listing all names under which LNG-related activities requiring licensing are to be conducted and the applicant's properly qualified company representative, and the following forms or documents as applicable:

(A) LNG Form 2001A if the applicant will operate any outlets pursuant to subsection (g) of this section;

(B) LNG Form 2007 and any information requested in §14.2704 of this title (relating to Registration and Transfer of LNG Transports) if the applicant intends to register any LNG transports;

(C) LNG Form 2019 if the applicant will be transferring the operation of an existing storage or retail facilities;

(D) any form required to comply with §14.2031 of this title (relating to Insurance Requirements);

(E) a copy of current certificate of account status if required by §14.2028 of this title (relating to Franchise Tax Certification and Assumed Name Certificates); and/or

(F) copies of the assumed name certificates if required by §14.2028 of this title; and

(2) payment for all applicable fees.

(A) If the applicant submits the payment by mail, the payment shall be in the form of a check, money order or printed copy of an online receipts.

(B) If the applicant pays the applicable fee online, the applicant shall submit a copy of an online payment receipt via mail, email or fax.

(g) A licensee shall submit LNG Form 2001A listing all outlets operated by the licensee.

(1) Each outlet shall employ an operations supervisor who meets the requirements of §14.2025 of this title.

(2) Each outlet shall be listed on the licensee's renewal specified in subsection (j) of this section.

(h) Beginning February 15, 2021, a prospective container manufacturer may apply to AFS to manufacture LNG containers in the state of Texas. Beginning February 15, 2021, a person shall not engage in the manufacture of LNG containers in this state unless that person has obtained a container manufacturer's registration as specified in this subsection.



(1) Applicants for container manufacturer registration shall file with AFS LNG Form 2001M, and the following forms or documents as applicable:

(A) any form required by §14.2031 of this title;

(B) a copy of current certificate of account status if required by §14.2028 of this title;

(C) copies of the assumed name certificates if required by §14.2028 of this title;

(D) a copy of current DOT authorization. A registered manufacturer shall not continue to operate after the expiration date of the DOT authorization; and/or

(E) a copy of current ASME Code, Section VIII certificate of authorization or "R" certificate. If ASME is unable to issue a renewed certificate of authorization prior to the expiration date, the manufacturer may request in writing an extension of time not to exceed 60 calendar days past the expiration date. The request for extension shall be received by AFS prior to the expiration date of the ASME certificate of authorization referred to in this section, and shall include a letter or statement from ASME that the agency is unable to issue the renewal certificate of authorization prior to expiration and that a temporary extension will be granted for its purposes. A registered manufacturer shall not continue to operate after the expiration date of an ASME certificate of authorization until the manufacturer files a current ASME certificate of authorization with AFS or AFS grants a temporary exception.

(2) By filing LNG Form 2001M, the applicant certifies that it has read the requirements of this chapter and shall comply with all applicable rules, regulations and adopted standards.

(3) The required fee shall accompany LNG Form 2001M. An original registration fee is \$1,000; the renewal fee is \$600.

(A) If submitted by mail, payment shall be by check, money order, or printed copy of an online receipt.

(B) If submitted by email or fax, payment shall be a copy of an online receipt.

(4) If a manufacturer registration expires or lapses, the person shall immediately cease the manufacture, assembly, repair, testing and sale of LNG containers in Texas.

(i) AFS will review an application for license or registration to verify all requirements have been met.

(1) If errors are found or information is missing in the application or other documents, AFS will notify the applicant of the deficiencies in writing.

(2) The applicant must respond with the required information and/or documentation within 30 days of the written notice. Failure to respond by the deadline will result in withdrawal of the application.

(3) If all requirements have been met AFS will issue the license or manufacturer registration and send the license or registration to licensee or manufacturer, as applicable.

(j) For license and manufacturer registration renewals:

(1) AFS shall notify the licensee or registered manufacturer in writing at the address on file with AFS of the impending license or manufacturer registration expiration at least 30 calendar days before the date the license or registration is scheduled to expire.

(2) The renewal notice shall include copies of applicable LNG Forms 2001, 2001A, and 2007 or LNG Form 2001M showing the information currently on file.

(3) The licensee or registered manufacturer shall review and return all renewal documentation to AFS with any necessary changes clearly marked on the forms. The licensee or registered manufacturer shall submit any applicable fees with the renewal documentation.

(4) Failure to meet the renewal deadline set forth in this section shall result in expiration of the license or manufacturer registration.

(5) If a person's license or manufacturer registration expires, that person shall immediately cease performance of any LNG activities authorized by the license or registration.

(6) If a person's license or manufacturer registration has been expired for 90 calendar days or fewer, the person shall submit a renewal fee that is equal to 1 1/2 times the renewal fee in §14.2013 of this title (relating to License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations and Renewals).

(7) If a person's license or manufacturer registration has been expired for more than 90 calendar days but less than one year, the person shall submit a renewal fee that is equal to two times the renewal fee.

(8) If a person's license or manufacturer registration has been expired for one year or more, that person shall not renew, but shall comply with the requirements for issuance of an original license or manufacturer registration under this section and §14.2013 of this title.

(9) After verification that the licensee or registered manufacturer has met all requirements for licensing or manufacturer registration, AFS shall renew the license or registration and send the applicable authorization to the licensee or manufacturer.

(k) Applicants for license or license renewal in the following categories shall comply with these additional requirements:

(1) An applicant for a Category 20 or 50 license or renewal shall file with AFS a completed LNG Form 2505, certifying that the applicant will follow the testing procedures indicated. LNG Form 2505 shall be signed by the appropriate LNG company representative designated on the licensee's LNG Form 2001.

(2) An applicant for Category 15, 20, or 50 license or renewal who tests tanks, subframes LNG cargo tanks, or performs other activities requiring DOT registration shall file with AFS a copy of any applicable current DOT registrations. Such registration shall comply with Title, 40 Code of Federal Regulations, Part 107 (Hazardous Materials Program Procedures), Subpart F (Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers and Repairers and Cargo Tank Motor Vehicle Assemblers).

§14.2015. Military Fee Exemption.

(a) This section applies to military service members, military veterans, or military spouses, as those terms are defined in Texas Occupations Code, Chapter 55.

(b) The Commission shall waive license and examination fees for:

(1) a military service member or military veteran whose service, training, or education meets the Commission's licensing or certification requirements in this chapter; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction with licensing requirements substantially equivalent to the Commission's licensing requirements in this chapter.

(c) To receive a military fee exemption, an applicant for a fee exemption shall file with the Commission LNG Form 2035 and any documentation required by this subsection.

(1) A military service member or military veteran whose service, training, or education meets the Commission's requirements for licensing or certification shall submit the following documentation with LNG Form 2035:

(A) a copy of any military records showing the applicant's dates of service;

(B) a copy of the applicant's driver's license or state-issued identification card; and either

(C) any military service history for the applicant showing that LNG activities were performed, including a description of the types of LNG activities that were performed; or

(D) any military LNG training or education the applicant received, including a description of the types of LNG activities the training or education covered.

(2) A military service member or military veteran who holds a current license issued by another jurisdiction with licensing requirements substantially equivalent to the Commission's requirements in this chapter shall submit the following documentation with LNG Form 2035:

(A) a copy of the license issued by the named jurisdiction;

(B) a description of the types of LNG activities that were performed under the license;

(C) a copy of any military records showing the applicant's dates of service; and

(D) a copy of the applicant's driver's license or state-issued identification card.

(3) A military spouse who holds a current license issued by another jurisdiction with licensing requirements substantially equivalent to the Commission's requirements in this chapter shall submit the following documentation with LNG Form 2035:

(A) a copy of the license issued by the named jurisdiction;

(B) a description of the types of LNG activities that were performed under the license;

(C) a copy of the applicant's driver's license or state-issued identification card;

(D) a copy of the military service member's military records, including dates of service; and

(E) a copy of a valid marriage license between the applicant and the individual listed on the military records.

(d) The Commission shall review LNG Form 2035 and required documentation to determine if the requirements for the fee exemption have been met and shall notify the applicant of the determination in writing within 30 days.

(1) If all requirements have been met, the applicant may submit the application for license or examination and attach a copy of the written notice granting military fee exemption with the application to serve as notice of payment.

(2) If the Commission has notified the applicant that the application is incomplete, the applicant shall provide any requested information or documentation within 30 days of the date of the notice.

(e) A military service member, military veteran, or military spouse who receives a military fee exemption is not exempt from, and may not use this section to circumvent, the requirements in this chapter to obtain a license or become certified by examination; license or certification renewal requirements; or any transport registration requirements or fees.

#### §14.2016. Penalty Guidelines and Enforcement.

(a) Penalty guidelines for LNG safety violations.

(1) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging licensees, certificate holders and registered manufacturers to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank LNG-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

(2) Guidelines. This section complies with the requirements of Texas Natural Resources Code, §81.0531. The penalty amounts contained in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of Texas Natural Resources Code, Chapter 116; of rules, orders, licenses, registrations, permits, or certificates relating to LNG safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference.

(3) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to assess administrative penalties. The typical minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Chapter 116; of rules, orders, licenses, registrations, permits, or certificates relating to LNG safety adopted or issued under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

(4) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(A) the person's history of previous violations;

(B) the seriousness of the previous violations;

(C) any hazard to the health or safety of the public; and

(D) the demonstrated good faith of the person charged.

(5) Typical penalties. Regardless of the method by which the typical penalty amount is calculated, the total penalty amount will be within the statutory limit. Typical penalties for violations of Texas Natural Resources Code, Chapter 116; of rules, orders, licenses, registrations, permits, or certificates relating to LNG safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, are set forth in Table 1.

Figure: 16 TAC §14.2016(a)(5)

(6) Penalty enhancements for certain violations. For violations that involve threatened or actual safety hazards, or that result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty. The enhancement may be in any amount in the range shown for each type of violation, as shown in Table 2.

Figure: 16 TAC §14.2016(a)(6)

(7) Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.

Figure 1: 16 TAC §14.2016(a)(7)

Figure 2: 16 TAC §14.2016(a)(7)

(8) Penalty reduction for settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(9) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

(10) Other sanctions. Depending upon the nature of and the consequences resulting from a violation of the rules in this chapter, the Commission may impose a non-monetary penalty, such as requiring attendance at a safety training course, or may issue a warning.

(11) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.

Figure: 16 TAC §14.2016(a)(11)

(b) Denial, suspension, or revocation of licenses, manufacturer registrations, or certificates.

(1) The Commission may deny, suspend, or revoke a license, manufacturer registration, or certificate for any person who fails to comply with this chapter.

(A) If AFS determines that an applicant for license, manufacturer registration, certificate, or renewal has not met the requirements of this chapter, AFS shall notify the applicant in writing of the reasons for the proposed denial. In the case of an applicant for license, manufacturer registration, or certificate, the notice shall advise the person that the application may be resubmitted within 30 calendar days of receipt of the denial with all cited deficiencies corrected, or, if the person disagrees with AFS=determination, that person may request in writing a hearing on the matter within 30 calendar days of receipt of the notice of denial.

(B) If a person resubmits the application within 30 calendar days of receipt of the denial with all deficiencies corrected, AFS shall issue the license, manufacturer registration, certificate, or renewal as applicable.

(2) Hearing regarding denial of license, manufacturer registration, certificate, or associated renewals.

(A) An applicant receiving a notice of denial may request a hearing to determine whether the applicant did comply in all respects with the requirements for the license, registration, or certificate sought. The request for hearing shall be in writing, shall refer to the specific requirements the applicant claims were met, and shall be submitted to AFS within 30 calendar days of the applicant's receipt of the notification of denial.

(B) Upon receipt of a request complying with this paragraph, AFS shall forward the request for a hearing to the Hearings Division for the purpose of scheduling a hearing.

(C) If, after hearing, the Commission finds the applicant's claim has been supported, the Commission may issue an order approving the license, manufacturer registration, or certificate and AFS shall issue the license, manufacturer registration, certificate, or associated renewal if applicable.

(D) If, after hearing, the Commission finds that the applicant does not comply with the requirements of this chapter the Commission may issue an order denying the application or renewal.

(3) Alleged violations and notice of non-compliance.

(A) If AFS finds by means including, but not limited to, inspection, review of required documents submitted, or complaint by a member of the general public or any other person, a probable or actual violation of or noncompliance with Texas Natural Resources Code, Chapter 116, or the rules in this chapter, AFS shall notify the licensee, registered manufacturer, or certified person of the alleged violation or noncompliance in writing.

(B) The notice shall specify the acts, omissions, or conduct constituting the alleged violation or noncompliance and shall designate a date not less than 30 calendar days or more than 45 calendar days after the licensee, registered manufacturer, or certified person receives the notice by which the violation or noncompliance shall be corrected or discontinued. If AFS determines the violation or noncompliance may pose imminent peril to the health, safety, or welfare of the general public, AFS may notify the licensee, registered manufacturer, or certified person orally with instruction to immediately cease the violation or noncompliance. When oral notice is given, AFS shall follow it with written notification no later than five business days after the oral notification.

(C) The licensee, registered manufacturer, or certified person shall either report the correction or discontinuance of the violation or noncompliance within the time frame specified in the notice or shall request an extension of time in which to comply. The request for extension of the time to comply shall be received by AFS within the same time frame specified in the notice for correction or discontinuance.

(4) Hearing regarding suspension or revocation of licenses, manufacturer registrations, and certificates. If a licensee, registered manufacturer, or certified person disagrees with the determination of AFS under this subsection, that person may request a public hearing on the matter as specified in Chapter 1 of this title (relating to Practice and Procedure). The request shall be in writing, shall refer to the specific rules or statutes the licensee, registered manufacturer, or certified person claims to have complied with, and shall be received by AFS

within 30 calendar days of the person's receipt of the notice of violation or noncompliance. AFS shall forward the request for hearing to the Hearings Division.

§14.2019. Examination [Certification] Requirements and Renewals.

(a) Requirements and application for a new certificate. [This section applies to all licensees and their employees who perform LNG activities, and to any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined by this chapter as an LNG transport, including any employee of such ultimate consumer if that employee drives or in any way operates such an LNG transport. Only paragraph (2) of this subsection applies to an employee of a state agency or institution, county, municipality, school district, or other governmental subdivision. Driving a motor vehicle powered by LNG or fueling of motor vehicles for an ultimate consumer by the ultimate consumer or its employees do not in themselves constitute LNG activities.]

(1) In addition to NFPA 52 §§4.1 and 4.2 and 59A §14.9, no person shall perform work, directly supervise LNG activities, [No individual may work] or be employed in any capacity requiring [which requires] contact with LNG unless that individual: [or LNG systems until that individual has submitted to and passed an examination measuring the competence of that individual to perform the LNG activities anticipated and the individual's working knowledge of the Texas Natural Resources Code and the rules in this chapter related to the type of LNG work anticipated. Table 1 of this section specifies which requirements, indicated with an asterisk, apply to each category of license.]

(A) is a certificate holder who is in compliance with renewal requirements in subsection (g) of this section and is employed by a licensee; or

(B) is a trainee who complies with subsection (f) of this section.

(2) Any person transporting LNG on a public roadway must be properly certified, even if the unit is operated by an ultimate consumer [Each individual who performs LNG activities as an employee of an ultimate consumer or a state agency, county, municipality, school district, or other governmental subdivision shall be properly supervised by his or her employer. Any such individual who is not certified by AFRED to perform such LNG activities shall be properly trained by a competent person in the safe performance of such LNG activities].

(b) Rules examination.

(1) An individual who passes the applicable rules examination with a score of at least 75% will become a certificate holder. AFS will send a certificate to the licensee listed on LNG Form 2016. If a licensee is not listed on the form, AFS will send the certificate to individual's personal address.

(A) Successful completion of any required examination shall be credited to the individual.

(B) An individual who has been issued a certificate shall make the certificate readily available and shall present it to any Commission employee or agent who requests proof of certification.

(2) [(3)] An applicant for [individual wishing to submit to] examination shall bring to the exam site:

(A) a completed [file] LNG Form 2016; and

(B) payment of the applicable fee specified in paragraph (3)(B) of this subsection [along with the appropriate fee listed in subsection (e) of this section with AFRED].

[Figure: 16 TAC §14.2019(a)(3)]

(3) [(4)] An individual who files [has filed] LNG Form 2016 and pays the applicable nonrefundable examination fee may take the rules examination [at the Commission's AFRED Training Center, 6506 Bolm Road, Austin, Texas, between the hours of 8:00 a.m. and 12:00 noon, Monday through Friday, except for state holidays, and at other designated times and locations around the state. Tuesdays and Thursdays are the preferred days for examinations at the AFRED Training Center].

(A) Dates and locations of available Commission LNG examinations may be obtained in the Austin offices of AFS [AFRED] and on the Commission's web site, and shall be updated at least monthly. Examinations may [shall] be conducted at the Commission's AFS Training Center in Austin between the hours of 8:00 a.m. and 12:00 noon, Monday through Friday, except for state holidays, and at other designated times and [in other] locations around the state. Individuals or companies may request in writing that examinations be given in their area. AFS [AFRED] shall schedule its examinations and locations at its discretion.

(B) Exam fees.

(i) The nonrefundable management-level rules examination fee is \$70.

(ii) The nonrefundable employee-level rules examination fee is \$40.

(iii) The nonrefundable examination fees shall be paid each time an individual takes an examination.

(iv) A military service member, military veteran, or military spouse shall be exempt from the examination fee pursuant to §14.2015 of this title (relating to Military Fee Exemption). An individual who receives a military fee exemption is not exempt from renewal fees specified in subsection (g) of this section.

[(5)] [Within 15 days of the date an individual takes an examination, AFRED shall notify the individual of the results of the examination. The individual shall pass the rules examination with a score of at least 75%.]

[(A)] [If the examination is graded or reviewed by a testing service, AFRED shall notify the individual of the examination results within 14 days of the date AFRED receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, AFRED shall notify the individual of the reason for the delay before the 90th day. AFRED may require a testing service to notify an individual of the individual's examination results.]

[(B)] [Successful completion of any required examination shall be credited to the individual. An individual who has been issued a certification card shall make the card readily available and shall present the card to any Commission employee or agent who requests proof of certification.]

[(C)] [Any individual who fails an examination shall be immediately disqualified from performing any LNG activities covered by that examination. If requested by an individual who failed the examination, AFRED shall furnish the individual with an analysis of the individual's performance on the examination. Any individual who fails an examination administered by AFRED at the Austin location only may retake the same examination one additional time during a business day. Any subsequent examination shall be taken on another business day, unless approved by the AFRED director.]

(C) [(6)] Time limits.

(i) [(A)] An [Effective June 1, 2008, an] applicant shall complete the examination within the time limits specified in this subparagraph.

(l) The employee-level LNG Delivery Truck Driver examination and the management-level Category 35 Retail and Wholesale Dealers examination shall be limited to [within] three hours; and

(II) [shall complete] all other examinations shall be limited to [within] two hours.

(ii) [(B)] The examination proctor shall be the official timekeeper.

(iii) [(C)] An examinee shall submit the examination and the answer sheet to the examination proctor before or at the end of the established time limit for an examination.

(iv) [(D)] The examination proctor shall mark any answer sheet that was not completed within the time limit.

(D) Each individual who performs LNG activities as an employee of an ultimate consumer or a state agency, county, municipality, school district, or other governmental subdivision shall be properly supervised by his or her employer. Any such individual who is not certified by the Commission to perform LNG activities shall be properly trained by a competent person in the safe performance of such LNG activities.

(c) The following examinations are offered by the Commission.

(1) Employee-level examinations:

(A) The Delivery Truck Driver examination qualifies an individual to operate a transport, load and unload LNG and connect and disconnect transfer hoses, and to perform all activities related to stationary LNG systems, including LNG containers, piping and equipment.

(B) The Service and Installation Technician examination qualifies an individual to perform all CNG activities related to stationary LNG systems, including LNG containers, piping and equipment. The Service and Installation examination does not authorize an individual to fill containers or operate an LNG transport.

(C) The Transport Truck Driver examination qualifies an individual to operate an LNG transport, to load and unload LNG, and connect and disconnect transfer hoses. The Transport Driver examination does not authorize an individual to install or repair transport systems.

(D) The Engine Fuel examination qualifies an individual to install LNG motor fuel containers and LNG motor fuel systems, and replace container valves on motorized vehicles licensed to operate on public roadways. The Engine Fuel examination does not authorize an individual to fill LNG motor fuel containers.

(E) The Motor/Mobile Fuel Filler examination qualifies an individual to inspect and fill motor or mobile fuel containers on vehicles, including recreational vehicles, cars, trucks, and buses. The Motor/Mobile Fuel Dispensing examination does not authorize an individual to fill stationary LNG containers.

(2) Management-level examinations:

(A) Category 15 examination qualifies an individual to assemble, repair, install, test, and sell LNG containers, including LNG motor or mobile fuel containers and systems, and to repair transport and transfer systems for use in Texas.

(B) Category 20 examination qualifies an individual to subframe, test, and sell LNG transport containers, test LNG storage containers, install, test, and sell LNG motor or mobile fuel containers and systems, and install and repair transport systems and motor or mobile fuel systems for use in Texas.

(C) Category 25 examination qualifies an individual to transport LNG by transport, including the loading and unloading of LNG.

(D) Category 30 examination qualifies an individual to sell, repair, service, and install stationary containers and LNG systems.

(E) Category 35 examination qualifies an individual to store, sell, transport, and distribute LNG and all other activities included in this section except manufacture, fabrication, assembly, repair, subframing, and testing of LNG containers.

(F) Category 40 examination qualifies an individual to store, sell, and dispense LNG into motor- and mobile fuel containers.

(G) Category 45 qualifies an individual to sell and install LNG motor or mobile fuel containers, and sell, repair, and install LNG motor or mobile fuel systems.

(H) Category 50 qualifies an individual to test LNG containers, LNG motor fuel systems or mobile fuel systems, transfer systems, and transport systems for the purpose of determining the safety of the containers or systems for LNG service, including the necessary installation, disconnection, reconnection, testing, and repair of LNG motor fuel systems or mobile fuel systems, transfer systems and transport systems involved in the testing of containers.

(d) Within 15 calendar days of the date an individual takes an examination, AFS shall notify the individual of the results of the examination.

(1) If the examination is graded or reviewed by a testing service, AFS shall notify the individual of the examination results within 14 days of the date AFS receives the results from the testing service.

(2) If the notice of the examination results will be delayed for longer than 90 days after the examination date, AFS shall notify the individual of the reason for the delay before the 90th day. AFS may require a testing service to notify an individual of the individual's examination results.

(e) Failure of any examination shall immediately disqualify the individual from performing any LNG related activities covered by the examination which is failed, except for activities covered by a separate examination which the individual has passed.

(1) Any individual who fails an examination administered by the Commission, at the Austin location, may retake the same examination one additional time during a business day.

(2) Any subsequent examination shall be taken on another business day, unless approved by the AFS director.

(3) An individual who fails an examination may request an analysis of the individual's performance on the examination.

(f) Trainees.

(1) [(b)] A licensee or ultimate consumer [other than a political subdivision] may employ an individual as a trainee for a period not to exceed 45 calendar days without that individual having successfully completed the rules examination, as specified in subsection (b) of this section, subject to the following conditions:

(A) [(4)] In addition to NFPA 52 §4.2, the [The] trainee shall be directly and individually supervised at all times by an individual who has successfully completed the Commission's rules examination for the [those] areas of work being performed by the trainee.

(B) A trainee who has been in training for a total period of 45 days, in any combination and with any number of employers, shall cease to perform any LNG activities for which the trainee is not currently certified, until the trainee successfully completes the rules examination.

[(2) The licensee or ultimate consumer other than a political subdivision shall ensure that LNG Form 2016 is on file with AFRED for each trainee at the time the trainee begins supervised LNG activities. The trainee shall then have 45 calendar days to pass the applicable rules examination.]

(2) [(3)] A trainee who fails the rules examination shall immediately cease to perform any LNG activities covered by the examination failed.

[(4) A trainee who has been in training for a total of 45 days in any combination and with any number of employers shall cease to perform any LNG activities for which the trainee is not currently certified.]

[(5) Once a trainee has taken the rules examination, the training period shall cease and the individual shall perform no LNG activities which require certification until the individual is notified by AFRED that the individual passed the examination.]

[(e) The applicant shall pay to AFRED a \$70 examination fee for each management-level examination and a \$40 fee for each employee-level examination in advance of each required examination. Examination fees are nonrefundable. An applicant who fails an examination shall pay the full examination fee for each subsequent examination.]

(g) [(d)] Requirements for certificate holder renewal.

(1) In order to maintain active status, certificate holders shall renew their certificate annually as specified in this subsection.

(2) AFS [AFRED] shall notify licensees of any of their employees' pending renewal deadlines and [renewals, or] shall notify the individual if not employed by a licensee, in writing, at the address on file with AFS [AFRED] no later than March 15 of a year for the May 31 renewal date of that year.

(3) Certificate holders [To maintain active status, a certificate holder] shall pay the nonrefundable \$25 annual certificate renewal fee to AFS [AFRED] on or before May 31 of each year. Individuals who hold more than one certificate shall pay only one annual renewal fee.

(A) [(4)] Failure to pay the nonrefundable annual renewal fee by the [renewal] deadline shall result in a lapsed certificate [a lapse of certification unless the late filing fee in paragraph (2) of this subsection is paid. If an individual's certification has been expired for one year or longer, that individual shall comply with the requirements of subsection (a) of this section].

(i) To renew a lapsed certificate, the individual shall pay the nonrefundable \$25 annual renewal fee plus a nonrefundable \$20 late-filing fee. Failure to do so shall result in the expiration of the certificate.

(ii) If an individual's certificate [certification] lapses or expires, that individual shall immediately cease performance of any LNG activities authorized by the certificate [that require certification. An individual may regain certified status only by successfully com-

pleting the examination required for the certification and meeting the requirements of paragraph (2) of this section.]

(iii) If an individual's certificate has been expired for more than two years from May 31 of the year in which the certificate lapsed, that individual shall comply with the requirements of subsection (b) of this section.

(B) [(2) Any lapsed or expired renewals submitted after May 31 of each year shall include a \$20 late-filing fee in addition to the renewal fee and proof of successful completion of the examination required for the certification no later than close of business on August 31 or, if August 31 falls on a weekend or state holiday, close of business on the last business day before August 31.] Upon receipt of the annual renewal fee and any late-filing fee, AFS shall verify that all applicable requirements have been met [renewal fee, late-filing penalty, and proof of successful completion of the examination required for the certification; AFRED shall verify that the individual's certification has not been suspended, revoked, or expired for one year or longer]. After verification, AFS [AFRED] shall renew and send a copy of the certificate, [certification] and the individual may continue or resume LNG activities authorized by that certificate.

[(e) Expired certifications. Any renewal submitted after the August 31 deadline shall be considered expired. If an individual wishes to renew a certification that has been expired for less than one year, that individual shall submit the annual renewal fee and late filing fee, and proof of successful completion of the examination required for certification. Upon verification that the individual's certificate has not been suspended, revoked, or expired for one year or longer, AFRED shall renew the individual's certification and the individual may resume LNG activities.]

[(f) A military service member, military veteran, or military spouse shall be exempt from the examination fee specified in subsection (e) of this section pursuant to the requirements in §14.2014 of this title (relating to Military Fee Exemption). An individual who receives a military fee exemption is not exempt from renewal fees specified in subsection (d) of this section.]

§14.2020. Employee Transfers.

(a) A [When a previously certified individual is hired, the] licensee or [s] ultimate consumer[, or state agency, county, municipality, school district, or other governmental subdivision] shall notify AFS [AFRED] by filing [a properly completed and signed] LNG Form 2016A and a nonrefundable \$10 [along with a \$10 filing] fee with AFS, or in lieu of LNG Form 2016A, submit the \$10 fee and a written notice including: [ Notice shall include]

(1) the employee's name as recorded with the Commission; and [on a current driver's license or Texas Department of Public Safety identification card,]

(2) the last four digits of the employee's [employee] social security number [, name of previous and new licensee-employer, and types of LNG related work to be performed by the newly-hired certified employee. A state agency, county, municipality, school district, or other governmental subdivision is exempt from this subsection if such entity chooses not to certify its employees who perform LNG activities].

(b) Upon approval of the documents submitted under subsection (a) of this section and verification of the individual's active status, AFS will send a copy of the certificate card to the new employer.

§14.2021. Requests for LNG Classes.

Requests for Commission staff [Staff] to conduct an LNG training class for LNG activities under the Commission's jurisdiction shall be submitted to the AFS [AFRED] training section. The AFS [AFRED] training

section may conduct the requested class at its discretion. The nonrefundable fee for an LNG training class is \$250 if no overnight expenses are incurred by AFS [AFRED], or \$500 if overnight expenses are incurred. AFS [AFRED] may waive the class fee in cases where the Commission recovers the cost of the class from another source, such as a grant.

*§14.2025. Designation and Responsibilities of Company Representatives [Outlet] and Operations Supervisors [Supervisor (Branch Manager)].*

(a) Each licensee shall have at least one company representative for the license and at least one operations supervisor for each outlet. [The Commission shall designate whether a site is an outlet for the purpose of this chapter. Criteria used by the Commission in determining the designation of an outlet include but are not limited to:]

{(1) distance from other LNG activities operated by the licensee;}

{(2) whether the operation duplicates the primary LNG operation; and}

{(3) whether the operation is directly supervised on a routine basis.}

(1) [(b)] A licensee maintaining one or more outlets [than one outlet] shall file LNG Form 2001 [2001A] with AFS listing the physical location of the first outlet and designating the company representative for the license and file LNG Form 2001A [LP-Gas Operations] designating the physical location and [an] operations supervisor for each additional [(branch manager) at each] outlet. [The operations supervisor shall pass the management examination administered by AFRED before commencing or continuing the licensee's operations at the outlet.]

(2) A licensee may have more than one company representative.

(3) An individual may be an operations supervisor at more than one outlet provided that:

(A) each outlet has a designated LNG certified employee responsible for the LNG activities at that outlet;

(B) the certified employee's and/or operations supervisor's telephone number is posted at the outlet on a sign with lettering at least 3/4 inches high, visible and legible during normal business hours; and

(C) the certified employee and/or operations supervisor monitors the telephone number and responds to calls during normal business hours.

(4) [(e)]The [An operations supervisor may be a] company representative may also serve as operations supervisor for one or more of the licensee's outlets provided that the person meets both the company representative and operations supervisor requirements in this section [of the licensee; however, an individual may be designated as an operations supervisor at only one outlet unless approved by LP-Gas Operations].

(5) A licensee shall immediately notify AFS in writing upon conclusion of employment, for whatever reason, of its company representative or any operations supervisor and shall at the same time designate a replacement.

(A) A licensee shall cease all LNG activities if it no longer employs a qualified company representative who complies with the Commission's requirements. A licensee shall not resume LNG activities until such time as it has a properly qualified company representative.

(B) A licensee shall cease LNG activities at an outlet if it no longer employs a qualified operations supervisor at that outlet who complies with the Commission's requirements. A licensee shall not resume LNG activities at that outlet until such time as it has a properly qualified operations supervisor.

(b) A company representative shall:

(1) be an owner or employee of the licensed entity;

(2) be the licensee's principal individual in authority and be responsible for actively supervising all LNG activities conducted by the licensee, including all equipment, container, product, and system activities;

(3) have a working knowledge of the licensee's LNG activities to ensure compliance with the rules in this chapter and the Commission's administrative requirements;

(4) pass the appropriate management-level rules examination;

(5) be directly responsible for all employees performing their assigned LNG activities, unless an operations supervisor is fulfilling this requirement; and

(6) submit any additional information as deemed necessary by AFS.

(c) In addition to NFPA 52 §§1.4.3 and 4.2, an operations supervisor shall:

(1) be an owner or employee of the licensee;

(2) pass the applicable management-level rules examination; and

(3) [(d) The operations supervisor shall] be directly responsible for actively supervising the LNG activities [operations] of the licensee at the designated outlet.

*§14.2028. Franchise Tax Certification and Assumed Name Certificates.*

(a) An applicant for an original or renewal license or registered manufacturer that is a corporation, limited partnership or limited liability company shall be approved to transact business in Texas by [in good standing with] the Texas Comptroller of Public Accounts. The licensee or registered manufacturer [of the State of Texas. An original license applicant] shall provide a copy of the current Certificate of Account Status [Franchise Tax Statement] from the Texas Comptroller of Public Accounts. [showing "In Good Standing."]

(b) All applicants [Any applicant] for license or manufacturer registrations or their corresponding renewals shall list [all names] on LNG Form 2001 or LNG Form 2001M all names under which LNG related activities requiring licensing or registration as a container manufacturer are to be conducted. Any company performing LNG activities under an assumed name ("doing business as" or "DBA") [name] shall file with AFS [LP-Gas Operations] copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the Secretary of State's Office [office].

*§14.2029. Changes in Ownership, Form of Dealership, or Name of Dealership.*

(a) Changes in ownership which require a new license or manufacturer registration.

(1) Transfer of dealership outlet or location by sale, lease, or gift. The purchaser, lessee, or donee of any dealership or outlet shall have a current and valid license or manufacturer registration authorizing the LNG activities to be performed and the dealership or outlet

shall apply for and be issued an LNG license or manufacturer registration prior to engaging in any LNG activities which require a license or manufacturer registration. The purchaser, lessee, or donee shall notify AFS by filing a properly completed LNG Form 2001 or LNG Form 2001M prior to engaging in any LNG activities at that dealership or outlet which require an LNG license or manufacturer registration.

(2) Other changes in ownership. A change in members of a partnership occurs upon the death, withdrawal, expulsion, or addition of a partner. Upon the death of a sole proprietor or partner, the dissolution of a corporation or partnership, any changes in the members of a partnership, or other changes in ownership not specifically provided for in this section, an authorized representative of the previously existing dealership or of the successor in interest shall notify AFS in writing and shall immediately cease all LNG activities of the previously existing dealership which require an LNG license or manufacturer registration and shall not resume until AFS issues an LNG license or manufacturer registration to the successor in interest.

(b) Changes in dealership business entity. When a dealership converts from one business entity into a different kind of business entity, the resulting entity shall have a valid license or manufacturer registration before engaging in any LNG activities which require an LNG license or manufacturer registration and shall immediately notify AFS in writing of the change in business entity.

(c) Dealership name change. A licensee or registered manufacturer which changes its name shall not be required to obtain a new license or manufacturer registration but shall immediately notify AFS as follows prior to engaging in any LNG activities under the new name. The licensee or registered manufacturer shall file:

- (1) an amended LNG Form 2001 or LNG Form 1001M;
- (2) an amended LNG Form 2001A, if outlet names will change;
- (3) a copy of the licensee's or registered manufacturer's business documents reflecting the name change, such as amendments to the articles of incorporation or assumed name filings;
- (4) certificates of insurance or affidavits in lieu of insurance if permitted by §14.2034 of this title (relating to Self-Insurance Requirements) or both; and
- (5) any other forms required by AFS.

(d) Company representatives and operations supervisors. In all changes of ownership, form of dealership, or name of dealership, the resulting entity shall have a properly certified company representative for the license and an operations supervisor, if required, at each outlet and as specified in §14.2025 of this title (relating to Designation and Responsibilities of Company Representative and Operations Supervisors).

(e) In the event of a death of a sole proprietor or partner, the AFS director may grant a temporary exception not to exceed 30 calendar days to the examination requirement for company representatives and operations supervisors. An applicant for a temporary exception shall comply with applicable safety requirements.

#### §14.2031. Insurance Requirements.

(a) A licensee or registered manufacturer shall not perform any activity authorized by its license or registration under §14.2013 of this title (relating to License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations and Renewals) unless insurance coverage required by this section is in effect. LNG licensees, registered manufacturers, or applicants for license or manufacturer registration shall comply with the minimum amounts of insurance specified in Table 1 of this section or with the

self-insurance requirements in §14.2034 of this title (relating to Self-Insurance Requirements). Registered manufacturers are not eligible for self-insurance. Before AFS grants or renews a manufacturer registration, an applicant for a manufacturer registration shall submit the documents required by paragraph (1) of this subsection. Before AFS grants or renews a license, an applicant for license shall submit either:

(1) an insurance Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier and containing all required information. The forms must be issued by an insurance company authorized or accepted by the Texas Department of Insurance; or

(2) properly completed documents demonstrating the applicant's compliance with the self-insurance requirements in §14.2034 of this title.  
Figure: 16 TAC §14.2031(a)(2)

{(b) Before LP-Gas Operations grants or renews a license, the applicant shall submit either:}

{(1) an insurance AcordJ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier and contains all required information. The forms must be issued by an insurance company authorized or accepted by the Texas Department of Insurance; or}

{(2) properly completed documents demonstrating the applicant's compliance with the self-insurance requirements in §14.2034 of this title (relating to Self-Insurance Requirements).}

{(3) Certificates of insurance shall be continuous in duration and shall remain on file with LP-Gas Operations during the entire period that the license is in effect.}

{(4) Documentation other than a certificate of insurance may be accepted by LP-Gas Operations as evidence of required insurance provided that the documentation contains the same information as required on a certificate of insurance. The alternative documentation may be accepted for a period not to exceed 45 days. During the temporary period, a licensee shall file with LP-Gas Operations an amended certificate of insurance which complies with the requirements of this section.}

(b) [(e)] Each licensee shall file LNG Form 2999 or other written notice with AFS [LP-Gas Operations] at least 30 calendar days before the cancellation of any insurance coverage. The 30-day period commences on the date the notice is actually received by AFS [LP-Gas Operations].

(c) [(d)] A licensee or applicant for a license that does not employ or contemplate employing any employee to be engaged in LNG-related activities in Texas may [shall] file LNG Form 2996B in lieu of filing a workers' compensation insurance form, including employers' liability insurance, or alternative accident and health insurance coverage. The licensee or applicant for a license shall file the required insurance form [forms] with AFS [LP-Gas Operations] before hiring any person as an employee engaged in LNG-related work.

(d) [(e)] A [Category 25 or 35] licensee, applicant for a license, or an ultimate consumer that does not operate or contemplate operating a motor vehicle equipped with an LNG cargo container or does not transport or contemplate transporting LNG by vehicle in any manner may [shall] file LNG Form 2997B in lieu of filing [a] motor vehicle bodily injury and property damage insurance form, if this certificate is not otherwise required. The licensee or applicant for a license shall file the required insurance form [forms] with AFS [LP-Gas Operations] before operating a motor vehicle equipped with an LNG cargo container or transporting LNG by vehicle in any manner.



(e) [(f)] A [Category 15] licensee, registered manufacturer, or applicant for a license or manufacturer registration that does not engage in or contemplate engaging in any LNG activities [LNG-related operations in Texas] that would be covered by completed operations or products [and product] liability insurance, or both, may [shall] file LNG Form 2998B in lieu of filing a completed operations and/or products [and product] liability insurance form. The licensee, registered manufacturer, or applicant for a license or manufacturer registration shall file the required insurance form [forms] with AFS [LP-Gas Operations] before engaging in any activities [operations] that require completed operations and/or products [and product] liability insurance.

(f) [(g)] A licensee, registered manufacturer, or applicant for a license or manufacturer registration that does not engage in or contemplate engaging in any activities [LNG-related operations] that would be covered by general liability insurance may [shall] file LNG Form 2998B in lieu of filing a general liability insurance form. The licensee, registered manufacturer, or applicant for a license or manufacturer registration shall file the required insurance form [forms] with AFS [LP-Gas Operations] before engaging in any activities [operations] that require general liability insurance.

(g) [(h)] A [Notwithstanding the requirements specified in Table 1 of subsection (a) of this section that each licensee carry a policy of workers' compensation insurance; the] licensee may protect its employees by obtaining accident and health insurance coverage from an insurance company authorized to write such policies in this state [Texas] as an alternative to workers' compensation coverage. The alternative coverage shall be in the amounts specified in Table 1 [of subsection (a)] of this section.

(h) [(i)] Each licensee or registered manufacturer shall promptly notify AFS [LP-Gas Operations] of any change in insurance coverage or insurance carrier by filing a [properly completed] revised [certificate of insurance; insurance] Acord™ form; other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required [that contains all the] information [required by the certificate of insurance]; or documents demonstrating the applicant's compliance with the self-insurance requirements set forth in §14.2034 of this title [(relating to Self-Insurance Requirements)]. Failure to promptly notify AFS [LP-Gas Operations] of a change in the status of insurance coverage or insurance carrier may result in an enforcement action and an administrative penalty.

(i) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements of this section for worker's compensation, general liability and/or motor vehicle liability insurance. The requirements may be met by submitting evidence of self-insurance that complies with the requirements of §14.2034 of this title. LNG Form 2995 may be filed as evidence of self-insurance, if self-insurance is permitted by the Texas Labor Code, Title 5, Subtitle C, and Texas Natural Resources Code, §116.036.

#### *§14.2034. Self-Insurance Requirements.*

(a) This section applies to a licensee's general liability insurance, including premises and operations coverage. This section shall not apply to worker's compensation insurance, including employer's liability coverage.

(b) A licensee applying for self-insurance shall file LNG Form 2027 with AFS [LP-Gas Operations;] along with materials which will allow AFS [LP-Gas Operations] to determine whether:

(1) the net worth of the applicant is adequate in relationship to the size of operations and the extent of its request for self-insurance authority. The applicant shall demonstrate that it will maintain a net worth sufficient to ensure that it will meet its statutory obligations to the

public to pay all claims relating to general liability, including premises and operations coverage; and

(2) the applicant has a sound self-insurance program. The applicant shall demonstrate that it has established and shall maintain an insurance program that will protect the public against all claims involving LNG activities to the same extent as the minimum limits specified in Table 1 of §14.2031 of this title (relating to Insurance Requirements). Such a program may include but not be limited to one or more of the following: reserves; irrevocable letter of credit, as specified in subsection (h) of this section; sinking funds; third-party financial guarantees; parent company or affiliate sureties; excess insurance coverage; or other similar arrangements.

(c) AFS [LP-Gas Operations] may consider applications for approval of other securities or agreements, or may require any other information which may be necessary to ensure the application satisfies that the security or agreement offered will afford adequate security for protection of the public.

(d) AFS [LP-Gas Operations] may approve a licensee's application for self-insurance if the licensee demonstrates to AFS [LP-Gas Operations] its ability to satisfy its obligations for the minimum insurance requirements specified in §14.2031 of this title . AFS [(relating to Insurance Requirements). LP-Gas Operations] may approve the licensee as a self-insurer for a specific time period or for an indefinite period until further action is taken by AFS [LP-Gas Operations].

(e) The applicant shall file semi-annual reports and annual statements with the applicant's financial status and status of its self-insurance program with AFS [LP-Gas Operations] during the period of its self-insurer status by March 10 and September 10 of each year.

(f) After ten days' notice to the applicant, AFS [LP-Gas Operations] may require the applicant to appear and demonstrate that it continues to have adequate financial resources to pay all general liability, including premises and operations coverage[, claims, and that it remains in compliance with the other requirements of this section. If the applicant fails to do so, AFS [LP-Gas Operations] shall revoke its self-insurer status and may order that the licensee is ineligible for self-insurance in the future.

(g) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements for workers' compensation coverage or general liability and/or motor vehicle liability insurance if permitted by the Texas Workers' Compensation Act, Texas Labor Code, Title 5, Subtitle A; and Texas Natural Resources Code, §116.036, by submitting LNG Form 2995 to AFS [LP-Gas Operations].

(h) Letters of credit filed with LNG Form 2028 shall:

(1) be issued by a federally chartered and federally insured bank authorized to do business in the United States;

(2) be irrevocable during their terms;

(3) be payable to the Commission in part or in full upon demand and receipt from the Commission of a notice of forfeiture; and

(4) not apply to the licensing requirements for worker's compensation insurance, including employer's liability coverage.

#### *§14.2040. Filings Required [and Notice Requirements] for Stationary LNG Installations.*

(a) General requirements. No LNG container shall be placed into LNG service or an installation operated or used in LNG service until the requirements of this section, as applicable, are met and the facility is in compliance with all applicable rules in this chapter and [ah] statutes. LNG systems under the jurisdiction of DOT Safety reg-

ulations in 49 CFR Part 193 shall comply with Chapter 8 of this title (relating to Pipeline Safety Regulations) prior to implementation of service. [; in addition to any applicable requirements of the municipality or the county where an installation is or will be located. A person who purchases an existing LNG installation shall file LNG Form 2019 with LP-Gas Operations within 10 calendar days of the purchase in order for the installation to remain in LNG service.]

(b) Commercial installations with an aggregate water capacity of less than 15,540 gallons.

(1) Within 10 calendar days following the completion of a commercial container installation, the licensee shall submit LNG Form 2501 to AFS stating:

(A) the installation fully complies with the statutes and the rules in this chapter;

(B) all necessary Commission licenses, certificates, and permits have been issued; and

(C) the date the installation has been placed into LNG service.

(2) The licensee shall pay a nonrefundable fee of \$10 for each LNG container listed on the form.

(A) AFS shall review the submitted information and shall notify the applicant in writing of any deficiencies.

(B) A nonrefundable \$20 fee shall be required for any resubmission.

(3) LNG activities may commence prior to the submission of LNG Form 2501 if the facility is in compliance with the rules in this chapter.

(c) Aggregate water capacity of 15,540 gallons or more.

(1) [(b)] For [Prior to the construction of a] stationary installations with [installation which would result in] an aggregate water capacity of 15,540 gallons or more, the licensee [applicant] shall submit the following information to AFS at least 30 days prior to construction:

(A) LNG Form 2500; [and]

(B) LNG Form 2500A with all applicable documents;

(C) a plat drawing from the appropriate appraisal district identifying:

(i) the facility's property boundaries;

(ii) the names of all real property owners within 500 feet; and

(iii) a 500-foot radius measured from the proposed container location on the site;

(D) a site plan of sufficient scale that identifies:

(i) fire protection which complies with §14.2131 of this title (relating to Fire Protection);

(ii) location, types, and size of all LNG containers already on site or proposed to be on site;

(iii) the distances from the container(s) to property lines and buildings;

(iv) location of LNG dispensers and their distance from the proposed container (the nearest container if more than one), property lines, buildings on the same property, roadways, driveways, and railroad track centerlines;

(v) any known potential hazards;

(vi) location of any sources of ignition;

(vii) location of other types of aboveground fuel containers, the type of fuel stored, and the distance to LNG containers and dispensing equipment;

(viii) the location of other types of fuel dispensers, the type of fuel dispensed, and the distance to LNG containers and dispensing equipment;

(E) a non-refundable fee of \$50 for the initial [\$50] application or a nonrefundable fee of \$30 for any resubmission; and [fee to LP-Gas Operations including site plans and plans and specifications for the installation at least 30 calendar days prior to construction.]

(F) if the facility is accessed by cargo tanks from a public highway under the jurisdiction of the Texas Department of Transportation, a statement or permit from the Texas Department of Transportation showing that the driveway is of proper design and construction to allow safe entry and egress of the LNG cargo tanks.

(2) Site plans shall include a scale or legend indicating the distances or measurements described and printed copies of plans with a legend must be printed to the correct size for the legend or distance provided.

(3) [(4)] Plans and specifications submitted under paragraph (1)(D) of this subsection shall be sealed by a registered professional engineer licensed and in good standing to practice in the State of Texas and who is qualified in the area of the design and construction of LNG facilities.

[(2) Plans and specifications shall include fire protection which complies with §14.2131 of this title (relating to Fire Protection).]

(4) [(3)] If the applicant modifies the plans and specifications before tentative or interim approval is granted by AFS [LP-Gas Operations] or the Commission, respectively, the plans and specifications shall be resealed by a registered professional engineer licensed to practice in the State of Texas and resubmitted to AFS. [LP-Gas Operations. A non-refundable fee of \$30 shall be required for any resubmission.]

(5) Prior to the installation of any individual LNG container, AFS shall determine whether the proposed installation constitutes a danger to the public health, safety, and welfare. The applicant shall provide additional information if requested by AFS.

(A) AFS may impose restrictions or conditions on the proposed LNG installation based on one or more of the following factors:

(i) nature and density of the population or occupancy of structures within 500 feet of the proposed or existing container locations;

(ii) nature of use of property located within 500 feet of the LNG installation;

(iii) type of activities on the installation's premises;

(iv) potential sources of ignition that might affect an LNG leak;

(v) existence of dangerous or combustible materials in the area that might be affected by an emergency situation;

(vi) any known potential hazards or other factors material to the public health, safety, and welfare.

(B) The Commission does not consider public health, safety, and welfare to include such factors as the value of property adjacent to the installation, the esthetics of the proposed installation, or similar considerations.

(6) AFS shall notify the applicant as follows:

(A) If AFS administratively approves the installation, AFS shall notify the applicant in writing within 21 business days.

(B) If the application is administratively denied:

(i) AFS shall notify the applicant in writing, specifying the deficiencies, within 21 business days.

(ii) The applicant shall modify the submission and resubmit it for approval or request a hearing on the matter in accordance with Chapter 1 of this title (relating to Practice and Procedure). The subject of the submission shall not be operated or used in LNG service in this state until approved by the Commission following a hearing.

(iii) When AFS notifies an applicant of an incomplete LNG Form 2500 or LNG Form 2500A, the applicant has 120 calendar days from the date of the notification letter to resubmit the corrected application or the application will expire. After 120 days, the applicant shall file a new application to reactivate AFS review of the proposed installation.

(iv) The applicant may request in writing an extension of the 120-day time period. The request shall be postmarked or physically delivered to AFS before the expiration date. AFS may extend the application period for up to an additional 90 days.

(7) The licensee shall not commence construction until notice of approval is received from AFS.

(A) If the subject installation is not completed within one year from the date AFS has granted construction approval, the application will expire.

(B) Prior to the date of expiration, the applicant may request in writing an extension of time of up to 90 days to complete the installation.

(C) If the applicant fails to request an extension of time within the time period prescribed in this paragraph, the applicant will be required to submit a new application before the installation can be completed.

(8) The applicant shall submit to AFS written notice of completed construction and the Commission shall complete the field inspection as specified in §14.2042 of this title (relating to Physical Inspection of Stationary Installations).

(9) The container may be placed into service after AFS has completed the inspection and determines the installation meets all safety requirements.

(10) The proposed installation shall not be operated or used in LNG service until approved by AFS.

(11) A licensee shall not be required to submit LNG Form 2500, LNG Form 2500A, or a site plan prior to the installation of pull-away devices, or emergency shutoff valves (ESV's), or when maintenance and improvements are being made to the piping system at an existing LNG installation.

(12) If a licensee is replacing a container with a container of the same or less overall diameter and length or height, and is installing the replacement container in the identical location of the existing container, the licensee shall file LNG Form 2500.

(d) AFS may request LNG Form 2008, a Manufacturer's Data Report, or any other documentation or information pertinent to the installation in order to determine compliance with the rules in this chapter.

(e) For an installation that is a licensee outlet, the operating licensee shall comply with §14.2014 of this title (relating to Applications for License or Manufacturer Registration (New and Renewal)) within 30 days of installation.

{(e) Prior to the installation of an LNG container resulting in an aggregate water capacity of 15,540 gallons or more, the applicant or licensee shall send a copy of LNG Form 2500, LNG Form 2500A, and a plat by certified mail, return receipt requested, to all owners of real property situated within 500 feet of the proposed container location(s). The applicant or licensee shall submit LNG Form 2500 to LP-Gas Operations at the same time LNG Form 2500 and LNG Form 2500A are mailed to the real property owners.}

{(1) Notice shall be considered sufficient when the applicant or licensee has provided evidence that a complete LNG Form 2500, LNG Form 2500A, and a plat have been sent to all real property owners. The applicant or licensee may obtain names and addresses of owners from current county tax rolls.}

{(2) The applicant or licensee shall notify owners of real property situated within 500 feet of the proposed container location(s) if the current aggregate water capacity of the installation is more than doubled in a 12-month period or if the resulting aggregate water capacity of the installation will be more than 214,348 gallons.}

{(3) The applicant or licensee shall retain the return receipts for Commission review, if requested.}

{(4) The site plan or drawing shall describe the facility's property or a 250-foot diameter (measured from the proposed container's location on the site), whichever is smaller, and include all containers, buildings, structures, geographical or topographical features, or any other features or activities relating to LNG which could affect the health, safety and welfare of the general public. The site plan or drawing shall include a scale or legend to indicate the distances or measurements described.}

{(5) Objections shall be filed with LP-Gas Operations within 18 days of the postmarked date on the notice letter. If LP-Gas Operations finds that the objection is not proper, LP-Gas Operations shall notify the property owner and the property owner shall have ten days from the date of LP-Gas Operations' postmarked letter to correct the objection. If one or more of the adjoining property owners files an objection and a written request with LP-Gas Operations for a hearing, the hearing shall be conducted as soon as possible and a recommendation presented to the Railroad Commission within 90 days following the hearing. When possible, the hearing shall be held in a location near the proposed site.}

{(A) LP-Gas Operations shall review all objections within 10 business days of receipt. An objection shall be in writing and shall include a statement of facts showing that the proposed installation:}

{(i) does not comply with the rules in this chapter, specifying which rules are violated;}

{(ii) does not comply with the statutes of the State of Texas, specifying which statutes are violated; or}

{(iii) constitutes a danger to the public health, safety, and welfare, specifying the exact nature of the danger. For purposes of this section, "danger" means an imminent threat or an unreasonable risk of bodily harm, but does not mean diminished property or esthetic

values in the area. The Railroad Commission does not consider public health, safety, and welfare to include such factors as the value of property adjacent to the installation, the esthetics of the proposed installation, or similar considerations.]

[(B) Upon review of the objection, LP-Gas Operations shall either:]

[(i) schedule a public hearing as specified in §14.2022 of this title (relating to Denial, Suspension, or Revocation of Licenses or Certifications; and Hearing Procedure); or]

[(ii) notify the objecting party in writing within 10 business days of receipt requesting further information for clarification and stating why the objection is being returned. The objecting entity shall have 10 calendar days from the postmark of LP-Gas Operations' letter to file its corrected objection. Clarification of incomplete or non-substantive objections shall be limited to two opportunities. If new objections are raised in the objecting party's clarification, the new objections shall be limited to one notice of correction.]

[(6) Temporary installations which are used during peak demand times such as during cold weather or emergencies are not required to comply with these notice requirements. However, a sign shall be installed at the site and brochures or other similar means of notification shall be available at the site to advise the public of the need and use for the temporary installation.]

[(d) Unless considered to be in the public interest by LP-Gas Operations, the applicant or licensee does not need to notify owners of real property situated within 500 feet of the proposed container location(s) of an addition to an existing LNG facility provided the current aggregate water capacity is not more than doubled in a 12-month period; however, if the resulting aggregate water capacity will exceed 214,348 gallons, the applicant or licensee shall provide notice as specified in subsection (e) of this section.]

[(e) LP-Gas Operations shall grant tentative or the Commission shall grant interim approval prior to the setting of the LNG container and construction of the LNG installation.]

[(f) When an LNG container is replaced with a container of the same or less overall diameter and length or height, and installed in the identical location of the existing container at an LNG storage installation of 15,540 gallons aggregate water capacity or more, the applicant shall file LNG Form 2501 with LP-Gas Operations.]

[(1) LNG Form 2500, LNG Form 2500A, and LNG Form 2501, including site plans and plans and specifications, are not required to be filed prior to installation of pull-away devices, or emergency shut-off valves (ESV's), or when maintenance and improvements are being performed to the piping system at existing previously approved LNG installations having an aggregate water capacity of 15,540 gallons or more.]

[(2) A nonrefundable fee of \$50 shall be submitted with each LNG Form 2500. A nonrefundable resubmission fee of \$30 shall be included with each incomplete or revised set of plans and specifications resubmitted.]

[(3) The proposed installation shall not be operated or used in LNG service until approved by LP-Gas Operations.]

[(g) Upon completion of a commercial installation having an aggregate water capacity of less than 15,540 gallons, the applicant shall submit LNG Form 2501, postmarked or physically delivered to LP-Gas Operations, within ten calendar days after completion of such installation. LNG Form 2501 shall state that:]

[(1) the installation complies with the statutes and the rules in this chapter;]

[(2) any necessary LNG licenses have been issued; and]

[(3) the installation has been placed in LNG service.]

[(h) A nonrefundable fee of \$10 for each LNG container listed on LNG Form 2501 shall be submitted with each LNG Form 2501 required to be filed by the applicable subsections of this section. A nonrefundable resubmission fee of \$20 shall be included for each LNG Form 2501 resubmitted.]

[(i) LP-Gas Operations shall review all applications within 21 business days of the receipt of all required information and shall notify the applicant as follows:]

[(1) If LP-Gas Operations administratively approves the installation, LP-Gas Operations shall notify the applicant in writing within 21 business days.]

[(2) If LP-Gas Operations declines to administratively approve the installation, LP-Gas Operations shall notify the applicant in writing, specifying the deficiencies, within 21 business days. The applicant may modify the submission and resubmit it for approval, or may request a hearing on the matter in accordance with Chapter 1 of this title (relating to Practice and Procedure).]

[(j) When LP-Gas Operations notifies an applicant of an incomplete LNG Form 2500 or LNG Form 2500A, the applicant has 120 calendar days from the date of the notification letter to resubmit the corrected application or the application will expire. After 120 days, the applicant shall file a new application to reactivate LP-Gas Operations' review of the proposed installation.]

[(1) The applicant may request in writing an extension of the 120-day time period. The request shall be postmarked or physically delivered to LP-Gas Operations before the expiration date. LP-Gas Operations may extend the application period for up to an additional 90 days.]

[(2) If the tentatively approved installation is not completed within one year from the date tentative approval was granted, the application will expire. Prior to the date of expiration, the applicant may request in writing an extension of time of up to 90 days to complete the installation. If the applicant fails to request an extension of time within the time period prescribed in this subsection, the applicant will be required to submit a new application before the original installation can be completed.]

[(3) Prior to the installation of an LNG container referenced in this section in a heavily populated or congested area, LP-Gas Operations shall determine whether the proposed installation poses a threat to the health, safety, and welfare of the general public. LP-Gas Operations shall determine restrictions on LNG container capacities in accordance with the following:]

[(A) density of the population within 500 feet of the LNG installation;]

[(B) nature of the land use on those pieces of property located within 500 feet of the LNG installation;]

[(C) vehicular traffic in the area;]

[(D) types and numbers of roadways in the area;]

[(E) type of operations on the premises;]

[(F) potential ignition sources in the area;]

[(G) existence of dangerous or combustible materials in the area that might be affected in an emergency situation;]

{(H) the number of members of the general public who are concentrated in the area; and]

{(I) other factors related to the public health, safety, and welfare.}]

{(k) LP-Gas Operations shall examine plans and specifications to ensure that they have been sealed by a qualified professional engineer licensed to practice in the State of Texas. LP-Gas Operations shall review site plans to determine whether the installation complies with the distance requirements in this chapter. LP-Gas Operations shall determine whether the subject of the submission poses a threat to the health, safety, and welfare of the general public.}]

{(1) If LP-Gas Operations declines to approve administratively the submission, LP-Gas Operations shall notify the applicant of this decision in writing within 21 calendar days. The applicant may modify the submission and resubmit it for approval within 21 calendar days after receiving the notice, or may request a hearing to be conducted in accordance with Chapter 1 of this title. The subject of the submission shall not be operated or used in LNG service in this state until approved by the Commission following a hearing.}]

{(2) LNG Form 2008 or the Manufacturer's Data Report, and any other documentation pertinent to the installation, may be requested by LP-Gas Operations in order to further determine compliance with the rules in this chapter.}]

{(4) Physical inspection of stationary installations.}]

{(1) Aggregate water capacity 15,540 gallons or more. The applicant shall notify LP-Gas Operations when the installation is ready for inspection. If LP-Gas Operations does not physically inspect the facility within 30 calendar days of receipt of notice that the facility is ready for inspection, the applicant may operate the facility conditionally until the initial complete inspection is made. If any safety rule violations exist at the time of the initial inspection, the applicant may be required to cease LNG operations until the applicant corrects the violations.}]

{(2) Aggregate water capacity of less than 15,540 gallons. After receipt of LNG Form 2501, LP-Gas Operations shall conduct an inspection as soon as possible to verify the installation described complies with the rules in this chapter. The applicant may operate the facility prior to inspection if the facility fully complies with the rules in this chapter. If any LNG statute or safety rule violations exist at the time of the initial inspection at a commercial installation, LP-Gas Operations may immediately remove the subject container, including any piping, appliances, appurtenances, or equipment connected to it from LNG service until the applicant corrects the violations.}]

{(m) If the Railroad Commission finds after a public hearing that the proposed installation complies with the rules in this chapter and the statutes of the State of Texas, and does not constitute a danger to the public health, safety, and welfare, the Railroad Commission shall issue an interim approval order. The construction of the installation and the setting of the container shall not proceed until the applicant has received written notification of the interim approval order. Any interim approval order shall include a provision that such approval may be suspended or revoked if:}]

{(1) the applicant has introduced LNG into the system prior to final approval; or]

{(2) a physical inspection of the installation indicates that it is not installed in compliance with the submitted plat drawing for the installation, the rules in this chapter, or the statutes of the State of Texas; or]

{(3) the installation constitutes a danger to the public health, safety, and welfare.}]

{(n) Material variances. If LP-Gas Operations determines the completed installation varies materially from the application originally accepted, the applicant shall correct the variance and notify LP-Gas Operations of the correction of the variance or resubmit the application. LP-Gas Operations' review of such resubmitted application shall comply with the procedure described in this section.}]

{(o) In the event an applicant has requested an inspection and LP-Gas Operations' inspection identifies violations requiring modifications by the applicant, LP-Gas Operations may assess an inspection fee to cover the costs associated with any additional inspection, including mileage and per diem rates set by the legislature.}]

§14.2041. Notice of, Objections to, and Hearings on Proposed Stationary LNG Installations.

(a) Notice of proposed stationary LNG installations.

(1) For a proposed installation with an aggregate water capacity of 15,540 gallons or more, an applicant shall send a copy of the filings required under §14.2040 of this title (relating to Filings Required for Stationary LNG Installations) by certified mail, return receipt requested or otherwise delivered, to all owners of real property situated within 500 feet of any proposed container location at the same time the originals are filed with AFS.

(A) AFS shall consider the notice to be sufficient when the applicant has provided evidence that copies of a complete application have been mailed or otherwise delivered to all real property owners.

(B) The applicant or licensee may obtain names and addresses of owners from current county tax rolls.

(2) An applicant shall notify owners of real property situated within 500 feet of the proposed container location if:

(A) the current aggregate water capacity of the installation is more than doubled in a 12-month period; or

(B) the resulting aggregate water capacity of the installation will be more than 214,348 gallons.

(b) Objections to proposed stationary LNG installations.

(1) Each owner of real property receiving notice of a proposed installation pursuant to subsection (a) of this section shall have 18 calendar days from the date the notice is postmarked to file a written objection with AFS using the LNG Form 2500A sent to them by the applicant. An objection is considered timely filed when it is actually received by the Commission.

(A) AFS shall review all objections within 10 business days of receipt.

(B) An objection shall be in writing and shall include a statement of facts showing that the proposed installation:

(i) does not comply with the rules in this chapter, specifying which rules are violated;

(ii) does not comply with the statutes of the State of Texas, specifying which statutes are violated; or

(iii) constitutes a danger to the public health, safety, and welfare, specifying the exact nature of the danger. For purposes of this section, "danger" means an imminent threat or an unreasonable risk of bodily harm, but does not mean diminished property or esthetic values in the area.

(2) Upon review of the objection, AFS shall:

(A) request a public hearing as specified in §14.2016 of this title (relating to Penalty Guidelines and Enforcement); or

(B) notify the objecting party in writing within 10 business days of receipt requesting further information for clarification and stating why the objection is not valid. The objecting entity shall have 10 calendar days from the postmark of AFS' letter to file its corrected objection. Clarification of incomplete or non-substantive objections shall be limited to two opportunities. If new objections are raised in the objecting party's clarification, the new objections shall be limited to one notice of correction.

(c) Temporary installations which are used during peak demand times such as during cold weather or emergencies are not required to comply with these notice requirements. However, a sign shall be installed at the site and brochures or other similar means of notification shall be available at the site to advise the public of the need and use for the temporary installation.

(d) Hearings on stationary LNG installations.

(1) Reason for hearing. AFS shall call a public hearing if:

(A) AFS receives an objection that complies with subsection (b) of this section; or

(B) AFS determines that a hearing is necessary to investigate the impact of the installation.

(2) Notice of public hearing. The Hearings Division shall give notice of the public hearing at least 21 calendar days prior to the date of the hearing to the applicant and to all real property owners who were required to receive notice of the proposed installation under subsection (a) of this section.

(3) Procedure at hearing. The public hearing shall be conducted pursuant to Chapter 1 of this title (relating to Practice and Procedure).

(4) Hearing findings. If the Railroad Commission finds after a public hearing that the proposed installation complies with the rules in this chapter and the statutes of the State of Texas, and does not constitute a danger to the public health, safety, and welfare, the Railroad Commission shall issue an interim approval order. The construction of the installation and the setting of the container shall not proceed until the applicant has received written notification of the interim approval order. Any interim approval order shall include a provision that such approval may be suspended or revoked if:

(A) the applicant has introduced LNG into the system prior to final approval;

(B) a physical inspection of the installation indicates that it is not installed in compliance with the submitted plat drawing for the installation, the rules in this chapter, or the statutes of the State of Texas; or

(C) the installation constitutes a danger to the public health, safety, and welfare.

§14.2042. Physical Inspection of Stationary Installations.

(a) Aggregate water capacity of 15,540 gallons or more. The applicant shall notify AFS in writing when the installation is ready for inspection.

(1) If any non-compliance items are cited at the time of AFS' initial inspection, the installation shall not be placed in LNG service until the non-compliance items are corrected, as determined at the time of inspection depending on the nature of the non-compliance items cited.

(2) If AFS does not physically inspect the facility within 30 calendar days of receipt of notice that the facility is ready for inspection, the facility may operate conditionally until the initial inspection is completed.

(b) Aggregate water capacity of less than 15,540 gallons. After receipt of LNG Form 2501, AFS shall conduct an inspection as soon as possible to verify the installation described complies with the rules in this chapter. The facility may be operated prior to inspection if the facility fully complies with the rules in this chapter. If the initial inspection at a commercial installation results in the citation of non-compliance items, AFS may require that the subject container, including any piping, appliances, appurtenances, or equipment connected to it, be immediately removed from LNG service until the non-compliance items are corrected.

(c) Material variances. If AFS determines the completed installation varies materially from the application originally accepted, correction of the variance and notification to AFS or resubmission of the application is required. The review of such resubmitted application shall comply with §14.2040 of this title (relating to Filings Required for Stationary LNG Installations).

(d) In the event an applicant has requested an inspection and AFS' inspection identifies non-compliance items requiring modifications by the applicant, AFS may assess an inspection fee to cover the costs associated with any additional inspection, including mileage and per diem rates set by the legislature.

§14.2043. Temporary Installations.

(a) Temporary installations shall comply with the following requirements:

(1) Prior to the completion of a temporary installation with an individual or aggregate water capacity of 15,540 gallons or less, the licensee [~~or non-licensee~~] shall file LNG Form 2501 with AFS, and include [~~LP-Gas Operations, including~~] proof of the local fire marshal's approval if the installation is within such jurisdiction.

(2) Prior to the completion of a temporary installation with an individual or aggregate water capacity of 15,541 gallons or more, the licensee [~~or non-licensee~~] shall file LNG Form 2500, including plans and specifications, and proof of the local fire marshal's approval if the installation is with such jurisdiction.

(b) Temporary installations shall be limited to one year from the date of installation. If the temporary installation is expected [~~needs~~] to remain in service for more than one year, the licensee [~~or non-licensee~~] responsible for the temporary installation shall inform AFS [~~LP-Gas Operations of this extension of time~~] at least 30 days prior to the expiration of the one-year period.

(c) Temporary installations shall be protected by guardrailings as specified in §14.2101(c) [~~§14.2102(f)~~] of this title (relating to System [~~Uniform~~] Protection Requirements) unless otherwise approved by AFS [~~LP-Gas Operations~~].

(d) Temporary installations shall comply with the electrical requirements specified in Subchapter F of this chapter (relating to Instrumentation and Electrical Services).

(e) Temporary installations shall be mounted on a secure surface, not to include bare earth.

(f) Temporary installations are not required to have impounding areas.

(g) AFS [~~LP-Gas Operations~~] may inspect temporary installations for compliance with this section.

(h) Any temporary installation subject to the jurisdiction of United States Department of Transportation under 49 Code of Federal Regulations, Part 193, shall comply with the applicable DOT rules and any requirements of AFS [LP-Gas Operations].

(i) Pursuant to §14.2041(c) of this title (relating to Notice of, Objections to, and Hearings on Proposed Stationary LNG Installations), temporary installations are not required to comply with the notification requirements in §14.2041 of this title.

§14.2046. [Filings Required for] School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections [Vehicles].

(a) After the manufacture of or the conversion to an LNG system on any vehicle to be used in Texas as a school bus, mass transit, public transportation, or special transit vehicle, the manufacturer, licensee, or ultimate consumer making the installation or conversion shall notify AFS [LP-Gas Operations] in writing on LNG Form 2503 that the applicable LNG-powered vehicles are ready for a complete inspection to determine compliance with the rules in this chapter.

(b) AFS shall conduct the inspection [If LP-Gas Operations' initial complete inspection finds the vehicle in compliance with the rules in this chapter and the statutes, the vehicle may be placed into LNG service. For fleet installations of identical design, an initial inspection shall be conducted prior to the operation of the first vehicle, and subsequent vehicles of the same design may be placed into service without prior inspections. Subsequent inspections shall be conducted] within a reasonable time [frame] to ensure the vehicles are operating in compliance with the rules in this chapter. [If violations exist at the time of the initial complete inspection, the vehicle shall not be placed into LNG service and the manufacturer, licensee, or ultimate consumer making the installation or conversion shall correct the violations. The manufacturer, licensee, or ultimate consumer shall file with LP-Gas Operations documentation demonstrating compliance with the rules in this chapter, or LP-Gas Operations shall conduct another complete inspection before the vehicle may be placed into LNG service.]

(1) If AFS' initial complete inspection finds that the vehicle is in compliance with the rules in this chapter and the statutes, the vehicle may be placed into LNG service. For fleet installations of identical design, an initial inspection shall be conducted prior to the operation of the first vehicle, and subsequent vehicles of the same design may be placed into service without prior inspections.

(2) If violations exist at the time of the initial inspection, the vehicle shall not be placed into LNG service and the manufacturer, licensee, or ultimate consumer making the installation or conversion shall correct the violations. The manufacturer, licensee, or ultimate consumer shall file with AFS documentation demonstrating compliance with the rules in this chapter, or AFS shall conduct another complete inspection before the vehicle may be placed into LNG service.

(3) For public transportation vehicles only, if AFS does not conduct the initial inspection within 30 business days of receipt of the LNG Form 2503, the vehicle may be operated in LNG service if it complies with the rules in this chapter.

(c) The manufacturer, licensee, or ultimate consumer making the installation or conversion shall be responsible for compliance with the rules in this chapter, statutes, and any other local, state, or federal requirements.

(d) If the requested AFS [LP-Gas Operations] inspection identifies violations requiring modifications by the manufacturer, licensee, or ultimate consumer, AFS [LP-Gas Operations] shall consider the assessment of an inspection fee to cover the costs associated with any

additional inspection, including mileage and per diem rates set by the legislature.

§14.2049. Report of LNG Incident/Accident.

(a) At the earliest practical moment or within two hours following discovery, a [If an incident or accident occurs during transport, as a result of a pullaway, or where LNG is or is suspected to be the cause, the] licensee [or nonlicensee] owning, operating, or servicing equipment or an [the] installation shall notify AFS [LP-Gas Operations] by telephone of any event involving LNG which [within two hours of discovery after the licensee or nonlicensee has knowledge of the incident or accident if any of the following occurs]:

(1) involves a single release of LNG during or following LNG transfer or during container transportation. Any loss of LNG which is less than 1.0% of the gross amount delivered, stored, or withdrawn need not be reported. Any loss occurring as a result of a pull-away shall be reported [a spill of 25 gallons or more of LNG];

(2) caused an estimated [property] damage to the property of the operator, others, or both totaling \$50,000 or more, including gas loss; [of \$1,000 or greater; or]

(3) caused a death or any personal [an] injury requiring hospitalization; [transport to a medical facility.]

(4) required taking an operating facility out of service;

(5) resulted in an unintentional ignition of LNG requiring an emergency response;

(6) involved the LNG installation on any vehicle propelled by or transporting LNG;

(7) could reasonably be judged as significant because of rerouting of traffic, evacuation of buildings, or media interest, even though it does not meet paragraphs (1) - (6) of this subsection; or

(8) is required to be reported to any other state or federal agency (such as the Texas Department of Public Safety or U.S. Department of Transportation).

(b) Any transport unit required to be registered with AFS [LP-Gas Operations] in accordance with §14.2704 of this title (relating to Registration and Transfer of LNG Transports) which is involved in an accident where there is damage to the tank, piping appurtenances, or any release of LNG resulting from the accident shall be reported to AFS [LP-Gas Operations], regardless of the accident location. Any LNG-powered motor vehicle used for school transportation or mass transit, including any state-owned vehicle, which is involved in an accident resulting in a release of LNG or damage to LNG equipment shall be reported to AFS [LP-Gas Operations], regardless of the accident location.

(c) The telephonic notice [telephone notification] required by this section shall be made to the Railroad Commission's 24-hour emergency line at (512) 463-6788 or (844) 773-0305 and shall include the following [information]:

(1) [the] date and time of the incident [or accident];

(2) name of the reporting operator [type of structure or equipment involved];

(3) phone number of the operator [resident's or operator's name];

(4) [physical] location of the leak or incident;

(5) personal [number and type of] injuries and/or [or] fatalities;

(6) whether fire, explosion, or leak has occurred;

(7) status of leak or other immediate hazards; [whether LNG is currently leaking; and]

(8) other significant facts relevant to the incident; and

(9) [(8)] whether immediate assistance from AFS [LP-Gas Operations] is requested.

[(d) The individual making the telephone notification shall leave his or her name and telephone number.]

(d) [(e)] Following the initial telephone report [of any of the incidents or accidents described in this section], the licensee who made the telephonic report shall submit [file] LNG Form 2020 to AFS [with LP-Gas Operations]. The form shall be postmarked within 14 calendar days of the date of initial notification to AFS, or within five business days of receipt of the fire department report, whichever occurs first, unless AFS grants authorization for a longer period of time when additional investigation or information is necessary [LP-Gas Operations].

(e) Within five business days of receipt, AFS shall review LNG Form 2020 and notify in writing the person submitting LNG Form 2020 if the report is incomplete and specify in detail what information is lacking or needed. Incomplete reports may delay the resumption of LNG activities at the involved location.

*§14.2052. Application for an Exception to a Safety Rule.*

(a) In addition to NFPA 52 §4.3 and for any alternate design used for installations subject to NFPA 59A requirements, a [Any] person may apply for an exception to the provisions of this chapter by filing LNG Form 2025 along with supporting documentation and a \$50 filing fee[,] with AFS [LP-Gas Operations].

(b) The application shall contain the following:

(1) the section number of any [applicable] rules for which an [the] exception is being requested;

(2) the type of relief desired, including the exception requested and any information which may assist AFS [LP-Gas Operations] in comprehending the requested exception;

(3) a concise statement of facts which support the applicant's request for the exception, such as the reason for the exception, the safety aspects of the exception, and the social and/or [or] economic impact of the exception;

(4) for all stationary installations, regardless of size, a description of the acreage and/or address upon which the subject of the exception will be located. The description shall be in writing and shall include:

(A) a site drawing;

(B) sufficient identification of the site so that determination of property boundaries may [can] be made;

(C) a plat from the applicable appraisal district indicating the ownership of the land; and

(D) the legal authority under which the applicant, if not the owner, is permitted occupancy;

(5) the name, business address, and telephone number of the applicant and of the authorized agent, if any; and

[(6) an original signature in ink by the applicant filing the application or by the applicant's authorized representative; and]

(6) [(7)] a list of the names and addresses of all interested entities as defined in subsection (c) of this section.

(c) Notice of the application for an exception to a safety rule shall include the following items and procedures:

(1) The applicant shall send a copy of LNG Form 2025 by certified mail, return receipt requested, to all affected entities as specified in paragraphs (2), (3), and (4) of this subsection on the same date on which the form is filed with or sent to AFS [LP-Gas Operations]. The applicant shall include a notice to the affected entities that any objection shall be filed with AFS [LP-Gas Operations] within 18 calendar days of the postmark. The applicant shall file all return receipts with AFS [LP-Gas Operations] as proof of notice.

(2) If an exception is requested for a stationary site, the affected entities to whom the applicant shall give notice shall include but not be limited to:

(A) persons and businesses owning or occupying property adjacent to the site;

(B) the city council or fire marshal, if the site is within municipal limits; and

(C) the county Commission, if the site is not within any municipal limits.

(3) If an exception is requested for a non-stationary installation, affected entities to whom the applicant shall give notice shall include but not be limited to:

(A) the Texas Department of Public Safety; and

(B) all processed gas loading and unloading facilities used by the applicant.

(4) AFS [LP-Gas Operations] may require an applicant to give notice to persons in addition to those listed in paragraphs (2) and (3) of this subsection if doing so will not prejudice the rights of any entity.

(d) Objections to the requested exception shall be in writing, filed with AFS [at LP-Gas Operations] within 18 calendar days of the postmark of the application, and shall be based on facts that tend to demonstrate that, as proposed, the exception would have an adverse effect on public health, safety, or welfare. AFS [LP-Gas Operations] may decline to consider objections based solely on claims of diminished property or esthetic values in the area.

(e) AFS [LP-Gas Operations] shall review the application within 21 business days of receipt of the application.

(1) If AFS [LP-Gas Operations] does not receive any objections from any affected entities as defined in subsection (c) of this section, the AFS [LP-Gas Operations] director may grant administratively the exception if the AFS [LP-Gas Operations] director determines that the installation, as proposed, does not adversely affect the health or safety of the public. AFS [LP-Gas Operations] shall notify the applicant in writing by the end of the 21-day review period and, if approved, the installation shall be installed within one year from the date of approval. AFS [LP-Gas Operations] shall also advise the applicant at the end of the objection period as to whether any objections were received and whether the applicant may proceed.

(2) If the AFS [LP-Gas Operations] director denies the exception, AFS [LP-Gas Operations] shall notify the applicant, in writing, outlining [of] the reasons and any specific deficiencies.

(3) The applicant may modify the application to correct the deficiencies and resubmit the application along with a \$30 resubmission fee, or may request a hearing on the matter [in accordance with Chapter 1 of this title (relating to Practice and Procedure)].

(A) To be granted a hearing, the applicant shall file a written request for hearing within 14 calendar days of receiving notice of the administrative denial.



(B) [(f)] A hearing shall be held when AFS [LP-Gas Operations] receives an objection, as set out in subsection (d) of this section from any affected entity or when the applicant requests one following an administrative denial. AFS [LP-Gas Operations] shall forward the request to the Hearing Division [mail the notice of hearing to the applicant and all objecting entities by certified mail, return receipt requested, at least 21 calendar days prior to the date of the hearing. Hearings will be held in accordance with the Texas Government Code, Chapter 2001, et seq., Chapter 4 of this title, and the rules in this chapter].

(f) [(g)] Applicants intentionally submitting incorrect or misleading information are subject to penalties as set out in Texas Natural Resources Code, [(116.142 [94.143], and the filing of incorrect or misleading information shall be grounds for dismissing the [Commission to dismiss an] application with prejudice.

(g) [(h)] After hearing, [the Commission may grant] exceptions to this chapter may be granted by the Commission if the Commission finds that granting the exception for the installation, as proposed, will not adversely affect the safety of the public.

[(i) For good cause shown, LP-Gas Operations may grant a temporary exception of 30 days or less to the examination requirements for company representatives and operations supervisors. Good cause includes but is not limited to death of a sole proprietor or partner. Applicants for temporary exceptions shall comply with applicable safety requirements and LP-Gas Operations shall obtain information showing that the exception will not be hazardous to the public.]

(h) [(j)] A request for an exception shall expire if it is inactive for three months after the date of the letter in which the applicant was notified by AFS [LP-Gas Operations] of an incomplete request. Additional time may be granted upon request if needed to generate engineering results or calculations. The applicant may restart the application process.

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

Filed with the Office of the Secretary of State on October 20, 2020.

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Haley Cochran

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Railroad Commission of Texas

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 475-1295



## 16 TAC §§14.2014 - 14.2016, 14.2022, 14.2037

The Commission proposes the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers

to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

§14.2014. *Military Fee Exemption.*

§14.2015. *Penalty Guidelines for LNG Safety Violations.*

§14.2016. *Licensing Requirements.*

§14.2022. *Denial, Suspension, or Revocation of Licenses or Certifications, and Hearing Procedure.*

§14.2037. *Components of LNG Stationary Installations Not Specifically Covered.*

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

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For further information, please call: (512) 475-1295



## SUBCHAPTER B. GENERAL RULES FOR ALL STATIONARY LNG INSTALLATIONS

### 16 TAC §§14.2101, 14.2102, 14.2104, 14.2110, 14.2116, 14.2119, 14.2122, 14.2125, 14.2131, 14.2137

The Commission proposes the amendments and new rule under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

§14.2101. *System [Uniform] Protection Requirements.*

(a) In addition to NFPA 59A §12.9.3 and 13.2.3, this [This] section applies to the protection from tampering and damage of stationary LNG installations, including LNG transfer systems, dispensing systems, and storage containers.

(b) Fencing at LNG stationary installations shall comply with the following:

(1) Fencing material shall be solid construction of noncombustible material or chain link type with wire at least 12 1/2 American wire gauge in size.

(2) Fencing shall be at least six feet in height at all points. Fencing may be five feet in height when topped with at least three strands of barbed wire, with the strands four inches apart.

(3) Uprights, braces, and cornerposts of the fence shall be composed of noncombustible material.

(4) Uprights, braces, and cornerposts of the fence shall be anchored in concrete a minimum of 12 inches below the ground.

(5) All fenced enclosures shall have at least one gate suitable for ingress and egress. All gates shall be locked whenever the area enclosed is unattended.

(6) A minimum clearance of two feet shall be maintained between the fencing and any part of an LNG transfer system, dispensing system, or storage container that is part of a stationary installation.

(7) Fencing which is located more than 25 feet from any point of the LNG transfer system, dispensing system, or storage containers shall be designated as perimeter fencing. If the LNG transfer system, dispensing system, or storage container is located inside perimeter fencing and is subject to vehicular traffic, it shall be protected against damage according to subsection (c) of this section.

(8) The storage and compression area must be completely enclosed by fencing.

(9) Where fencing is not used to protect the installation, then valve locks, a means of locking the electric control for the compressors, or other suitable means shall be provided to prevent unauthorized withdrawal of CNG.

(c) Guardrails at LNG stationary installations shall comply with the following:

(1) Vertical supports for guardrails shall be at least four-inch concrete-filled schedule 40 steel pipe or material with equal or greater strength. The vertical supports shall be capped on top, anchored in concrete at least 36 inches below the ground, and rise at least 30 inches above the ground. Supports shall be spaced four feet apart or less.

(2) The top of the horizontal guardrail shall be secured to the vertical supports at least 30 inches above the ground. The horizontal guardrail shall be at least three-inch Schedule 40 steel pipe or other material with equal or greater strength. The horizontal guardrail shall be welded or bolted to the vertical supports with bolts of sufficient size and strength to prevent damage to the protected equipment under normal conditions including the nature of the traffic to which the protected equipment is subjected.

(3) Openings in the horizontal guardrail shall not exceed 36 inches. Only one opening is allowed on each side of the guardrail. A means of temporarily removing the horizontal guardrail and/or vertical supports to facilitate the handling of heavy equipment may be incorporated into the horizontal guardrail and vertical supports. In no case shall the protection provided by the horizontal guardrail and vertical supports be decreased. Transfer hoses from the bulkhead shall be routed only over the horizontal guardrail or through the 45-degree opening in front of the bulkhead.

(4) A minimum clearance of 24 inches shall be maintained between the railing and any part of an LNG transfer system, dispensing system, or storage container.

(d) [(b)] Protection shall be maintained in good condition at all times in accordance with the standards set forth in this section. AFS [LP-Gas Operations] may impose additional requirements to ensure the safety of personnel and the general public.

(e) [(e) Stationary LNG installations shall be protected from tampering and damage by either fencing or guardrails, or a combination of both as specified in this section.] The operating end of each [the] container, including the material handling equipment and the entire dispensing system, and any part of the LNG transfer system, dispensing system, or storage container which is exposed to collision damage or vehicular traffic shall be protected from this type of damage [by the vehicular traffic to which it is normally exposed. The protection shall extend at least 24 inches beyond any part of the LNG transfer system, dispensing system, or storage container].

[(d) Stationary LNG installations may use fencing which is located more than 25 feet from any point of the LNG transfer system, dispensing system, or storage containers. If such perimeter fencing is used, the LNG transfer system, dispensing system, or storage containers shall also be protected from the normal vehicular traffic to which they are subjected by guardrails at the operating end of the equipment, including all material handling equipment. Guardrails shall be located at least 24 inches beyond any part of the protected equipment which is exposed to vehicular traffic.]

[(e) Fencing at LNG stationary installations shall comply with the following:]

[(1) Fencing material shall be solid construction of noncombustible material or chain link with wire at least 12 1/2 American wire gauge in size.]

[(2) Fencing shall be at least six feet in height at all points. Fencing may be five feet in height when topped with at least three strands of barbed wire, with the strands four inches apart.]

[(3) Uprights, braces, and cornerposts shall be composed of noncombustible material if located within the minimum distances specified for ignition sources or combustible materials set forth in §14.2110 of this title (relating to LNG Container Installation Distance Requirements) for the enclosed LNG transfer system, dispensing system, or LNG containers.]

[(4) A minimum clearance of 24 inches shall be maintained between the fencing and any part of an LNG transfer system, dispensing system, or storage container that is part of a stationary installation.]

[(f) Guardrails at LNG stationary installations shall comply with the following:]

[(1) Vertical supports for guardrails shall be at least four-inch concrete-filled schedule 40 steel pipe or material of equal or greater strength. The vertical supports shall be capped on top, anchored in concrete at least 36 inches below the ground, and rise at least 30 inches above the ground. Supports shall be spaced four feet apart or less.]

[(2) The top of the horizontal guardrail shall be secured to the vertical supports at least 30 inches above the ground. The horizontal guardrail shall be at least three-inch schedule 40 steel pipe or other material with equal or greater strength. The horizontal guardrail shall be welded or bolted to the vertical supports with bolts of sufficient size and strength to prevent damage to the protected equipment under normal conditions including the nature of the traffic to which the protected equipment is exposed.]

{(3) Openings in the horizontal guardrailing shall not exceed 36 inches. A means of temporarily removing the horizontal guardrailing and vertical supports to facilitate the handling of heavy equipment may be incorporated into the horizontal guardrailing and vertical supports. In no case shall the protection provided by the horizontal guardrailing and vertical supports be decreased. Transfer hoses from the bulkhead shall be routed only over the horizontal guardrailing or through the 45-degree opening in front of the bulkhead.}

{(4) A minimum clearance of 24 inches shall be maintained between the railing and any part of an LNG transfer system, dispensing system, or storage container.}

(f) [(g)] Stationary LNG installations shall comply with the sign and lettering requirements specified in Table 1 of this section and the following:

Figure: 16 TAC §14.2101(f)

[Figure: 16 TAC §14.2101(g)]

(1) Unless colors are specified, lettering shall be a color in sharp contrast to the background color of the sign and shall be easily readable.

(2) Signs shall be visible from each point of transfer;

(3) Signs on emergency shutdown devices shall be permanently affixed;

(4) Signs bearing the words, "NATURAL GAS," shall be located on all operating sides of dispensers; and

(5) Signs indicating the licensee's name shall be located at either the vehicle dispenser or refueling area, or at the loading or unloading area.

(g) [(h)] At least two monitoring sensors shall be installed at all stationary installations to detect hazardous levels of LNG. Sensors shall activate at not more than 25% of the lower flammability limit (LFL) of LNG. If the level exceeds one-fourth of the LFL, the sensor shall either shut the system down or activate an audible and visual alarm. The number of sensors to be installed shall comply with the area of coverage for each sensor and the size of the installation. The sensors shall be installed and maintained in accordance with the manufacturer's instructions.

#### §14.2102. Installation and Maintenance.

All LNG containers, valves, dispensers, accessories, piping, transfer equipment, and gas utilization equipment shall be installed and maintained in safe working order according to the manufacturer's instructions and the rules in this chapter. If any one of the LNG storage containers, valves, dispensers, accessories, piping, transfer equipment, gas utilization equipment, and appliances is not in safe working order, AFS may require that the installation be immediately removed from LNG service and not be operated until the necessary repairs have been made.

#### §14.2104. Testing of Containers [Uniform Safety Requirements].

(a) In order to determine the safety of a container, AFS [LP-Gas Operations] may require that the licensee or operator of the container submit a copy of [request] the manufacturer's data report on that container. AFS [LP-Gas Operations] may also require [request] that the container and assembly [containers and assemblies] be tested [examined] by a Category 15, 20, or 50 licensee and [equipped for and experienced in the testing of LNG containers and equipment. The Category 15, 20, or 50 licensee shall file] a comprehensive report on the [its] findings submitted to AFS [with LP-Gas Operations]. This requirement may be applied even though an acceptable LNG Form 2023 has been received [is on file with LP-Gas Operations].

(b) Any stationary LNG container previously in LNG service brought into Texas or which has not been subject to continuous LNG

pressure or inert gas pressure shall be inspected by a currently licensed Category 15, 20, or 50 licensee to determine if the container shall be leak-tested or re-certified. A copy of the inspector's written report shall be filed with AFS [LP-Gas Operations]. The container shall not be used until the appropriate leak test or certification process determines the container is safe for LNG service [LP-Gas Operations grants approval].

(c) Any stationary LNG container which has been subject to continuous LNG or inert gas pressure may not require testing [need not be tested] prior to installation provided the licensee or operator of the container files [an acceptable] LNG Form 2023 at the time [is filed with LP-Gas Operations when] LNG Form 2500 is submitted for any facility requiring submission of a site plan in accordance with §14.2040 of this title (relating to Filings for Stationary LNG Installations) [plans and specifications].

(d) AFS may remove a container from LNG service or require ASME acceptance of a container at any time if AFS determines that the nameplate is loose, unreadable, or detached, or if it appears to be tampered with or damaged in any way and does not contain at a minimum the items specified in subsection (a) of this section. [When installed for use, containers shall not be stacked one upon another except when designed by the manufacturer for stacking.]

#### §14.2110. LNG Container Installation Distance Requirements.

{(a) LNG containers shall be installed in accordance with the following minimum distance requirements:}

{(1) Containers with aggregate water capacities up to 15,540 gallons shall be located at least 25 feet from any building, property line, stationary ignition sources, or other aboveground flammable liquids;}

{(2) Containers with aggregate water capacities from 15,541 to 93,240 gallons shall be located at least 50 feet from any building, property line, stationary ignition sources, or other aboveground flammable liquids;}

{(3) Containers with aggregate water capacities of 93,241 gallons or more shall be located at least 100 feet from any building, property line, stationary ignition sources, or other aboveground flammable liquids.}

{(4) Underground LNG containers shall be located at least 15 feet apart, regardless of size.}

{(5) LNG dispensers or points of transfer shall be located at least 25 feet from the nearest building not associated with the LNG facility and from any line of adjoining property that can be built upon.}

(a) [(b)] Operating industrial trucks with only one container mounted on each truck may be stored inside buildings. Extra containers shall not be stored inside buildings. Operating industrial trucks shall be stored in an area that will reduce the likelihood of an accident. Service valves shall be closed whenever a truck with a mounted container is stored. A venting system shall be used any time a vehicle not in operation is inside a building to allow safe relief valve venting.

(b) [(e)] In addition to NFPA 52 §13.5, stationary [Stationary] LNG containers and piping shall not be placed in the area directly beneath or above an electric transmission, distribution, or customer service line and the area six feet to either side of that line. If this distance is not adequate to prevent the line and the associated voltage from contacting the LNG container in the event of breakage of any conductor, then other suitable means of protection designed and constructed to prevent such contact with the container may be used if approval is received from AFS [LP-Gas Operations]. The request for approval shall be in writing and shall specify the manner in which the container will be protected from contact, including specifications for the materials to

be used. If AFS [LP-Gas Operations] does not approve the proposed protection, then the container shall be located a sufficient distance from the line to prevent such contact.

(c) When installed for use, containers shall not be stacked one upon another except when designed by the manufacturer for stacking.

(d) Welding, cutting, and similar operations shall be prohibited within 25 feet of the container and the transfer area during transfer operations and shall be conducted only as specifically authorized in a manner to prevent accidental ignition of LNG or flammable fluids.

*§14.2116. Venting [Transfer] of LNG.*

[(a)] Venting of LNG is prohibited as part of routine activities, except for the following:

(1) as provided for in §14.2119 of this title (relating to Transport Vehicle Loading and Unloading Facilities and Procedures); and

(2) through a trycock installed on a stationary storage tank during filling of the tank.

[(b)] LNG being transferred into stationary storage containers shall be compatible in composition or temperature and density with the LNG already in the container. When making transfers into fueling facility containers, the LNG shall be transferred at a pressure that will not exceed the set pressure of the pressure relief device.

[(c)] When the composition or temperature and density are not compatible, measures shall be taken to prevent an excessive rate of vapor evolution.

[(d)] At least one licensed or certified individual shall be in attendance while unloading is in progress.

[(e)] Ignition sources shall not be permitted within 25 feet of the transfer area or within the distances specified as classified areas in Table 1 of §14.2513 of this title (relating to Electrical Equipment) while transfer of LNG is in progress.

[(f)] Measuring instruments shall be provided to determine that containers are not overfilled.

*§14.2119. Transport Vehicle Loading and Unloading Facilities and Procedures.*

[(a)] In addition to NFPA 59A §11.6, transport [Transport] vehicle loading and unloading facilities shall meet the following requirements:

[(1)] Rack structures shall be constructed of noncombustible material such as steel or concrete.

(1) [(2)] Transfer piping, pumps, and compressors shall be installed with the following protective measures:

(A) protection from damage from vehicle movements in compliance with the guardrail and fencing requirements of §14.2101 of this title (relating to System [Uniform] Protection Requirements);

(B) isolation valves at both ends of containers with less than 2,000 gallon capacity, and a remote operating valve, automatic closure, or check valve to prevent backflow on containers of 2,000 gallons or more capacity;

[(C)] isolation valving and bleed connections to depressurize hoses and arms and minimize venting before disconnecting;

[(D)] hoses and arms equipped with a shutoff valve at the free end;

(C) [(E)] a check valve on piping for liquid transfer to minimize accidental release; and

(D) [(F)] a line relief valve between every pair of isolation valves.

[(3)] Where multiple products are loaded or unloaded at the same location, loading arms, hoses, and manifolds shall be marked to indicate the product or products handled by each system.

(2) [(4)] Operating status indicators shall be provided in the transfer area.

[(b)] Written procedures covering normal transfer and emergency operating procedures shall be available for all transfer operations. The procedures shall be kept current and available to all employees engaged in transfer operations.

[(c)] Prior to beginning transfer operations, the following checks shall be made:

[(1)] Gauge readings shall be obtained or inventory established to prevent overfilling of the receiving vessel.

[(2)] Transfer connections shall be checked to ensure they are gastight and liquidtight.

[(3)] Unless required for transfer operations, LNG or flammable liquid transport vehicle engines shall be turned off. Brakes shall be set and wheels chocked to prevent movement of the vehicle prior to connecting for transfer. The engine shall not be started until the transport vehicle has been disconnected and any released vapors have dissipated.

[(4)] Prior to loading LNG into a transport vehicle tank which does not have a positive pressure or is not in exclusive LNG service, a test shall be made to determine the oxygen content in the receiving container. If the oxygen content in either case exceeds 1.0% by volume, the container shall not be loaded until suitably purged.

[(5)] An LNG transport vehicle shall be positioned prior to transfer so that it can exit the area without backing when the transfer operation is complete.

[(d)] During transfer operations, the following checks shall be made:

[(1)] Levels shall be checked during the transfer operations.

[(2)] Pressure and temperature conditions shall be observed during the transfer operations. If any unusual variance in pressure occurs, transfer shall be stopped until the cause has been determined and corrected.

[(e)] No repair shall be performed on the transfer system while transfer is taking place.

*§14.2122. [Transfer Systems, Including Piping.] Pumps[,] and Compressors[,] Used for LNG and Refrigerants.*

[(a)] Transfer systems and pumps used for transfer of LNG and refrigerants shall be provided with means for precooling to reduce the effect of thermal shock and overpressure.

[(b)] Check valves shall be provided as required to prevent backflow in transfer systems and shall be located as close as practicable to the point of connection to any system from which backflow might occur.

[(c)] In addition to a locally mounted device to shut down the pump or compressor drive, a readily accessible, remotely located device shall be provided at least 25 feet away from the equipment to shut down the pump or compressor in case of emergency. The device shall be marked in accordance with the table in §14.2101 of this title (relating to Uniform Protection Requirements). Remotely located pumps

and compressors used for loading or unloading tank vehicles shall be provided with shut-down controls at the transfer area and at the pump or compressor site.}]

[(d)] In addition to NFPA 59A §11.8, pressure [Pressure] gauges shall be installed on each pump and compressor discharge.

[(e)] Valves shall be installed so that each pump or compressor can be isolated for maintenance. Where pumps or centrifugal compressors are installed for operation in parallel, each discharge line shall be equipped with a check valve.}]

[(f)] Pumps and compressors shall be provided with pressure relief devices to limit the discharge pressure to their maximum allowable working pressure.}]

#### §14.2125. Hoses and Arms.

[(a)] Hoses and arms used for transfer shall be suitable for the temperature and pressure of the operating conditions. Hoses shall be designed to have a bursting pressure of at least five times the maximum allowable working pressure of the equipment to which it is attached.}]

[(b)] Loading hoses or arms shall be supported to prevent displacement of the hoses and arms that results in greater stresses than those allowed in Appendix A of ANSI B31.3.}]

[(c)] In addition to NFPA 59A §11.8, couplings [Couplings] used for connection of a hose or arm shall be suitable for operating conditions and shall be designed for frequent coupling and uncoupling.

[(d)] Hoses shall be tested at least annually to the setting of the relief valve that protects the hose.}]

[(e)] Hoses shall be visually inspected for damage or defects before each use and shall not be used if any damage or defect is found.}]

#### §14.2131. Fire Protection.

[(a)] Fire protection shall be provided for all LNG facilities, as determined by sound fire protection engineering principles; analysis of local conditions; hazards within the facility; and exposure to or from other property. The evaluation shall determine at a minimum type, quantity, and location of:}]

[(1)] equipment necessary for the detection and control of fires, leaks, and spills of LNG, flammable refrigerants, or flammable gases.}]

[(2)] equipment necessary for the detection and control of potential non-process and electrical fires.}]

[(3)] the methods necessary for protection of the equipment and structures from the effects of fire.}]

[(4)] fire protection water systems.}]

[(5)] fire extinguishing and other fire control equipment.}]

[(6)] the availability and duties of employees and the availability of local emergency response organizations during an emergency; and}]

[(7)] the protective equipment and special training needed by employees for their emergency duties.}]

[(b)] A detailed emergency response manual shall be prepared for potential emergency conditions. The procedures shall include but not be limited to:}]

[(1)] shut-down or isolation of all or part of the equipment to ensure that the escape of gas or liquid is promptly stopped or reduced as much as possible.}]

[(2)] use of fire protection equipment.}]

[(3)] notification of emergency response organizations and public authorities.}]

[(4)] first aid; and}]

[(5)] duties of employees.}]

(a) [(e)] The emergency procedure manual required in NFPA 59A §13.18.3.1 shall be available in the operating area and shall be updated as required by changes in equipment or procedures.

[(d)] Employees engaged in LNG activities shall be trained in emergency duties and procedures. Refresher training shall be conducted at least once every two years.}]

[(e)] Fire control measures shall be coordinated with the local fire and emergency response organizations.}]

(b) [(f)] In addition to NFPA 59A §12.7, safety [Safety] and fire protection equipment shall be visually inspected at least once a month and tested at least once a year. Documentation shall be maintained on inspections and tests for at least two years or consistent with other safety record retention schedules, whichever is greater.

[(g)] Maintenance on fire control equipment shall be scheduled so that a minimum of equipment is out of service at any one time and fire protection safety is not compromised. Access routes for movement of fire control equipment to an LNG fueling facility shall be maintained at all times.}]

[(h)] Fire extinguishing and other fire control systems shall follow the local fire marshal's requirements and recommendations for the protection of specific hazards.}]

[(i)] Dry chemical fire extinguishers suitable for extinguishing gas fires shall be provided at each stationary LNG installation.}]

#### §14.2137. Employee Safety and Training.

[(a)] Employees shall be advised of the hazards relative to LNG facility operations.}]

[(b)] Protective clothing and equipment shall be provided to employees for both normal operations and emergency response.}]

(a) [(e)] Employees who handle and dispense LNG shall be trained in proper handling, operating duties, and procedures.

(b) [(d)] Employees shall be trained upon employment and as needed thereafter, but no less than every two years. Training shall include the following:

(1) information on the nature, properties, and hazards of LNG in both the liquid and gaseous phases;

(2) specific instructions on the facility equipment to be used;

(3) use and care of protective equipment and clothing;

(4) standard first aid;

(5) response to emergency situations such as fire, leaks, and spills;

(6) good housekeeping practices;

(7) the emergency response plan; and

(8) evacuation and fire drills.

[(e)] Licensees or ultimate consumers shall retain employee safety training records for the past four years.}]

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

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## 16 TAC §§14.2107, 14.2113, 14.2128, 14.2134, 14.2140

The Commission proposes the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

§14.2107. *Stationary LNG Storage Containers.*

§14.2113. *Maintenance Tanks.*

§14.2128. *Communications and Lighting.*

§14.2134. *Container Purging Procedures.*

§14.2140. *Inspection and Maintenance.*

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## SUBCHAPTER D. GENERAL RULES FOR LNG FUELING FACILITIES

### 16 TAC §§14.2304, 14.2310, 14.2313, 14.2314, 14.2319

The Commission proposes the amendments and new rule under Texas Natural Resources Code, §116.012, which authorizes

the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

§14.2304. *General Facility Design.*

[(a)] LNG fueling facilities shall be designed with provisions for securing all equipment in accordance with §14.2101 of this title (relating to Uniform Protection Requirements).]

[(b)] Structures and support of LNG fueling facility equipment, piping, controls, and tanks shall be constructed of noncombustible material.]

[(c)] Dikes, grading, or diversion curbs shall be provided to prevent combustible or hazardous liquids from encroaching on the LNG refueling facility.]

[(a)] [(d)] LNG shall not be vented to the atmosphere under normal operations unless the vent leads to a safe point of discharge. Vent pipes or stacks shall have the open end suitably protected to prevent entrance of rain, snow, and other foreign material. Vent stacks shall have provision for drainage.

[(e)] Instructions identifying the location and operation of emergency controls shall be conspicuously posted in the facility area.]

[(f)] LNG fueling facility containers, liquid impoundment areas, and points of transfer shall be located according to the distances specified in §14.2110 of this title (relating to LNG Container Installation Distance Requirements).]

[(g)] LNG fueling facility containers may be sited above or below grade. Soil susceptible to freezing from contact with containers shall be heated directly or protected with an air space.]

[(h)] Containers having outer jackets made of materials subject to corrosion shall be protected against corrosion.]

[(i)] Vehicles delivering LNG to a facility or vehicles being fueled from a facility shall not be considered ignition sources. Vehicles containing fuel-fired equipment, such as recreational vehicles and catering trucks, shall be considered ignition sources unless the fuel-fired equipment is shut off completely before the vehicle enters an area in which ignition sources are prohibited.]

[(j)] LNG fueling facilities which transfer LNG at night shall have permanent lighting at points of transfer and operation, including at least two lights with a total of at least two footcandles of power.]

[(b)] [(k)] Temperature monitoring systems shall be provided where the foundations supporting cryogenic containers and equipment could be adversely affected by freezing or frost heaving of the ground.

§14.2310. *Emergency Refueling.*

(a) Licensees and nonlicensees, such as mass transit authorities, may use a mobile refueling vehicle for emergency refueling provided it complies with the following requirements:

(1) The gross vehicle weight (GVW) shall not exceed the GVW rating. Installation of the container shall not adversely affect the vehicle.

(2) The vehicle used to transport the container shall comply with all DOT and Texas placarding requirements.

(3) The LNG cargo container shall have a maximum water capacity of 200 gallons.

(4) The container, fittings, and transfer equipment shall be properly secured against displacement.

(b) The individual performing the transfer of LNG shall be properly trained in all aspects of LNG transfer.

(c) Prior to the mobile refueling vehicle being placed into service, the licensee ~~[or non-licensee]~~ shall file with AFS [LP-Gas Operations] a drawing showing the mounting, type of container, water capacity of the container, type of vehicle to be used, and the method of mounting. The vehicle shall not be placed into service until AFS [LP-Gas Operations] ensures that it complies with the applicable rules.

(d) Emergency refueling vehicles are not required to be registered with AFS [LP-Gas Operations].

#### *§14.2313. Fuel Dispensing Systems.*

(a) Compliance with NFPA 52 §10.4 or requirements of this section does not ensure conformity with other state and federal regulations, such as those of the Texas Commission on Environmental Quality or the United States Environmental Protection Agency. Retail LNG dispensers shall comply with the applicable weights and measures requirements of the Texas Department of Agriculture relating to dispensing accuracy.

(b) All appurtenances ~~[Appurtenances]~~ and equipment placed into LNG service shall be certified, marked, or listed by a nationally recognized laboratory such as Underwriters Laboratory (UL), Factory Mutual (FM), CSA International or other such laboratories approved by AFS [Category 15, 20, or 50 licensee] unless:

(1) the appurtenances or equipment are specifically prohibited for use by another section of ~~[the rules in]~~ this chapter; or

(2) there is no test specification or procedure developed by a testing laboratory for the appurtenances or equipment.

(c) Appurtenances and equipment that cannot be ~~[are labeled but not]~~ listed but ~~[and]~~ are not prohibited for use by the rules in this chapter shall be acceptable ~~[and safe]~~ for LNG service over the full range of pressures and temperatures to which they will be subjected under normal operating conditions.

(d) The licensee or operator of the appurtenance or equipment shall maintain ~~[LP-Gas Operations may require any]~~ documentation sufficient to substantiate any claims made regarding the safety of any valves, fittings, and equipment and shall, upon request, furnish copies to AFS.

~~[(e) Drive-away protection shall be provided.]~~

~~[(f) Emergency shut-down devices shall be distinctly marked for easy recognition according to the requirements of Table 4 of §14.2101 of this title (relating to Uniform Protection Requirements) and shall activate a valve installed at the dispensing area that shuts off the power and gas supply to the dispensers. ESD devices shall be located as follows:]~~

~~[(1) For containers with water capacity of 93,240 gallons or less, an ESD device shall be located between 35 and 50 feet from the container.]~~

~~[(2) For containers with water capacity of 93,241 gallons or more, an ESD device shall be located between 60 and 75 feet from the container.]~~

~~[(g) Manually operated container valves shall be provided for each container.]~~

~~[(h) Manually operated shutoff valves shall be installed in manifolds as close as practicable to a container or group of containers.]~~

~~[(i) The use of hoses or arms in a fueling installation is limited to:]~~

~~[(1) a vehicle fueling hose;]~~

~~[(2) an inlet connection to compression equipment; or]~~

~~[(3) a section of metallic hose not exceeding 36 inches in length in a pipeline to provide flexibility where necessary. Metallic hose shall be installed so that it will be protected against damage and be readily visible for inspection. The manufacturer's identification shall be retained for each section of metallic hose used.]~~

~~[(j) When a hose or arm of nominal three-inch diameter or larger is used for liquid transfer, or nominal four-inch diameter or larger is used for vapor transfer, an emergency shutoff valve shall be installed in the piping of the transfer system less than ten feet from the nearest end of the hose or arm. If the flow is away from the hose, a check valve may be used as the shutoff valve. If a liquid or vapor line has two or more legs, an emergency shutoff valve shall be installed in each leg.]~~

~~[(k) The fill line on storage containers shall be equipped with a backflow check valve to prevent discharge of LNG from the container in case of line, hose, or fitting rupture.]~~

~~[(l) A fueling connection and mating vehicle receptacle shall be used to transfer LNG or gas vapor to or from the vehicle.]~~

~~[(m) An interlock device shall be provided so that the hose coupling cannot be released while the transfer line is open. Interlock devices are not required for transports when transferring fuel to a stationary tank.]~~

~~[(n) The maximum delivery pressure shall not exceed the maximum allowable working pressure of the vehicle and fuel tanks.]~~

~~[(o) Where excess flow check valves are used, the closing flow shall be less than the flow rating of the piping system that would result from a pipeline rupture between the excess flow valve and the equipment downstream of the excess flow check valve.]~~

#### *§14.2314. Removal from LNG Service.*

(a) If AFS determines that any LNG container or installation constitutes an immediate danger to the public health, safety, and welfare, AFS shall require the immediate removal of all LNG and/or the immediate disconnection by a properly licensed company to the extent necessary to eliminate the danger. This may include equipment or any part of the system including the service container. A warning tag shall be attached by AFS until the unsafe condition is remedied. Once the unsafe condition is remedied, the tag may be removed by an AFS inspector or by the licensee if authorized by AFS.

(b) If the affected entity disagrees with the removal from service and/or placement of a warning tag the entity may request a review of AFS' decision within 10 calendar days. Within 10 business days, AFS shall notify such entity of its finding in writing, stating the deficiencies. If the entity disagrees, the entity may request or AFS on its own motion may request a hearing. Such installation shall be brought

into compliance or removed from service until such time as the final decision is rendered by the Commission.

*§14.2319. Automatic Fuel Dispenser Safety Requirements.*

(a) Automatic fuel dispensers shall be fabricated of material suitable for LNG and resistant to the action of LNG under service conditions. Pressure containing parts shall be stainless steel, brass, or other equivalent cryogenic material. Aluminum may be used for approved meters.

(b) Electric installations within dispenser enclosures and the entire pit or open space beneath dispensers shall comply with NEC, Class I, Group D, Division 1, except for dispenser components located at least 48 inches above the dispenser base which NEC states are intrinsically safe.

(c) Valves, metering equipment, and other related equipment installed on automatic dispensers shall meet all applicable requirements of the rules in this chapter.

(d) In addition to NFPA 52 §10.4.1, automatic [Automatic] dispensers shall be protected from damage by vehicle collision by fencing and guardrails installed in accordance with §14.2101 of this title (relating to System [Uniform] Protection Requirements).

(e) A device shall be installed in the liquid piping so that displacement of an automatic dispenser will result in the displacement of such piping on the downstream side of the device.

(f) The fueling nozzle shall prevent LNG from being discharged unless the nozzle is connected to the vehicle.

(g) A key, card, or code system shall be used to activate the automatic dispenser.

(h) Automatic dispensers shall incorporate cutoff valves with opening and closing devices which ensure the valves are in a closed position when dispensers are deactivated.

(i) LNG fuel storage installations which include automatic dispensers shall be equipped with an emergency shut-down device for the entire LNG installation located at least 20 feet from the nearest dispenser or storage area. The emergency shut-down device shall be distinctly marked for easy recognition in compliance with the requirements of §14.2101 of this title [~~relating to Uniform Protection Requirements~~].

(j) If automatic dispensers are to be used during hours of darkness, permanent adequate lighting shall be provided to facilitate proper operations.

(k) Fuel dispensers, including automatic dispensers, may be operated only by an individual who has been properly trained.

(1) The licensee owning, operating, or servicing a CNG fuel dispensing facility shall ensure the safe operation of the system and provide training to users.

(2) Step-by-step operating instructions provided by the manufacturer shall be posted at or on each automatic dispenser, readily visible to the operator during transfer operations. The instructions shall describe each action necessary to operate the automatic dispenser and include the location of and procedure for activating emergency shutoff equipment.

(3) Each person or entity who operates a fuel dispenser, excluding an automatic dispenser, shall be provided with written instructions and safe operating procedures by the licensee. The person operating the dispenser should be cautioned to study and preserve such instructions and procedures.

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**16 TAC §§14.2307, 14.2316, 14.2322, 14.2325, 14.2328**

The Commission proposes the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

*§14.2307. Indoor Fueling.*

*§14.2316. Filings Required for Installation of Fuel Dispensers.*

*§14.2322. Protection of Automatic and Other Dispensers.*

*§14.2325. LNG Transport Unloading at Fueling Facilities.*

*§14.2328. Training, Written Instructions, and Procedures Required.*

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**SUBCHAPTER E. PIPING SYSTEMS AND COMPONENTS FOR ALL STATIONARY LNG INSTALLATIONS**



**16 TAC §§14.2404, 14.2407, 14.2410, 14.2413, 14.2419, 14.2422, 14.2425, 14.2428, 14.2431, 14.2434, 14.2437, 14.2440**

The Commission proposes the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

*§14.2404. Piping Materials.*

*§14.2407. Fittings Used in Piping.*

*§14.2410. Valves.*

*§14.2413. Installation of Piping.*

*§14.2419. Welding at Piping Installations.*

*§14.2422. Pipe Marking and Identification.*

*§14.2425. Pipe Supports.*

*§14.2428. Inspection and Testing of Piping.*

*§14.2431. Welded Pipe Tests.*

*§14.2434. Purging of Piping Systems.*

*§14.2437. Pressure and Relief Valves in Piping.*

*§14.2440. Corrosion Control.*

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**16 TAC §14.2416**

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect

the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

*§14.2416. Installation of Valves.*

~~[(a) Valves shall be installed to prevent leaking or malfunction due to freezing. Cryogenic liquid valves shall be installed at an angle greater than 45 degrees from horizontal.]~~

~~[(b) Isolation valves shall be provided on container, tank, and vessel connections, except for connections:]~~

~~[(1) for relief valves. Shutoff valves are only permitted at connections for relief valves in accordance with ASME Code, Section VIII, Division 1, Paragraphs UG-125(d) and Appendix M, Paragraphs M-5 and M-6;]~~

~~[(2) for liquid level alarms required by §14.2501 of this title (relating to Liquid Level Gauging); or]~~

~~[(3) that are blind-flanged or plugged.]~~

~~[(e) Shutoff valves shall be located inside the impounding area as close as practicable to the containers, tanks, and vessels.]~~

~~[(d) Internal valves shall be designed and installed so that any failure of the nozzle will be downstream of the seat of the internal valve itself.]~~

~~(a) [(e)] In addition to NFPA 59A ' ' 9.4.2.3 and 9.4.2.4, the [The] number of shutoff valves installed shall be kept to the minimum required for efficient and safe operation of each facility.~~

~~(b) [(f)] Piping systems shall be designed to limit the contained volume that could be discharged in the event of a piping system failure. Sufficient valves which can be operated both at the installed location and from a remote location to shut down the process and transfer systems in the event of an emergency shall be installed.~~

~~[(g) Container connections larger than one-inch pipe size through which liquid can escape shall be equipped with:]~~

~~[(1) a valve which closes automatically if exposed to fire; or]~~

~~[(2) a remotely controlled, quick-closing valve which shall remain closed except during the operating period;]~~

~~[(3) a fail-closed valve; or]~~

~~[(4) a check valve on filling connections.]~~

~~(c) [(h)] ESD valves shall be single-purpose valves.~~

~~[(i) Valves and valve controls shall be designed to permit operation under icing conditions, if such conditions are possible.]~~

~~[(j) Powered controls shall be provided for emergency shutoff valves that would require excessive time to manually operate during an emergency or if the valve is eight inches or larger in size. A means for manual operation shall also be provided.]~~

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## SUBCHAPTER F. INSTRUMENTATION AND ELECTRICAL SERVICES

### 16 TAC §§14.2501, 14.2504, 14.2507, 14.2510, 14.2513, 14.2516

The Commission proposes the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

§14.2501. *Liquid Level Gauging.*

§14.2504. *Pressure Gauges.*

§14.2507. *Vacuum Gauges.*

§14.2510. *Emergency Failsafe.*

§14.2513. *Electrical Equipment.*

§14.2516. *Electrical Grounding and Bonding.*

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## SUBCHAPTER G. ENGINE FUEL SYSTEMS

### 16 TAC §§14.2604, 14.2610, 14.2619, 14.2625, 14.2634, 14.2637, 14.2640

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

§14.2604. *System Component Qualification.*

[(a) Components in the engine compartment normally in contact with LNG shall be suitable for service over a range of temperatures of -260 degrees Fahrenheit to +250 degrees Fahrenheit. Other components not normally in contact with LNG shall be suitable for service over a range of -40 degrees Fahrenheit to +250 degrees Fahrenheit.]

[(b) Components outside the engine compartment normally in contact with LNG shall be suitable for service over a range of temperatures from -260 degrees Fahrenheit to +180 degrees Fahrenheit. Other components not normally in contact with LNG shall be suitable for service over a range from -40 degrees Fahrenheit to +180 degrees Fahrenheit.]

[(c) Fuel-carrying components (excluding service valves, tubing, and fittings) shall be labeled or stamped with the following:

- (1) the manufacturer's name or symbol;
- (2) the model designation;
- (3) the maximum allowable maximum allowable working pressure;
- (4) the design temperature range;
- (5) direction of flow of fuel when necessary for correct installation; and
- (6) capacity or electrical rating as applicable.

§14.2610. *Installation of Vehicle Fuel Containers.*

(a) In addition to NFPA 52 §9.12.1.2, vehicle [Vehicle] fuel containers [shall comply with the following specifications:]

[(1) Fuel containers on vehicles other than school buses, mass transit, or other vehicles used in public transportation may be located within, below, or above the driver or passenger compartments, provided all connections to the containers are external to or sealed and vented from those compartments. The motor fuel containers installed on a special transit vehicle may be installed in the passenger compartment, provided all connections to the containers are external to or sealed and vented from those compartments.]

{(2) Fuel supply components and containers shall be mounted in a location to minimize damage from collision. No part of a container or its appurtenances shall protrude beyond any part of the vehicle at the point of installation.}

{(3) Fuel systems shall be installed with as much road or ground clearance as practicable, but not less than the minimum road or ground clearance of the vehicle when loaded to its gross vehicle weight rating. The minimum distance shall be measured from the lowest part of the fuel system.}

{(4) No portion of a fuel supply container or container appurtenance shall be located ahead of the front axle or behind the rear bumper mounting face of a vehicle. Fuel container valves shall be protected from physical damage using the vehicle structure, valve protectors, or a suitable metal shield.}

{(5) Fuel supply containers located less than eight inches from the exhaust system shall be shielded from direct heat.}

{(6) Mountings shall minimize fretting corrosion between the fuel container and the mounting system by means of rubber insulators or other suitable means.}

{(7) Fuel containers shall not be installed where they would adversely affect the driving characteristics of the vehicle.}

{(8) [Fuel containers] on school buses, [or] mass transit vehicles, and other public transportation vehicles shall be installed on the underside of the vehicle, except as specified in subsection (c) of this section. Fuel containers on special transit vehicles shall be installed in a location which will not interfere with vehicle operation.

{(9) Fuel containers, appurtenances, and connections may be enclosed in a shroud-type structure, provided it is securely attached to the container and liquid-tight. The shroud access doors shall be secured in place by fasteners such as wing nuts or spring-loaded latches and shall not require the use of tools for removal. The use of locks on shroud access doors is prohibited.}

(b) Fuel supply containers shall be connected or mounted to comply with the following specifications:

{(1) Fuel supply container connections shall be external to or sealed and vented from the driver and passenger compartments or any space containing radio transmitters or other spark-producing equipment.}

(1) [(2)] Container brackets shall be secured to the vehicle body, bed, or frame with bolts, lock washers and nuts, or self-locking nuts of a size and strength capable of withstanding a static force in any direction of eight times the weight of a full container for vehicles with gross vehicle weights of 19,500 pounds or less, and four times the weight of a full container for vehicles with gross vehicle weights of 19,501 pounds or more. Mounting brackets shall be marked with the manufacturer's name or logo. If self-locking nuts are installed, they shall not be reused once they are removed. [Container mounting brackets shall prevent the container from jarring loose, slipping or rotating.}

{(3) Fuel supply containers shall be secured in the mounting brackets by bolts, lock washers, and nuts, or self-locking nuts of a size and strength capable of withstanding a static force applied in any direction eight times the weight of the full container for vehicles with gross vehicle weights of 19,500 pounds or less, and four times the weight of a full container for vehicles with gross vehicle weights of 19,501 pounds or more. If self-locking nuts are installed, the nuts shall not be reused once they are removed.}

{(4) The weight of the fuel container shall not be supported by the outlet, service valves, manifolds, or other fuel connections.}

(2) [(5)] Containers shall be secured to a school bus, mass transit, or special transit vehicle frame excluding the floor by container fastenings or mounting brackets described in paragraph (1) of this subsection [(b) of this section]. The fastenings or brackets shall be secured to the frame, backing plates, or other supporting structure without compromising the strength of that structure.

(c) Roof-mounted containers are allowed if the vehicle was originally designed and manufactured to have roof-mounted containers or if the original manufacturer approves the design of the structure mounting. Vehicles shall not be modified to have roof-mounted containers.

{(d) Container markings shall be readable after a container is permanently installed on a vehicle. A portable lamp or mirror may be used to read markings.}

{(e) Where an LNG container is substituted for the fuel container installed by the original manufacturer of the vehicle, whether or not that fuel container was for LNG, the LNG container shall either fit within the space in which the original fuel container was installed or comply with subsection (a) of this section.}

(d) [(f)] If necessary, a plumbing chamber door shall be provided in the sidewall of the school bus, mass transit, or special transit vehicle to allow for easy access for filling or securing the service valve in the event of an emergency. The plumbing chamber door shall be hinged and latched, but not locked.

#### *§14.2619. Installation of Piping.*

{(a) Piping that carries fuel shall be fabricated to minimize vibration and shall be shielded or installed in a protected location to prevent damage from unsecured objects.}

(a) [(b) Fuel lines shall be mounted, braced, and supported to minimize vibration and protected against damage, corrosion, or breaking due to strain or wear.] Fuel lines shall be supported at least every 21 to 27 inches.

{(c) Fuel lines passing through a panel shall be protected against abrasion by grommets or similar devices such as fittings, which shall snugly fit both the supply lines and the holes in the panel.}

{(d) Fuel lines shall have a minimum clearance of eight inches from the engine exhaust system or shall be shielded against direct heat.}

{(e) Piping or tubing shall pass through the floor of a vehicle directly beneath or adjacent to the container. If a branch line is required, the tee connection shall be in the main fuel line under the floor and outside the vehicle.}

{(f) Hydrostatic relief valves shall be installed in each section of piping or tubing in which LNG can be isolated between shutoff valves to relieve to a safe atmosphere the pressure which could develop from the trapped fuel. The pressure relief valve shall have a pressure not greater than the maximum allowable working pressure of the line it protects.}

(b) [(g)] Joint compound or tape acceptable for use with LNG shall be applied to all male pipe threads prior to assembly.

(c) [(h)] Piping and fittings shall be clean and free from cutting or threading burrs and scaling. The ends of all piping shall be reamed.

(d) [(i)] Bends in piping or tubing are prohibited if the bend weakens the pipe or tubing. Bends shall be made by bending tools designed for this purpose.

(c) [(j)] Joints or connections shall be located only in an accessible location.

~~[(k)] Fuel connections between a tractor and trailer or other vehicle units are prohibited.]~~

*§14.2625. Installation of Pressure Gauges.*

~~[(a)] Pressure gauges located within driver or passenger compartments shall be installed so that no gas will flow through the gauge in the event of failure. Installed gauges shall be readily visible by the driver.]~~

~~[(b)] Pressure gauges installed outside driver or passenger compartments shall be equipped with a limiting orifice, a shatter-proof dial lens, and a body relief.~~

~~[(c)] Gauges shall be securely mounted, shielded, and installed in a protected location to prevent damage from vibration and unsecured objects.]~~

*§14.2634. Vehicle Fueling Connection.*

~~(a) Vehicle fueling connections shall provide for the reliable and secure connection of the fuel system containers to a source of LNG.~~

~~[(b)] Fueling connections shall be designed for the pressure expected under normal conditions and corrosive conditions which might occur.]~~

~~[(b)] [(e)] Fueling connections shall prevent escape of gas when the connector is not properly engaged or becomes separated.~~

~~[(d)] Refueling receptacles on engine fuel systems shall be firmly supported and shall:]~~

~~[(1)] receive the fueling connector and accommodate the maximum allowable working pressure of the vehicle fuel system;]~~

~~[(2)] incorporate a means to prevent the entry of dust, water, and other foreign material. If the means used is capable of sealing system pressure, it shall be capable of being depressurized before removal; and]~~

~~[(3)] have a different fueling connection for each pressure base vehicle fuel system.]~~

*§14.2637. Signs and Labeling.*

~~(a) Signs or labels shall be readily visible before and during transfer operations, shall be weather-resistant, and shall be located as specified in Table 1 of this section.~~

Figure: 16 TAC §14.2637(a) (No change.)

~~[(b)] Vehicles shall be identified with a weather-resistant diamond-shaped label located on an exterior vertical or near vertical surface on the lower right rear of the vehicle (excluding the bumper) in-board of any other markings. The label shall be at least 4 3/4 inches by 3 1/4 inches. The marking shall consist of a border and the capital letters, "LNG"; the letters shall be at least one inch tall, and be silver or white reflective luminous material on a blue or black background.]~~

~~[(b)] [(e)] Upon completion of a vehicle conversion, the licensee making the conversion shall affix to the vehicle an identification tag or decal in a location that is easily readable. The tag or decal shall contain letters that indicate the licensee's name, current license number, and the year and month the conversion was made.~~

*§14.2640. System Testing.*

~~[(a)] The complete LNG engine fuel system shall be leak tested.]~~

~~[(b)] After installation, the piping and connections that are subject to container pressure shall be checked with a non-ammonia soap solution or a leak detector instrument after the equipment is connected~~

~~and pressurized to its 90% of the maximum allowable working pressure of the container.]~~

~~[(a)] [(e)] If the completed LNG engine fuel system is leak tested with natural gas, the testing shall be done under adequately ventilated conditions.~~

~~[(b)] [(d)] If an LNG container is involved in an accident or fire causing damage to the container, the container shall be replaced or removed and returned to a currently licensed Category 15, 20, or 50 licensee to be inspected and retested in accordance with the original manufacturer's specifications. The licensee who performs any repair, modification, or testing of a container shall file LNG Form 2008 with AFS [LP-Gas Operations] before the container is returned to service.~~

~~[(e)] If a vehicle is involved in an accident or fire causing damage to any part of the LNG engine fuel system, the system shall be replaced or repaired as provided in these regulations and retested before it is returned to service.]~~

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**16 TAC §§14.2607, 14.2613, 14.2616, 14.2622, 14.2628, 14.2631**

The Commission proposes the repeals under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

*§14.2607. Vehicle Fuel Containers.*

*§14.2613. Engine Fuel Delivery Equipment.*

*§14.2616. Installation of Venting Systems and Monitoring Sensors.*

*§14.2622. Installation of Valves.*

*§14.2628. Installation of Pressure Regulators.*

*§14.2631. Wiring.*

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## SUBCHAPTER H. LNG TRANSPORTS

### 16 TAC §§14.2701, 14.2704, 14.2705, 14.2707, 14.2710, 14.2737, 14.2746

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

*§14.2701. DOT Requirements.*

(a) This subchapter applies to LNG transports as defined in this chapter ~~[transport containers]~~ used in the transportation and distribution of LNG.

(b) LNG transports shall comply with the requirements of DOT specification MC-338 and the applicable parts of Title 49, Code of Federal Regulations, Parts 171 - 180.

*§14.2704. Registration and Transfer of LNG Transports.*

(a) A person who operates an LNG transport ~~[as defined in this chapter]~~, regardless of who owns the transport, shall register the transport with AFS [LP-Gas Operations] in the name or names under which the operator conducts business in Texas prior to the transport being used in LNG service ~~[in Texas]~~.

(1) To register a unit previously unregistered in Texas, the operator of the unit shall:

(A) pay to AFS [LP-Gas Operations] the \$270 registration fee for each LNG transport ~~[truck, semi-trailer, or other motor vehicle equipped with an LNG cargo tank]; [and]~~

(B) file a properly completed LNG Form 2007; ~~[;]~~

(C) file a copy of the manufacturer's data report;

(D) file a copy of the DOT compliance sheet; and

(E) file a copy of the test required by §14.2707 of this title ~~(relating to Testing Requirements), unless that unit was manufactured within the previous five years.~~

(2) To register a transport ~~[unit]~~ which was previously registered in Texas but for which the registration has expired, the operator of the unit shall:

(A) pay to AFS [LP-Gas Operations] the \$270 registration fee;

(B) file ~~[a properly completed]~~ LNG Form 2007; and

(C) file a copy of the latest test results if an expired unit has not been used in the transportation of LNG for over one year or the current test has not been filed with AFS.

(3) To re-register a currently registered unit, the licensee operating the unit shall pay a \$300 annual registration fee.

(4) ~~[(3)]~~ To transfer a currently registered unit, the new operator ~~[owner]~~ of the transport shall:

(A) pay the \$100 transfer fee for each unit; and

(B) file a properly completed LNG Form 2007.

(b) AFS [LP-Gas Operations] may also request an operator registering or transferring any transport have the transport tested by a test other than those required by §14.2707 of this title ~~[unit to file a copy of the Manufacturer's Data Report or a copy of the DOT certification issued by the manufacturer and/or subframer who prepared the unit for road use, or any other documentation to show the container complies with MC-338].~~

(c) When all registration or transfer requirements have been met, AFS [LP-Gas Operations] shall issue LNG Form 2004 ~~[or letter of authority]~~ which shall be properly affixed in accordance with the placement instructions on the form ~~[as instructed on the decal or letter or maintained on the bobtail or transport trailer]~~. LNG Form 2004 ~~[or letter of authority]~~ shall authorize the licensee or ultimate consumer to whom it has been issued and no other person to operate such unit in the transportation of LNG and to fill the transport containers.

(1) A person shall not operate an LNG transport ~~[unit or introduce LNG into a transport container]~~ in Texas unless the LNG Form 2004 ~~[or letter of authority]~~ has been properly affixed ~~[as instructed on the decal or the letter or maintained on the bobtail or transport trailer]~~ or unless its operation has been specifically approved by AFS [LP-Gas Operations].

(2) A person shall not introduce LNG into a transport container unless that transport bears an LNG Form 2004 or unless specifically approved by AFS.

(3) ~~[(2)]~~ LNG Form 2004 ~~[or letter of authority]~~ shall not be transferable by the person to whom it has been issued, but shall be registered by any subsequent licensee or ultimate consumer prior to the unit being placed into LNG service.

(4) ~~[(3)]~~ This subsection ~~[section]~~ shall not apply to:

(A) a container manufacturer/fabricator who introduces ~~[from introducing]~~ a reasonable amount of LNG into a newly constructed container in order to properly test the vessel, piping system, and appurtenances prior to the initial sale of the container. The LNG

shall be removed from the transport container prior to the transport leaving the manufacturer's or fabricator's premises; or

(B) a person who introduces ~~[introducing]~~ a maximum of 150 gallons of LNG into a newly constructed transport container when such container will provide the motor fuel to the chassis engine for the purpose of allowing the unit to reach its destination.

(5) ~~[(4)]~~ AFS [LP-Gas Operations] shall not issue an LNG Form 2004 ~~[or letter of authority]~~ if AFS [LP-Gas Operations] or a Category 15 or 50 licensee determines that the transport is unsafe for LNG service.

*§14.2705. Replacement Decals ~~[or Letters of Authority and Fees]~~.*

If an LNG Form 2004 decal ~~[or letter of authority]~~ on a transport ~~[unit]~~ currently registered with AFS [LP-Gas Operations] is destroyed, lost, or damaged, the operator of that vehicle shall obtain a replacement decal ~~[or letter of authority]~~ by filing LNG Form 2018B and a \$50 replacement fee with AFS [LP-Gas Operations].

*§14.2707. Testing Requirements.*

(a) Transports ~~[Transport container units]~~ required to be registered with AFS [LP-Gas Operations] shall be tested at least once every five years by a Category 15, 20, or 50 licensee.

(1) Documentation of the required testing shall be filed by the Category 15, 20, or 50 licensee.

(2) The results of any test required under this section shall clearly indicate whether the transport container unit is safe for LNG service. The Category 15, 20, or 50 licensee shall ~~send [mail]~~ LNG Form 2008 to AFS [LP-Gas Operations] within 30 calendar days of the due date of any tests required under this section.

(3) If evidence of any unsafe condition is discovered as a result of any tests performed under this section, the transport container unit shall be immediately removed from LNG service and shall not be returned to LNG service until AFS [LP-Gas Operations] notifies the licensee in writing that the transport container unit may be returned to LNG service.

(b) Containers shall be tested in accordance with 49 CFR §338.

(c) Containers shall be inspected for corroded areas, dents, or other conditions (including leakage under test pressure) which could render the container unsafe for LNG service.

*§14.2710. Markings.*

(a) LNG transports ~~[and container delivery units in LNG service]~~ shall be marked ~~on each side and the rear~~ with the name of the licensee or the ultimate consumer operating the unit. ~~Such lettering [The name]~~ shall be legible and ~~[in letters]~~ at least two inches in height and in sharp color contrast to the background. AFS [LP-Gas Operations] will determine whether the name ~~marked on the transport [marking]~~ is sufficient to properly identify the operator.

~~(b) Each school bus, special transit vehicle, mass transit vehicle, and public transportation unit shall be marked with the manual shutoff valve's location with the words "Manual Shutoff Valve." Decals or stencils are acceptable.~~

~~[(b) Other markings shall comply with other DOT marking requirements.]~~

~~[(c) If a transport unit is loaned or leased for a period of time not to exceed 30 days, the unit may have painted or permanently affixed thereon, in lieu of the name of the licensee operating the transport unit, the name of the owner of the transport unit in letters at least two inches in height.]~~

*§14.2737. Parking of LNG Transports and Container Delivery Units, and Use of Chock Blocks.*

(a) LNG transport or container delivery units shall not be parked on any public street, highway, or alley, except in an emergency, or when in connection with normal duties, meals, or rest stops. Such units shall not be parked in a congested area and shall be parked a minimum distance of 50 feet from any building, except buildings devoted exclusively to LNG ~~activities [operations]~~.

(b) LNG transports shall carry at least two chock blocks designed to effectively prevent the movement of the transport. These blocks shall be used any time the transport is parked and during the transfer of fuel regardless of the level of the surrounding terrain.

*§14.2746. Delivery of Inspection Report to Licensee.*

The transport driver of any transport unit receiving an inspection report from AFS [LP-Gas Operations] shall deliver that report to the licensee in whose name the transport unit is registered.

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**16 TAC §14.2749**

The Commission proposes the repeal under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

*§14.2749. Issuance of LNG Form 2004 Decal.*

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## SUBCHAPTER I. ADOPTION BY REFERENCE OF NFPA 52 (VEHICULAR GASEOUS FUEL SYSTEMS CODE)

### 16 TAC §§14.2801 - 14.2803

The Commission proposes the new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

#### §14.2801. Adoption by Reference of NFPA 52.

(a) Effective February 15, 2021, except as modified in the remaining sections of this subchapter, the Commission adopts by specific reference the provisions established by the National Fire Protection Association in its 2013 edition of the Vehicular Gaseous Fuel Systems Code, commonly referred to as NFPA 52 or Pamphlet 52. Nothing in this section or subchapter shall prevent the Commission, after notice, from adopting additional requirements, whether more or less stringent, for individual situations to protect the health, safety, and welfare of the general public. Any documents or parts of documents incorporated by reference into these rules shall be a part of these rules as if set out in full.

(b) Effective February 15, 2021, the Commission also adopts by reference all other NFPA publications or portions of those publications referenced in NFPA 52 which apply to LNG activities only. The pamphlets adopted by reference in NFPA 52 are:

- (1) FPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2012 edition;
- (2) NFPA 37, Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines, 2010 edition;
- (3) NFPA 51B, Standard for Fire Prevention During Welding, Cutting, and Other Hot Work, 2009 edition;
- (4) NFPA 54, National Fuel Gas Code, 2012 edition;
- (5) NFPA 59A, Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG), 2013 edition;

- (6) NFPA 70, National Electrical Code, 2014 edition;
- (7) NFPA 80, Standard for Fire Doors and Other Opening Protectives, 2013 edition;
- (8) NFPA 101, Life Safety Code, 2012 edition;
- (9) NFPA 259, Standard Test Method for Potential Heat of Building Materials, 2013 edition;
- (10) NFPA 302, Fire Protection Standard for Pleasure and Commercial Motor Craft, 2010 edition;
- (11) NFPA 303, Fire Protection Standard for Marinas and Boatyards, 2011 edition;
- (12) NFPA 496, Standard for Purged and Pressurized Enclosures for Electrical Equipment, 2013 edition; and
- (13) NFPA 5000, Building Construction and Safety Code, 2012 edition.

#### §14.2802. Clarification of Certain Terms Used in NFPA 52.

(a) Authority having jurisdiction. As pertains to LNG activities in Texas, the phrase "authority having jurisdiction" defined in NFPA 52 §3.2 and referenced in other NFPA publications shall be the Railroad Commission of Texas or any of its divisions or employees, except with respect to the definitions of "approved," "labeled," and "listed" in NFPA 52 §3.2.

(b) Engineering. The Commission does not adopt language in any NFPA 52 rule such as "sound engineering practice," "accepted engineering practice," "good engineering practice," "sound engineering design," or similar language that might be understood to mean or refer to the practice of engineering. The omission of a specific NFPA 52 rule or other NFPA pamphlets containing such language from the exceptions listed in this subchapter is inadvertent and shall not be read or understood as requiring, allowing, or approving the unlicensed practice of engineering or any other professional occupation requiring a license.

#### §14.2803. Sections in NFPA 52 Adopted with Additional Requirements or Not Adopted.

Table 1 of this section lists certain NFPA 52 sections which the Commission adopts with additional requirements or does not adopt in order to address the Commission's rules in this chapter.

Figure: 16 TAC §14.2803

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## SUBCHAPTER J. ADOPTION BY REFERENCE OF NFPA 59A (STANDARD FOR THE PRODUCTION, STORAGE, AND HANDLING OF LIQUEFIED NATURAL GAS (LNG))

### 16 TAC §§14.2901 - 14.2903

The Commission proposes the new rules under Texas Natural Resources Code, §116.012, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the compressed natural gas and liquefied natural gas industries that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §116.013, which allows the Commission to adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment; and Texas Natural Resources Code §116.031(e), which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission.

Statutory authority: Texas Natural Resources Code, §§116.012, 116.013, and 116.031.

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

§14.2901. Adoption by Reference of NFPA 59A.

(a) Effective February 15, 2021, except as modified in the remaining sections of this subchapter, the Commission adopts by specific reference the provisions established by the National Fire Protection Association in its 2013 edition of the Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG), commonly referred to as NFPA 59A or Pamphlet 59A. Nothing in this section or subchapter shall prevent the Commission, after notice, from adopting additional requirements, whether more or less stringent, for individual situations to protect the health, safety, and welfare of the general public. Any documents or parts of documents incorporated by reference into these rules shall be a part of these rules as if set out in full.

(b) Effective February 15, 2021, the Commission also adopts by reference all other NFPA publications or portions of those publications referenced in NFPA 59A. The pamphlets adopted by reference in NFPA 59A are:

(1) NFPA 10, Standard for Portable Fire Extinguishers, 2010 edition;

(2) NFPA 11, Standard for Low-, Medium-, and High-Expansion Foam, 2010 edition;

(3) NFPA 12, Standard on Carbon Dioxide Extinguishing Systems, 2011 edition;

(4) NFPA 12A, Standard on Halon 1301 Fire Extinguishing Systems, 2009 edition;

(5) NFPA 13, Standard for the Installation of Sprinkler Systems, 2013 edition;

(6) NFPA 16, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems, 2011 edition;

(7) NFPA 17, Standard for Dry Chemical Extinguishing Systems, 2009 edition;

(8) NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, 2013 edition;

(9) NFPA 22, Standard for Water Tanks for Private Fire Protection, 2008 edition;

(10) NFPA 24, Standard for the Installation of Private Fire Service Mains and Their Appurtenances, 2013 edition;

(11) NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2011 edition;

(12) NFPA 30, Flammable and Combustible Liquids Code, 2012 edition;

(13) NFPA 37, Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines, 2010 edition;

(14) NFPA 54, National Fuel Gas Code, 2012 edition;

(15) NFPA 58, Liquefied Petroleum Gas Code, 2011 edition;

(16) NFPA 59, Utility LP-Gas Plant Code, 2012 edition;

(17) NFPA 70, National Electrical Code, 2011 edition;

(18) NFPA 72, National Fire Alarm and Signaling Code, 2013 edition;

(19) NFPA 101, Life Safety Code, 2012 edition;

(20) NFPA 274, Standard Test Method to Evaluate Fire Performance Characteristics of Pipe Insulation, 2009 edition;

(21) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 2012 edition;

(22) NFPA 600, Standard on Industrial Fire Brigades, 2010 edition;

(23) NFPA 1221, Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems, 2013 edition;

(24) NFPA 1901, Standard for Automotive Fire Apparatus, 2009 edition;

(25) NFPA 2001, Standard on Clean Agent Fire Extinguishing Systems, 2012 edition;

(26) NFPA 5000, Building Construction and Safety Code, 2012 edition.

§14.2902. Clarification of Certain Terms Used in NFPA 59A.

(a) Authority having jurisdiction. As pertains to LNG activities in Texas, the phrase "authority having jurisdiction" defined in NFPA 59A §3.2 and referenced in other NFPA publications shall be the Railroad Commission of Texas or any of its divisions or employees, except with respect to the definitions of "approved," "labeled," and "listed" in NFPA 59A §3.2.

(b) Engineering. The Commission does not adopt language in any NFPA 59A rule such as "sound engineering practice," "accepted engineering practice," "good engineering practice," "sound engineering design," or similar language that might be understood to mean or refer to the practice of engineering. The omission of a specific NFPA 59A rule or other NFPA pamphlets containing such language from the exceptions listed in this subchapter is inadvertent and shall not be read or understood as requiring, allowing, or approving the unlicensed practice of engineering or any other professional occupation requiring a license.

§14.2903. Sections in NFPA 59A Adopted with Additional Requirements or Not Adopted.

Table 1 of this section lists certain NFPA 59A sections which the Commission adopts with additional requirements or does not adopt in order to address the Commission's rules in this chapter.

Figure: 16 TAC §14.2903

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



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Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 475-1295



## CHAPTER 15. ALTERNATIVE FUELS PROGRAMS

### 16 TAC §§15.1 - 15.13

The Railroad Commission of Texas proposes the repeal of 16 Texas Administrative Code Chapter 15, relating to Alternative Fuels Programs, specifically §§15.1 - 15.13, relating to Purpose; Definitions; Establishment and Duration; Availability of Funds; Eligibility; Application; Conditions of Receipt of Rebate or Incentive; Selection of Equipment and Installer; Rebate or Incentive Amount; Minimum Efficiency Factor; or Performance Standard; Verification, Safety, Disallowance, and Refund; Assignment of Rebate or Incentive; Compliance; and Complaints. The repeals are proposed pursuant to House Bill 1818, 85th Legislative Session (2017) which repealed the statute authorizing the Alternative Fuels Research and Education program.

Texas Natural Resources Code Chapter 113, Subchapter I, provided authority to create the Alternative Fuels Research and Education Program. In 2013, House Bill 7 (83rd Legislature) repealed Texas Natural Resources Code, Chapter 113, Subchapter I, and moved the authority for the program to Texas Natural Resources Code §81.0681, which read (in part): "The commission shall adopt all necessary rules relating to activities regarding the use of alternative fuels that are or have the potential to be effective in improving the air quality, energy security, or economy of this state." Finally, House Bill 1818 of the 85th Legislature repealed §81.0681, thus eliminating the Alternative Fuels Research and Education Program. The proposal would repeal Commission rules related to this program.

April Richardson, Director, Alternative Fuels Department, Oversight and Safety Division, has determined that for each year of the first five years the repeals as proposed are in effect, there will be no fiscal effect on state or local government.

Ms. Richardson has determined that for the first five years the proposed repeals are in effect, the primary public benefit will be the elimination of unnecessary Commission rules and consistency with the Commission's governing statutes.

Ms. Richardson has determined that for each year of the first five years that the repeals will be in effect, there will be no economic costs for persons required to comply as a result of adoption of the proposed repeals.

The Commission has determined that the proposed repeals will not have an adverse economic effect on rural communities, small businesses or micro businesses. Therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

The Commission has also determined that the proposed repeals will not affect a local economy. Therefore, the Commission has

not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the repeals do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the repeals would be in full effect, the proposed repeals would not: require an increase or decrease in future legislative appropriations; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; or affect the state's economy. The proposed repeal would not eliminate a government program but would remove rules related to a program that was eliminated by the legislature.

Comments on the proposed repeals may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings](http://www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings); or by electronic mail to [rulescoordinator@rrc.texas.gov](mailto:rulescoordinator@rrc.texas.gov). The Commission will accept comments until 12:00 noon on Monday, December 14, 2020. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Richardson at (512) 463-6935. The status of Commission rulemakings in progress is available at [www.rrc.texas.gov/general-counsel/rules/proposed-rules](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules). Once received, all comments are posted on the Commission's website at <https://rrc.texas.gov/general-counsel/rules/proposed-rules>. If you submit a comment and do not see the comment posted at this link within three business days of submittal, please call the Office of General Counsel at (512) 463-7149. The Commission has safeguards to prevent emailed comments from getting lost; however, your operating system's or email server's settings may delay or prevent receipt.

The Commission proposes the repeals pursuant to House Bill 1818 (85th Legislature, 2017). House Bill 1818 repealed Nat. Res. Code §81.0681 which authorized the Commission to adopt all necessary rules relating to activities regarding the use of alternative fuels that are or have the potential to be effective in improving the air quality, energy security, or economy of this state.

Statutory authority: Texas Natural Resources Code, §81.0681.

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

§15.1. *Purpose.*

§15.2. *Definitions.*

§15.3. *Establishment and Duration.*

§15.4. *Availability of Funds.*

§15.5. *Eligibility.*

§15.6. *Application.*

§15.7. *Conditions of Receipt of Rebate or Incentive.*

§15.8. *Selection of Equipment and Installer.*

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

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

§15.11. *Assignment of Rebate or Incentive.*

§15.12. *Compliance.*

§15.13. *Complaints.*

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

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Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 475-1295



## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 67. AUCTIONEERS

#### 16 TAC §67.20

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 67, §67.20, regarding the Auctioneers program. These proposed changes are referred to as the "proposed rule."

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rule under 16 TAC Chapter 67 implements Texas Occupations Code, Chapter 1802.

The proposed rule implements necessary changes required by Senate Bill (SB) 1531, 86th Legislature, Regular Session (2019). The proposed rule amends the licensure requirements for auctioneers.

The proposed rule was presented to and discussed by the Auctioneer Advisory Board at its meeting on October 13, 2020. The Advisory Board did not make any changes to the proposed rule. The Advisory Board voted and recommended that the proposed rule be published in the *Texas Register* for public comment.

#### SECTION-BY-SECTION SUMMARY

The proposed rule amends §67.20, License Requirements Auctioneer, by removing the restriction that prevents an applicant with a felony conviction during the five years prior to application from being licensed.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of state governments.

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of local governments.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rule will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

Mr. Couvillon has determined that the proposed rule will affect the local economy, so the agency has prepared a local employment impact statement, as detailed and required under Government Code §2001.022.

#### PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be that applicants will no longer be automatically ineligible for an auctioneer license due to a felony conviction within five years of the application date. A person with such a conviction seeking to become an auctioneer will be able to have their application and criminal history considered to obtain a license. Due to the statutory change, these applicants will be afforded the due process which was not previously available to them.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

#### FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rule does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed rule will be in effect, the agency has determined the following:

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does not require an increase or decrease in fees paid to the agency.
5. The proposed rule does not create a new regulation.
6. The proposed rule does expand, limit, or repeal an existing regulation. The proposed rule eliminates the provision which prohibited an applicant from having a criminal conviction within the five years prior to the application date.
7. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rule does not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rule and the proposed rule does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

#### STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and 1802, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapters 51 and 1802. No other statutes, articles, or codes are affected by the proposed rule.

#### §67.20. *Licensure Requirements--Auctioneer.*

- (a) (No change.)
- (b) To obtain a license as an auctioneer an applicant must:
  - (1) - (3) (No change.)
  - (4) hold a high school diploma or a high school equivalency certificate; and
  - ~~[(5) not have been convicted of a felony during the five (5) years preceding the application date; and]~~
  - (5) ~~[(6)]~~ show proof of successful completion of at least eighty (80) hours of classroom instruction at an auction school with a curriculum approved by the department.

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

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 475-4879

## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

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

#### SUBCHAPTER N. PUBLIC ACCESS TO COURSE INFORMATION

##### 19 TAC §4.227

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter N, §4.227, concerning Public Access to Course Information. Specifically, this amendment will remove §4.227(11) as corresponding §4.229 is proposed for repeal. The information in those sections duplicates the details regarding required internet access to work-study information outlined in §22.129(f) and Texas Education Code §56.080.

Additionally, the Coordinating Board proposes the repeal of §4.229, concerning Public Access to Course Information. Specifically, this repeal will eliminate duplicate language regarding required internet access to work-study information outlined in §22.129(f) and Texas Education Code §56.080.

Dr. Stacey Silverman, Assistant Commissioner, Academic Quality and Workforce, has determined that for each of the first five years the sections are repealed there would be no fiscal implications for state or local governments as a result of repealing the rules. There are no estimated reductions in costs to the state and to local governments as a result of repealing the rules. There are no estimated loss or increase in revenue to the state or to local governments as a result of repealing the rules.

There is no impact on small businesses, micro-businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Silverman has also determined that for each year of the first five years the sections are repealed, the public benefit anticipated as a result of the repeals will be the elimination of duplicative rules. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;

- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will repeal rules §§4.227(11) and 4.229;
- (7) the rules will not change the number of individuals subject to the rules; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Stacey Silverman, Ph.D., Assistant Commissioner, Academic Quality and Workforce, P.O. Box 12788, Austin, Texas 78711, (512) 427-6206, [stacey.silverman@highered.texas.gov](mailto:stacey.silverman@highered.texas.gov). 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, §§56.077 and 56.080, which provides the Coordinating Board with the authority to adopt rules for the administration of the Texas College Work-Study Program.

The proposed amendment affects Texas Education Code, §§56.077 and 56.080.

#### §4.227. Definitions.

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

(1) - (10) (No changes.)

~~[(11) Work-study employment opportunity--Includes all of the programs and opportunities in the Federal College Work-Study Program, the State of Texas Work-Study Program, and any similar financial aid employment programs sponsored by the institution. For the purposes of this subchapter, work-study applies only to resident undergraduate students.]~~

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6206



### 19 TAC §4.229

The repeal is proposed under the Texas Education Code, §§56.077 and 56.080, which provides the Coordinating Board with the authority to adopt rules for the administration of the Texas College Work-Study Program.

The proposed repeal affects Texas Education Code, §§56.077 and 56.080.

§4.229. Internet Access to Work-Study Information.

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

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Nichole Bunker-Henderson

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Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6206



## CHAPTER 13. FINANCIAL PLANNING

### SUBCHAPTER G. RESTRICTED RESEARCH EXPENDITURES

#### 19 TAC §13.122, §13.126

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter G, §13.122 and 13.126, concerning Restricted Research Expenditures. Specifically, the amendment to §13.122 would clarify the definitions of terms used for determining restricted research expenditures and the amendment to §13.126 would clarify reporting requirements of restricted research expenditures.

Texas Education Code, §62.091, establishes the Texas Comprehensive Research Fund. Texas Education Code, §62.096, authorizes the Coordinating Board, with the assistance of a committee, to prescribe standards and accounting methods for determining the amount of restricted research funds expended by an eligible institution in a state fiscal year. TAC §13.123 requires the Commissioner to convene, on an as needed basis, a committee to review and recommend changes to standards and accounting methods for determining restricted research expenditures. The Restricted Research Committee approved changes to the standards and accounting methods for determining restricted research expenditures, as defined by TAC §13.124, at its September 2, 2020 annual meeting.

The proposed amendment, in §13.122, would allow institutions to classify thesis and dissertation research and capstone research projects for Research and Development (R&D) as part of training of individuals in R&D techniques. The amendment would strike an erroneous reference to "RDF," the no-longer existing Research Development Fund. The amendment would clarify a definition for "Pass-through funds," which are not called "Pass-through to subrecipient," as currently written.

The proposed amendment, §13.126, would clarify that the prohibited expenditure "rentals" is rentals for "personal use." It would also clarify that travel reimbursements and costs associated with research workshops are allowable if permitted by award-specific award conditions or limitations.

Dr. Stacey Silverman, Assistant Commissioner of Academic Quality and Workforce, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of

enforcing or administering the rule. There are no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Stacey Silverman has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the more uniform application of how restricted research expenditures are accounted at institutions of higher education. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Stacey Silverman, Assistant Commissioner, Academic Quality and Workforce, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at AQW@higher.texas.gov. 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, Sections 62.091-62.098, which provides the Coordinating Board with the authority to administer the Texas Comprehensive Research Fund and adopt rules regarding standards and accounting methods for determining the amount of restricted research funds expended in a state fiscal year.

The proposed amendment affects Texas Education Code, Chapter 62, Subchapter E, Texas Comprehensive Research Fund, Subchapter F-1, Core Research Support Fund, and Subchapter G, National Research University Fund.

#### §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) Coordinating Board or Board--The Texas Higher Education Coordinating Board.
- (2) Clinical Trial Agreement--An externally sponsored agreement for the administration of a specifically mandated patient protocol (sometimes in multiple clinical sites involving other institutions), in which some costs typically are paid from patient charges or other sources.
- (3) Commissioner--Commissioner of Higher Education.

(4) Comptroller--The Texas Comptroller of Public Accounts.

(5) Core Research Support Fund (CRSF)--A funding mechanism established to promote increased research capacity at emerging research universities under Texas Education Code, §§62.131 - 62.137.

(6) Demonstration Projects--Projects in which the primary purpose is to apply previous Research and Development findings in new settings and to demonstrate their utility.

(7) Development--The systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

(8) Indirect Costs--Costs incurred for certain overhead related to administering a particular sponsored project, an instructional activity, or any other institutional activity. Indirect costs are synonymous with "facilities and administrative (F&A) costs."

(9) Industrial Collaboration Agreements--Agreements with universities, colleges, centers, or institutes under which funds are provided for collaborative R&D activities. The activity must be sponsored by private philanthropic organizations and foundations, for-profit businesses, or individuals.

(10) Multiple Function Awards--Awards that have multiple goals, such as research, instruction, and public service.

(11) Other Sponsored Activities--Programs and projects financed by Federal and non-federal agencies and organizations may be R&D for [RDF] restricted research under certain conditions:

(A) travel grants, only if in sole support of research activities;

(B) support for conferences or seminars, only if in sole support of research activities;

(C) support for projects pertaining to library collections, acquisitions, bibliographies or cataloging, only if their purpose is primarily for documented research activities; and

(D) programs to enhance institutional resources, including computer enhancements, etc., only if their purpose is primarily for documented research activities.

(12) Pass-through funds [to sub-recipient]--External award funds that are passed from one entity to a sub-recipient. The sub-recipient expends the award funds on behalf of or in connection with the pass-through entity.

(13) Research--A systematic study directed toward fuller scientific knowledge or understanding of the subject studied.

(14) Research and Development (R&D)--All research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions.

(15) Restricted Funds--Funds for which some external agency, business entity, individual, or organization has placed limitations on the uses for which the funds may be spent.

(16) Restricted Gifts for R&D--A gift provided by an external entity (a foundation, a business, or an individual) for a specific purpose and for which:

(A) there is documented evidence that the gift is restricted for research, such as a donor's restriction for research; or

(B) there is separate evidence that the gift is restricted for research through:

(i) documentation by the donor that the gift is restricted (e.g., endowed chair, fellowship); and

(ii) more than half of the earnings are budgeted for research through the institutional accounting process.

(17) Restricted Research Committee or Committee--The Coordinating Board's Restricted Research Committee.

(18) Restricted Research Expenditure--An expenditure of funds which an external entity has placed limitations on (Restricted Funds) and for which the use of the funds qualifies as research and development.

(19) Sponsored Instruction and Training--Specific instructional or training activity established by grant, contract, or cooperative agreement with federal, state, or local government agencies; private philanthropic organizations and foundations; for-profit businesses; or individuals. Sponsored Instruction and Training may be R&D for restricted research under certain conditions:

(A) curriculum development projects if the primary purpose of the project is developing and testing an instructional or educational model through appropriate research methodologies (i.e., data collection, evaluation, dissemination, and publication); or

(B) activities involving the training of individuals in R&D techniques, commonly called R&D training, if such activities utilize the same facilities as other R&D activities and if such activities are not included in the instruction function. Such activities include thesis and dissertation research and capstone research projects for [work associated with an] R&D [project].

(20) Sources and Uses template--An annual survey of Texas general academic and health-related institutions to detail financial information and provide specific information about revenues and expenditures.

(21) Sponsored Research and Development (Sponsored R&D)--Activity funded by grants, gifts, and/or contracts, including sponsored research contracts, that are externally awarded funds designated by the sponsor as primarily for R&D purposes. The activity must be sponsored by federal, state, or local governmental agencies; private philanthropic organizations and foundations; for-profit businesses; or individuals. Sponsored R&D includes:

(A) awards to university faculty to support R&D activities;

(B) competitively awarded grants and contracts funded by state appropriations specifically identified by the legislature as for research, but not state appropriations made directly to the institution for R&D through formula or special item funding;

(C) external faculty "career awards" to support the R&D efforts of the faculty;

(D) external funding to maintain facilities or equipment and/or operation of a center or facility that will be used for R&D;

(E) external support for the writing of books when the purpose of the writing is to publish R&D results;

(F) the research portion of expenditures in the federal work-study program, in accordance with instructions for preparing the annual financial report that is submitted by an institution to the Comptroller after each fiscal year ends;

(G) industrial collaboration agreements with universities, colleges, centers, or institutes may qualify as R&D if at least half of the funds are explicitly designated as research support;

(H) clinical trial agreements in which data collection and analysis are the primary components of the institution's role in the trial, excluding costs of data collection and analysis performed by other institutions under subcontract and excluding costs that are covered by patient charges or similar sources; and

(I) demonstration projects may be R&D only if they include a new R&D component that is at least one-half of the scope of the project.

(22) Texas Comprehensive Research Fund (TCRF)--A funding mechanism established to promote increased research capacity at eligible general academic institutions that are neither research universities nor emerging research institutions under Texas Education Code, §§62.091 - 62.098.

#### *§13.126. Reporting of Restricted Research Expenditures.*

(a) Each institution eligible for either TCRF or CRSF shall provide a verified report of its restricted research expenditures to the Commissioner through the Sources and Uses template.

(1) The report will include restricted research expenditures from the awards approved by the Commissioner under §13.125 of this title (relating to Report on Restricted Research Awards).

(2) Certain expenditures related to any award classified as restricted research are prohibited to be recorded as restricted research expenditures: indirect costs; capital construction; and costs associated with entertainment or any direct individual benefit. Examples of costs associated with entertainment or any direct individual benefit include costs for shows, sports events, meals, lodging, rentals for personal use, gratuities, or personal, non-research related travel. Travel reimbursement and costs associated with research workshops or other events to disseminate research is permitted as allowed by award-specific award conditions or limitations.

(b) Not later than December 1, each institution that received a TCRF or CRSF appropriation in the preceding fiscal year shall provide the Commissioner and the Legislative Budget Board with a report that describes how the institution used the appropriated funds in the preceding fiscal year. The report shall include a description of expenditures of appropriated funds received during prior fiscal years.

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6206



## SUBCHAPTER K. TECHNOLOGY WORKFORCE DEVELOPMENT GRANT PROGRAM

19 TAC §§13.190 - 13.197

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter K, §§13.190 - 13.197, concerning the Technology Workforce Development Grant Program (TWD Grant Program). Specifically, this repeal will strike out the entire Subchapter K.

The TWD Grant Program was created by the 77th Texas Legislature, Regular Session, 2001, and originally codified as Texas Education Code, Chapter 51, Subchapter V (Technology Workforce Development) (Act of May 3, 2001, 77th Leg., R.S., Ch. 146, §1, 2001 Tex. Gen. Laws 297-300) (S.B. 353). In 2003, these provisions were relettered and renumbered as Chapter 51, Subchapter X, §§ 51.851-51.860 (Act of May 20, 2003, 78th Leg., R.S., Ch. 1275, §2(26), 2003 Tex. Gen. Laws 4141) (H.B. 3506).

The 82nd Texas Legislature first repealed Texas Education Code §51.859, with an effective date of September 1, 2013 (Act of May 27, 2011, 82nd Leg., R.S., Ch. 1049, §9.01(b)(1), 2011 Tex. Gen. Laws 2701) (S.B. 5). The 83rd Texas Legislature then repealed Texas Education Code Chapter 51, Subchapter X, in its entirety, with an effective date of September 1, 2013 (Act of May 26, 2013, 83rd Leg., R.S., Ch. 1155, § 62(2), 2013 Tex. Gen. Laws 2876) (S.B. 215).

Because the underlying statutory authority for the TWD Grant Program has been repealed, the Coordinating Board proposes to accordingly update its rules.

Dr. Stacey Silverman, Assistant Commissioner of Academic Quality and Workforce, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro-businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Stacey Silverman has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the repeal of rules that have no longer statutory authority. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Stacey Silverman, Assistant Commissioner, Academic Quality and Workforce, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at [AQW@highered.texas.gov](mailto:AQW@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Act of May 27, 2011, 82nd Leg., R.S., Ch. 1049, § 9.01(b)(1), 2011 Tex. Gen. Laws 2701) (S.B. 5). Act of May 26, 2013, 83rd Leg., R.S., Ch. 1155, § 62(2), 2013 Tex. Gen. Laws 2876 (S.B. 215).

The proposed repeal does not affect other provisions of law.

§13.190. *Authority, Scope, and Purpose.*

§13.191. *Definitions.*

§13.192. *Advisory Committee.*

§13.193. *Proposal Solicitation.*

§13.194. *Proposal Evaluation and Project Selection.*

§13.195. *Grants.*

§13.196. *Reporting.*

§13.197. *External Evaluation.*

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

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## CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

### SUBCHAPTER A. GENERAL PROVISIONS

#### 19 TAC §22.1

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter A, §22.1 (Definitions), concerning General Provisions. Specifically, Texas Education Code (TEC), §61.027, authorizes the Coordinating Board to adopt rules to effectuate the provisions of TEC Chapter 61, including §61.051(a)(5) regarding the administration of financial aid programs. The amendments are proposed to provide institutions with greater clarity regarding defined financial aid terms throughout Chapter 22 and align the use of state and federal financial aid terms.

Section 22.1 is amended to add the phrase "academic year" as a defined term throughout the chapter to align the use of the phrase in state financial aid programs with its use in federal financial aid programs. Remaining definitions are renumbered accordingly.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each

of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Contéro-Puls has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the greater clarity regarding defined financial aid terms throughout Chapter 22. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, [Charles.Contero-Puls@HigherEd.Texas.gov](mailto:Charles.Contero-Puls@HigherEd.Texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code (TEC), §61.027, which authorizes the Coordinating Board to adopt rules to effectuate the provisions of TEC Chapter 61, including §61.051(a)(5) regarding the administration of financial aid programs.

The proposed amendment affects Texas Administrative Code, Chapter 22.

#### §22.1. Definitions.

The following words and terms, when used in Chapter 22, shall have the following meanings, unless otherwise defined in a particular subchapter:

(1) Academic Year--The combination of semesters defined by a public or private institution of higher education to fulfill the federal "academic year" requirement as defined by 34 CFR 668.3.

(2) [(4)] Attempted Semester Credit Hours--Every course in every semester for which a student has been registered as of the official Census Date, including but not limited to, repeated courses and courses the student drops and from which the student withdraws. For transfer students, transfer hours and hours for optional internship and cooperative education courses are included if they are accepted by the receiving institution towards the student's current program of study.

(3) [(2)] Awarded--Offered to a student.

(4) [(3)] Board or Coordinating Board--The Texas Higher Education Coordinating Board.

(5) [(4)] Board Staff--The staff of the Texas Higher Education Coordinating Board.

(6) [(5)] Categorical Aid--Gift aid that the institution does not award to the student, but that the student brings to the school from a non-governmental third party.

(7) [(6)] Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(8) [(7)] Cost of Attendance/Total Cost of Attendance--An institution's estimate of the expenses incurred by a typical financial aid recipient in attending a particular institution of higher education. It includes direct educational costs (tuition and fees) as well as indirect costs (room and board, books and supplies, transportation, personal expenses, and other allowable costs for financial aid purposes).

(9) [(8)] Degree or certificate program of four years or less--A baccalaureate degree or certificate program other than a program determined by the Board to require four years or less to complete.

(10) [(9)] Degree or certificate program of more than four years--A baccalaureate degree or certificate program determined by the Board to require more than four years to complete.

(11) [(10)] Encumber--Program funds that have been officially requested by an institution through procedures developed by the Coordinating Board.

(12) [(11)] 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.

(13) [(12)] Expected Family Contribution (EFC)--A measure of how much the student and his or her family can be expected to contribute to the cost of the student's education for the year as determined following the federal methodology.

(14) [(13)] 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 Expected Family Contribution are to be determined in accordance with Board guidelines.

(15) [(14)] Full-Time--For undergraduate students, enrollment or expected enrollment for the equivalent of twelve or more semester credit hours per semester. For graduate students, enrollment or expected enrollment for the normal full-time course load of the student's program of study as defined by the institution.

(16) [(15)] Gift Aid--Grants, scholarships, exemptions, waivers, and other financial aid provided to a student without a requirement to repay the funding or earn the funding through work.

(17) [(16)] Graduate student--A student who has been awarded a baccalaureate degree and is enrolled in coursework leading to a graduate or professional degree.

(18) [(17)] Half-Time--For undergraduates, enrollment or expected enrollment for the equivalent of at least six but fewer than nine semester credit hours per regular semester. For graduate students, enrollment or expected enrollment for the equivalent of 50 percent of the normal full-time course load of the student's program of study as defined by the institution.



(19) [(18)] Period of enrollment--The semester or semesters within the current state fiscal year (September 1 - August 31) for which the student was enrolled in an approved institution and met all eligibility requirements for an award through this program.

(20) [(49)] 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 the determination of student eligibility, selection of recipients, maintenance of all records, and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the institution's chief executive officer, the director of student financial aid shall serve as Program Officer.

(21) [(20)] Residency Core Questions--A set of questions developed by the Coordinating Board to be used to determine a student's eligibility for classification as a resident of Texas, available for downloading from the Coordinating Board's website, and incorporated into the ApplyTexas application for admission.

(22) [(24)] 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.

(23) [(22)] Semester--A payment period, as defined by 34 CFR 668.4(a) or 34 CFR 668.4(b)(1).

(24) [(23)] Three-Quarter-Time--For undergraduate students, enrollment or expected enrollment for the equivalent of at least nine but fewer than 12 semester credit hours per semester. For graduate students, enrollment or expected enrollment for the equivalent of 75 percent of the normal full-time course load of the student's program of study as defined by the institution.

(25) [(24)] Timely Distribution of Funds--Activities completed by institutions of higher education related to the receipt and distribution of state financial aid funding from the Board and subsequent distribution to recipients or return to the Board.

(26) [(25)] Undergraduate student--An individual who has not yet received a baccalaureate degree.

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6365



## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 151. COMMISSIONER'S RULES CONCERNING PASSING STANDARDS FOR EDUCATOR CERTIFICATION EXAMINATIONS

#### 19 TAC §151.1001

The Texas Education Agency (TEA) proposes an amendment to §151.1001, concerning passing standards for educator certification examinations. The proposed amendment would specify the satisfactory scores for the following new educator certification examinations: Core Subjects: EC-6, Science of Teaching Reading, Early Childhood: PK-3, Educational Diagnostician, School Counselor, and Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Texas Education Code, §21.048(a), requires the commissioner of education to establish the satisfactory levels of performance required on educator certification examinations and require a satisfactory level of performance on each core subject covered by an examination.

The proposed amendment would establish passing standards for the new Core Subjects: EC-6, Science of Teaching Reading, Early Childhood: PK-3, Educational Diagnostician, School Counselor, and Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 examinations.

A standard setting committee of educators developed a recommended passing standard for each subtest of the Core Subjects: EC-6 examination. The proposed amendment to §151.1001(b)(1) would implement the committee-recommended passing standard for each Core Subjects: EC-6 subtest.

Section 151.1001(b)(1), (b)(14), and (c) would also be modified to implement an initial passing standard for the Science of Teaching Reading, Early Childhood: PK-3, Educational Diagnostician, School Counselor, and Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 examinations. The initial passing standard would include the passing standard for selected-response and constructed-response examination sections. During the introductory period, the initial passing standards for the constructed-response section of each examination would be "complete." The proposed amendment would define "complete" as a full and complete scorable response that must address the specific requirements of the item, be of sufficient length to respond to the requirements of the item, be original work and written in the candidate's own words (however, candidates may use citations when appropriate), and conform to the standards of written English.

The proposed amendment would implement the initial passing standard for each examination during an eight-month introductory period. This introductory period would provide candidates and educator preparation programs with a transition period to adjust to more rigorous examinations and allow for the collection of examination performance data to inform the development of passing standards for both the select-response and constructed-response sections after the introductory period. Standard setting committees for each examination would develop recommendations to be used to develop passing standards after the introductory period. The initial passing standards for the Science of Teaching Reading, Early Childhood: PK-3, and Educational Diagnostician examinations would be implemented prior to September 6, 2021, and the initial passing standards for the School Counselor and Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 examinations would be implemented prior to May 3, 2022.

**FISCAL IMPACT:** Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposal is in effect there are no additional

costs to state or local government required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by including passing standards for new examinations adopted by the State Board for Educator Certification.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Franklin has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be providing clarity to educators and others regarding the required passing standards for Texas certification examinations. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no new data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins November 6, 2020, and ends December 7, 2020. A request for a public hearing on the proposal 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* on November 6, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §21.048(a), which requires the

commissioner to determine the level of performance considered to be satisfactory on educator certification examinations and further authorizes the commissioner to require a satisfactory level of performance on each core subject covered by an examination.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §21.048(a).

*§151.1001. Passing Standards.*

(a) As required by the Texas Education Code, §21.048(a), the commissioner of education shall determine the satisfactory level of performance for each educator certification examination and require a satisfactory level of performance on each core subject covered by an examination. The figures in this section identify the passing standards established by the commissioner for educator certification examinations.

(b) The figures in this subsection identify the passing standards established by the commissioner for classroom teacher examinations.

(1) The figure in this paragraph identifies the passing standards for early childhood through Grade 6 examinations.

Figure: 19 TAC §151.1001(b)(1)

[Figure: 19 TAC §151.1001(b)(1)]

(2) The figure in this paragraph identifies the passing standards for Grades 4-8 examinations.

Figure: 19 TAC §151.1001(b)(2) (No change.)

(3) The figure in this paragraph identifies the passing standards for secondary mathematics and science examinations.

Figure: 19 TAC §151.1001(b)(3) (No change.)

(4) The figure in this paragraph identifies the passing standards for secondary English language arts and social studies examinations.

Figure: 19 TAC §151.1001(b)(4) (No change.)

(5) The figure in this paragraph identifies the passing standards for speech and journalism examinations.

Figure: 19 TAC §151.1001(b)(5) (No change.)

(6) The figure in this paragraph identifies the passing standards for fine arts examinations.

Figure: 19 TAC §151.1001(b)(6) (No change.)

(7) The figure in this paragraph identifies the passing standards for health and physical education examinations.

Figure: 19 TAC §151.1001(b)(7) (No change.)

(8) The figure in this paragraph identifies the passing standards for computer science and technology applications examinations.

Figure: 19 TAC §151.1001(b)(8) (No change.)

(9) The figure in this paragraph identifies the passing standards for career and technical education examinations.

Figure: 19 TAC §151.1001(b)(9) (No change.)

(10) The figure in this paragraph identifies the passing standards for bilingual examinations.

Figure: 19 TAC §151.1001(b)(10) (No change.)

(11) The figure in this paragraph identifies the passing standards for languages other than English (LOTE) examinations.

Figure: 19 TAC §151.1001(b)(11) (No change.)

(12) The figure in this paragraph identifies the passing standards for special education examinations.

Figure: 19 TAC §151.1001(b)(12) (No change.)

(13) The figure in this paragraph identifies the passing standards for supplemental examinations.

Figure: 19 TAC §151.1001(b)(13) (No change.)

(14) The figure in this paragraph identifies the passing standards for pedagogy and professional responsibilities examinations.

Figure: 19 TAC §151.1001(b)(14)

[Figure: 19 TAC §151.1001(b)(14)]

(15) The figure in this paragraph identifies the passing standards for content certification examinations.

Figure: 19 TAC §151.1001(b)(15) (No change.)

(c) The figure in this subsection identifies the passing standards established by the commissioner for student services examinations.

Figure: 19 TAC §151.1001(c)

[Figure: 19 TAC §151.1001(e)]

(d) The figure in this subsection identifies the passing standards established by the commissioner for administrator examinations.

Figure: 19 TAC §151.1001(d) (No change.)

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

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Director, Rulemaking

Texas Education Agency

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## CHAPTER 152. COMMISSIONER'S RULES CONCERNING EXAMINATION REQUIREMENTS

### 19 TAC §152.1001

The Texas Education Agency (TEA) proposes an amendment to §152.1001, concerning exceptions to examination requirements for individuals certified outside the state. The proposed amendment would streamline the process that individuals certified outside the state must follow for consideration of an exception to the state-mandated examination requirements for certification.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Texas Education Code (TEC), §21.052, authorizes the commissioner of education to adopt rules establishing exceptions to the examination requirements prescribed by TEC, §21.052(a)(3), for an educator from outside the state to obtain a certificate in this state.

Section 152.1001 provides a pathway to exempt individuals already certified in other states from Texas certification examination requirements; supports the mobility of teachers transferring from state to state; reduces the burden of repetitive testing on educators and acknowledges established demonstration of content knowledge and skills; and recognizes and respects the professionalism of credentials issued by other state departments of education or countries of licensure.

Following is a description of the proposed changes to §152.1001.

#### *Subsection (b), Definitions*

Proposed language in subsection (b)(2) would add the word "certificate" to the defined term "professional class" to better align with the defined term "standard certificate" also included in this subsection. The reference to "master teacher" in subsection (b)(2) would be deleted since that credential is no longer issued per provisions in House Bill 3, 86th Texas Legislature, 2019.

State Board for Educator Certification (SBEC) rules have changed recently to require examinations for admission into an educator preparation program that are separate and distinct from the examinations that candidates take to attain Texas educator certification. Proposed changes to subsection (b)(4) would provide clarification that the examinations referenced in this rule are those required for issuance of a Texas standard certificate.

The term "teacher service record" would be deleted from subsection (b)(5) as this term would no longer be used in Chapter 152 as amended. Removing this provision would also assist in reducing confusion regarding verification of years of experience for salary increment purposes versus verification of experience in the role to qualify for exemption from Texas testing requirements. All remaining subsections would be renumbered accordingly.

#### *Subsection (c), Minimum requirements*

The proposed changes to subsection (c) would further expedite the test exemption review and approval process and align educator preparation and certification requirements of applicants from outside the state with the general requirements and level of preparation expected of in-state candidates for certification. The proposed changes would also provide a pathway to exempt applicants from testing in Texas based on successful demonstration of proficiency in content and pedagogy prior to issuance of certification by the state department of education in a state other than Texas. To further expedite TEA staff's ability to complete the test exemption process immediately following a successful review of credentials, proposed changes would eliminate the requirement that other state departments of education provide paperwork to verify test scores for certification applicants.

Proposed language in subsection (c)(1) would emphasize that each applicant for Texas certification must first meet the general requirements specified in SBEC rules in 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter B, General Certification Requirements. These rules establish the minimum age, degree, preparation, and testing requirements to qualify an applicant for certificate issuance in Texas. A successful review of credentials must be completed prior to consideration of an exemption from Texas testing requirements. The requirements to complete a review of credentials for individuals certified outside the state or country are addressed in SBEC rules in 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States, and 19 TAC Chapter 245, Certification of Educators from Other Countries. The proposed deletion of subsection (c)(1)(A)-(F) would eliminate redundancy in as these certification requirements are already outlined in the SBEC rules referenced in the proposed amended language.

The proposed deletion of the references to official score reports in subsection (c)(2)(A)(ii) and (B)(vi) would further streamline the test exemption process by eliminating the need for individuals to obtain official score reports from another state, as well as the processing time that testing vendors require to provide official

test score verification. Official score reports are not necessary because the educator's certificate from the other state demonstrates that the individual met the requirements for issuance of that certificate. This proposed change would assist in reducing the time needed to qualify individuals certified outside the state for the Texas standard certificate.

#### *Subsection (d), Approval process*

The proposed amendment to subsection (d) would clarify and consolidate the requirements for years of experience for applicants that currently appear both in subsections (c)(1)(E) and (F) and (d)(2). Subsection (5) would be deleted because it is redundant with proposed new subsection (e). All remaining information in the subsection would be renumbered accordingly to more clearly identify the documents and information necessary to approve candidates for exemptions from required Texas examinations.

#### *Subsection (e), Denial of exemption from examination requirements*

Proposed new subsection (e) would reflect the requirements of TEC, §21.052, for clarity and ease of reference by the public. The proposed provision would provide that an individual would not qualify for an exemption from Texas tests for either of the following reasons: (1) the applicant's documentation does not meet the Texas certification requirements as defined in SBEC rule; or (2) Texas does not issue a certificate comparable to the one presented for the initial review of credentials. For example, a single subject certificate area in another state (e.g., geography, economics, algebra, or geometry) would not equate to a Texas multiple-certificate area like social studies or mathematics at Grades 4-8 or 7-12.

**FISCAL IMPACT:** Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposal is in effect there will be fiscal impact to state government; however, there is no fiscal impact to local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

TEA currently receives \$11 of the \$116 total registration fee from each certification test administered to an individual certified outside the state and working to meet requirements for Texas certificate issuance. The agency will no longer receive this \$11 fee. During the 2018-2019 test administration year, a total of 7,124 tests were administered to educators outside the state, generating an estimated yearly revenue of \$78,364 (\$11 per test administered) for TEA. Using the 2018-2019 test administration numbers as a baseline, TEA estimates the agency would lose at minimum a total of \$78,364 in testing fees each year for the next five fiscal years (FY 2021-FY 2025) with the adoption of the proposed rule changes.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would result in a decrease of fees paid to the agency and would limit an existing regulation by removing certain requirements for individuals outside the state to obtain Texas certification.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase in fees paid to the agency; would not create a new regulation; would not expand or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Franklin has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be allowing for more timely completion of the test exemption review process and issuance of standard certificates for individuals certified outside the state. Implementation of the proposed changes would also comply with Governor Abbott's request to reduce barriers to certification for applicants moving to Texas and would provide support to districts recruiting certified educators from other states moving to Texas for employment purposes.

There is no anticipated economic cost to persons who are required to comply with the proposal; however, there are fiscal implications to persons required to comply with the proposed rule action. Each individual approved for exemptions from examination requirements will save \$116 for each test he or she would no longer be required to take for issuance of a Texas standard certificate. During the 2018-2019 test administration year, a total of 7,124 tests were administered to educators outside the state. If every individual would need a minimum of two tests to meet requirements for Texas certificate issuance, each educator pursuing certification in Texas would save a total of \$232 in testing fees. TEA has divided the figure for tests administered in 2018-2019 by two (to equal 3,562) and will use this figure as a baseline for the estimated minimum number of individuals per year that would receive a cost savings through the proposed rule action. TEA estimates a minimum total cost savings of \$826,384 in test registration fees for individuals certified outside the state for the next five fiscal years (FY 2021-FY 2025) with the adoption of the proposed rule changes.

**DATA AND REPORTING IMPACT:** The proposal would have no new data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins November 6, 2020, and ends December 7, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calen-

dar days after notice of the proposal has been published in the *Texas Register* on November 6, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §21.052(a-1), which permits the commissioner to adopt rules establishing exceptions to the examination requirements prescribed by TEC, §21.052(a)(3), for an educator from outside the state to obtain a certificate in this state.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code (TEC), §21.052(a-1).

*§152.1001. Exceptions to Examination Requirements for Individuals Certified Outside the State.*

(a) General provisions. Texas Education Code (TEC), §21.052(a-1), permits the commissioner of education to adopt rules establishing exceptions to the examination requirements prescribed by TEC, §21.052(a)(3), for an educator from outside the state to obtain a certificate in Texas.

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

(1) Standard certificate--A type of certificate issued to an individual who has met all requirements for a given class of certification, as specified in §230.33 of this title (relating to Classes of Certificates).

(2) Professional class certificate--A term that refers to certificates for duties other than classroom teacher (e.g., superintendent, principal, school counselor, school librarian, educational diagnostician, and reading specialist; and master teacher).

(3) Texas review of credentials--An internal process completed by Texas Education Agency (TEA) to determine the certificate areas an applicant is eligible to pursue in Texas based on certificates issued by another state department of education or another country. Applicants must submit an online application for a review of credentials, application fee, and required documents specified in the application and on the TEA website, based on certificates issued in another state or country.

(4) Examination--A standardized test or assessment required by statute or State Board for Educator Certification rule that governs an individual's [admission to an educator preparation program;] certification as an educator; continuation as an educator, or advancement as an educator].

[(5) Teacher service record--The basic document (form FIN-115) or a similar form completed in support of the number of years of professional service claimed for salary increment purposes and both the state's sick and personal leave program data for all personnel. It is the responsibility of the issuing school district or charter school to ensure that service records are true and correct and that all service recorded on the service record was performed.]

(c) Minimum requirements.

(1) An applicant [Applicants] must meet the [following] general requirements for certification specified in Chapter 230, Subchapter B, of this title (relating to General Certification Requirements) and successfully complete a Texas review of credentials specified in Chapter 230, Subchapter H, of this title (relating to Texas Educator Certificates Based on Certification and College Credentials from Other

States or Territories of the United States) and/or Chapter 245 of this title (relating to Certification of Educators from Other Countries) to be considered for an exception to the required examinations for issuance of state licensure. [;]

[(A) obtain a bachelor's degree from an institution of higher education that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board;]

[(B) complete a state-approved educator preparation program, including student teaching or a teaching practicum, in the state where the standard certificate was issued;]

[(C) pass the examinations required by the state department of education or country of licensure for issuance of the standard certificate;]

[(D) hold a standard certificate issued by the state department of education or country of licensure that is equivalent to a Texas standard classroom or professional class certificate;]

[(E) for an applicant certified as a classroom teacher, have one academic year of verifiable, full-time experience serving in the role and documented on a service record; and]

[(F) for an applicant certified in a professional class area only, have two academic years of verifiable, full-time experience serving in the role and documented on a service record.]

(2) An applicant [Applicants] from outside the state who meets [that meet] requirements specified in subsection (c)(1) of this section must apply online for a review of credentials by the TEA and submit the following documents prior to being considered for an exception to the examination requirements for state licensure.

(A) For a candidate [candidates] certified in another state, the [each] applicant must submit the following:

(i) official transcript(s) showing degree(s) conferred and date(s); and

[(ii) official score report(s) for required examinations passed for issuance of the state certificate; and]

(ii) [(iii)] copy of standard certificate(s) issued by the state department(s) of education that clearly indicates the subject area(s) and grade levels of certification.

(B) For a candidate [candidates] licensed to teach in another country, the [each] applicant must submit the following, and all documentation must be written in the English language or must be accompanied by a translation in the English language from a foreign credential evaluation service recognized by the TEA or an accredited translation service:

(i) original detailed report or course-by-course evaluation for professional licensing of all college-level credits prepared by a foreign credential evaluation service recognized by the TEA. The evaluation must verify that the individual:

(I) holds, at a minimum, the equivalent of a baccalaureate degree issued by an accredited institution in the United States as specified in §245.1(b) of this title (relating to General Provisions), including the date that the degree was conferred; and

(II) has completed an educator preparation program, including a teaching practicum;

(ii) demonstration of English language proficiency as specified in §230.11(b)(5) of this title (relating to General Requirements);

(iii) letter of professional standing from the country that issued licensure to teach that confirms the educator certificate(s) or other credential(s) are currently in good standing and have not been revoked, suspended, or sanctioned for misconduct and are not pending disciplinary or adverse action;

(iv) official transcripts of any additional college credits and/or degrees earned in the United States; and

(v) copies of any standard certificates issued by the country of licensure or another state department of education. [; and]

~~[(vi) official score report(s) for required examinations passed for issuance of the standard certificate in the country of licensure or another state.]~~

(d) Approval process.

(1) TEA will review and verify all required documentation submitted as part of the Texas review of credentials. An individual who does not submit all required documents for the review at the time of the application will have one year from the original date of application to submit all required documents, or the individual will be required to reapply online and resubmit the application fee for a Texas review of credentials.

(2) An applicant certified as a classroom teacher must have completed at least one academic year of verifiable, full-time experience serving in the role and must submit documentation of that experience to TEA.

(3) ~~[(2)]~~ Applicants certified in a professional class other than classroom teacher (e.g., principal, superintendent, school counselor, school librarian, educational diagnostician, and reading specialist [master teacher] ) are required to provide ~~[a completed teacher service record that verifies and]~~ documents that verify two years of full-time experience in the role aligned with the professional class certificate area.

(4) ~~[(3)]~~ Once all required documentation has been submitted by the educator and [;] reviewed [;] and verified by TEA staff ~~[to meet the Texas certification criteria]~~ , the applicant will be issued an exemption from state examination requirements by TEA in accordance with minimum requirements established by the commissioner of education as specified in this section.

(5) ~~[(4)]~~ Upon completion of the Texas review of credentials, TEA will notify an applicant ~~[applicants]~~ of the Texas certificate areas for which the applicant qualifies ~~[they qualify]~~ and examination requirements from which the applicant has ~~[they have]~~ been exempted (if applicable) and will specify final actions the applicant ~~[applicants]~~ must complete to obtain ~~[their]~~ licensures in this state.

~~[(5) If the required documentation does not meet the Texas certification requirements, the applicant will be denied exemption from the state examination requirements and will be required to successfully complete the applicable examination(s) for issuance of the Texas standard certificate(s).]~~

(c) Denial of exemption from examination requirements. An applicant will be denied exemption from the state examination requirements and will be required to successfully complete the applicable examination(s) and any other requirements for issuance of the Texas standard certificate(s) if any of the following apply:

(1) the applicant's documentation does not meet the Texas certification requirements as defined by the State Board for Educator Certification in Chapter 230, Subchapter B, of this title; Chapter 230, Subchapter H, of this title; and/or Chapter 245 of this title; or

(2) Texas does not issue a comparable certificate to that issued outside the state and cannot complete a review of credentials that would qualify the applicant for a test exemption under this section.

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

Filed with the Office of the Secretary of State on October 26, 2020.

TRD-202004477

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 475-1497



## TITLE 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

#### CHAPTER 104. CONTINUING EDUCATION

##### 22 TAC §104.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §104.1, concerning continuing education. The proposed rule is necessary to implement the requirements of House Bill 2059 of the 86th Texas Legislature, Regular Session (2019), and the Texas Occupations Code Chapter 116, requiring human trafficking prevention training for health care practitioners prior to the renewal of a license.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols, has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency's implementation of legislative direction for the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does

not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

**COST TO REGULATED PERSONS:** This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed new rule may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to [official\\_rules\\_comments@tsbde.texas.gov](mailto:official_rules_comments@tsbde.texas.gov) for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

The statutory provision affected by this proposed rule is set forth in Texas Occupations Code, Chapter 116.

#### *§104.1. Requirement.*

As a prerequisite to the biennial renewal of a dental or dental hygiene license, proof of completion of 24 hours of acceptable continuing education is required.

(1) Each licensee shall select and participate in the continuing education courses endorsed by the providers identified in §104.2 of this title (relating to Providers). A licensee, other than a licensee who resides outside of the United States, who is unable to meet education course requirements may request that alternative courses or procedures be approved by the Licensing Committee.

(A) Such requests must be in writing and submitted to and approved by the Licensing Committee prior to the expiration of the biennial period for which the alternative is being requested.

(B) A licensee must provide supporting documentation detailing the reason why the continuing education requirements set forth in this section cannot be met and must submit a proposal for alternative education procedures.

(C) Acceptable causes may include unanticipated financial or medical hardships or other extraordinary circumstances that are documented.

(D) A licensee who resides outside of the United States may, without prior approval of the Licensing Committee, complete all required hours of coursework by self-study.

(i) These self-study hours must be provided by those entities cited in §104.2 of this title. Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(ii) Upon being audited for continuing education compliance, a licensee who submits self-study hours under this subsection must be able to demonstrate residence outside of the United States for all periods of time for which self-study hours were submitted.

(E) Should a request to the Licensing Committee be denied, the licensee must complete the requirements of this section.

(2) Effective September 1, 2018, the following conditions and restrictions shall apply to coursework submitted for renewal purposes:

(A) At least 16 hours of coursework must be either technical or scientific as related to clinical care. The terms "technical" and "scientific" as applied to continuing education shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.

(B) Effective January 1, 2021, a licensed dentist whose practice includes direct patient care must complete not less than 2 hours of continuing education annually, and not less than 4 hours for each biennial renewal, regarding safe and effective pain management related to the prescription of opioids and other controlled substances. These 4 hours may be used to satisfy the 16-hour technical and scientific requirement. The courses taken to satisfy the safe and effective pain management requirement must include education regarding:

- (i) reasonable standards of care;
- (ii) the identification of drug-seeking behavior in patients; and
- (iii) effectively communicating with patients regarding the prescription of an opioid or other controlled substance.

(C) Up to 8 hours of coursework may be in risk-management courses. Acceptable "risk management" courses include courses in risk management, record-keeping, and ethics. Dentists may complete continuing education courses described by §111.1 of this title (relating to Additional Continuing Education Required) to satisfy a portion of the risk-management requirement.

(D) Up to 8 hours of coursework may be self-study. These self-study hours must be provided by those entities cited in §104.2 of this title. Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(E) Hours of coursework in the standards of the Occupational Safety and Health Administration (OSHA) annual update course or in cardiopulmonary resuscitation (CPR) basic life support training may not be considered in the 24-hour requirement.

(F) Hours of coursework in practice finance may not be considered in the 24-hour requirement.

(3) As part of the 24-hour requirement, a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission must be completed.

(4) [(3)] Each licensee shall complete the jurisprudence assessment every four (4) years. This requirement is in addition to the twenty-four (24) hours of continuing education required biennially for the renewal of a license.

(5) [(4)] A licensee may carry forward continuing education hours earned prior to a renewal period which are in excess of the 24-hour requirement and such excess hours may be applied to subsequent years' requirements. Excess hours to be carried forward must have been earned in a classroom setting and within the one year immediately preceding the renewal period. A maximum of 24 total excess credit hours may be carried forward.

(6) [(5)] Examiners for the Western Regional Examining Board (WREB) and for Central Regional Dental Testing Services Inc. (CRDTS) will be allowed credit for no more than 12 hours biennially, obtained from calibration and standardization exercises associated with the examinations.

(7) [(6)] Any individual or entity may petition one of the providers listed in §104.2 of this title to offer continuing education.

(8) [(7)] Providers cited in §104.2 of this title will approve individual courses and/or instructors.

(9) [(8)] A consultant for the SBDE who is also a licensee of the SBDE is eligible to receive up to 12 hours of continuing education credit biennially to apply towards the biennial renewal continuing education requirement under this section.

(A) Continuing education credit hours shall be awarded for the issuance of an expert opinion based upon the review of SBDE cases and for providing assistance to the SBDE in the investigation and prosecution of cases involving violations of the Dental Practice Act and/or the Rules of the SBDE.

(B) The amount of continuing education credit hours to be granted for each consultant task performed shall be determined by the Executive Director, Division Director or manager that authorizes the consultant task to be performed. The award of continuing education credit shall be confirmed in writing and based upon a reasonable assessment of the time required to complete the task.

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

Filed with the Office of the Secretary of State on October 22, 2020.

TRD-202004447

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 305-8910



## CHAPTER 111. STANDARDS FOR PRESCRIBING CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

### 22 TAC §111.5

The State Board of Dental Examiners (Board) proposes new rule 22 TAC §111.5 concerning Electronic Prescribing Waivers. The new rule is proposed to comply with the requirements of HB 2174 (86th Regular Legislative Session), which requires practitioners to electronically prescribe all controlled substances. The law allows for prescriber waivers which may be renewed annually, if the prescriber is experiencing: 1) economic hardship; 2) technological limitations not reasonably within the control of the prescriber; or 3) other exceptional circumstances demonstrated by the prescriber.

**FISCAL NOTE:** Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

**PUBLIC BENEFIT-COST NOTE:** Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

**LOCAL EMPLOYMENT IMPACT STATEMENT:** Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

**SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT:** Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

**GOVERNMENT GROWTH IMPACT STATEMENT:** The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

**COST TO REGULATED PERSONS:** This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to [official\\_rules\\_comments@tsbde.texas.gov](mailto:official_rules_comments@tsbde.texas.gov) for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are implemented or affected by this proposed rule.

#### §111.5 Electronic Prescribing Waivers

(a) Effective January 1, 2021, the Board shall issue an electronic prescribing waiver to dentists who submit a waiver request form.

(b) The dentist must demonstrate circumstances necessitating a waiver from the electronic prescribing requirement, which include:

(1) economic hardship. Economic hardship shall be determined on a case by case basis, taking into account factors including:

(A) any special situational factors affecting either the cost of compliance or the ability to comply;

(B) the likely impact of compliance on profitability or viability; and

(C) the availability of measures that would mitigate the economic impact of compliance;

(2) technological limitations not reasonably within the control of the dentist; or



(3) other exceptional circumstances demonstrated by the dentist. Exceptional circumstances include, but are not limited to, prescribing fewer than twenty-five prescriptions per year.

(c) The dentist must submit a written statement and supporting documentation describing the circumstances necessitating a waiver as described in subsection (b) of this section.

(d) The waiver shall be issued for a period of one year. A dentist may reapply for a subsequent waiver not earlier than the 30th day before the date the waiver expires if the circumstances that necessitated the waiver continue.

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

Filed with the Office of the Secretary of State on October 22, 2020.

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Lauren Studdard

General Counsel

State Board of Dental Examiners

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For further information, please call: (512) 305-8910



## CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

### 22 TAC §114.12

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §114.12, concerning continuing education for certificate holders. The proposed rule is necessary to implement the requirements of House Bill 2059 of the 86th Texas Legislature, Regular Session (2019), and the Texas Occupations Code Chapter 116, requiring human trafficking prevention training for health care practitioners prior to the renewal of a license.

**FISCAL NOTE:** Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

**PUBLIC BENEFIT-COST NOTE:** Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency's implementation of legislative direction for the protection of public safety and welfare.

**LOCAL EMPLOYMENT IMPACT STATEMENT:** Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

**SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT:** Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

**GOVERNMENT GROWTH IMPACT STATEMENT:** The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply:

(1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

**COST TO REGULATED PERSONS:** This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 649-2482, or by email to [official\\_rules\\_comments@tsbde.texas.gov](mailto:official_rules_comments@tsbde.texas.gov) for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

The statutory provision affected by this proposed rule is set forth in Texas Occupations Code, Chapter 116.

#### *§114.12. Continuing Education for Certificate Holders.*

(a) To renew a certificate of registration issued under this chapter, a dental assistant must complete six (6) hours of continuing education each year in areas covering dental assistant duties. At least three (3) of these six (6) hours must be clinical continuing education.

(b) A dental assistant may fulfill the continuing education requirement through board-approved self-study, interactive computer courses, or lecture courses. All continuing education must be offered by providers approved under 22 Texas Administrative Code §104.2.

(c) As a prerequisite to the renewal of a dental assistant's certificate of registration, a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission must be completed.

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

Filed with the Office of the Secretary of State on October 22, 2020.

TRD-202004448

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 305-8910



## PART 9. TEXAS MEDICAL BOARD

## CHAPTER 161. GENERAL PROVISIONS

### 22 TAC §161.11

The Texas Medical Board (Board or TMB) proposes new rule 22 TAC §161.11, entitled Memorandum of Understanding between Texas Medical Board (TMB) and Texas Physician Health Program (TXPHP).

The proposed rule §161.11 would adopt the Memorandum of Understanding entered into by the Texas Medical Board (TMB) and the Texas Physician Health Program (TXPHP), pursuant to H.B. 1504 (86th Legislature TMB Sunset Bill (2019)). H.B. 1504 added provision Texas Occupations Code §167.012 directing the TMB and TXPHP to enter into a memorandum of understanding to establish performance measures for the TXPHP, include a list of services provided by TMB to TXPHP, and require an internal audit of TXPHP to be completed once every three years.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the proposed rule are in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to have increased coordination between TXPHP and TMB pursuant to their various shared duties to protect the public health and welfare and to have rules that comport with statutes.

Mr. Freshour has also determined that for the first five-year period the proposed rule is in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed rule.

Mr. Freshour has also determined that for the first five-year period the proposed rule is in effect there will be no probable economic cost to individuals required to comply with the proposed rule.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule and has determined that for each year of the first five years the proposed rule will be in effect, there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years the proposed rule is in effect:

- (1) there will be no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the proposed rule;
- (2) there will be no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the proposed rule;
- (3) there will be no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed rule; and
- (4) there will be no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the proposed rule.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed rule will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed rule will be in effect, Mr. Freshour has determined the following:

- (1) The proposed rule will not create or eliminate a government program.
- (2) Implementation of the proposed rule will not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed rule will not require an increase or decrease in future legislative appropriations to the agency.
- (4) The proposed rule will not require an increase or decrease in fees paid to the agency.
- (5) The proposed rule will not create a new regulation.
- (6) The proposed rule will not expand an existing regulation as described above.
- (7) The proposed rule will not increase the number of individuals subject to the rule's applicability.
- (8) The proposed rule will not positively or adversely affect this state's economy.

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

The rule are proposed under the authority of Texas Occupations Code §164.0015, as amended by H.B. 1504 (86th Leg. (2019)), Texas Occupations Code §153.001, related to the Board's general rulemaking authority, and Texas Occupations Code, Chapter 167, related to TXPHP and the Board's rulemaking authority. No other statutes, articles or codes are affected by this proposal.

§161.11. Memorandum of Understanding between Texas Medical Board (TMB) and Texas Physician Health Program (TXPHP).

(a) Statement of Purpose. Texas Occupations Code, § 167.012, added by the 86th Legislature, provides that the Texas Medical Board (TMB) and the Texas Physician Health Program (TXPHP) by rule shall adopt a memorandum of understanding (MOU) to better coordinate services and operations of TXPHP. Additionally, this MOU shall inform the public of each agency's responsibilities and the procedures for providing support to TXPHP as a program administratively attached to the TMB.

(b) Scope of Administrative Attachment. TXPHP shall receive services in the same manner as a department within the TMB. TXPHP shall have the reciprocal obligation to comply with all policies and procedures of all other respective departments of TMB providing services to TXPHP. The following services shall be provided by TMB:

- (1) Executive services;
- (2) Financial and support services;
- (3) Human resources;
- (4) Information technology resources;
- (5) General counsel legal services;
- (6) Governmental affairs and communication services; and
- (7) Other administrative services as necessary.

(c) Performance Measures. TXPHP shall report to the TMB at every scheduled Disciplinary Process Review Committee meeting those performance measures listed in the TMB Legislative Appropriations Report as well as additional measures as necessary to perform internal audits.

(d) Internal Audit. TMB shall review TXPHP's operations and program once every three years to ascertain whether the results are consistent with established objectives and goals, and whether the operations or programs are being carried out as planned. TMB shall set out performance and accountability standards.

(e) Other Duties and Obligations. TMB and TXPHP agree to share information in a timely manner in order to implement their various duties regarding licensees, applicants, and participants. Any such information shared between TMB and TXPHP is confidential, pursuant to the Texas Occupations Code including §§ 164.007 and 167.010, and other relevant statutes. All information will be safeguarded and its confidentiality maintained in accordance with such laws.

(1) TMB agrees to timely provide to TXPHP information as necessary for TXPHP to process a referral pursuant to Texas Occupations Code, § 167.009, including all available contact information of the individual being referred. TXPHP agrees to timely provide TMB with information regarding the resolution of referrals, as needed for TMB's resolution of such referrals.

(2) TXPHP agrees to report participant information as provided by Texas Occupations Code, § 167.010(b) and (c). A report under subsection shall include all information in the possession or control of TXPHP not subject to other state or federal confidentiality protections prohibiting its release to TMB.

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

Filed with the Office of the Secretary of State on October 19, 2020.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016



## CHAPTER 180. TEXAS PHYSICIAN HEALTH PROGRAM

### 22 TAC §180.4

The Texas Medical Board (Board or TMB) proposes amendments to 22 TAC §180.4 concerning Operation of Program.

The proposed §180.4 would correct an error in the rule and is necessary to ensure that the rules are consistent with Texas Occupations Code Section 153.051(d)(10). The erroneous fee increase was implemented for a period of two weeks only and all fees received in excess of the statutory cap have been reimbursed or prorated.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated

as a result of enforcing the proposed amendments will be to have rules that comport with statutes.

Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed amendments.

Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect there will be no probable economic cost to individuals required to comply with the proposed amendments.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years the proposed amendments are in effect:

(1) there will be no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the proposed amendments;

(2) there will be no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the proposed amendments;

(3) there will be no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed amendments; and

(4) there will be no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the proposed amendments.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Mr. Freshour has determined the following:

(1) The proposed amendments will not create or eliminate a government program.

(2) Implementation of the proposed amendments will not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed amendments will not require an increase or decrease in fees paid to the agency.

(5) The proposed amendments will not create a new regulation.

(6) The proposed amendments will not expand an existing regulation as described above.

(7) The proposed amendments will not increase the number of individuals subject to the rule's applicability.

(8) The proposed amendments will not positively or adversely affect this state's economy.

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

The amendments are proposed under the authority of Texas Occupations Code §164.0015, as amended by H.B. 1504 (86th Leg. (2019)), Texas Occupations Code §153.001, related to the Board's general rulemaking authority, and Texas Occupations Code, Chapter 167, related to TXPHP and the Board's rulemaking authority.

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

#### *§180.4. Operation of Program.*

##### (a) Referrals.

(1) The program shall accept a self-referral from a licensure applicant or licensee, or a referral from an individual, a physician health and rehabilitation committee, a physician assistant organization, a state physician health program, a state acupuncture program, a hospital or hospital system licensed in this state, a residency program, or the Agency.

(2) The Agency may publicly or privately refer an applicant or licensee to the Program.

(b) Eligible Program Participants. An individual who has or may have mental or physical impairment or substance use disorder is eligible to participate in the Program.

##### (c) Drug Testing.

(1) The Program's drug testing shall be provided under contract for services with the vendor approved by the Texas Medical Board.

(2) The Program shall adopt policies and protocols for drug-testing that are consistent with those of the Agency.

(3) The Agency may monitor the test results for all program participants, provided that the identities of the program participants are not disclosed to the agency.

##### (d) Reports to the Agency.

(1) If an individual who has been referred by the Agency and does not enter into an agreement for services or a program participant is found to have committed a substantive violation of an Agreement, the Governing Board shall report that individual to the Agency for possible disciplinary action.

(2) A positive drug screen that is not attributed to a therapeutic prescription by a treating physician, shall be determined to be substantive violation of an Agreement by the program participant.

(3) A committee of the Board shall review the report and may accept the individual or program participant for possible disciplinary action. The Agency has the option of referring the individual back to the Program.

##### (e) Fees.

(1) Program participants shall pay an annual fee of \$1,200.00 [~~\$1,400.00~~] for physicians and PAs and \$1,000.00 for all other licensees. Half of the annual fee shall be due upon scheduling of the intake interview. This fee is in addition to costs owed by program

participants for completion of monitoring associated with a program participant's Agreement.

(2) The Program may waive all or part of the annual fee for a program participant upon a showing of good cause. Good cause may include documented financial hardship. All fee waivers shall be reported on at the next scheduled meeting of the Governing Board.

##### (f) Process.

###### (1) Interview by Medical Director.

(A) Upon receipt of a referral as described in subsection (a) of this section, the applicant or licensee shall meet with the TXPHP Medical Director or a member of the Advisory Committee designated by the Medical Director or Governing Board President for an interview to determine eligibility for the Program.

(B) An interview may be waived if the Medical Director determines that good cause exists.

(C) The performance of an intake interview may be delegated to another qualified medical professional as necessary.

###### (2) Review by Case Advisory Panel.

(A) A case advisory panel shall include three members. These members shall be the President of the Governing Board, the Secretary of the Governing Board, another member of the Governing Board who shall serve for a four-month term on a rotating basis with the other members, and one member of the Advisory Board who shall serve for a three-month term on a rotating basis. In the event that the President and/or the Secretary is unavailable or must recuse themselves, additional members of the Governing Board may serve on the panel.

(B) After an interview has occurred, a case advisory panel may be convened at the discretion of the Medical Director for the purpose of seeking advice and direction.

(C) All cases reviewed by a case advisory panel shall be reported on at the next scheduled meeting of the Governing Board.

(3) After the requirements in paragraph (1) of this subsection have been completed, the applicant or licensee shall be offered an agreement, determined ineligible for the program, or discharged from TXPHP.

(4) Agreements are effective upon signature by the program participant.

(5) All agreements are subject to review by the Governing Board.

(g) Evaluations. The TXPHP may request that an applicant or licensee undergo a clinically appropriate evaluation after the person has been interviewed. The evaluation shall be considered a term of an agreement and the person will be considered a program participant at that time. If an individual refuses to undergo an evaluation, he or she may be referred to the Agency on an emergent basis or as described in subsection (d) of this section.

(h) Agreements. Agreements between program participants and the TXPHP may include, but are not limited to, the following terms and conditions:

(1) abstinence from prohibited substances and drug testing;

(2) agreement not to treat one's own family and friends or receive treatment from family or friends;

(3) agreement not to manage one's own medical care;

(4) participation in mutual help groups such as Alcoholics Anonymous;

- (5) participation in support groups for recovering professionals;
- (6) worksite monitor;
- (7) worksite restrictions; and
- (8) treatment by an appropriate health care provider.

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

Filed with the Office of the Secretary of State on October 19, 2020.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016



## CHAPTER 183. ACUPUNCTURE

### 22 TAC §183.20

The Texas Medical Board (Board) proposes amendments to 22 TAC §183.20, concerning Continuing Acupuncture Education.

The proposed amendments to §183.20, relating to Continuing Acupuncture Education, proposes amendments to implement new continuing education requirements set forth by H.B. 2059, passed by the 86th Legislature, Regular Session (2019). The new language requires that acupuncturists complete a course in the topic of human trafficking prevention, as part of the course hours required each biennial registration period. Carry forward hours will not apply to the new course. Other changes proposed to §183.20 are made to reorganize and format the rule.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments will be to increase acupuncturist knowledge about human trafficking prevention, which is a critical health and social issue affecting Texas.

Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed amendments.

Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect there will be no probable economic cost to individuals required to comply with the proposed amendments.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the

agency has determined that for each year of the first five years the proposed amendments are in effect:

- (1) there will be no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the proposed amendments;
- (2) there will be no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the proposed amendments;
- (3) there will be no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed amendments; and
- (4) there will be no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the proposed amendments.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Mr. Freshour has determined the following:

- (1) The proposed amendments will not create or eliminate a government program.
- (2) Implementation of the proposed amendments will not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency.
- (4) The proposed amendments will not require an increase or decrease in fees paid to the agency.
- (5) The proposed amendments will create a new regulation.
- (6) The proposed amendments will not expand, limit, or repeal an existing regulation as described above, as the proposed amendments set forth new regulations about required topics of CE, but do not increase the number of CE hours to be completed each biennial renewal period.
- (7) The proposed amendments will not increase the number of individuals subject to the rule's applicability.
- (8) The proposed amendments will not positively or adversely affect this state's economy.

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

The amendments are proposed under the authority of Texas Occupations Code §153.001 and 205.101(b) which provide authority for the Board to adopt rules necessary to regulate acupuncturists. The amendments are further proposed under H.B. 2059, passed by the 86th Legislature, Regular Session (2019).

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

*§183.20. Continuing Acupuncture Education.*

(a) Purpose. This section is promulgated to promote the health, safety, and welfare of the people of Texas through the establishment of minimum requirements for continuing acupuncture education (CAE) for licensed Texas acupuncturists so as to further enhance their professional skills and knowledge.

(b) Minimum Continuing Acupuncture Education. As a prerequisite to the biennial registration of the license of an acupuncturist, the acupuncturist shall complete 34 hours of CAE every 24 months.

(1) The required hours shall be from courses that meet one of the following criteria at the time the hours are taken:

(A) are designated or otherwise approved for credit by the Texas State Board of Acupuncture Examiners based on a review and recommendation of the course content by the Education Committee of the board as described in subsection (n) of this section;

(B) are offered by providers approved by the Texas State Board of Acupuncture Examiners;

(C) have been approved for CAE credit for a minimum of three years by another state acupuncture board, having first gone through a formal approval process in such state;

(D) approved by the NCCAOM (National Certification Commission for Acupuncture and Oriental Medicine) for professional development activity credit; or

(E) are provided outside of the United States by a provider of continuing acupuncture education that is acceptable to the Board.

(2) The required CAE hours shall include the following core hours:

(A) at least eight hours shall be in general acupuncture therapies;

(B) at least two of the required hours shall be from a course in ethics and safety;

(C) at least six of the required hours shall be in herbology; and

(D) at least four hours of biomedicine.

(3) The remaining CAE hours may be from other courses approved under paragraph (1) of this subsection, subject to the limitations under paragraphs (5) through (7) of this subsection.

(4) Courses may be taught through live lecture, distance learning, or the Internet.

(5) No more than four hours in courses that relate to business practices or office administration may be applied to the total hours required for each registration period.

(6) No more than a total of 16 hours completed under paragraph (1)(D) or (E) of this subsection may be applied to the total hours required each registration period.

(7) At least 18 hours applied to the total hours required each registration period must be approved under paragraph (1)(A) - (C) of this subsection.

(8) The required CAE shall include the completion of a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission. The course may be counted as part of the minimum 18 hours approved under paragraph 1(A) - (C) of this subsection.

(c) Reporting Continuing Acupuncture Education. An acupuncturist must report on the licensee's registration form whether

the licensee has completed the required acupuncture education during the previous two years.

(d) Grounds for Exemption from Continuing Acupuncture Education. An acupuncturist may request in writing and may be exempt from the biennial minimum continuing acupuncture education requirements for one or more of the following reasons:

(1) the licensee's catastrophic illness;

(2) the licensee's military service of longer than one year in duration;

(3) the licensee's acupuncture practice and residence of longer than one year in duration outside the United States; and/or

(4) good cause shown on written application of the licensee which gives satisfactory evidence to the board that the licensee is unable to comply with the requirements of continuing acupuncture education.

(e) Exemption Requests. Exemption requests shall be subject to the approval of the executive director of the board, and shall be submitted in writing at least 30 days prior to the expiration of the license.

(f) Exemption Duration and Renewal. An exemption granted under subsections (d) and (e) of this section may not exceed one year, but may be renewed biennially upon written request submitted at least 30 days prior to the expiration of the current exemption.

(g) Verification of Credits. The board may require written verification of continuing acupuncture education hours from any licensee and the licensee shall provide the requested verification within 30 calendar days of the date of the request. Failure to timely provide the requested verification may result in disciplinary action by the board.

(h) Nonrenewal for Insufficient Continuing Acupuncture Education. Unless exempted under the terms of this section, the apparent failure of an acupuncturist to obtain and timely report the 34 hours of continuing education hours as required and provided for in this section shall result in nonrenewal of the license until such time as the acupuncturist obtains and reports the required hours; however, the executive director of the board may issue to such an acupuncturist a temporary license numbered so as to correspond to the non-renewed license. Such a temporary license issued pursuant to this subsection may be issued to allow the board to verify the accuracy of information related to the continuing acupuncture education hours of the acupuncturist and to allow the acupuncturist who has not obtained or timely reported the required number of hours an opportunity to correct any deficiency so as not to require termination of ongoing patient care.

(i) Fee for Issuance of Temporary License. The fee for issuance of a temporary license pursuant to the provisions of this section shall be in the amount specified under §175.1 of this title (relating to Application Fees); however, the fee need not be paid prior to the issuance of the temporary license, but shall be paid prior to the renewal of a permanent license.

(j) Application of Additional Hours. Continuing acupuncture education hours that are obtained to comply with the requirements for the preceding registration period, as a prerequisite for licensure renewal, shall first be credited to meet the requirements for that previous registration period. Once the requirements of the previous registration period are satisfied, any additional hours obtained shall be credited to meet the continuing acupuncture education requirements of the current registration period. A licensee may carry forward CAE hours earned prior to a biennial registration report, which are in excess of the 34-hour biennial requirement and such excess hours may be applied to the following registration periods' requirements, except for the required course under subsection (b)(8) of this section. A maximum of 34 total

excess hours may be carried forward. Excess CAE hours may not be carried forward or applied to a biennial report of CAE more than two years beyond the date of the registration following the period during which the hours were earned.

(k) **False Reports/Statements.** An intentionally false report or statement to the board by a licensee regarding continuing acupuncture education hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Act, §205.351(a)(2) and (6).

(l) **Monetary Penalty.** Failure to obtain and timely report the continuing acupuncture education hours for renewal of a license shall subject the licensee to a monetary penalty for late registration in the amount set forth in §175.2 and §175.3 of this title (relating to Registration and Renewal Fees and Penalties).

(m) **Disciplinary Action, Conditional Licensure, and Construction.** This section shall be construed to allow the board to impose requirements for completion of additional continuing acupuncture education hours for purposes of disciplinary action and conditional licensure.

(n) **Required Content for Continuing Acupuncture Education Courses.** Continuing Acupuncture Education courses must meet the following requirements:

(1) the content of the course, program, or activity is related to the practice of acupuncture or oriental medicine, and shall:

(A) be related to the knowledge and/or technical skills required to practice acupuncture; or

(B) be related to direct and/or indirect patient care;

(2) the method of instruction is adequate to teach the content of the course, program, or activity;

(3) the credentials of the instructor(s) indicate competency and sufficient training, education, and experience to teach the specific course, program, or activity;

(4) the education provider maintains an accurate attendance/participation record on individuals completing the course, program, or activity;

(5) each credit hour for the course, program, or activity is equal to no less than 50 minutes of actual instruction or training;

(6) the course, program, or activity is provided by a knowledgeable health care provider or reputable school, state, or professional organization;

(7) the course description provides adequate information so that each participant understands the basis for the program and the goals and objectives to be met; and

(8) the education provider obtains written evaluations at the end of each program, collate the evaluations in a statistical summary, and makes the summary available to the board upon request.

(o) **Continuing Acupuncture Education Approval Requests.** All requests for approval of courses, programs, or activities for purposes of satisfying CAE credit requirements shall be submitted in writing to the Education Committee of the board on a form approved by the board, along with any required fee, and accompanied by information, documents, and materials accurately describing the course, program, or activity, and necessary for verifying compliance with the requirements set forth in subsection (n) of this section. At the discretion of the board or the Education Committee, supplemental information, documents, and materials may be requested as needed to obtain an adequate description of the course, program, or activity and to verify compliance with the requirements set forth in subsection

(n) of this section. At the discretion of the board or the Education Committee, inspection of original supporting documents may be required for a determination on an approval request. The Acupuncture Board shall have the authority to conduct random and periodic checks of courses, programs, or activities to ensure that criteria for education approval as set forth in subsection (n) of this section have been met and continue to be met by the education provider. Upon requesting approval of a course, program, or activity, the education provider shall agree to such checks by the Acupuncture Board or its designees, and shall further agree to provide supplemental information, documents, and material describing the course, program, or activity which, in the discretion of the Acupuncture Board, may be needed for approval or continued approval of the course, program, or activity. Failure of an education provider to provide the necessary information, documents, and materials to show compliance with the standards set forth in subsection (n) of this section shall be grounds for denial of CAE approval or rescission of prior approval in regard to the course, program, or activity.

(p) **Reconsideration of Denials of Approval Requests.** Determinations to deny approval of a CAE course, program, or activity may be reconsidered by the Education Committee or the board based on additional information concerning the course, program, or activity, or upon a showing of good cause for reconsideration. A decision to reconsider a denial determination shall be a discretionary decision based on consideration of the additional information or the good cause showing. Requests for reconsideration shall be made in writing by the education provider, and may be made orally or in writing by board staff or a committee of the board.

(q) **Reconsideration of Approvals.** Determinations to approve a CAE course, program, or activity may be reconsidered by the Education Committee or the board based on additional information concerning the course, program, or activity, or upon a showing of good cause. A decision to reconsider an approval determination shall be a discretionary decision based on consideration of the additional information or the good cause showing. Requests for reconsideration may be made in writing by a member of the public or may be made orally or in writing by board staff or a committee of the board.

(r) **Criteria for Provider Approval.**

(1) In order to be an approved provider, a provider shall submit to the board a provider application on a form approved by the board, along with any required fee. All provider applications and documentation submitted to the board shall be typewritten and in English.

(2) To become an approved provider, a provider shall submit to the board evidence that the provider has three continuous years of previous experience providing at least one different CAE course in Texas in each of those years that were approved by the board. In addition the provider must have no history of complaints or reprimands with the board.

(3) The approval of the provider shall expire three years after it is issued by the board and may be renewed upon the filing of the required application, along with any required fee.

(4) Acupuncture schools and colleges which have been approved by the board, as defined under §183.2(2) of this title (relating to Definitions), who seek to be approved providers shall be required to submit an application for an approved provider number to the board.

(s) **Requirements of Approved Providers.**

(1) For the purpose of this chapter, the title "approved provider" can only be used when a person or organization has submitted a provider application form, and has been issued a provider number unless otherwise provided.

(2) A person or organization may be issued only one provider number. When two or more approved providers co-sponsor a course, the course shall be identified by only one provider number and that provider shall assume responsibility for recordkeeping, advertising, issuance of certificates and instructor(s) qualifications.

(3) An approved provider shall offer CAE programs that are presented or instructed by persons who meet the minimum criteria as described in subsection (t) of this section.

(4) An approved provider shall keep the following records for a period of four years in one identified location:

- (A) course outlines of each course given;
- (B) record of time and places of each course given;
- (C) course instructor curriculum vitae or resumes;
- (D) the attendance record for each course; and
- (E) participant evaluation forms for each course given.

(5) An approved provider shall submit to the board the following within ten days of the board's request:

(A) a copy of the attendance record showing the name, signature and license number of any licensed acupuncturists who attended the course; and

(B) the participant evaluation forms of the course.

(6) Approved providers shall issue, within 60 days of the conclusion of a course, to each participant who has completed the course, a certificate of completion that contains the following information:

- (A) provider's name and number;
- (B) course title;
- (C) participant's name and, if applicable, his or her acupuncture license number;
- (D) date and location of course;
- (E) number of continuing education hours completed;
- (F) description of hours indicating whether hours completed are in general acupuncture, ethics, herbology, biomedicine, or practice management; and
- (G) statement directing the acupuncturist to retain the certificate for at least four years from the date of completion of the course.

(7) Approved providers shall notify the board within 30 days of any changes in organizational structure of a provider and/or the person(s) responsible for the provider's continuing education course, including name, address, or telephone number changes.

(8) Provider approval is non-transferable.

(9) The board may audit during reasonable business hours records, courses, instructors and related activities of an approved provider.

(t) Instructors.

(1) Minimum qualifications of an acupuncturist instructor. The instructor must:

(A) hold a current valid license to practice acupuncture in Texas or other state and be free of any disciplinary order or probation by a state licensing authority; and

(B) be knowledgeable, current and skillful in the subject matter of the course as evidenced through one of the following:

(i) hold a minimum of a master's degree from an accredited college or university or a post-secondary educational institution, with a major in the subject directly related to the content of the program to be presented;

(ii) have experience in teaching similar subject matter content within the last two years in the specialized area in which he or she is teaching;

(iii) have at least one year's experience within the last two years in the specialized area in which he or she is teaching; or

(iv) have graduated from an acceptable acupuncture school, as defined under §183.2(2) of this title, and have completed 3 years of professional experience in the licensed practice of acupuncture.

(2) Minimum qualifications of a non-acupuncturist instructor. The instructor must:

(A) be currently licensed or certified in his or her area of expertise if appropriate;

(B) show written evidence of specialized training or experience, which may include, but not be limited to, a certificate of training or an advanced degree in a given subject area; and

(C) have at least one year's teaching experience within the last two years in the specialized area in which he or she teaches.

(u) CAE Credit for Course Instruction. Instructors of board-approved CAE courses or courses taught through a program offered by an approved provider for CAE credit may receive three hours of CAE credit for each hour of lecture, not to exceed six hours of continuing education credit per year, regardless of how many hours taught. Participation as a member of a panel presentation for the approved course shall not entitle the participant to earn CAE credit as an instructor. No CAE credit shall be granted to school faculty members as credit for their regular teaching assignments.

(v) Expiration, Denial and Withdrawal of Approval.

(1) Approval of any CAE course shall expire three years after the date of approval.

(2) The board may withdraw its approval of a provider or deny an application for approval if the provider is convicted of a crime substantially related to the activities of a provider.

(3) Any material misrepresentation of fact by a provider or applicant in any information required to be submitted to the board is grounds for withdrawal of approval or denial of an application.

(4) The board may withdraw its approval of a provider after giving the provider written notice setting forth its reasons for withdrawal and after giving the provider a reasonable opportunity to be heard by the board or its designee.

(5) Should the board deny approval of a provider, the provider may appeal the action by filing a letter stating the reason(s) with the board. The letter of appeal shall be filed with the board within ten days of the mailing of the applicant's notification of the board's denial. The appeal shall be considered by the board.

(w) An acupuncturist, who is a military service member, may request an extension of time, not to exceed two years, to complete any CAE requirements.



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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016



## CHAPTER 184. SURGICAL ASSISTANTS

### 22 TAC §184.4, §184.25

The Texas Medical Board (Board) proposes amendments to 22 TAC §184.4, concerning Qualifications for Licensure, and §184.25, concerning Continuing Education.

The proposed amendments to §184.4, relating to Qualifications for Licensure, proposes to repeal language requiring an applicant for a surgical assistant license to attest to good moral character in order to obtain a license, pursuant to H.B. 1504 (86th Legislature (2019)).

Amendments are further proposed for §184.25, relating to Continuing Education, to implement new continuing education requirements set forth by H.B. 2059 (86th Leg.). The new language requires that licensed surgical assistants complete a course in the topic of human trafficking prevention, as part of the course hours required each biennial registration period. Carry forward hours will not apply to the new course requirement. Other changes proposed to 184.25 remove references to annual requirements, as the hours are required on a biennial basis. Remaining changes reorganize and format the rule.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments will be to have rules that comport with statutes and increased knowledge amongst health care practitioners about human trafficking prevention, a critical health and social issue affecting Texas.

Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed amendments.

Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect there will be no probable economic cost to individuals required to comply with the proposed amendments.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years the proposed amendments are in effect:

- (1) there will be no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the proposed amendments;
- (2) there will be no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the proposed amendments;
- (3) there will be no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed amendments; and
- (4) there will be no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the proposed amendments.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Mr. Freshour has determined the following:

- (1) The proposed amendments will not create or eliminate a government program.
- (2) Implementation of the proposed amendments will not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency.
- (4) The proposed amendments will not require an increase or decrease in fees paid to the agency.
- (5) The proposed amendments will create a new regulation.
- (6) The proposed amendments will expand, limit, or repeal an existing regulation as described above.
- (7) The proposed amendments will not increase the number of individuals subject to the rule's applicability.
- (8) The proposed amendments will not positively or adversely affect this state's economy.

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

The amendments are proposed under the authority of Texas Occupations Code §206.203, as amended by H.B. 1504 (86th Leg. (2019)) and §206.101(5) which provides authority for the Board to adopt rules necessary to regulate minimum continuing education requirements for licensed surgical assistants. The amendments are further proposed under H.B. 2059, passed by the 86th Legislature, Regular Session (2019).

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

*§184.4. Qualifications for Licensure.*

(a) Except as otherwise provided in this section, an individual applying for licensure must:

- (1) submit an application on forms approved by the board;
- (2) pay the appropriate application fee;
- (3) certify that the applicant is mentally and physically able to function safely as a surgical assistant;

(4) not have a license, certification, or registration in this state or from any other licensing authority or certifying professional organization that is currently revoked, suspended, or subject to probation or other disciplinary action for cause;

(5) have no proceedings that have been instituted against the applicant for the restriction, cancellation, suspension, or revocation of certificate, license, or authority to practice surgical assisting in the state, Canadian province, or unincorporated service of the United States in which it was issued;

(6) have no prosecution pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony;

~~[(7) be of good moral character;]~~

~~[(7)]~~ [(8)] not have been convicted of a felony or a crime involving moral turpitude;

~~[(8)]~~ [(9)] not use drugs or alcohol to an extent that affects the applicant's professional competency;

~~[(9)]~~ [(10)] not have engaged in fraud or deceit in applying for a license;

~~[(10)]~~ [(11)] pass an independently evaluated surgical or first assistant examination approved by the board;

~~[(11)]~~ [(12)] have been awarded at least an associate's degree at a two or four year institution of higher education;

~~[(12)]~~ [(13)] have successfully completed an educational program as set forth in subparagraphs (A) and (B) of this paragraph;

(A) A surgical assistant program accredited, for the entire duration of applicant's attendance, by the Commission on Accreditation of Allied Health Education Programs (CAAHEP); or

(B) a substantially equivalent program that is one of the following:

(i) a medical school whereby the applicant can verify completion of basic and clinical sciences coursework;

(ii) a registered nurse first assistant program that is approved or recognized by an organization recognized by the Texas Board of Nursing for purposes of licensure as a registered nurse first assistant; or

(iii) a post graduate clinical physician assistant program accredited, for the entire duration of applicant's attendance, by the Accreditation Review Commission on Education for the Physician Assistant, Inc. (ARC-PA), or by that committee's predecessor or successor entities designed to prepare the physician assistant for a surgical specialty.

(C) The curriculum of an educational program listed in subparagraphs (A) and (B) of this paragraph must include at a minimum, either as a part of that curriculum or as a required prerequisite, successful completion of college level instruction in the following courses:

(i) anatomy;

(ii) physiology;

(iii) basic pharmacology;

(iv) aseptic techniques;

(v) operative procedures;

(vi) chemistry;

(vii) microbiology; and

(viii) pathophysiology.

~~[(13)]~~ [(14)] demonstrate to the satisfaction of the board the completion of full-time work experience performed in the United States under the direct supervision of a physician licensed in the United States consisting of at least 2,000 hours of performance as an assistant in surgical procedures for the three years preceding the date of the application;

~~[(14)]~~ [(15)] be currently certified by a national certifying board approved by the board; and

~~[(15)]~~ [(16)] submit to the board any other information the board considers necessary to evaluate the applicant's qualifications.

(b) An applicant must provide documentation that the applicant has passed a surgical or first assistant examination required for certification by one of the following certifying boards:

(1) American Board of Surgical Assistants;

(2) National Board of Surgical Technology and Surgical Assisting (NBSTSA) formerly known as Liaison Council on Certification for the Surgical Technologist (LCC-ST); or

(3) the National Surgical Assistant Association provided that the exam was administered on or after March 29, 2003.

(c) Alternative License Procedures for Military Service Members, Military Veterans, and Military Spouses.

(1) An applicant who is a military service member, military veteran, or military spouse may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.

(2) To be eligible, an applicant must be a military service member, military veteran, or military spouse and meet one of the following requirements:

(A) holds an active unrestricted surgical assistant license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas surgical assistant license; or

(B) within the five years preceding the application date held a surgical assistant license in this state.

(3) The executive director may waive any prerequisite to obtaining a license for an applicant described by this subsection after reviewing the applicant's credentials.

(4) Applications for licensure from applicants qualifying under this section, shall be expedited by the board's licensure division. Such applicants shall be notified, in writing or by electronic means, as soon as practicable, of the requirements and process for renewal of the license.

(5) Alternative Demonstrations of Competency Allowed. Applicants qualifying under this section, notwithstanding:

(A) the one year expiration in §184.5(a)(2) of this title (relating to Procedural Rules for Licensure Applicants), are allowed an additional six months to complete the application prior to it becoming inactive; and

(B) the 20 day deadline in §184.5(a)(6) of this title, may be considered for permanent licensure up to five days prior to the board meeting; and

(C) the requirement to produce a copy of a valid and current certificate from a board approved national certifying organization in §184.6(b)(4) of this title (relating to Licensure Documentation), may substitute certification from a board approved national certifying organization if it is made on a valid examination transcript.

(d) Applicants with Military Experience.

(1) For applications filed on or after March 1, 2014, the Board shall, with respect to an applicant who is a military service member or military veteran as defined in §184.2 of this title (relating to Definitions), credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the Board.

(2) This section does not apply to an applicant who:

(A) has had a surgical assistant license suspended or revoked by another state or a Canadian province;

(B) holds a surgical assistant license issued by another state or a Canadian province that is subject to a restriction, disciplinary order, or probationary order; or

(C) has an unacceptable criminal history.

#### *§184.25. Continuing Education.*

(a) As a prerequisite to the registration of a surgical assistant's license, 36 [48] hours of continuing education (CE) in surgical assisting or in courses that enhance the practice of surgical assisting are required to be completed every 24 [42] months in the following categories:

(1) at least 18 [9] of the [annual] hours are to be from formal courses that are:

(A) designated for AMA/PRA Category I credit by a CE sponsor accredited by the Accreditation Council for Continuing Medical Education;

(B) approved for prescribed credit by the Association of Surgical Technologists/ Association of Surgical Assistants, the American Board of Surgical Assistants, or the National Surgical Assistants Association;

(C) approved by the Texas Medical Association based on standards established by the AMA; or

(D) designated for AOA Category 1-A credit approved by the American Osteopathic Association.

(2) At least two [one] of the [annual] formal hours of CE which are required by paragraph (1) of this subsection must involve the study of medical ethics and/or professional responsibility. Whether a particular hour of CE involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in paragraph (1) of this subsection as part of their course planning.

(3) As part of the required hours set forth under paragraph (1) of this subsection, a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission must be completed. The course shall be approved by the Board to be credited toward the required medical ethics

or professional responsibility hours set forth under paragraph (2) of this subsection.

(4) [(3)] The remaining 18 [9] hours [each year] may be composed of informal self-study, attendance at hospital lectures or grand rounds not approved for formal CE, or case conferences and shall be recorded in a manner that can be easily transmitted to the board upon request.

(b) A licensed surgical assistant must report on the license renewal application if he or she has completed the required continuing education since the licensee last registered with the board. A licensee who timely registers, may apply CE credit hours retroactively to the preceding biennial registration period [year's annual] requirement, however, those hours may be counted only toward one registration permit. A licensee may carry forward CE credit hours earned prior to a registration report which are in excess of the 36-hour [18-hour annual] requirement and such excess hours may be applied to the renewal period's [years'] requirements, except for the course in human trafficking prevention required under subsection (a)(3) of this section. A maximum of 36 total excess credit hours may be carried forward and shall be reported according to the categories set out in subsection (a) of this section. Excess CE credit hours of any type may not be carried forward or applied to a [an annual] report of CE more than two years beyond the date of the [annual] registration following the period during which the hours were earned.

(c) A licensed surgical assistant may request in writing an exemption for the following reasons:

(1) the licensee's catastrophic illness;

(2) the licensee's military service of longer than one year's duration outside the state;

(3) the licensee's residence of longer than one year's duration outside the United States; or

(4) good cause shown submitted in writing by the licensee that gives satisfactory evidence to the board that the licensee is unable to comply with the requirement for continuing education.

(d) Exemptions are subject to the approval of the executive director of the board and must be requested in writing at least 30 days prior to the expiration date of the license.

(e) An exception under subsection (c) of this section may not exceed two years [one year] but may be requested biennially [annually], subject to the approval of the executive director of the board.

(f) This section does not prevent the board from taking board action with respect to a licensee or an applicant for a license by requiring additional hours of continuing education or of specific course subjects.

(g) The board may require written verification of both formal and informal credits from any licensee within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(h) Unless exempted under the terms of this section, a licensee's apparent failure to obtain and timely report the 36 [48] hours of CE as required [annually] and provided for in this section shall result in the denial of licensure renewal until such time as the licensee obtains and reports the required CE hours; however, the executive director of the board may issue to such a surgical assistant a temporary license numbered so as to correspond to the nonrenewed license. Such a temporary license shall be issued at the direction of the executive director for a period of no longer than 90 days. A temporary license issued pursuant to this subsection may be issued to allow the surgical

assistant who has not obtained or timely reported the required number of hours an opportunity to correct any deficiency so as not to require termination of ongoing patient care.

(i) CE hours that are obtained to comply with the CE requirements for the prior biennial period [~~for the preceding year~~] as a prerequisite for obtaining licensure renewal, shall first be credited to meet the CE requirements for the previous period [year]. Once the previous period's [year's] CE requirement is satisfied, any additional hours obtained shall be credited to meet the CE requirements for the current period [year].

(j) A false report or statement to the board by a licensee regarding CE hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to §§206.302-.304 of the Act and §§164.051-.053 of the Medical Practice Act, Tex. Occ. Code Ann. A licensee who is disciplined by the board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the surgical assistant's license, but in no event shall such action be less than an administrative penalty of \$500.

(k) Unless otherwise exempted under the terms of this section, failure to obtain and timely report CE hours for the renewal of a license shall subject the licensee to a monetary penalty for late registration in the amount set forth in Chapter 175 of this title (relating to Fees, Penalties, and Applications). Any temporary CE licensure fee and any administrative penalty imposed for failure to obtain and timely report the 36 [48] hours of CE required [~~annually~~] for renewal of a license shall be in addition to the applicable penalties for late registration or as set forth in Chapter 175 of this title (relating to Fees, Penalties and Applications).

(l) A surgical assistant, who is a military service member, may request an extension of time, not to exceed two years, to complete any CE requirements.

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016



## CHAPTER 185. PHYSICIAN ASSISTANTS

### 22 TAC §185.6

The Texas Medical Board (Board) proposes amendments to 22 TAC §185.6, concerning Biennial Renewal of License.

The proposed amendments to §185.6, relating to Biennial Renewal of License, proposes amendments to implement new continuing education requirements set forth by H.B. 2059 passed by the 86th Legislature, Regular Session (2019). The new language requires that physician assistants complete a course in the topic of human trafficking prevention. The new courses are to be completed as part of the formal course hours required each biennial registration period. Carry forwards will not be allowed

toward the new requirements. Other changes are proposed to §185.6 are made to reorganize and format the rule.

Requiring all physician assistants to complete the new education requirements will fulfill legislative intent and better protect the public.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments will be to increase physician assistant knowledge about human trafficking prevention, a critical health and social issue affecting Texas.

Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed amendments.

Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect there will be no probable economic cost to individuals required to comply with the proposed amendments.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years the proposed amendments are in effect:

(1) there will be no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the proposed amendments;

(2) there will be no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the proposed amendments;

(3) there will be no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed amendments; and

(4) there will be no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the proposed amendments.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Mr. Freshour has determined the following:

(1) The proposed amendments will not create or eliminate a government program.

(2) Implementation of the proposed amendments will not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed amendments will not require an increase or decrease in fees paid to the agency.

(5) The proposed amendments will create a new regulation.

(6) The proposed amendments will not expand, limit, or repeal an existing regulation as described above, as the proposed amendments set forth new regulations about required topics of CME, but do not increase the number of CME hours to be completed each biennial renewal period.

(7) The proposed amendments will not increase the number of individuals subject to the rule's applicability.

(8) The proposed amendments will not positively or adversely affect this state's economy.

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

The amendments are proposed under the authority of Texas Occupations Code §153.001 and 204.102, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and to adopt rules necessary to regulate and license physician assistants. The amendments are further proposed under H.B. 2059, passed by the 86th Legislature, Regular Session (2019).

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

#### §185.6. *Biennial Renewal of License.*

(a) Physician assistants licensed under the Physician Assistant Licensing Act shall register biennially and pay a fee. A physician assistant may, on notification from the board, renew an unexpired license by submitting the required form and documents and by paying the required renewal fee to the board on or before the expiration date of the permit. The fee shall accompany the required form which legibly sets forth the licensee's name, mailing address, business address, and other necessary information prescribed by the board.

(b) [The following documentation shall be submitted as part of the renewal process:]

[~~(4)~~] Continuing Medical Education. As a prerequisite to the biennial registration of a physician assistant's license, 40 hours of continuing medical education (CME) are required to be completed. [~~in the following categories:~~]

(1) [~~(A)~~] At [~~at~~] least 20 [~~one-half of the~~] hours are to be from formal courses:

(A) [~~(i)~~] that are designated for Category I credit by a CME sponsor approved by the American Academy of Physician Assistants; or

(B) [~~(ii)~~] approved by the board for course credit.

(2) As part of the 20 formal hours required, a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission must be completed.

(3) [~~(B)~~] The remaining hours may be from Category II composed of informal self-study, attendance at hospital lectures, grand rounds, case conferences, or by providing volunteer medical services at a site serving a medically underserved population, other than at a site that is the primary practice site of the license holder, and shall be

recorded in a manner that can be easily transmitted to the board upon request.

(4) [~~(C)~~] A physician assistant shall receive one credit of continuing medical education for each hour of time spent up to 6 hours per year, as required by paragraph (1) of this subsection [~~subparagraph (A) of this paragraph~~] based on participation in a program sponsored by the board and approved for CME credit for the evaluation of a physician assistant's competency or practice monitoring.

(5) [~~(2)~~] A physician assistant must report on the biennial registration form if she or he has completed the required continuing medical education during the previous year.

(6) A licensee may carry forward CME credit hours earned prior to registration which are in excess of the 40 hour biennial requirement, except that excess credits may not be applied to requirements set forth under paragraph (2) of this subsection, and such excess hours may be applied to the following years' requirements. A maximum of 80 total excess credit hours may be carried forward and shall be reported according to whether the hours are Category I and/or Category II. Excess CME credit hours of any type may not be carried forward or applied to a report of CME more than two years beyond the date of the biennial registration following the period during which the hours were earned.

(7) [~~(3)~~] A physician assistant may request in writing an exemption for the following reasons:

(A) catastrophic illness;

(B) military service of longer than one year's duration outside the United States;

(C) residence of longer than one year's duration outside the United States; or

(D) good cause shown on written application of the licensee that gives satisfactory evidence to the board that the licensee is unable to comply with the requirement for continuing medical education.

(8) [~~(4)~~] Exemptions are subject to the approval of the licensure committee of the board.

(9) [~~(5)~~] An exemption [~~A temporary exception~~] under paragraph (8) [~~(4) of this subsection~~] may not exceed two years but may be renewed biennially, subject to the approval of the board.

(10) [~~(6)~~] This section does not prevent the board from taking disciplinary action with respect to a licensee or an applicant for a license by requiring additional hours of continuing medical education or of specific course subjects.

(11) [~~(7)~~] The board may require written verification of both formal and informal credits from any licensee within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(12) [~~(8)~~] Unless exempted under the terms of this section, a physician assistant licensee's apparent failure to obtain and timely report the 40 hours of CME as required and provided for in this section shall result in nonrenewal of the license until such time as the physician assistant obtains and reports the required CME hours; however, the executive director of the board may issue to such a physician assistant a temporary license numbered so as to correspond to the nonrenewed license. Such a temporary license shall be issued at the direction of the executive director for a period of no longer than 90 days. A temporary license issued pursuant to this subsection may be issued to allow the physician assistant who has not obtained or timely reported the required number of hours an opportunity to correct any deficiency so as not to require termination of ongoing patient care.

(13) [(9)] A physician assistant, who is a military service member, may request an extension of time, not to exceed two years, to complete any CME requirements.

(14) [(10)] A physician assistant must provide a complete and legible set of fingerprints to the board, unless fingerprints were already submitted with their initial license application or a previous renewal request.

(c) Falsification of an affidavit or submission of false information to obtain renewal of a license shall subject a physician assistant to denial of the renewal and/or to discipline pursuant to the Act, §§204.301-204.303.

(d) If the renewal fee and completed application form are not received on or before the expiration date of the permit, the fees set forth in Chapter 175 of this title (relating to Fees and Penalties) shall apply.

(e) The board shall not waive fees or penalties.

(f) The board shall stagger biennial registration of physician assistants proportionally on a periodic basis.

(g) Practicing as a physician assistant as defined in the Act without a biennial registration permit for the current year as provided for in the board rules has the same force and effect as and is subject to all penalties of practicing as a physician assistant without a license.

(h) Expired Biennial Registration Permits.

(1) If a physician assistant's registration permit has been expired for less than one year, the physician assistant may obtain a new permit by submitting to the board a completed permit application, the registration fee, as defined in §175.2(2) of this title (relating to Registration and Renewal Fees) and the penalty fee, as defined in §175.3(2) of this title (relating to Penalties).

(2) If a physician assistant's registration permit has been expired for one year or longer, the physician assistant's license is automatically canceled, unless an investigation is pending, and the physician assistant may not obtain a new permit.

(3) A person whose license has expired may not engage in activities that require a license until the licensed has been renewed. Practicing as a physician assistant after a physician assistant's permit has expired under subsection (a) of this section without obtaining a new registration permit for the current registration period has the same effect as, and is subject to all penalties of, practicing as a physician assistant without a license. The Board interprets §204.156 of the Act to provide the exclusive sanction that may be imposed by the board for practicing medicine after the expiration of the permit.

(i) A military service member who holds a physician assistant license in Texas is entitled to two years of additional time to complete any other requirement related to the renewal of the military service member's license.

(j) The physician assistant board may refuse to renew a license if the licensee is in violation of a physician assistant board order.

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

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Scott Freshour

General Counsel

Texas Medical Board

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## CHAPTER 186. RESPIRATORY CARE PRACTITIONERS

### 22 TAC §186.10

The Texas Medical Board (Board) proposes amendments to 22 TAC §186.10, concerning Continuing Education Requirements.

The proposed amendments to §186.10, relating to Continuing Education Requirements, propose amendments to implement new continuing education requirements set forth by H.B. 2059, passed by the 86th Legislature, Regular Session (2019). The new language requires that respiratory care practitioners complete a course in the topic of human trafficking prevention, as part of the course hours required each biennial registration period. Other changes proposed to 186.10 are made to reorganize and format the rule.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments will be to increase respiratory care practitioners' knowledge about human trafficking prevention, which is a critical health and social issue affecting Texas.

Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed amendments.

Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect there will be no probable economic cost to individuals required to comply with the proposed amendments.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years the proposed amendments are in effect:

(1) there will be no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the proposed amendments;

(2) there will be no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the proposed amendments;

(3) there will be no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed amendments; and

(4) there will be no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the proposed amendments.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Mr. Freshour has determined the following:

(1) The proposed amendments will not create or eliminate a government program.

(2) Implementation of the proposed amendments will not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed amendments will not require an increase or decrease in fees paid to the agency.

(5) The proposed amendments will create a new regulation.

(6) The proposed amendments will not expand, limit, or repeal an existing regulation as described above, as the proposed amendments set forth new regulations about required topics of CE, but do not increase the number of CE hours to be completed each biennial renewal period.

(7) The proposed amendments will not increase the number of individuals subject to the rule's applicability.

(8) The proposed amendments will not positively or adversely affect this state's economy.

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

The proposed amendments are proposed under the authority of Texas Occupations Code §153.001 and 604.0522(a)(1) which provide authority for the Board to adopt rules necessary to administer and enforce the Respiratory Care Practitioners Act and to adopt rules necessary to regulate and license Respiratory Care Practitioners. The proposed amendments are further proposed under H.B. 2059, passed by the 86th Legislature, Regular Session (2019).

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

*§186.10. Continuing Education Requirements.*

(a) General. Each respiratory care practitioner is required to complete 24 contact hours of approved continuing education (CE) every two (2) years as a condition of renewal of a certificate. At least 12 contact hours must be in traditional courses. Of the required contact hours, a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission must be completed. The remainder of contact hours may be in non-traditional courses or from passage of examinations detailed in subsection (b)(3) of this section. At least 2 contact hours must be in

ethics. These ethics hours may be completed via traditional courses or non-traditional courses. The board shall credit completion of the human trafficking prevention course toward required ethics hours.

(1) A contact hour shall be 60 minutes of attendance and participation in an acceptable continuing education experience.

(2) A retired respiratory care practitioner providing only voluntary charity care who is approved by the advisory board for renewal may complete reduced CE requirements equal to half of the number of CE hours required for renewal for a certified respiratory care practitioner.

(3) Notwithstanding paragraph (1) of this subsection, completion of one academic semester unit or hour that is a part of the curriculum of a respiratory care education program or a similar education program in another health-care related field offered by an accredited institution shall be credited 15 contact hours of non-traditional CE.

(4) No CE hours may be carried over from one renewal period to another renewal period.

(b) Types of acceptable continuing education. Continuing education must be in skills relevant to the practice of respiratory care and must have a direct benefit to patients and clients and shall be acceptable if the experience falls in one or more of the following categories:

(1) Traditional CE. Provider-directed educational activities directly related to the profession of respiratory care that require the learner and provider to interact in real time, including, but not limited to, live lectures, courses, seminars, workshops, review sessions, or distance learning activities such as webcasts, videoconferences, and audio conferences in which the learner can interact with the provider. Traditional CE must be approved, recognized, accepted, or assigned CE credit by a professional organization or association (such as TSRC, NBRC or AARC) or offered by a federal, state, or local government entity.

(2) Non-traditional CE.

(A) Self-directed study directly related to the profession of respiratory care that does not include interaction between the learner and the instructor. A test at the conclusion of the self-directed study is required. Non-traditional CE must be approved, recognized, accepted, or assigned CE credit by a professional organization or association (such as TSRC, NBRC or AARC) or offered by a federal, state, or local government entity.

(B) A respiratory care practitioner who teaches or instructs a CE course shall be credited one (1) contact hour in non-traditional CE for each contact hour actually taught. CE credit will be given only once for teaching a particular course.

(C) A respiratory care practitioner who teaches or instructs a course in a respiratory care educational program accredited by the Commission on Accreditation for Respiratory Care or other accrediting body approved by the board shall be credited one (1) contact hour in non-traditional CE for each contact hour actually taught. CE credit will be given only once per renewal period for teaching a particular course.

(3) Passage of an official credentialing or proctored self-evaluation examination, as follows:

(A) NBRC Therapist Multiple Choice (TMC) credentialing or re-credentialing examination - 10 contact hours;

(B) NBRC Clinical Simulation Examination (credentialing or re-credentialing) - 10 contact hours;

(C) NBRC Neonatal/Pediatric Respiratory Care Specialist (NPS) examination (credentialing or re-credentialing) - 10 contact hours;

(D) NBRC Adult Critical Care Specialist (ACCS) examination (credentialing or re-credentialing) - 10 contact hours;

(E) NBRC Sleep Disorder Specialist (SDS) examination (credentialing or re-credentialing) - 10 contact hours;

(F) NBRC Certified Pulmonary Function Technologist (CPFT) examination or NBRC Registered Pulmonary Function Technologist (RPFT) examination (credentialing or re-credentialing) - 10 contact hours;

(G) Board of Registered Polysomnographic Technologists (BRPT) registration examination (credentialing or re-credentialing) - 10 contact hours;

(H) National Asthma Educator Certification Board (NAECB) Certified Asthma Educator (AE-C) examination (credentialing or re-credentialing) - 10 contact hours;

(I) Advanced cardiac life-support (ACLS), pediatric advanced life-support (PALS), neonatal advanced life-support (NALS) or neonatal resuscitation program (NRP), basic trauma life-support, or pre-hospital trauma life-support (credentialing or re-credentialing) - 8 contact hours;

(J) Examinations listed in subparagraphs (A) - (I) of this paragraph may be counted only once for credit. If an initial credentialing examination is counted towards fulfillment of CE requirements, the same examination taken later for re-credentialing purposes may only be applied towards fulfillment of CE requirements once every three (3) renewal periods.

(c) Verification of continuing education. The advisory board may conduct random audits of CE reported to be completed by respiratory care practitioners to determine compliance with this section. The advisory board may require written verification of CE hours from a respiratory care practitioner within 30 days of request. Failure to provide such verification may result in disciplinary action by the advisory board.

(d) Exemptions.

(1) A respiratory care practitioner may request in writing an exemption from the CE requirement for the following reasons:

(A) documented catastrophic illness;

(B) military service of longer than one year's duration outside the United States;

(C) residence of longer than one year's duration outside the United States; or

(D) good cause shown on written application of the respiratory care practitioner that gives satisfactory evidence to the advisory board that he or she is unable to comply with the CE requirement.

(2) Exemptions are subject to the approval of the Executive Director of the Medical Board and must be requested in writing at least 30 days prior to the expiration date of the certificate.

(3) An approved exemption may not exceed one renewal period but may be requested biennially, subject to the approval of the Executive Director of the Medical Board.

(e) CE hours that are obtained to comply with the CE requirements for the preceding renewal period as a prerequisite for obtaining the renewal of a certificate shall first be credited to meet the CE requirements for the previous renewal period. Once the previous renewal pe-

riod's CE requirement is satisfied, any additional hours obtained shall be credited to meet the CE requirements for the current renewal period.

(f) A false report or statement to the advisory board by a respiratory care practitioner regarding CE hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to §604.201 of the Act. A respiratory care practitioner who is disciplined by the advisory board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the practitioner's certificate.

(g) A respiratory care practitioner who is a military service member may request an extension of time, not to exceed two years, to complete any CE requirements. A request for such extension is subject to the approval of the Executive Director of the Medical Board.

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

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Scott Freshour

General Counsel

Texas Medical Board

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## CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) proposes amendments to 22 TAC §187.9, concerning Board Actions; §187.35, concerning Presentation of Proposal for Decision; §187.37, concerning Final Decisions and Orders; and repeal of 187.38, concerning Motions for Rehearing.

The proposed amendments to §187.9 propose to repeal language limiting the board's authority to issue more than one remedial plan to resolve complaints of violations of laws by licensees, pursuant to H.B. 1504 (86th Legislature TMB Sunset Bill (2019)). H.B. 1504 changed Texas Occupations Code §164.0015 so that the board is permitted to issue remedial plans to address minor law violations if the licensee has not received a remedial plan in the preceding five years. Remaining amendments delete language related to non-disciplinary orders, a type of order that the board has had no authority to issue since approximately 2009. Finally, the amendments delete an unnecessary reference to chapter 175 of the board rules.

Proposed amendments are made to §187.35, Presentation of Proposal for Decision, and §187.37, Final Decisions and Orders; pursuant to Texas Occupations Code Section 164.0072, added by H.B.1504 (86th Legislature TMB Sunset Bill (2019)). Section 187.38, pertaining to Motions for Rehearing, is proposed for repeal, as Texas Government Code Chapter 2001 provides for a specific and clear process requiring no regulatory clarification.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments will be to have increased options to address minor violations by licensees with remedial measures and to have rules that comport with statutes.



Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed amendments.

Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect there will be no probable economic cost to individuals required to comply with the proposed amendments.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years the proposed amendments are in effect:

- (1) there will be no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the proposed amendments;
- (2) there will be no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the proposed amendments;
- (3) there will be no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed amendments; and
- (4) there will be no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the proposed amendments.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Mr. Freshour has determined the following:

- (1) The proposed amendments will not create or eliminate a government program.
- (2) Implementation of the proposed amendments will not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency.
- (4) The proposed amendments will not require an increase or decrease in fees paid to the agency.
- (5) The proposed amendments will not create a new regulation.
- (6) The proposed amendments will not expand, but will limit or repeal an existing regulation as described above.
- (7) The proposed amendments will not increase the number of individuals subject to the rule's applicability.

(8) The proposed amendments will not positively or adversely affect this state's economy.

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

## SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

### 22 TAC §187.9

The amendments are proposed under the authority of Texas Occupations Code §164.0015, as amended by H.B. 1504 (86th Leg. (2019)). The amendments are further authorized by S.B. 292 (81st Leg. R.S. (2009)) (repealing statutes under Chapter 164 and 204 of the Texas Occupations Code authorizing non-disciplinary orders); and Texas Occupations Code Section 153.001, related to the Board's general rulemaking authority.

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

#### *§187.9. Board Actions.*

(a) Pursuant to the Act, §164.001, and in accordance with Chapter 190 of this title (relating to Disciplinary Guidelines), the board, upon finding that an applicant or licensee has committed a prohibited act under the Act or board rules, or has violated an order of the board, shall enter an order imposing any action authorized by law:

(b) The board may stay enforcement of any order and place the person on probation. The board shall retain the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of the probation or to impose any other disciplinary action authorized by law in addition to or instead of enforcing the original order.

(c) An agreed order~~;~~ ~~including a private nondisciplinary rehabilitation order;~~ may impose actions as agreed to by the board and person subject to the order.

(d) An agreed order may include a refund, as provided by §164.206, Texas Occupations Code. A refund may only be ordered to be paid to a patient of the licensee who is the subject of disciplinary action and shall not exceed the amounts that the patient paid directly to the licensee related to medical services provided by the licensee that are the subject of the complaint involved. Refunds may be ordered to be paid by the licensee directly to a patient, with proof of payment provided to the board to show compliance with the board order. As used in this subsection, "patient" includes the legal guardian of a patient, but does not include any third-party payer.

(e) The time period of an order shall be extended for any period of time in which a person subject to an order subsequently resides or practices outside the State of Texas, for any period during which the person's license is subsequently cancelled for nonpayment of licensure fees, or as provided in a board order. This subsection does not apply to *locum tenens* practice if the licensee maintains a residence in this state and fully cooperates with his compliance officer.

(f) Notwithstanding ~~Notwithstanding~~ subsections (a) - (d) of this section, the board may issue and establish the terms of a nondisciplinary remedial plan to resolve an investigation of a complaint.

(1) A remedial plan may not contain a provision that:

(A) revokes, suspends, limits, or restricts a person's license or other authorization to practice medicine; or

(B) assesses an administrative penalty against a person.

(2) A remedial plan may not be imposed to resolve a complaint:

(A) concerning:

(i) a patient death;

(ii) the commission of a felony; or

(iii) a matter in which the physician engaged in inappropriate sexual behavior or contact with a patient or became financially involved with a patient in an inappropriate manner; or

(B) in which the appropriate resolution may involve a restriction on the manner in which a license holder practices medicine.

(3) A remedial plan may not be issued to resolve a complaint against a licensee if the licensee previously entered into a remedial plan in the preceding five year period [~~with the board for the resolution of a different complaint relating to a violation of the Act or board rules~~].

(4) A fee may be assessed against a licensee participating in a remedial plan in an amount necessary to recover the costs of administering the plan [as set out in Chapter 175 of this title (~~relating to Fees and Penalties~~)].

(5) A remedial plan may not be entered into to resolve an investigation of a complaint, once a SOAH complaint or petition has been filed.

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016



## SUBCHAPTER D. FORMAL BOARD PROCEEDINGS

### 22 TAC §187.35

The amendments are proposed under the authority of Texas Occupations Code §164.0015, as amended by H.B. 1504 (86th Leg. (2019)). The amendments are further authorized by S.B. 292 (81st Leg. R.S. (2009)) (repealing statutes under Chapter 164 and 204 of the Texas Occupations Code authorizing non-disciplinary orders); and Texas Occupations Code Section 153.001, related to the Board's general rulemaking authority. No other statutes, articles or codes are affected by this proposal.

§187.35. *Presentation of Proposal for Decision.*

(a) Notice of oral argument. All parties shall be given notice of the opportunity to attend and provide oral argument concerning a proposal for decision before the board. The ALJ who issued the proposal for decision shall be given notice of the opportunity to attend and provide a summation of the proposal for decision before the board. The ALJ is not required to attend the presentation of the proposal for decision before the board. Notice shall be sent to the party or the party's attorney of record as set out in Texas Government Code, §2001.142(a).

Notice to the ALJ may be provided by facsimile, e-mail, telephone, hand delivery, regular mail, certified mail - return receipt requested, courier service, or registered service.

(b) Arguments before the Board. The order of the proceeding shall be as follows:

(1) the ALJ may present and explain the proposal for decision;

(2) the party adversely affected shall briefly state the party's reasons for being so affected supported by the evidence of record;

(3) the other party or parties shall be given the opportunity to respond;

(4) the party with the burden of proof shall have the right to close;

(5) board members may question any party as to any matter relevant to the proposal for decision and evidence presented at the hearing;

(6) at the end of all arguments by the parties, the board may deliberate in closed session and any action shall be taken [~~take action on a final decision or final order~~] in open session.

(c) Limitation. A party shall not inquire into the mental processes used by the board in arriving at its decision, nor be disruptive of the orderly procedure of the board's routines.

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

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### 22 TAC §187.37

The amendments are proposed under the authority of Texas Occupations Code §164.0015, as amended by H.B. 1504 (86th Leg. (2019)). The amendments are further authorized by S.B. 292 (81st Leg. R.S. (2009)) (repealing statutes under Chapter 164 and 204 of the Texas Occupations Code authorizing non-disciplinary orders); and Texas Occupations Code Section 153.001, related to the Board's general rulemaking authority.

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

§187.37. *Board Action on Proposal for Decision* [~~Final Decisions and Orders~~].

(a) For purposes of this section a Final Order is defined as the disposition of a contested case based on the administrative law judge's findings of fact and conclusions of law resulting in a disciplinary order or dismissal issued by the board. A Final Order shall be in writing and shall be signed by the president, vice-president, or secretary and reported in the minutes of the meeting. Notice of the Final Order shall be delivered in accordance with Texas Government Code, Chapter 2001, Section 2001.142. [For purposes of this section a Final Decision is defined as the findings of fact and conclusions of law issued by the ALJ after the filing of exceptions and replies to exceptions, in the form of a

proposal for decision. A Final Decision shall include only findings of fact and conclusions of law, separately stated.}]

(b) If the board does not file an appeal pursuant Section 164.0072 of the Texas Occupations Code, then a licensee may appeal a final order of the Board as allowed by Subchapter F of the Texas Government Code, Chapter 2001. [For purposes of this section a Final Order is defined as the findings of fact and conclusions of law, separately stated, and the sanctions, if any, issued by the board.]

(c) Board action on a Motion for Rehearing must be done in accordance with Texas Government Code, Chapter 2001, Section 2001.145 and 2001.146. [The board shall notify the licensee if it will present a Final Decision or a Final Order when providing the notice required in §187.35 of this title (relating to Presentation of Proposal for Decision).]

[(d) The determination to enter a Final Decision or issue a Final Order rests solely with the board. The board may only appeal a Final Decision.]

[(e) If a Final Decision is appealed, the determination of that appeal is conclusive to both the board and licensee as to the findings of fact and conclusions of law and only the sanction can subsequently be appealed after the issuance of a Final Order.]

[(f) If the board issues only a Final Order, the licensee retains the rights under the APA to appeal the findings of fact, conclusions of law, and the sanctions.]

[(g) Board action. Notice of the and Final Decision, if applicable, and/or Final Order, including a copy of the Final Decision and/or Final Order, shall be delivered in accordance with Texas Government Code, §2001.142(a). The Board shall keep a record documenting the provision of notice to each party.]

[(h) Recorded. All Final Decisions and Final Orders of the board shall be in writing and shall be signed by the president, vice-president, or secretary and reported in the minutes of the meeting.]

[(i) Imminent peril. If the board finds that imminent peril to the public's health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.]

[(j) Changes to findings of fact and conclusions of law. The board may not change a finding of fact or conclusion of law or vacate or modify an order of the administrative law judge. The board may, however, obtain judicial review of any findings of fact or conclusions of law as provided by the APA.]

[(k) In the case where the board intends to seek judicial review of a Final Decision, the board shall file a motion for rehearing as described in §187.38 of this title (relating to Motions for Rehearing).]

[(1) Determination and Imposition of Sanctions in a Final Order. The agency is charged by the legislature to protect the public interest, is an independent agency of the executive branch of the government of the State of Texas, and is the primary means of licensing, regulating and disciplining physicians and surgeons, physician assistants, and acupuncturists, to ensure that sound medical principles govern the decisions of the board.]

[(2) Sanctions. After receiving the ALJ's proposal for decision, the board may enter it as a Final Decision and seek judicial review. Upon the appeal's resolution, the board shall determine the charges on the merits, and issue a Final Order. The board has the sole authority and

discretion to determine the appropriate sanction or action to impose on a licensee. The board determination regarding appropriate sanctions shall be based on the findings of fact and conclusions of law as set out in the Proposal for Decision or Final Decision and shall be set out in a Final Order.]

[(1) Administrative finality. A final order or final decision is administratively final:]

[(1) upon a finding of imminent peril to the public's health, safety or welfare, as outlined in subsection (i) of this section;]

[(2) when no motion for rehearing has been filed within 25 days after the date the final order or board decision is entered; or]

[(3) when a timely motion for rehearing is filed and the motion for rehearing is denied by board order or operation of law as outlined in §187.38 of this title.]

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

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Scott Freshour

General Counsel

Texas Medical Board

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## 22 TAC §187.38

The repeal is proposed under the authority of Texas Occupations Code §164.0015, as amended by H.B. 1504 (86th Leg. (2019)). The repeal is further authorized by S.B. 292 (81st Leg. R.S. (2009)) (repealing statutes under Chapter 164 and 204 of the Texas Occupations Code authorizing non-disciplinary orders); and Texas Occupations Code Section 153.001, related to the Board's general rulemaking authority.

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

*§187.38. Motions for Rehearing.*

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

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## CHAPTER 188. PERFUSIONISTS

### 22 TAC §188.24

The Texas Medical Board (Board) proposes amendments to 22 TAC §188.24, concerning Continuing Education.

The proposed amendments to §188.24, relating to Continuing Education, proposes amendments to implement new continuing education requirements set forth by H.B. 2059, passed by the 86th Legislature, Regular Session (2019). The new language requires that perfusionists complete a course in the topic of human trafficking prevention, as part of the course hours required each biennial registration period. Other changes proposed to §188.24 are made to make language consistent with requirements being on a biennial basis, remove outdated language, and otherwise to reorganize and format the rule.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments will be to increase perfusionists' knowledge about human trafficking prevention, which is a critical health and social issue affecting Texas.

Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed amendments.

Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect there will be no probable economic cost to individuals required to comply with the proposed amendments.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years the proposed amendments are in effect:

- (1) there will be no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the proposed amendments;
- (2) there will be no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the proposed amendments;
- (3) there will be no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed amendments; and
- (4) there will be no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the proposed amendments.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Mr. Freshour has determined the following:

- (1) The proposed amendments will not create or eliminate a government program.
- (2) Implementation of the proposed amendments will not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency.
- (4) The proposed amendments will not require an increase or decrease in fees paid to the agency.
- (5) The proposed amendments will create a new regulation.
- (6) The proposed amendments will not expand, limit, or repeal an existing regulation as described above, as the proposed amendments set forth new regulations about required topics of CE, but do not increase the number of CE hours to be completed each biennial renewal period.
- (7) The proposed amendments will not increase the number of individuals subject to the rule's applicability.
- (8) The proposed amendments will not positively or adversely affect this state's economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or email comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

The amendments are proposed under the authority of Texas Occupations Code §603.304 which provides authority for the Board to adopt rules necessary to regulate minimum continuing education requirements for perfusionists. The amendments are further proposed under H.B. 2059, passed by the 86th Legislature, Regular Session (2019).

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

*§188.24. Continuing Education.*

(a) Completion of continuing education (CE) requirements by licensee with current certification by the ABCP or its successor agency. Completion of continuing education requirements may be documented by demonstrating current certification by the ABCP annual license renewal.

(b) Completion of CE requirements by licensee without current certification by the ABCP. A licensee without current certification by the ABCP at the time of license renewal must meet the following criteria.

(1) Document a minimum of 30 continuing education credits [credit] (CEUs) every 24 months (24 month timeline is in relation to the biennial registration period, not the calendar year). A licensee must report during registration if she or he has completed the required CE. Documentation of CE courses shall be made available to the Board upon request but should not be mailed with the registration payment. Random audits will be made to assure compliance. Of the required CEUs, a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission must be completed. A minimum of 15 hours of CEU must be earned in Category I. The activity period covered in the professional activity report is from the date of licensure to the third licensure renewal date and every subsequent third license renewal date.

(2) Document a minimum of 40 clinical perfusion cases in a two-year period by submitting a clinical activity report upon renewal,

on the approved form, demonstrating completion of 40 cases each biennial as the Primary Perfusionist for Cardiopulmonary bypass (instructor or primary), ECMO, VAD, Isolated Limb Perfusion, or VENO-VENO bypass.

(3) One CEU or contact hour activity is defined as 50 minutes spent in an organized, structured or unstructured learning experience. Categories of CEU activities are:

(A) Category I--Perfusion Meetings and Other Perfusion Related Activity--Perfusion meetings are those programs and seminars in which a minimum of 75% of the contact hours consist of perfusion related material. Only those meetings approved by the ABCP will qualify for Category 1 hours. Examples:

(i) International, national, regional, and state perfusion meetings.

(ii) Publication of perfusion related book chapter or paper in a professional journal.

(iii) Presentation at an international, national, regional, or state perfusion journal.

(B) Category II--Non-Accredited Perfusion Meetings and Other Medical Meetings--This category includes international, national, regional, and state meetings that have not been approved by the ABCP, local perfusion meetings, and all other medically related meetings. Examples:

(i) International, national, regional, and state [~~National, Regional, and State,~~] perfusion meetings that have not been accredited by the ABCP.

(ii) Local perfusion meetings (do not require ABCP accreditation). Any perfusion meeting NOT EQUALLY ACCESSIBLE to the general CCP community, this includes manufacturer-specific and company-sponsored educational activities.

(iii) International, national, regional, or local [~~National, Regional, or Local~~] medically-related meetings.

(C) Category III--Individual Education and Other Self-Study Activities Credit in this category is acquired on an hour for hour basis of the time spent in these non-accredited or non-supervised activities. Examples:

(i) Reading or viewing medical journals, audio-visual, or other educational material.

(ii) Participation in electronic forums.

(iii) Participation in a Journal Club.

(iv) Participation in degree-oriented, professional-related course work.

(v) Presentation of perfusion topic at a non-perfusion meeting.

(4) Documentation of activities. Licensees are responsible for reporting completion of their professional activities. This information must be reported to the board at the time of registration and renewal and documentation must be submitted to the board upon request. Credit will not be granted for activities that are not documented. The suitable documentation is outlined as follows:

(A) Category I--Perfusion meetings [~~--Approved perfusion meetings held before June 30, 1998, may be documented by copies of registration receipts or official meeting name tags.~~]. For approved perfusion meetings [~~held after June 30, 1998~~], an official document from the meeting sponsor documenting attendance and the number of hours received must be provided.

(i) Perfusion Publications must have complete reference of book or article (authors, title, journal, and date/volume of journal).

(ii) Perfusion Presentations must have copy of program agenda.

(B) Category II--International, national, regional, and state perfusion meetings not accredited by the ABCP, local perfusion meetings and all other medical meetings--must provide an official document stating CEUs awarded and copy of the meeting program.

(C) Category III--All self-study activities will require an official record of completion or written summary of the activity.

(D) Submission of a clinical activity report upon renewal, on the approved form, demonstrating completion of 40 cases each biennial as the Primary Perfusionist for Cardiopulmonary bypass (instructor or primary), ECMO, VAD, Isolated Limb Perfusion, or VENO-VENO bypass.

(c) A licensee may request in writing an exemption for the following reasons:

(1) the licensee's catastrophic illness;

(2) the licensee's military service of longer than one year's duration outside the state;

(3) the licensee's residence of longer than one year's duration outside the United States; or

(4) good cause shown submitted in writing by the licensee that gives satisfactory evidence to the board that the licensee is unable to comply with the requirement for continuing education.

(d) Exemptions are subject to the approval of the executive director of the board and must be requested in writing at least 30 days prior to the expiration date of the license.

(e) An exception under subsection (c) of this section may not exceed one renewal [year] but may be requested again [annually], subject to the approval of the executive director of the board.

(f) This section does not prevent the board from taking board action with respect to a licensee or an applicant for a license by requiring additional hours of continuing education or of specific course subjects.

(g) The board may require written verification of both formal and informal credits from any licensee within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(h) Unless exempted under the terms of this section, a licensee's apparent failure to obtain and timely report the number of hours of CE as required [annually] and provided for in this section shall result in the denial of licensure renewal until such time as the licensee obtains and reports the required CE hours.

(i) CE hours that are obtained to comply with the CE requirements for the preceding renewal period [year] as a prerequisite for obtaining licensure renewal~~[-]~~ shall first be credited to meet the CE requirements for the previous renewal period [year]. Once the previous renewal period [year's] CE requirements are [requirement is] satisfied, any additional hours obtained shall be credited to meet the CE requirements for the current renewal period [year].

(j) A false report or statement to the board by a licensee regarding CE hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to §603.401 of the Act. A licensee who is disciplined by the board for such a violation may be subject to the full

range of actions authorized by the Act including suspension or revocation of the perfusionist's license, but such action shall not be less than an administrative penalty of \$500.

(k) A perfusionist, who is a military service member, may request an extension of time, not to exceed two years, to complete any CE requirements.

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016



## CHAPTER 194. MEDICAL RADIOLOGIC TECHNOLOGY

### SUBCHAPTER A. CERTIFICATE HOLDERS, NON-CERTIFIED TECHNICIANS, AND OTHER AUTHORIZED INDIVIDUALS OR ENTITIES

#### 22 TAC §194.7

The Texas Medical Board (Board) proposes amendments to 22 TAC §194.7, concerning Biennial Renewal of Certificate or Placement on the Board's Non-Certified Technician Registry.

The proposed amendments to §194.7, relating to Biennial Renewal of Certificate or Placement on the Board's Non-Certified Technician Registry, proposes amendments to implement new continuing education requirements set forth by H.B. 2059, passed by the 86th Legislature, Regular Session (2019). The new language requires that radiologist assistants, medical radiologic technologists, and non-certified technicians complete a course in the topic of human trafficking prevention, as part of the course hours required each biennial registration period. Carry forward hours will not apply to the new course requirement. For radiologist assistants, the course will be required in addition to the formal course hours. Other changes proposed to 194.7 reorganize and format the rule.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments will be to increase knowledge in the radiologic technology field about human trafficking prevention, a critical health and social issue affecting Texas.

Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed amendments.

Mr. Freshour has also determined that for the first five-year period the proposed amendments are in effect there will be no prob-

able economic cost to individuals required to comply with the proposed amendments.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years the proposed amendments are in effect:

(1) there will be no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the proposed amendments;

(2) there will be no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the proposed amendments;

(3) there will be no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed amendments; and

(4) there will be no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the proposed amendments.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Mr. Freshour has determined the following:

(1) The proposed amendments will not create or eliminate a government program.

(2) Implementation of the proposed amendments will not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed amendments will not require an increase or decrease in fees paid to the agency.

(5) The proposed amendments will create a new regulation.

(6) The proposed amendments will not expand, limit, or repeal an existing regulation as described above, as the proposed amendments set forth new regulations about required topics of CE, but do not increase the number of CE hours to be completed each biennial renewal period.

(7) The proposed amendments will not increase the number of individuals subject to the rule's applicability.

(8) The proposed amendments will not positively or adversely affect this state's economy.

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

The amendments are proposed under the authority of Texas Occupations Code §601.0522(a)(1) which provides authority for the Board to adopt rules necessary to regulate individuals who perform radiologic procedures. The amendments are further proposed under H.B. 2059, passed by the 86th Legislature, Regular Session (2019).

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

§194.7. *Biennial Renewal of Certificate or Placement on the Board's Non-Certified Technician Registry.*

(a) Temporary Certificates.

(1) A temporary certificate shall expire one year from the date of issue. A person whose temporary certificate has expired is not eligible to reapply for another temporary certificate.

(2) A temporary certificate is not subject to a renewal or extension for any reason.

(3) Persons who hold temporary certificates, either radiologist assistant, general, or limited, are not subject to continuing education requirements set forth under subsection (c) of this section.

(b) Biennial Registration and Fee Required.

(1) Certificate holders and NCTs registered under the Act shall renew authorization to practice biennially and pay a fee. Upon notification from the board, unexpired authorization may be renewed by submitting the required form and documents and by paying the required renewal fee to the board on or before the expiration date of the authorization.

(2) The fee shall accompany the required form which legibly sets forth the certificate or NCT registration holder's name, mailing address, business address, and other necessary information prescribed by the board. The certificate or NCT registration holder must include with the required forms and fee documentation of continuing education completed during the previous two years to the date of renewal ("biennial renewal period").

(c) Continuing education requirements.

(1) Generally.

(A) RA. As a prerequisite to the biennial renewal of a radiologist assistant certificate, the following must be completed:

(i) a minimum of 23 [24] hours of continuing education hours must be completed during each biennial renewal period. The hours must be in activities that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a Recognized Continuing Education Evaluation Mechanism (RCEEM) or RCEEM+ during the biennial renewal period; and[-]

(ii) a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission.

(B) MRT. As a prerequisite to the biennial renewal of an MRT certificate, a minimum of 24 hours of continuing education hours must be completed during each biennial renewal period. The continuing education must be completed as follows [in the following categories]:

(i) at [At] least 12 hours of the required number of hours must be satisfied by completing activities that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a RCEEM or RCEEM+ during the biennial renewal period;[-]

(ii) the required hours must include a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission;

(iii) [(ii)]the [The] remaining [42] credits for the biennial renewal period may be composed of self-study or courses not approved for formal CE, and shall be recorded in a manner that can be easily transmitted to the board upon request; and[-]

(iv) any additional hours completed through self-study must be verifiable, through activities that include reading materials, audio materials, audiovisual materials, or a combination thereof.

(C) LMRT. As a prerequisite to the biennial renewal of a limited certificate, a minimum of 18 hours of continuing education acceptable to the board must be completed during each biennial renewal period. [The hours completed must be in the topics of general radiation health and safety or related to the categories of limited certificate held.] The continuing education must be completed as follows [in the following categories]:

(i) at [At] least nine hours of the required number of hours must be satisfied by completing activities that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a RCEEM or RCEEM+ during the biennial renewal period; [-]

(ii) the required hours must include a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission; and the [The] remaining [nine] credits for the biennial renewal period may be composed of self-study or courses not approved for formal CE, and shall be recorded in a manner that can be easily transmitted to the board upon request. The hours completed must be in the topics of general radiation health and safety or related to the categories of limited certificate held.

(iii) Any additional hours completed through self-study must be verifiable, through activities that include reading materials, audio materials, audiovisual materials, or a combination thereof.

(D) An RA, MRT, or LMRT who also holds a current Texas license, registration, or certification in another health profession may satisfy the continuing education requirement for renewal of a certificate with hours counted toward renewal of the other license, registration, or certification, provided such hours meet all the requirements of this subsection.

(E) An RA or MRT who holds a current and active annual registration or credential card issued by ARRT indicating that the certificate holder is in good standing and not on probation satisfies the continuing education requirement for renewal of a certificate, except for the human trafficking prevention course, provided the hours accepted by ARRT were completed during the certificate holder's biennial renewal period and meet or exceed the [hour the] requirements set out in this subsection. The board must be able to verify the status of the card presented by the certificate holder electronically or by other means acceptable to the board. The board may review documentation of the continuing education activities in accordance with paragraph (5) of this subsection.

(F) NCTs. As a prerequisite to the biennial renewal of a placement on the NCT registry, the individual must complete a mini-

num of 12 hours of continuing education during each biennial renewal period. The continuing education must be completed as follows [in the following categories]:

(i) at [A+] least six hours of the required number of hours must be satisfied by completion of activities that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a RCEEM or RCEEM+ during the biennial renewal period; [-]

(ii) the required hours must include a course in human trafficking prevention approved by the executive commissioner of the Texas Health and Human Services Commission; and

(iii) [(+)] the [The] remaining hours [six credits] for the biennial renewal period may be composed of self-study or courses not approved for formal CE, and shall be recorded in a manner that can be easily transmitted to the board upon request.

iv [(+)] Any additional hours completed through independent self-study must be verifiable, through activities that include reading materials, audio materials, audiovisual materials, or a combination thereof.

## (2) Content Requirements.

(A) At least 50% of the required number of hours must be activities which are directly related to the use and application of ionizing forms of radiation to produce diagnostic images and/or administer treatment to human beings for medical purposes. For the purpose of this section, directly related topics include, but are not limited to: radiation safety, radiation biology and radiation physics; anatomical positioning; radiographic exposure technique; radiological exposure technique; emerging imaging modality study; patient care associated with a radiologic procedure; radio pharmaceuticals, pharmaceuticals, and contrast media application; computer function and application in radiology; mammography applications; nuclear medicine application; and radiation therapy applications.

(B) No more than 50% of the required number of hours may be satisfied by completing or participating in learning activities which are related to the use and application of non-ionizing forms of radiation for medical purposes.

(C) No more than 50% of the required number of hours may be satisfied by completing or participating in learning activities which are indirectly related to radiologic technology. For the purpose of the section, indirectly related topics include, but are not limited to, patient care, computer science, computer literacy, introduction to computers or computer software, physics, human behavioral sciences, mathematics, communication skills, public speaking, technical writing, management, administration, accounting, ethics, adult education, medical sciences, and health sciences. Other courses may be accepted for credit provided there is a demonstrated benefit to patient care.

(3) Alternative Continuing Education Accepted by the Board. The following may not be applied toward compliance with the required human trafficking prevention course. The additional activities for which continuing education credit will be awarded are as follows:

(A) successful completion of an entry-level or advanced-level examination previously passed in the same discipline of radiologic technology administered by or for the ARRT during the renewal period. The examinations shall be topics dealing with ionizing forms of radiation administered to human beings for medical purposes. Such successful completion shall be limited to not more than one-half of the continuing education hours required;

(B) successful completion or recertification in a cardiopulmonary resuscitation course, basic cardiac life support course,

or advanced cardiac life support course during the continuing education period. Such successful completion or recertification shall be limited to not more than:

(i) three hours credit during a renewal period for a cardiopulmonary resuscitation course or basic cardiac life support course; or

(ii) six hours credit during a renewal period for an advanced cardiac life support course;

(C) attendance and participation in tumor conferences (limited to six hours), in-service education and training offered or sponsored by Joint Commission-accredited or Medicare certified hospitals, provided the education/training is properly documented and is related to the profession of radiologic technology;

(D) teaching in a program accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools; or an institution accredited by JRCERT, JRCNMT, JTC-CVT, CCE, ABHES, ASRT, professional organizations or associations, or a federal, state, or local governmental entity, with a limit of one contact hour of credit for each hour of instruction per topic item once during the continuing education reporting period for up to a total of 6 hours. No credit shall be given for teaching that is required as part of one's employment. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic; or

(E) developing and publishing a manuscript of at least 1,000 words in length related to radiologic technology with a limit of six contact hours of credit during a continuing education period. Upon audit by the board, the certificate holder must submit a letter from the publisher indicating acceptance of the manuscript for publication or a copy of the published work. The date of publication will determine the continuing education period for which credit will be granted. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic.

(4) Reporting Requirements. A certificate holder or NCT must report on the biennial renewal application form if she or he has completed the required continuing education during the previous renewal period.

(A) A certificate holder or NCT may carry forward continuing education credit hours that meet the requirements under this subsection and earned prior to the biennial registration renewal period which are in excess of the biennial hour requirement, and apply such hours to the subsequent renewal period requirements, except for the required course in human trafficking prevention.

(B) For RAs or MRTs, a maximum of 48 total excess credit hours meeting the requirements under this subsection may be carried forward, except for the required course in human trafficking prevention. Excess continuing education credits may not be carried forward or applied to a report of continuing education more than two years beyond the date of the registration following the period during which the credits were earned.

(C) For LMRTs, a maximum of 24 hours meeting the requirements of this subsection may be carried forward, except for the required course in human trafficking prevention. Excess continuing education credits may not be carried forward or applied to a report of continuing education more than two years beyond the date of the registration following the period during which the credits were earned.

(D) For NCTs, a maximum of 12 total excess credit hours meeting the requirements of this subsection may be carried forward, except for the required course in human trafficking prevention. Excess continuing education credits may not be carried forward or ap-



plied to a report of continuing education more than two years beyond the date of the registration following the period during which the credits were earned.

(5) Exemptions.

(A) A certificate holder or NCT may request in writing an exemption for the following reasons, subject to the approval of the certification committee of the board:

- (i) catastrophic illness;
- (ii) military service of longer than one year's duration outside the United States;
- (iii) residence of longer than one year's duration outside the United States; or
- (iv) good cause shown on written application of the certificate holder that gives satisfactory evidence to the board that the certificate holder is unable to comply with the requirement for continuing medical education.

(B) An exception under paragraph (5) of this subsection may not exceed one registration period, but may be renewed biennially, subject to the approval of the board.

(6) A certificate holder or NCT who is a military service member may request an extension of time, not to exceed two years, to complete any continuing education requirements.

(7) This subsection does not prevent the board from taking disciplinary action with respect to a NCT or certificate holder or an applicant for such authorization by requiring additional hours of continuing education or of specific course subjects.

(8) The board may require written verification of continuing education credits from any certificate holder or NCT within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(9) Unless exempted under the terms of this subsection, a certificate holder or NCT's failure to obtain and timely report required hours of continuing education as required and provided for in this subsection shall result in the nonrenewal of the authorization to practice until such time as the certificate holder or NCT obtains and reports the required continuing education hours; however, the executive director of the Medical board may issue a temporary certificate or NCT registration numbered so as to correspond to the nonrenewed certificate or NCT registration. Such a temporary authorization to practice shall be issued at the direction of the executive director for a period of no longer than 90 days. A temporary authorization to practice issued pursuant to this subsection may be issued to allow the opportunity to correct any deficiency so as not to require termination of practice.

(10) Determination of contact hour credits. A contact hour shall be defined as 50 minutes of attendance and participation. One-half contact hour shall be defined as 30 minutes of attendance and participation during a 30-minute period.

(d) Criminal History Requirement for Registration Renewal.

(1) An applicant must submit a complete and legible set of fingerprints for purposes of performing a criminal history check.

(2) The board may not renew the certificate or NCT registration of a person who does not comply with the requirement of paragraph (1) of this subsection.

(3) A certificate holder or NCT is not required to submit fingerprints under this section for the renewal of the certificate or registration

if the holder has previously submitted fingerprints for the initial issuance or prior renewal of a certificate or NCT registration.

(e) Report of Impairment on Registration Form.

(1) A certificate holder or NCT who reports an impairment that affects his or her ability to actively practice shall be given written notice of the following:

(A) based on the individual's impairment, he or she may request:

- (i) to be placed on retired status pursuant to §194.10 of this title (relating to Retired Certificate or NCT Registration);
- (ii) to voluntarily surrender the certificate or NCT registration pursuant to §194.33 of this title (relating to Voluntary Relinquishment or Surrender of Certificate or Permit); or
- (iii) to be referred to the Texas Physician Health Program pursuant to Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders); and

(B) that failure to respond to the written notice or otherwise not comply with paragraph (1) of this subsection within 45 days shall result in a referral to the board's investigation division for possible disciplinary action.

(2) The board shall provide written notice as described in paragraph (1) of this subsection within 30 days of receipt of the renewal application form indicating the impairment.

(f) The board shall deny an application for renewal of an authorization to practice upon notice of the certificate or NCT registration holder's default of child support payments, as provided under Chapter 232 of the Texas Family Code.

(g) The board shall deny an application for renewal of a certificate or NCT registration or take and/or impose other disciplinary action against such an individual who falsifies an affidavit or otherwise submits false information to obtain renewal of a certificate or NCT registration, pursuant to the Act, §601.302.

(h) If the renewal fee and completed application form are not received on or before the expiration date of the certificate or NCT registration, the fees set forth in Chapter 175 of this title (relating to Fees and Penalties) shall apply.

(i) Except as otherwise provided, the board shall not waive fees or penalties.

(j) The board shall stagger biennial renewal of a certificate or NCT registration proportionally on a periodic basis.

(k) Expired Biennial Renewal.

(1) Generally.

(A) If a certificate or NCT registration has been expired for less than one year, the certificate or NCT registration may be renewed by submitting to the board a completed renewal application, and the renewal and penalty fees, as set forth under Chapter 175 (relating to Fees and Penalties).

(B) If a certificate or NCT registration has been expired for one year or longer, the certificate or NCT registration will be automatically canceled, unless an investigation is pending, and the certificate or NCT registration may not be renewed.

(C) A person whose certificate or NCT registration has expired may not engage in activities that require a certificate or NCT registration until the authorization has been renewed. Performing activities requiring a certificate or NCT registration during the period in

which the authority has expired has the same effect as, and is subject to all penalties of, practicing radiologic technology in violation of the Act.

(D) If a certificate or NCT registration has been expired for one year or longer, it is considered to have been canceled, unless an investigation is pending. A new certificate or NCT registration may be obtained by complying with the requirements and procedures for obtaining an original certificate or NCT registration.

(2) Renewal for technologists on active military duty with expired certificate or NCT registration. A holder of a certificate or NCT registration that has been expired for longer than a year may file a complete application for another certificate or NCT registration of the same type as that which expired.

(A) The application shall be on official board forms and be filed with required fees.

(B) An applicant shall be entitled to a certificate of the same type as that which expired based upon the applicant's previously accepted qualification and no further qualifications or examination shall be required.

(C) The application must include a copy of the official orders or other official military documentation showing that the holder was on active duty during any portion of the period for which the applicant was last certified or registered as an NCT with the board.

(D) An applicant for a different type of certificate than that which expired must meet the requirements of this chapter generally applicable to that type of certificate.

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

Filed with the Office of the Secretary of State on October 20, 2020.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016



## **TITLE 25. HEALTH SERVICES**

### **PART 1. DEPARTMENT OF STATE HEALTH SERVICES**

#### **CHAPTER 404. PROTECTION OF CLIENTS AND STAFF--MENTAL HEALTH SERVICES**

##### **SUBCHAPTER E. RIGHTS OF PERSONS RECEIVING MENTAL HEALTH SERVICES**

###### **25 TAC §§404.151 - 404.169**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §404.151, concerning Purpose; §404.152, concerning Application; §404.153, concerning Definitions; §404.154, concerning Rights of All Persons Receiving Mental Health Services; §404.155, concerning Rights of Persons Receiving Residential

Mental Health Services; §404.156, concerning Additional Rights of Persons Receiving Residential Mental Health Services at Department Facilities; §404.157, concerning Rights of Persons Voluntarily Admitted to Inpatient Services; §404.158, concerning Rights of Persons Apprehended for Emergency Detention for Inpatient Mental Health Services (Other Than for Chemical Dependency); §404.159, concerning Rights of Persons Apprehended for Emergency Detention for Inpatient Chemical Dependency Services; §404.160, concerning Special Rights of Minors Receiving Inpatient Mental Health Services; §404.161, concerning Rights Handbooks for Persons Receiving Mental Health Services at Department Facilities, Community Centers, and Psychiatric Hospitals Operated by Community Centers; §404.162, concerning Patient's Bill of Rights, Teen's Bill of Rights, and Children's Bill of Rights for Individuals Receiving Mental Health Services at Psychiatric Hospitals Not Operated by a Community Center; §404.163, concerning Communication of Rights to Individuals Receiving Mental Health Services; §404.164, concerning Rights Protection Officer at Department Facilities and Community Centers; §404.165, concerning Staff Training in Rights of Persons Receiving Mental Health Services; §404.166, concerning Restriction of Rights as Part of Non-Emergency Behavioral Interventions; §404.167, concerning Restriction of Rights as Part of Emergency Behavioral Interventions: Restraint and Seclusion; §404.168, concerning References; and §404.169, concerning Distribution.

#### **BACKGROUND AND PURPOSE**

The purpose of this proposal is to repeal rules no longer implemented by the Department of State Health Services in Texas Administrative Code (TAC) Title 25, Part 1, Chapter 404, Subchapter E, due to the consolidation of the Health and Human Services System by Senate Bill 200, 84th legislature, Regular Session, 2015. Rules that address the rights of individuals receiving mental health services are being proposed in Title 26, Part 1, Health and Human Services Commission, Chapter 320, Subchapter A. The new rules are proposed simultaneously elsewhere in this issue of the *Texas Register*.

#### **SECTION-BY-SECTION**

The proposed repeal of §§404.151 - 404.169 allows substantially similar new rules to be proposed in Title 26, Chapter 320, Subchapter A.

#### **FISCAL NOTE**

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the repeals will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

#### **GOVERNMENT GROWTH IMPACT STATEMENT**

HHSC has determined that during the first five years that the rules are repealed:

- (1) the proposed repeals will not create or eliminate a government program;
- (2) the proposed repeals will not affect the number of HHSC employee positions;
- (3) the proposed repeals will result in no assumed change in future legislative appropriations;
- (4) the proposed repeals will not affect fees paid to HHSC;
- (5) the proposed repeals will not create a new rule;

- (6) the proposed repeals will repeal existing rules;
- (7) the proposed repeals will not change the number of individuals subject to the rules; and
- (8) the proposed repeals will not affect the state's economy.

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The proposed repeals do not impose any additional costs on small businesses, micro-businesses, or rural communities.

#### LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these repeals because the repeals do not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Timothy E. Bray, Associate Commissioner of State Hospitals, has determined that for each year of the first five years the repeals are in effect, the public will benefit from the elimination of rules that refer to Texas Department of Mental Health and Mental Retardation, an agency that no longer exists.

Trey Wood has also determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because there is no requirement to alter current business practices.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Health and Specialty Care System, Mail Code 619E, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [healthandspecialtycare@hhsc.state.tx.us](mailto:healthandspecialtycare@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 18R047" in the subject line.

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which authorizes the Executive Commissioner of

HHSC to adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §§572.0025, 572.003, 573.025, 576.001 - 576.027, and 611.0045, which list rights of individuals receiving mental health services and authorize the Executive Commissioner to adopt rules relating to those rights.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code §§572.0025, 572.003, 573.025, 576.001 - 576.027, and 611.0045.

§404.151. *Purpose.*

§404.152. *Application.*

§404.153. *Definitions.*

§404.154. *Rights of All Persons Receiving Mental Health Services.*

§404.155. *Rights of Persons Receiving Residential Mental Health Services.*

§404.156. *Additional Rights of Persons Receiving Residential Mental Health Services at Department Facilities.*

§404.157. *Rights of Persons Voluntarily Admitted to Inpatient Services.*

§404.158. *Rights of Persons Apprehended for Emergency Detention for Inpatient Mental Health Services (Other Than for Chemical Dependency).*

§404.159. *Rights of Persons Apprehended for Emergency Detention for Inpatient Chemical Dependency Services.*

§404.160. *Special Rights of Minors Receiving Inpatient Mental Health Services.*

§404.161. *Rights Handbooks for Persons Receiving Mental Health Services at Department Facilities, Community Centers, and Psychiatric Hospitals Operated by Community Centers.*

§404.162. *Patient's Bill of Rights, Teen's Bill of Rights, and Children's Bill of Rights for Individuals Receiving Mental Health Services at Psychiatric Hospitals Not Operated by a Community Center.*

§404.163. *Communication of Rights to Individuals Receiving Mental Health Services.*

§404.164. *Rights Protection Officer at Department Facilities and Community Centers.*

§404.165. *Staff Training in Rights of Persons Receiving Mental Health Services.*

§404.166. *Restriction of Rights as Part of Non-Emergency Behavioral Interventions.*

§404.167. *Restriction of Rights as Part of Emergency Behavioral Interventions: Restraint and Seclusion.*

§404.168. *References.*

§404.169. *Distribution.*

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

Filed with the Office of the Secretary of State on October 26, 2020.

TRD-202004465

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 438-3049



## TITLE 26. HEALTH AND HUMAN SERVICES

# PART 1. HEALTH AND HUMAN SERVICES COMMISSION

## CHAPTER 320. RIGHTS OF INDIVIDUALS SUBCHAPTER A. RIGHTS OF INDIVIDUALS RECEIVING MENTAL HEALTH SERVICES

### 26 TAC §§320.1 - 320.15

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new Chapter 320, Rights of Individuals, Subchapter A, Rights of Individuals Receiving Mental Health Services, consisting of new §320.1, concerning Purpose; §320.2, concerning Application; §320.3, concerning Definitions; §320.4, concerning Abuse, Neglect, and Exploitation; §320.5, concerning Rights Which May Not Be Restricted; §320.6, concerning Rights of Individuals Receiving Mental Health Services; §320.7, concerning Rights of Individuals Receiving Inpatient Services; §320.8, concerning Rights of Individuals at HHSC Facilities, LMHAs, and LBHAs; §320.9, concerning Right to Request Discharge; §320.10, concerning Rights of Individuals Under Age 18; §320.11, concerning Restriction of Rights; §320.12, concerning Rights Handbooks for Individuals Receiving Mental Health Services; §320.13, concerning Communication of Rights to Individuals Receiving Mental Health Services; §320.14, concerning Rights Protection Officer; and §320.15, concerning Legally Authorized Representative.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to move rules previously implemented by the Department of State Health Services in Texas Administrative Code (TAC) Title 25, Part 1, Chapter 404, Subchapter E, to 26 TAC, Part 1, Health and Human Services Commission, due to the consolidation of the Health and Human Services System by Senate Bill 200, 84th legislature, Regular Session, 2015. Staff took this opportunity to update and reorganize the rules with a focus on incorporating plain language. The repeal of 25 TAC Chapter 404, Subchapter E is proposed simultaneously elsewhere in this issue of the *Texas Register*.

The new rules outline the rights of individuals receiving mental health services and stipulates when rights may be restricted.

#### SECTION-BY-SECTION SUMMARY

Proposed new §320.1 establishes the purpose of the subchapter.

Proposed new §320.2 establishes to whom the subchapter applies.

Proposed new §320.3 provides terminology used in the subchapter.

Proposed new §320.4 establishes a right to freedom from abuse, neglect, and exploitation.

Proposed new §320.5 establishes the rights which may not be restricted of individuals receiving mental health services.

Proposed new §320.6 establishes the rights of individuals receiving mental health services.

Proposed new §320.7 establishes the rights of individuals receiving inpatient services.

Proposed new §320.8 establishes the rights of individuals at HHSC facilities, local mental health authorities, and local behavioral health authorities.

Proposed new §320.9 establishes the right to request discharge.

Proposed new §320.10 establishes the rights of individuals under age 18.

Proposed new §320.11 establishes when rights can be restricted.

Proposed new §320.12 describes the rights handbooks for individuals receiving mental health services.

Proposed new §320.13 describes the communication of rights to individuals receiving mental health services.

Proposed new §320.14 establishes a rights protection officer.

Proposed new §320.15 establishes the rights of a legally authorized representative.

#### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules in 26 TAC, which will replace rules being repealed contemporaneously in 25 TAC;
- (6) the proposed rules will not expand, limit, or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There is no requirement for providers to alter current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and do not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Timothy E. Bray, Associate Commissioner for State Hospitals, has determined that for each year of the first five years the rules are in effect, the public benefit will be maintaining the health and safety of individuals receiving mental health services.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because there is no requirement to alter current business practices.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Mail Code E619, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [healthandspecialty@hhsc.state.tx.us](mailto:healthandspecialty@hhsc.state.tx.us).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 18R047" in the subject line.

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which authorizes the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §§572.0025, 572.003, 573.025, 576.001 - 576.027, and 611.0045, which list rights of individuals receiving mental health services and authorize the Executive Commissioner to adopt rules relating to those rights.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code §§572.0025, 572.003, 573.025, 576.001 - 576.027, and 611.0045.

##### §320.1. Purpose.

The purpose of this subchapter is:

(1) to provide to an individual receiving mental health services, and the individual's legally authorized representative if applicable, a listing of the specific rights guaranteed to the individual and to assist in exercising the individual's rights in a manner that does not conflict with the rights of other individuals;

(2) to require the development of a rights handbook and its distribution to each individual receiving mental health services, and when applicable, to the LAR and any other person designated by the individual;

(3) to require the appointment of a rights protection officer at each applicable entity; and

(4) to ensure that entity staff members are aware of the rights of an individual receiving mental health services.

##### §320.2. Application.

The provisions of this subchapter apply to any of the following types of entities that provide mental health services and to any provider contracting with such an entity or with HHSC to provide such services:

(1) a state hospital operated by HHSC;

(2) a crisis stabilization unit licensed under Texas Health and Safety Code Chapter 577;

(3) a hospital licensed under Texas Health and Safety Code Chapter 241 that provides mental health services;

(4) a local behavioral health authority designated by HHSC in accordance with Texas Health and Safety Code §533.0356;

(5) a local mental health authority designated by HHSC in accordance with Texas Health and Safety Code §533.035; and

(6) a psychiatric hospital licensed under Texas Health and Safety Code Chapters 571-577.

##### §320.3. Definitions.

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

(1) Abuse--An intentional, knowing, or reckless act or omission that causes or may cause death, physical injury, or substantial emotional harm to an individual.

(2) Aversive technique--A highly restrictive behavioral intervention designed to eliminate undesirable behavior patterns through learned associations with unpleasant stimuli or tasks.

(3) Behavioral emergency--A situation involving an individual who is behaving in a violent or self-destructive manner, in which preventive, de-escalating, or verbal techniques have been determined to be ineffective, so it is immediately necessary to restrain or seclude the individual to prevent imminent harm to self or others.

(4) Behavioral intervention--An intervention to increase socially adaptive behavior and to modify maladaptive or problem behaviors and replace them with behaviors and skills that are adaptive and socially productive. Also referred to as "behavior management," "behavior training," or "behavior therapy."

(5) Capacity--An individual's ability:

(A) to understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B) to decide whether to undergo the proposed treatment.

(6) Competency--A legal status that is determined by a court. Adults are presumed competent unless determined otherwise by a court.

(7) Entity--Any of the following types of facilities that provide mental health services or any provider that contracts with such a facility or with HHSC to provide such services:

(A) a state hospital operated by HHSC;

(B) a crisis stabilization unit licensed under Texas Health and Safety Code Chapter 577;

(C) a hospital licensed under Texas Health and Safety Code Chapter 241 that provides mental health services;

(D) a local behavioral health authority designated by HHSC in accordance with Texas Health and Safety Code §533.0356;

(E) a local mental health authority designated by HHSC in accordance with Texas Health and Safety Code §533.035; and

(F) a psychiatric hospital licensed under Texas Health and Safety Code Chapters 571-577.

(8) Exploitation--The illegal or improper use of an individual, or the individual's resources, for monetary or personal benefit, profit, or gain.

(9) Habeas corpus--An order issued by a court or judge of competent jurisdiction, directed to anyone having an individual in their custody or under their restraint, commanding the person to produce the individual at a time and place named in the writ and show why the individual is held in custody or under restraint.

(10) HHSC--The Texas Health and Human Services Commission.

(11) Informed consent--The knowing written consent of an individual with capacity, or the individual's legally authorized representative (LAR), when that individual or LAR is so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion. If the individual receiving services is physically unable to provide written consent, a brief explanation of the reason must be noted with the signatures of the person who explained the rights and a third-party witness. The basic elements of information necessary for informed consent include all of the following, presented in a language or format easily understood by the individual:

(A) a thorough explanation of the procedures to be followed and the purpose of the procedures, including identification of any experimental procedures;

(B) a description of any possible attendant discomforts and other risks;

(C) a description of any possible benefits;

(D) a disclosure of any appropriate alternative procedures as well as their possible risks and benefits, including those that might result if no procedure is utilized;

(E) an offer to answer any questions about the procedures; and

(F) an instruction that the individual can withdraw consent and stop participating in the program or activity at any time without prejudice to the individual, and withdrawal of consent may be in any form, including noncompliance, active resistance, or a verbal or other expression of unwillingness to continue participating in any aspect of the program.

(12) Inpatient services--Services provided to an individual by an entity over a period exceeding 23 hours and that include:

(A) bed and board;

(B) nursing and other related services;

(C) use of hospital or other critical access facilities;

(D) social services;

(E) medication, biological supplies, appliances, and equipment;

(F) other diagnostic or therapeutic services;

(G) licensed physician services; or

(H) transportation services, including ambulance transport.

(13) Intrusive search--The tactile or visual examination of an individual's partially or fully unclothed body, personal belongings, or space designated for the storage of the individual's personal belongings. Intrusive searches do not include:

(A) routine searches of belongings for contraband at the time of admission, return from pass, or transfer;

(B) external pat-downs by staff members of the same sex;

(C) daily room checks for housekeeping and chore completion;

(D) physical assessments by nurses and medical staff members, unless the assessment is resisted by the individual, in which case all procedures for intrusive searches are to be followed; and

(E) searches of the individual's outer clothing, hair, or mouth, unless the search is resisted by the individual, in which case all procedures for intrusive searches are to be followed.

(14) LAR--Legally authorized representative. A person who is authorized by law to act on behalf of an individual, including:

(A) a parent, legal guardian, or court-appointed managing conservator with authority to make health care decisions for the individual, if the individual is a minor;

(B) a legal guardian if the individual has been adjudicated incapacitated to manage the individual's personal affairs; or

(C) a personal representative or heir of the individual, as defined by Texas Estates Code Chapter 22, if the individual is deceased.

(15) LBHA--Local behavioral health authority. An entity designated as the local behavioral health authority by HHSC in accordance with Texas Health and Safety Code §533.0356.

(16) LMHA--Local mental health authority. An entity designated as the local mental health authority by HHSC in accordance with Texas Health and Safety Code §533.035(a).

(17) Medical staff member--Defined as determined by the entity; may include physicians, advanced practiced registered nurses, and physician's assistants.

(18) Mental health services--Any services concerned with the diagnosis, treatment, and care of mental illnesses or serious emotional disturbances of individuals with a mental illness (known as serious emotional disturbance in reference to children and adolescents), which may be accompanied by a co-occurring diagnosis.

(19) Neglect--A negligent act or omission that causes or may cause death, physical injury, or substantial emotional harm to an individual.

(20) Ombudsman--The Ombudsman for Behavioral Health Access to Care, established by Texas Government Code §531.02251, who receives rights-related complaints from individuals receiving services at HHSC facilities, LBHAs, LMHAs, and HHSC contractors, and serves as a neutral party to help those individuals with rights protection and to navigate and resolve issues related to access to behavioral health care, including care for mental health conditions and substance use disorders.

(21) PHI--Protected health information.

(A) Any information that identifies or could be used to identify an individual, whether oral or recorded in any form, which relates:

(i) to the past, present, or future physical or mental health or condition of the individual;

(ii) to the provision of health care to the individual;  
or

(iii) to the payment for the provision of health care to the individual.

(B) PHI does not include:

(i) health information that has been de-identified in accordance with 45 CFR §164.514(b); and

(ii) employment records held by an entity as an employer.

(22) Psychiatric emergency--A situation in which it is immediately necessary to administer medication to an individual to prevent:

(A) imminent probable death or substantial bodily harm to the individual because the individual:

(i) is overtly or continually threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the individual is unable to satisfy the individual's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the individual overtly or continually makes or commits.

(23) Recovery or treatment plan--A written plan:

(A) developed in collaboration with the individual, and the LAR if required, and the individual's recovery or treatment team;

(B) amended at any time based on an individual's needs or requests;

(C) guiding the recovery process and fostering resiliency;

(D) completed in conjunction with the uniform assessment;

(E) identifying the individual's changing strengths, capacities, goals, preferences, needs, and desired outcomes; and

(F) including recommended services and supports or reasons for the exclusion of services and supports.

(24) Rights protection officer--A staff member appointed by the head of an entity to protect and advocate for the rights of an individual receiving mental health services.

#### §320.4. Abuse, Neglect, and Exploitation.

An individual receiving mental health services from an entity has the right to freedom from abuse, neglect, and exploitation, which may not be restricted.

#### §320.5. Rights Which May Not Be Restricted.

An individual receiving mental health services from an entity has the following rights:

(1) a right, benefit, responsibility, or privilege guaranteed by the constitutions and laws of the United States or the State of Texas, except as limited by specific provisions of law, and these rights include:

(A) the right to impartial access to and provision of treatment, regardless of race, nationality, religion, sex, gender, ethnicity, sexual orientation, age, or disability;

(B) the right to petition for habeas corpus;

(C) the right to register and vote at elections;

(D) the right to acquire, use, and dispose of property, including contractual rights;

(E) the right to sue and be sued;

(F) all rights relating to the granting, use, and revocation of a license, permit, privilege, or benefit under law;

(G) the right to religious freedom; and

(H) rights relating to domestic relations;

(2) the right to presumption of competency in the absence of a judicial determination to the contrary;

(3) the right to a humane treatment environment that:

(A) ensures reasonable protection from harm;

(B) promotes respect and dignity for each individual;

(C) is free from any cruel, unnecessary, demeaning, or humiliating treatment; and

(D) provides for nutrition and hygiene needs.

(4) the right to appropriate treatment in the least restrictive appropriate setting available, consistent with the protection of the individual and the protection of the community;

(5) the right to be informed of the entity's rules and regulations regarding the individual's conduct; and

(6) the right to communication in a language and format understandable to the individual.

#### §320.6. Rights of Individuals Receiving Mental Health Services.

An individual receiving mental health services from an entity has the following rights, which may not be restricted except in accordance with §320.11 of this subchapter (relating to Restriction of Rights).

(1) The right to physical conditions that:

(A) provide personal privacy to as great a degree as possible, with regard to personal hygiene and personal needs;

(B) for an individual receiving inpatient services, provide a bed for sleeping overnight in a room that is free of known safety hazards, adequately cooled and ventilated during warm weather, adequately heated during cold weather, and appropriately lighted; and

(C) provide sufficient furniture for sitting.

(2) The right to actively participate in the development and periodic review of an individualized recovery or treatment plan, and in the development of a discharge plan addressing aftercare issues that include the individual's mental health, physical health, and social needs; the right to timely consideration of a request for any other person to participate in this process; and the right to be informed of the reasons for any denial of such a request.

(3) The right to explanations of the care, procedures, and treatment to be provided in the individual's primary language, or documentation in the individual's record as to why an explanation could not be provided, including the risks, side effects, and benefits of all medications and treatment procedures to be used; the alternative treatment procedures that are available; and the possible consequences of refusing the treatment or procedure. This right extends to the LAR and any other person authorized by the individual served.

(4) The right to refuse a particular treatment without prejudice to participation in other programs, or without compromising access to other treatments or services solely because of the refusal.

(5) The right to meet with the professional staff members responsible for the individual's care and to be informed of staff members' names, professional disciplines, job titles, and responsibilities. In addition, the individual has the right to an explanation of the justification involving any proposed change in the appointment of staff members responsible for the individual's care.

(6) The right to obtain an independent psychiatric, psychosocial, psychological, or medical examination or evaluation by a psychiatrist, physician, or non-physician mental health professional of the individual's or LAR's choice at the individual's or LAR's own expense. The entity's administrator shall allow the individual or LAR to obtain the examination or evaluation at any reasonable time.

(7) The right to an in-house review, by a licensed practitioner with experience or recognized expertise in the treatment or specific procedure, of the individual recovery or treatment plan or specific procedure upon reasonable request, as provided for in the written procedures of the entity.

(8) The right to an explanation of the reason for any transfer of the individual to any program within or outside of the entity.

(9) The right to information pertaining to the cost of services rendered (itemized when possible), the sources of the program's reimbursement, and any limitations placed upon the duration of services.

(10) The right to freedom from unnecessary or excessive medication, including the right to give or withhold informed consent to treatment with psychoactive medication, unless the right has been limited by court order or in a psychiatric emergency, in accordance with HHSC rules and other law.

(11) The right to give or withhold informed consent to participate in research programs, and the right not to have access compromised to services to which the individual is otherwise entitled based on that decision.

(12) The right to give or withhold informed consent for the use or performance of any procedure for which consent is required by law.

(13) The right to withdraw consent at any time for any matter in which the individual receiving services has previously granted consent, without limiting or compromising access to services or other treatments.

(14) The right to give or deny informed consent for the use and disposition of photographs, audio, or video recordings created during used in the treatment of the individual, with the exception of security video recordings.

(15) The right to confidentiality of PHI and the right to be informed of the conditions under which PHI can be disclosed without the individual's consent in accordance with federal and state statutes and regulations.

(16) The right to information contained in the individual's own record, including the right to an independent review, in accordance with federal and state law, of any denial of access to such information. This right does not extend to the PHI of another individual.

(17) The right to reasonable protection of personal property.

(18) The right not to be secluded or have a restraint applied to the individual, except in accordance with this subchapter.

(19) The right to fair compensation for labor performed for the entity in accordance with the Fair Labor Standards Act, and the right to retain any such compensation.

(20) The right to freedom from intrusive searches of the individual or his or her possessions unless justified by clinical necessity; ordered by a physician, advanced practice registered nurse, or physician assistant; witnessed by an individual of the same sex as the individual being searched; and conducted in a private area, with any body orifice searches being performed by a physician.

(21) The right to be transported in a way that protects the dignity and safety of the individual. This includes:

(A) the right of a female individual to be transported or accompanied by a female attendant, unless the individual is accompanied by her father, husband, or adult brother or son;

(B) the right to not be transported in a marked law enforcement vehicle or accompanied by a uniformed law enforcement officer, unless other means are not available;

(C) the right to not be transported with state prisoners;

(D) the right to not be restrained, except in accordance with this subchapter; and

(E) the right to a reasonable opportunity to receive food and water and use a restroom.

(22) The right to initiate a complaint, including the right to be informed how to initiate the complaint, and to be given contact information for the ombudsman and rights protection officer.

(23) The right to freedom from interference, coercion, punishment, retaliation, or threat of punishment or retaliation as a result of filing a complaint.

§320.7. *Rights of Individuals Receiving Inpatient Services.*

An individual receiving inpatient services from an entity has the following rights, which may not be limited except in accordance with §320.11 of this subchapter (relating to Restriction of Rights).

(1) The right to unrestricted visits from attorneys, rights protection officers, ombudsmen, representatives of the Texas protection and advocacy agency, private physicians, or other mental health professionals, at reasonable times and places.

(2) The right to be informed, in writing and by any other means necessary, at the time of admission to and discharge from inpatient services, and upon request, of the existence and purpose of the protection and advocacy agency in Texas under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (Public Law 99-319).

(3) The right to suitable clothing which is neat, clean, and well-fitting.

(4) The right to religious freedom and to participate or not to participate in any religious activity.

(5) The right to timely consideration of a request for transfer to another room, if another individual in the room is unreasonably disturbing the individual, and the right to be informed of any reasons for denial of such a request.

(6) The right to medical and psychiatric care and treatment in accordance with the highest standards accepted in medical practice.



(7) The right of each adult individual to have the entity notify a person chosen by the individual of the individual's admission or discharge, if the individual grants permission.

(8) The right of each adult individual admitted to information about the right to make health care decisions and execute advance directives, as allowed by state law.

(9) The right to written information about any prescription medication ordered by the medical staff member, including the name, dosage, risks, side effects, benefits, administration schedule, and name of the physician who prescribed the medication. This right extends to the individual's family member, with the individual's consent, and the individual's LAR, if applicable, subject to state and federal confidentiality laws.

(10) The right to periodic review of the need for continued inpatient treatment.

(11) The right to receive visitors at reasonable times and places, allowing for as much privacy as possible.

(12) The right to telephone, mail, or electronic communications, at reasonable times, allowing for as much privacy as possible, except when there is reason to suspect that the communication may present imminent risk of harm to the individual or others.

(13) The right to keep and use personal possessions, including the right to wear one's own clothing and religious or other symbolic items.

(14) The right to an opportunity, under a therapeutically appropriate level of supervision, for physical exercise and for going outdoors at least daily.

(15) The right to access appropriate areas of the campus of the entity, such as a recreation area, a canteen, a chapel, or another area away from the individual's living unit, under a therapeutically appropriate level of supervision.

(16) The right to the opportunity, under the appropriate level of supervision, to interact with individuals of different genders.

#### §320.8. Rights of Individuals at HHSC Facilities, LMHAs, and LBHAs.

An individual receiving mental health services has the following rights, which may not be limited except in accordance with §320.11 of this subchapter (relating to Restriction of Rights).

(1) The right, if receiving inpatient mental health services at an HHSC facility, to be advised of the availability of trust fund accounts and other safekeeping for funds and articles of value. This right extends to the individual's family members, who shall be informed of the existence of a trust fund as a means of securing personal funds for the individual, and who shall be advised of the option to send monies, either checks or cash, to the cashier, and not to the individual or to HHSC facility staff members.

(2) The right if receiving inpatient mental health services at an HHSC facility, to have the state pay the cost of transportation to the individual's home upon discharge or furlough, if the individual or someone responsible for the individual is unable to do so.

(3) The right if receiving inpatient mental health services at an HHSC facility, LMHA, or LBHA, to be informed that, if the individual is a beneficiary of a trust with an aggregate principal of \$250,000 or less, the corpus or income of the trust is not considered to be the property of the individual or the individual's estate and is not liable for the individual's support.

#### §320.9. Right to Request Discharge.

(a) An individual voluntarily admitted to inpatient services, or the person who requested admission on the individual's behalf, has the right to request the individual's discharge, which will be completed in accordance with Texas Health and Safety Code Chapter 572.004.

(b) Upon request, an individual, or the person who requested admission on the individual's behalf, shall have the right to an immediate explanation of the process for requesting discharge and the paperwork to request discharge.

(c) Without regard to whether the individual agrees to sign paperwork requesting discharge from services, the request will be documented and processed by a staff member. The refusal or inability of the individual to sign the request for discharge will be documented on the unsigned written request.

#### §320.10. Rights of Individuals Under Age 18.

An individual under the age of 18 receiving inpatient services has the following rights, which may not be limited except in accordance with §320.11 of this subchapter (relating to Restriction of Rights).

(1) The right to treatment by individuals who have specialized education and training in the emotional, mental health, and substance use disorders and treatment of minors.

(2) The right to receive inpatient services in an area separated from adults receiving services.

(3) The right to regular communication with the individual's family.

#### §320.11. Restriction of Rights.

(a) An entity shall initiate, implement, and monitor any restraint or seclusion in accordance with 25 TAC Chapter 415, Subchapter F (relating to Interventions in Mental Health Services).

(b) A right under this subchapter may be limited by a medical staff member only to the extent that the restriction is necessary to maintain the individual's physical or emotional well-being or to protect another person.

(c) The medical staff member shall document in the individual's record the duration of and clinical justification for any restriction of an individual's rights under this subchapter.

(d) A medical staff member or medical staff member's designee shall inform the individual, or the individual's LAR, if applicable, of the clinical reason for the restriction and its duration as soon as practicable. The treatment team shall consider strategies to help restore the restricted right.

(e) Unless the medical staff member reviews a restriction, renews the order for restriction in writing, and documents the renewal with clinical justification in the individual's record, the duration of a restriction may not exceed:

(1) three days for a restriction on freedom of movement, including physical exercise or going outdoors;

(2) ten business days or until discharge, whichever occurs first, for a restriction on accessing information contained in the individual's own record; or

(3) seven days for any other restriction, except:

(A) if a restriction authorizes a staff member to observe the opening of packages received by an individual with a chronic limitation who is deemed not capable of protecting personal property, the duration may not exceed 30 days; and

(B) if a restriction authorizes a staff member to assist in opening personal mail at the request or agreement of an individual

who is unable to do so because of a chronic limitation, a staff member is limited to opening the mail and shall not read the mail, unless the individual requests a staff member to read the mail, and the duration may continue until there is an improvement in the individual's condition.

(f) An entity may not restrict an individual's right to communicate with legal counsel, the ombudsman, rights protection officer, courts, Legislature, Texas protection and advocacy agency, or state attorney general.

§320.12. Rights Handbooks for Individuals Receiving Mental Health Services.

(a) An entity shall share the rights handbooks developed by HHSC in English or Spanish.

(b) The Ombudsman for Behavioral Health contact information shall be included in the rights handbooks.

(c) An entity shall, upon admission provide each individual receiving mental health services and the individual's LAR an age-appropriate rights handbook. The LAR of a minor shall also receive a copy of the rights handbook for adults.

(d) An entity shall have copies of age-appropriate rights handbooks available at all times, in areas frequented by individuals receiving services.

(e) The individual's rights shall be posted in plain view in common areas.

§320.13. Communication of Rights to Individuals Receiving Mental Health Services.

(a) An entity shall, in addition to providing the appropriate rights handbook, orally inform each individual, and the individual's LAR if applicable, of the individual's rights using plain and simple terms in the individual's and LAR's primary language. The notification shall include an explanation of the circumstances under which those rights may be limited and an explanation of how a complaint may be filed, and it shall take place:

- (1) Before voluntary admission, or within 24 hours after involuntary admission;
- (2) upon any changes to the rules;
- (3) annually; and
- (4) upon request.

(b) The oral communication of rights shall be documented and dated on a form signed by the individual, the individual's LAR if applicable, and the staff member who explained the rights and shall be placed in the individual's record.

(c) If an individual receiving services is unable or unwilling to sign the oral communication of rights form, the entity shall enter a brief explanation of the reason in the form along with the signatures of the person who explained the rights and a third-party witness.

(d) If the individual does not appear to understand the rights explanation, the entity shall attempt to provide another explanation daily, or as clinically indicated, until understanding is reached or until discharge, and the entity shall document attempts as in subsection (c) of this section.

§320.14. Rights Protection Officer.

(a) The head of each entity shall appoint a rights protection officer, who shall perform the duties of the office without any conflict of interest.

(b) The name, telephone number, email, and mailing address of the rights protection officer must be prominently posted in every

area frequented by individuals receiving services, including community outreach or contract programs. Individuals desiring to contact the rights protection officer shall be allowed access to a telephone.

(c) Duties required of the rights protection officer are specified at the discretion of the head of the entity, and shall include:

(1) receiving allegations of rights violations, allegations of inadequate provision of services, and requests to advocate for an individual at the entity;

(2) thoroughly investigating each allegation or request received or referring it to the appropriate agency, as necessary;

(3) representing the expressed desires of the individuals served and advocating for the resolution of their grievances;

(4) reporting the results of investigations and advocacy to the individual and the complainant, consistent with the protection of the individual's right to have any identifying information remain confidential;

(5) ensuring that the rights of an individual receiving services have been thoroughly explained to entity personnel through orientation and annual training;

(6) developing policies and procedures for maintaining training records; and

(7) reviewing all policies, procedures, behavior therapy programs, and rules that affect the rights of individuals receiving services.

§320.15. Legally Authorized Representative.

An individual's LAR has the right:

- (1) to information contained in the individual's own record;
- (2) to an explanation of the care, procedures, and treatment to be provided to the individual;
- (3) to an explanation of the clinical reason for any restriction of an individual's rights under this subchapter;
- (4) to actively participate in the development and review of the individual's recovery or treatment plan and in the development of the individual's discharge plan; and
- (5) to consent to or refuse consent to any care or treatment, including psychiatric medications.

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

Filed with the Office of the Secretary of State on October 26, 2020.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3049



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

# CHAPTER 1. GENERAL ADMINISTRATION

## SUBCHAPTER C. ASSESSMENT OF MAINTENANCE TAXES AND FEES

### 28 TAC §1.414

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §1.414, concerning the assessment of maintenance taxes and fees imposed by the Insurance Code.

**EXPLANATION.** The proposed amendments to §1.414 provide for adjusting the rates of assessment for maintenance taxes and fees each year based on gross premium receipts from the previous calendar year. Insurance Code Title 3, Subtitles A, C, and D, and Labor Code Chapters 403, 405, 407, and 407A for Workers' Compensation require setting the rates. Section 1.414 includes rates of assessment for life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bond insurance; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; health maintenance organizations (HMOs); third-party administrators; and workers' compensation certified self-insurers.

The department proposes to adopt a standing rule which would allow for the rates to be specified by order annually. This would allow the Commissioner to maintain transparency on how the rates are calculated in the rule, but also help avoid delays that can result from the rulemaking process. The Commissioner will be able to set the rates by order sooner than can be done by rule, which benefits stakeholders and preserves agency resources.

The proposed amendments to the section are described in the following paragraphs.

**Section 1.414 Heading.** The amendment to the section heading reflects that the proposed assessment of maintenance taxes and fees no longer applies to a specific year.

**Section 1.414(a) and (b).** Amendments to §1.414(a) and (b) clarify that gross premiums, for §1.414 only, include direct written and assumed premiums, as reported in the annual statements. An amendment to §1.414(b) adds the words "of insurers" for consistency with subsection §1.414(a).

**Section 1.414(a)(1) - (9); (b); (c)(1) and (2); (d); (e); and (f).** Amendments to §1.414(a)(1) - (9); (b); (c)(1) and (2); (d); (e); and (f) reflect that the Commissioner will set the rates by order each year, rather than have rates set by the rule for a specific year. The amendments remove specific rates and reflect the method the department sets out in this rule. The department also amends subsection (c)(1) by breaking it down into subparagraphs (A) - (B), it amends subsection (c)(2) to insert a hyphen in "third party," and it restructures each subsection for consistency with agency style.

**Section 1.414(a)(9).** An amendment to §1.414(a)(9) changes a reference to an Insurance Code section from §271.004 to §271.005 to accurately cite where in the Insurance Code the applicable maximum assessment rate is located.

**Section 1.414(g).** The amendment to §1.414(g) removes the reference to Senate Bill 14, 78th Legislature, Regular Session (2003), relating to certain insurance rates, forms, and practices. After 17 years, the language from the enactment of SB 14 no longer needs to appear in the rule text. Additionally, §1.414(g) is amended to explain the method the department will use to

determine revenue need and how the maintenance tax rates and fees will be calculated each year in the Commissioner order.

Section 1.414(h). The amendment to §1.414(h) reflects that the proposed payment due date to the Comptroller for the maintenance taxes and fees that will be issued by Commissioner order applies each year instead of to a specific year.

The following paragraphs provide an explanation of the method the department uses to determine proposed rates of assessment for maintenance taxes and fees:

In general, the department determines its revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; the department's self-directed budget account, as established under Insurance Code §401.252; and premium finance examination assessments) by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from the previous fiscal year.

To determine total cost need, the department combines costs from the following: (i) appropriations set out in the current General Appropriations Act, which come from two funds, the General Revenue Dedicated--Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund--Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Chapter 401, Subchapters D and F, as approved by the Commissioner for the self-directed budget account in the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the current fiscal year until the assessment collection period in the next fiscal year. From these combined costs, the department subtracts costs allocated to the Division of Workers' Compensation (DWC), including amounts to the Office of Injured Employee Counsel (OIEC), and the Workers' Compensation Research and Evaluation Group (WCREG).

The department determines how to allocate the remaining cost need to be attributed to each funding source using the following method:

Each section within the department that provides services directly to the public or the insurance industry allocates the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the self-directed budget account, the examination assessment, or another funding source. The department applies these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculates the percentage for each funding source by dividing the total directly allocated to each funding source by the total direct cost. The department uses this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the Commissioner's administration, and information technology. The department calculates the total direct costs and administrative support costs for each funding source.

The General Appropriations Act includes appropriations to state agencies other than the department that must be funded by

Account No. 0036 and the General Revenue Fund--Insurance Companies Maintenance Tax and Insurance Department Fees. The department adds these costs to the sum of the direct costs and the administrative support costs for the appropriate funding source, when possible. The department includes costs for other agencies that cannot be directly allocated to a funding source to the administrative support costs.

The department calculates the total revenue need after completing the allocation of costs to each funding source. To complete the calculation of revenue need, the department removes costs, revenues received, and fund balance related to the self-directed budget account. Based on remaining balances, the department reduces the total cost need by subtracting the estimated ending fund balance for the previous fiscal year and estimated fee revenue collections for the current fiscal year. The resulting balance is the estimated revenue need that must be supported during the current fiscal year by the following funding sources: the maintenance taxes or fees, exam overhead assessments, and premium finance assessments.

The department determines the revenue need for each maintenance tax or fee line by dividing the total cost need for each maintenance tax line by the total of the revenue needs for all maintenance taxes. The department multiplies the calculated percentage for each line by the total revenue need for maintenance taxes. The resulting amount is the revenue need for each maintenance tax line. The department adjusts the revenue need by subtracting the estimated amount of fee and reimbursement revenue collected for each maintenance tax or fee line from the total of the revenue need for each maintenance tax or fee line. The department further adjusts the resulting revenue need as described below.

If the cost allocated to a maintenance tax line exceeds the amount of revenue that can be collected at the maximum rate set by statute, the department allocates the difference between the amount estimated to be collected at the maximum rate and the costs allocated to the maintenance tax line to the other maintenance tax or fee lines. The department allocates the shortfall based on each of the remaining maintenance tax or fee lines a proportionate share of the total costs for maintenance taxes or fees. The department uses the adjusted revenue need as the basis for calculating the maintenance tax rates.

For each line of insurance, the department divides the adjusted revenue need by the estimated premium volume or assessment base to determine the rate of assessment for each maintenance tax or fee.

The following paragraphs provide an explanation of the method to develop the proposed rates for the DWC and OIEC:

To determine the revenue need, the department considers the following factors applicable to costs for the DWC and OIEC: (i) the appropriations in the current General Appropriations Act for the current fiscal year from Account No. 0036; (ii) estimated other costs statutorily required to be paid from Account No. 0036, such as fringe benefits; and (iii) an estimated cash amount to finance Account No. 0036 costs from the end of the current fiscal year until the assessment collection period in the next fiscal year. The department adds these three factors to determine the total revenue need.

The department reduces the total revenue need by subtracting the estimated fund balance at the end of the previous fiscal year, and the DWC fee and reimbursement revenue estimate to be collected and deposited to Account No. 0036 in the current fiscal

year. The resulting balance is the estimated revenue need from maintenance taxes. The department calculates the maintenance tax rate by dividing the estimated revenue need by the combined estimated workers' compensation premium volume and the certified self-insurers' liabilities plus the amount of expense incurred for administration of self-insurance.

The following paragraphs provide an explanation of the method the department uses to develop the proposed rates for the WCREG.

To determine the revenue need, the department considers the following factors that are applicable to the WCREG: (i) the appropriations in the current General Appropriations Act for the current fiscal year from Account No. 0036 and from the General Revenue Fund--Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) estimated other costs statutorily required to be paid from this funding source, such as fringe benefits; and (iii) an estimated cash amount to finance costs from this funding source from the end of the current fiscal year until the assessment collection period in the next fiscal year. The department adds these three factors to determine the total revenue need.

The department reduces the total revenue need by subtracting the estimated fund balance at the end of the previous fiscal year. The resulting balance is the estimated revenue need from maintenance taxes. The department calculates the maintenance tax rate by dividing the estimated revenue need by the estimated assessment base.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Robert Palm, program specialist in the Financial Services Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections imposed by statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Palm does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each of the first five years the proposed amendments are in effect, Mr. Palm expects that administering and enforcing the proposed amendments will have the public benefit of ensuring that the department's rules properly implement Insurance Code Title 3, Subtitles A, C, and D, and Labor Code Chapters 403, 405, 407, and 407A for Workers' Compensation. Additionally, the amendments will allow for the rates and fees to be set by order sooner than can be done by rule, which benefits stakeholders, and preserves agency resources.

Mr. Palm expects that the proposed amendments will not increase the cost of compliance with Insurance Code Title 3, Subtitles A, C, and D, or Labor Code Chapters 403, 405, 407, and 407A for Workers' Compensation, because the amendments do not impose requirements beyond those in statute. Insurance Code Title 3, Subtitles A, C, and D, and Labor Code Chapters 403, 405, 407, and 407A for Workers' Compensation, require that the Commissioner annually determine the rate of assessment of maintenance taxes and fees. Any cost associated with the department collecting maintenance taxes and fees that reflect the department's needs and allocating the cost among entities regulated by the department results from enforcing and administering statute, not from the proposed amendments.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** The department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. The proposed rule is designed to implement Insurance Code Title 3, Subtitles A, C, and D, and Labor Code Chapters 403, 405, 407, and 407A for Workers' Compensation, and any economic impact results from the statute itself. The proposed amendments do not impose requirements beyond those in statute and will not create an increase in cost of compliance with statute. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** The department has determined that this proposal does not impose a possible cost on regulated persons.

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that for each of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

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

**REQUEST FOR PUBLIC COMMENT.** The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on December 7, 2020. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on December 7, 2020. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** The department proposes §1.414 under Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001; 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 271.002 - 271.006;

964.068; and 36.001; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

Insurance Code §201.001(a)(1) provides that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the Commissioner or Comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) provides that the Commissioner administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. Section 201.001(c) provides that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §201.052(a) requires the department to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(d) provides that in setting maintenance taxes for each fiscal year, the Commissioner ensure that the amount of taxes imposed is sufficient to fully reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(e) provides that if the amount of maintenance taxes collected is not sufficient to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller, other money in the Texas Department of Insurance operating account be used to reimburse the appropriate portion of the general revenue fund.

Insurance Code §251.001 directs the Commissioner to annually determine the rate of assessment of each maintenance tax imposed under Insurance Code Title 3, Subtitle C.

Insurance Code §252.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §252.003. Insurance Code §252.001 also specifies that the tax required by Insurance Code Chapter 252 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 252.

Insurance Code §252.002 provides that the rate of assessment set by the Commissioner may not exceed 1.25% of the gross premiums subject to taxation under Insurance Code §252.003. Section 252.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under Insurance Code Chapters 1807, 2001-2006, 2171, 6001, 6002, and 6003; Chapter 5, Subchapter C; Chapter 544, Subchapter H; Chapter 1806, Subchapter D; and §403.002; Government Code §§417.007, 417.008, and 417.009; and Occupations Code Chapter 2154.

Insurance Code §252.003 provides that an insurer must pay maintenance taxes under Insurance Code Chapter 252 on the correctly reported gross premiums from writing insurance in Texas against loss or damage by bombardment; civil war or commotion; cyclone; earthquake; excess or deficiency of moisture; explosion as defined by Insurance Code §2002.006(b); fire;

flood; frost and freeze; hail, including loss by hail on farm crops; insurrection; invasion; lightning; military or usurped power; an order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe; rain; riot; the rising of the waters of the ocean or its tributaries; smoke or smudge; strike or lockout; tornado; vandalism or malicious mischief; volcanic eruption; water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers; weather or climatic conditions; windstorm; an event covered under a home warranty insurance policy; or an event covered under an inland marine insurance policy.

Insurance Code §253.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §253.003. Section 253.001 also provides that the tax required by Insurance Code Chapter 253 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 253.

Insurance Code §253.002 provides that the rate of assessment set by the Commissioner may not exceed 0.4% of the gross premiums subject to taxation under Insurance Code §253.003. Section 253.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under Insurance Code §253.003.

Insurance Code §253.003 provides that an insurer must pay maintenance taxes under Insurance Code Chapter 253 on the correctly reported gross premiums from writing a class of insurance specified under Insurance Code Chapters 2008, 2251, and 2252; Chapter 5, Subchapter B; Chapter 1806, Subchapter C; Chapter 2301, Subchapter A; and Title 10, Subtitle B.

Insurance Code §254.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §254.003. Section 254.001 also provides that the tax required by Insurance Code Chapter 254 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 254.

Insurance Code §254.002 provides that the rate of assessment set by the Commissioner may not exceed 0.2% of the gross premiums subject to taxation under Insurance Code §254.003. Section 254.002 also provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating motor vehicle insurance.

Insurance Code §254.003 provides that an insurer must pay maintenance taxes under Insurance Code Chapter 254 on the correctly reported gross premiums from writing motor vehicle insurance in Texas, including personal and commercial automobile insurance.

Insurance Code §255.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §255.003, including a stock insurance company, mutual insurance company, reciprocal or interinsurance exchange, and Lloyd's plan. Section 255.001 also provides that the tax required by Insurance Code Chapter 255 is in addition to

other taxes imposed that are not in conflict with Insurance Code Chapter 255.

Insurance Code §255.002 provides that the rate of assessment set by the Commissioner may not exceed 0.6% of the gross premiums subject to taxation under Insurance Code §255.003. Section 255.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating workers' compensation insurance.

Insurance Code §255.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 255 on the correctly reported gross premiums from writing workers' compensation insurance in Texas, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Chapter 2053, Subchapter E. The section also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit.

Insurance Code §257.001(a) imposes a maintenance tax on each authorized insurer, including a group hospital service corporation, managed care organization, local mutual aid association, statewide mutual assessment company, stipulated premium company, and stock or mutual insurance company, that collects from residents of this state gross premiums or gross considerations subject to taxation under Insurance Code §257.003. Section 257.001(a) also provides that the tax required by Chapter 257 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 257.

Insurance Code §257.002 provides that the rate of assessment set by the Commissioner may not exceed 0.04% of the gross premiums subject to taxation under Insurance Code §257.003. Section 257.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating life, health, and accident insurers.

Insurance Code §257.003 provides that an insurer must pay maintenance taxes under Insurance Code Chapter 257 on the correctly reported gross premiums collected from writing life, health, and accident insurance in Texas, as well as gross considerations collected from writing annuity or endowment contracts in Texas. The section also provides that gross premiums on which an assessment is based under Insurance Code Chapter 257 may not include premiums received from the United States for insurance contracted for by the United States in accordance with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; or premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §258.002 imposes a per capita maintenance tax on each authorized HMO with gross revenues subject to taxation under Insurance Code §258.004. Section 258.002 also provides

that the tax required by Insurance Code Chapter 258 is in addition to other taxes that are not in conflict with Insurance Code Chapter 258.

Insurance Code §258.003 provides that the rate of assessment set by the Commissioner on HMOs may not exceed \$2 per enrollee. Section 258.003 also provides that the Commissioner annually adjust the rate of assessment of the per capita maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating HMOs. Section 258.003 also provides that rate of assessment may differ between basic health care plans, limited health care service plans, and single health care service plans and must equitably reflect any differences in regulatory resources attributable to each type of plan.

Insurance Code §258.004 provides that an HMO must pay per capita maintenance taxes under Insurance Code Chapter 258 on the correctly reported gross revenues collected from issuing health maintenance certificates or contracts in Texas. Section 258.004 also provides that the amount of maintenance tax assessed may not be computed based on enrollees who, as individual certificate holders or their dependents, are covered by a master group policy paid for by revenues received from the United States for insurance contracted for by the United States in accordance with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c, *et seq.*) and its subsequent amendments; revenues paid on group health, accident, and life certificates or contracts in which the group covered by the certificate or contract consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §259.002 imposes a maintenance tax on each authorized third-party administrator with administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.002 also provides that the tax required by Insurance Code Chapter 259 is in addition to other taxes imposed that are not in conflict with the chapter.

Insurance Code §259.003 provides that the rate of assessment set by the Commissioner may not exceed 1% of the administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.003(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses of regulating third-party administrators.

Insurance Code §259.004 requires a third-party administrator to pay maintenance taxes under Chapter 259 on the administrator's correctly reported administrative or service fees.

Insurance Code §271.002 imposes a maintenance fee on all premiums subject to assessment under Insurance Code §271.006. Section 271.002 also specifies that the maintenance fee is not a tax and must be reported and paid separately from premium and retaliatory taxes.

Insurance Code §271.003 specifies that the maintenance fee is included in the division of premiums and may not be separately charged to a title insurance agent.

Insurance Code §271.004 provides that the Commissioner annually determine the rate of assessment of the title insurance maintenance fee. Section 271.004(b) provides that in determining the rate of assessment, the Commissioner consider the requirement to reimburse the appropriate portion of the general revenue fund under Insurance Code §201.052.

Insurance Code §271.005 provides that the rate of assessment set by the Commissioner may not exceed 1% of the gross premiums subject to assessment under Insurance Code §271.006. Section 271.005(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance fee so that the fee imposed that year, together with any unexpended funds produced by the fee, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating title insurance.

Insurance Code §271.006 requires an insurer to pay maintenance fees under Chapter 271 on the correctly reported gross premiums from writing title insurance in Texas.

Insurance Code §964.068 provides that a captive insurance company is subject to maintenance tax under Insurance Code, Title 3, Subtitle C, on the correctly reported gross premiums from writing insurance on risks located in this state as applicable to the individual lines of business written by the captive insurance company.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

Labor Code §403.002 imposes an annual maintenance tax on each insurance carrier to pay the costs of administering the Texas Workers' Compensation Act and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §403.002 also provides that the assessment may not exceed an amount equal to 2% of the correctly reported gross workers' compensation insurance premiums, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code §2053.202 (formerly Insurance Code Article 5.55C). Labor Code §403.002 also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit. Additionally, Labor Code §403.002 provides that a workers' compensation insurance company is taxed at the rate established under Labor Code §403.003, and that the tax be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in Insurance Code Chapter 255. Finally, Labor Code §403.002 states that each certified self-insurer must pay a fee and maintenance taxes as provided by Labor Code Chapter 407, Subchapter F.

Labor Code §403.003 requires the Commissioner of Insurance to set and certify to the Comptroller the rate of maintenance tax assessment, taking into account (i) any expenditure projected as necessary for DWC and OIEC to administer the Texas Workers' Compensation Act during the fiscal year for which the rate of assessment is set and reimburse the general revenue fund as provided by Insurance Code §201.052; (ii) projected employee benefits paid from general revenues; (iii) a surplus or deficit produced by the tax in the preceding year; (iv) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, and gifts recovered under the Texas Workers' Compensation Act; and (v) expenditures projected as necessary

to support the prosecution of workers' compensation insurance fraud. Labor Code §403.003 also provides that in setting the rate of assessment, the Commissioner of Insurance may not consider revenue or expenditures related to the State Office of Risk Management, the workers' compensation research functions of the department under Labor Code Chapter 405, or any other revenue or expenditure excluded from consideration by law.

Labor Code §403.005 provides that the Commissioner of Insurance must annually adjust the rate of assessment of the maintenance tax imposed under §403.003 so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner of Insurance determines is necessary to pay the expenses of administering the Texas Workers' Compensation Act. Labor Code §405.003(a) - (c) establishes a maintenance tax on insurance carriers and self-insurance groups to fund the WCREG, provides for the department to set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations, and provides that the tax is in addition to all other taxes imposed on insurance carriers for workers' compensation purposes.

Labor Code §407.103 imposes a maintenance tax on each workers' compensation certified self-insurer for the administration of the DWC and OIEC and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §407.103 also provides that not more than 2% of the total tax base of all certified self-insurers, as computed under subsection (b) of the section, may be assessed for the maintenance tax established under Labor Code §407.103. Labor Code §407.103 also provides that to determine the tax base of a certified self-insurer for purposes of Labor Code Chapter 407, the department multiply the amount of the certified self-insurer's liabilities for workers' compensation claims incurred in the previous year, including claims incurred but not reported, plus the amount of expense incurred by the certified self-insurer in the previous year for administration of self-insurance, including legal costs, by 1.02. Labor Code §407.103 also provides that the tax liability of a certified self-insurer under the section is the tax base computed under subsection (b) of the section multiplied by the rate assessed workers' compensation insurance companies under Labor Code §403.002 and §403.003. Finally, Labor Code §407.103 provides that, in setting the rate of maintenance tax assessment for insurance companies, the Commissioner of Insurance may not consider revenue or expenditures related to the operation of the self-insurer program under Labor Code Chapter 407.

Labor Code §407.104(b) provides that the department compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. Section 407.104(b) also provides that a certified self-insurer must remit the taxes and fees to the DWC.

Labor Code §407A.301 imposes a self-insurance group maintenance tax on each workers' compensation self-insurance group based on gross premium for the group's retention. Labor Code §407A.301 provides that the self-insurance group maintenance tax is to pay for the administration of the DWC, the prosecution of workers' compensation insurance fraud in Texas, the research functions of the department under Labor Code Chapter 405, and the administration of the OIEC under Labor Code Chapter 404. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(1) and (2) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §403.002 and

§403.003. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(3) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §405.003. Additionally, Labor Code §407A.301 provides that the tax under the section does not apply to premium collected by the group for excess insurance. Finally, Labor Code §407A.301(e) provides that the tax under the section be collected by the Comptroller as provided by Insurance Code Chapter 255 and Insurance Code §201.051.

Labor Code §407A.302 requires each workers' compensation self-insurance group to pay the maintenance tax imposed under Insurance Code Chapter 255, for the administrative costs incurred by the department in implementing Labor Code Chapter 407A. Labor Code §407A.302 provides that the tax liability of a workers' compensation self-insurance group under the section is based on gross premium for the group's retention and does not include premium collected by the group for excess insurance. Labor Code §407A.302 also provides that the maintenance tax assessed under the section is subject to Insurance Code Chapter 255, and that it be collected by the Comptroller in the manner provided by Insurance Code Chapter 255.

CROSS-REFERENCE TO STATUTE. Section 1.414 implements Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001, 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; and 271.002 - 271.006; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

*§1.414. Assessment of Maintenance Taxes and Fees[; 2020].*

(a) Each calendar year by Commissioner order the [The] department will assess [assesses the following] rates for maintenance taxes and fees on the gross premiums, including direct written and assumed premiums, of insurers [for calendar year 2019] for the following lines of insurance [specified in paragraphs (1) - (9) of this subsection]:

(1) [for] motor vehicle insurance, under Insurance Code §254.002[; the rate is .044 of 1 percent];

(2) [for] casualty insurance and fidelity, guaranty, and surety bonds, under Insurance Code §253.002[; the rate is .053 of 1 percent];

(3) [for] fire insurance and allied lines, including inland marine, under Insurance Code §252.002[; the rate is .274 of 1 percent];

(4) [for] workers' compensation insurance, under Insurance Code §255.002[; the rate is .067 of 1 percent];

(5) [for] workers' compensation insurance, under Labor Code §403.003[; the rate is 2.0 percent];

(6) [for] workers' compensation insurance, under Labor Code §405.003[; the rate is .034 of 1 percent];

(7) [for] workers' compensation insurance, under Labor Code §407A.301[; the rate is 2.0 percent];

(8) [for] workers' compensation insurance, under Labor Code §407A.302[; the rate is .067 of 1 percent]; and

(9) [for] title insurance, under Insurance Code §271.005[§271.004, the rate is .068 of 1 percent].

(b) Each calendar year by Commissioner order the department will assess the [The] rate for the maintenance tax to be assessed on gross premiums, including direct written and assumed premiums, of insurers [for calendar year 2019] for life, health, and accident insurance and



the gross considerations for annuity and endowment contracts, under Insurance Code §257.002[; is .040 of 1 percent].

(c) Each calendar year by Commissioner order the [The] department will assess [assesses] rates for maintenance taxes [for calendar year 2019] for the following entities [as follows]:

(1) under Insurance Code §258.003, an amount [; the rate is \$.28] per enrollee for:

(A) single service health maintenance organizations, [\$.84 per enrollee for]

(B) multiservice health maintenance organizations;[;] and [\$.28 per enrollee for]

(C) limited service health maintenance organizations; and

(2) under Insurance Code §259.003, a rate [; the rate is .009 of 1 percent] of the correctly reported gross amount of administrative or service fees for third-party [third party] administrators.

(d) Each calendar year by Commissioner order the department will assess a rate for maintenance tax under [Under] Labor Code §405.003 for[;] each certified self-insurer, to fund [must pay a maintenance tax for] the Workers' Compensation Research and Evaluation Group. The rate will be [in calendar year 2020 at a rate of .034 of 1 percent of the tax base] calculated under Labor Code §407.103(b), and it will [which must] be billed to the certified self-insurer by the Division of Workers' Compensation.

(e) Each calendar year by Commissioner order the department will assess a rate for maintenance tax under [Under] Labor Code §405.003 and §407A.301 for[;] each workers' compensation self-insurance group, to fund [must pay a maintenance tax for] the Workers' Compensation Research and Evaluation Group. The rate will be [in calendar year 2020 at a rate of .034 of 1 percent of the tax base] calculated under Labor Code §407.103(b).

(f) Each calendar year by Commissioner order the department will assess a rate for self-insurer maintenance tax under [Under] Labor Code §407.103 and §407.104 for [;] each certified self-insurer. The rate will be [must pay a self-insurer maintenance tax in calendar year 2020 at a rate of 2.0 percent of the tax base] calculated under Labor Code §407.103(b), and it will [which must] be billed to the certified self-insurer by the Division of Workers' Compensation.

(g) The maintenance tax revenue need is calculated as the amount of revenue needed to reach the targeted year-end fund balance, taking into account the beginning balance, expected non-maintenance tax revenues, and estimated expenditures. For each line of insurance:

(1) the assessment rate is calculated by dividing the revenue need by the estimated premium volume or assessment base; and

(2) if the calculated rate is above the statutory rate, the rate is set at the statutory maximum and any revenue shortfall is spread to the other maintenance tax lines, increasing the revenue need and tax rates for the remaining lines. [The enactment of Senate Bill 14, 78th Legislature, Regular Session (2003), relating to certain insurance rates, forms, and practices, did not affect the calculation of the maintenance tax rates or the assessment of the taxes.]

(h) The taxes and fees assessed by the Commissioner order issued under [under] subsections (a), (b), (c), and (e) of this section will be payable and due to the Comptroller of Public Accounts on March 1 each year[; 2020].

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

Filed with the Office of the Secretary of State on October 26, 2020.

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James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 676-6584



## SUBCHAPTER L. ELECTRONIC SUBMISSIONS AND COMMUNICATIONS

### 28 TAC §1.1301, §1.1302

The Texas Department of Insurance (TDI) proposes new 28 TAC §1.1301 and §1.1302, concerning electronic submissions made to TDI and electronic communications from TDI.

**EXPLANATION.** New §1.1301 is added to generally authorize persons to make any submissions to TDI electronically. New §1.1302 is added to recognize that TDI may officially communicate by email with regulated persons. Section 1.1302 requires regulated persons to designate an email for such communications from TDI. By allowing electronic submissions and communications instead of paper submissions and communications by mail, the new sections will reduce the regulatory burden and costs imposed on regulated persons and promote administrative efficiency and reduce costs for TDI.

**Section 1.1301.** Section 1.1301(a) generally authorizes persons to make submissions with TDI electronically, unless statute requires a method of submission that is not electronic. Subsection (a) prevails over any other provision in Title 28 TAC Part 1.

Section 1.1301(b) states that an electronic submission must be made in accordance with any electronic procedure established by statute or rule. If a procedure for the electronic submission is not established by statute or rule, the electronic submission must be made as specified on TDI's website.

**Section 1.1302.** Section 1.1302(a) defines for this section the term "regulated person" to encompass all persons regulated by the Commissioner and the Texas State Fire Marshal.

Section 1.1302(b) generally authorizes TDI to send official communications to the email designated by a regulated person, unless statute requires a different method of communication.

Section 1.1302(c) requires all regulated persons to provide to TDI an email address designated for receipt of official communications from TDI, except as provided by Section 1.1302(d). Regulated persons should provide the email address as specified on TDI's website. If emails may no longer be received at a designated email address, the regulated person must notify the department and provide a new email address within 10 business days.

Section 1.1302(d) states that notice or service requirements are satisfied if TDI communicated by email under the section, unless statute requires a different method of notice or service.

Section 1.1302(e) relieves a regulated person of the requirement in Section 1.1302(b) if the regulated person notifies the department that the regulated person does not have the technological capability to maintain an email address designated for official department communications or for other good reason does not wish to receive communications by email.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years the proposed new sections are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Walker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed new sections are in effect, Ms. Walker expects that administering the proposed sections will have the public benefits of reducing the regulatory burden and costs imposed on regulated persons and promoting administrative efficiency and reducing costs for TDI.

Ms. Walker expects that the proposed new sections will not increase the costs of compliance with laws administered by TDI because it does not impose requirements that would result in a cost for regulated persons.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed new sections will not have an adverse economic effect on small or micro businesses, or on rural communities. The proposed new sections will reduce the regulatory burden and costs imposed on regulated persons and promote administrative efficiency and reduce costs for TDI. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a possible cost on regulated persons.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

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

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on December 7, 2020. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m. central time, on December 7, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** TDI proposes §1.1301 and §1.1302 under Insurance Code §36.001 and Government Code §417.005.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Government Code §417.005 provides that the Commissioner may adopt necessary rules to guide the state fire marshal and fire and arson investigators commissioned by the state fire marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the commissioner.

**CROSS-REFERENCE TO STATUTE.** Section 1.1301 affects all provisions concerning submissions made with TDI. Section 1.1302 affects all provisions giving the Commissioner or the state fire marshal authority to issue an authorization, including a permit, license, certificate of authority, or certificate of registration.

§1.1301. Electronic Submissions.

(a) Notwithstanding any other provision in Part 1 of this title (relating to Texas Department of Insurance), any submissions made to the Texas Department of Insurance (department) may be made electronically, unless statute requires an alternative method of submission.

(b) A submission made electronically to the department must be made in accordance with any specific procedure for electronic submissions established by statute or rule. If a specific procedure for electronic submissions is not established by statute or rule, an electronic submission must be made as specified on the department's website.

§1.1302. Electronic Communications from the Texas Department of Insurance.

(a) In this section, "regulated person" means an individual, corporation, association, partnership, or other artificial person holding an authorization, including a permit, license, certificate of authority, or certificate of registration, issued or existing under the Commissioner's or the Texas State Fire Marshal's authority or the Insurance Code.

(b) Notwithstanding any other provision in Part 1 of this title (relating to Texas Department of Insurance) other than §1.90 of this ti-

tle (relating to Joint Memorandum of Understanding (MOU) between Texas Department of Insurance (TDI) and State Office of Administrative Hearings (SOAH) Concerning Procedures for Contested Cases before SOAH and Responsibilities of Each Agency), the department may send official communications to the email address designated for such communications by a regulated person, unless statute requires a different method of communication.

(c) Except as provided by subsection (e) of this section, all regulated persons must provide an email address that is designated for receipt of official department communications. Regulated persons should provide the email address as specified on TDI's website. If communications may no longer be received at the designated email address, the regulated person must notify the department and designate a new email address within 10 business days.

(d) Notice or service sent by email under this section satisfies any notice or service requirements, unless a different method of notice or service is required by statute or §1.90 of this title.

(e) If a regulated person does not have the technological capability to maintain an email address designated for official department communications, or for good reason does not wish to receive communications by email from the department, the regulated person should notify the department as specified on TDI's website regarding address changes.

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

Filed with the Office of the Secretary of State on October 22, 2020.

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James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 676-6584



## CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

### SUBCHAPTER RR. VALUATION MANUAL

#### 28 TAC §3.9901

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §3.9901, relating to the adoption of a valuation manual for reserving and related requirements.

EXPLANATION. Insurance Code §425.073 requires the Commissioner to adopt a valuation manual that is substantially similar to the valuation manual adopted by the National Association of Insurance Commissioners (NAIC). The valuation manual adopted by the NAIC may be viewed at the following website: [content.naic.org/sites/default/files/pbr\\_data\\_valuation\\_manual\\_future\\_edition.pdf](http://content.naic.org/sites/default/files/pbr_data_valuation_manual_future_edition.pdf).

Under Insurance Code §425.073, the Commissioner must adopt the valuation manual, and any changes to it, by rule.

Under Insurance Code §425.073(c), when the NAIC adopts changes to the valuation manual, TDI must adopt substantially similar changes. This subsection also requires the Commissioner to determine that the NAIC's changes were approved

by an affirmative vote representing at least three-fourths of the voting NAIC members, but not less than a majority of the total membership. In addition, the NAIC members voting in favor of amending the valuation manual must represent jurisdictions totaling greater than 75% of the direct written premiums as reported in the most recently available life, accident, and health/fraternal annual statements and health annual statements.

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016, in compliance with Insurance Code §425.073. On August 14, 2020, the NAIC voted to adopt changes to the valuation manual. Fifty-four jurisdictions, representing 99.98% of the relevant direct written premiums, voted in favor of adopting the amendments. The vote adopting changes to the NAIC valuation manual meets the requirements of Insurance Code §425.073(c).

Section 3.9901. TDI amends §3.9901 by striking the date on which the NAIC adopted its previous valuation manual and inserting the date on which the NAIC adopted its current valuation manual, changing it from August 6, 2019, to August 14, 2020.

This proposal includes provisions related to NAIC rules, regulations, directives, or standards. Under Insurance Code §36.004, TDI must consider whether authority exists to enforce or adopt it. Additionally, under Insurance Code §36.007, an agreement that infringes on the authority of this state to regulate the business of insurance in this state has no effect unless the agreement is approved by the Texas Legislature. TDI has determined that neither §36.004 nor §36.007 prohibit the proposed rule, because Insurance Code §425.073 requires TDI to adopt a valuation manual that is substantially similar to the valuation manual approved by NAIC, and §425.073(c) expressly requires TDI to adopt changes to the valuation manual that are substantially similar to changes adopted by the NAIC.

In addition to clarifying existing provisions, the 2021 valuation manual includes changes to:

- directly reference the interest rate used in the definition of life insurance under the Tax Code as the floor for the life nonforfeiture interest rate;

- allow for a transition from using the London Inter-bank Offered Rate because that rate standard is being eliminated;

- allow companies to use different credibility methods for different blocks of the life principle-based reserving business; and

- provide that reserving must reflect risks due to policy conversions and be included in reporting requirements.

The adopted changes to the valuation manual can be viewed at [content.naic.org/sites/default/files/pbr\\_data\\_valuation\\_manual\\_future\\_edition\\_redline.pdf](http://content.naic.org/sites/default/files/pbr_data_valuation_manual_future_edition_redline.pdf).

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. Ms. Walker made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Walker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendment is in effect, Ms. Walker expects that administering the proposed amendment will have the public benefit of ensuring that the latest version of the NAIC's valuation manual is adopted in TDI's rules, as required by Insurance Code §425.073.

Ms. Walker expects that the proposed amendment will not increase the cost of compliance with Insurance Code §425.073, because the amendment does not impose requirements beyond those in the statute. Section 425.073 requires that changes to the valuation manual must be adopted by rule and must be substantially similar to changes adopted by the NAIC. As a result, the cost associated with adopting the changes to the valuation manual does not result from the enforcement or administration of the proposed amendment.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses, or on rural communities. This is because the amendment does not impose any requirements beyond those required by statute. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a possible cost on regulated persons and no additional rule amendments are required.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed amendment is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

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

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on December 7, 2020. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or by mail to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a pub-

lic hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or by mail to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on December 7, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** TDI proposes §3.9901 under Insurance Code §425.073 and §36.001.

Insurance Code §425.073 requires the Commissioner to adopt changes to the valuation manual that are substantially similar to the changes to the valuation manual adopted by NAIC, and it provides that after a valuation manual has been adopted by the Commissioner by rule, any changes to the valuation manual must be adopted by rule.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**CROSS-REFERENCE TO STATUTE.** Section 3.9901 implements Insurance Code §425.073.

*§3.9901. Valuation Manual.*

(a) The Commissioner adopts by reference the National Association of Insurance Commissioners (NAIC) Valuation Manual, including subsequent changes that were adopted by the NAIC through August 14, 2020 [~~August 6, 2019~~], as required by Insurance Code §425.073.

(b) The operative date of the NAIC Valuation Manual in Texas is January 1, 2017.

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

Filed with the Office of the Secretary of State on October 20, 2020.

TRD-202004361

James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 676-6584



## CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

The Texas Department of Insurance (TDI) proposes new 28 TAC §7.508 and amendments to 28 TAC §7.1301, concerning a biographical affidavit form for foreign insurers and fees imposed on insurers regulated by TDI, respectively.

**EXPLANATION.** New §7.508 specifies that the biographical affidavit form for foreign insurers is only required on request from TDI. Currently, foreign insurers submit the biographical affidavit form, adopted in 28 TAC §7.507, for each officer and director on admission to Texas and any time there is a change in officer or director. Foreign insurers' domiciliary regulators evaluate and monitor officers and directors and any changes to them, making TDI's review duplicative.

Section 7.1301 is amended to reduce most of the fees imposed on insurers regulated by TDI to \$0. The costs incurred to process many of these fees is greater than the fees collected, so eliminating these fees will effectively reduce the cost on TDI for enforcing this section.

New proposed §7.508 and the amendments to §7.1301 are described in the following paragraphs.

Section 7.508. New §7.508 specifies that the biographical affidavit form for foreign insurers, adopted in 28 TAC §7.507, is only required on request from TDI.

Section 7.1301. Section 7.1301(a) is amended to delete the word "shall" and to replace "shall" with "will" in two places for consistency with agency rule drafting style. Section 7.1301(a) is also amended to add the parenthetical "(department)" to show that that term means "Texas Department of Insurance" when used in the section; to update the reference to pre-codified Insurance Code Chapters 1-3, 6-20, 20A, and 23 to current Insurance Code Titles 2 and 6-12; and to replace a reference to the previous rule adoption's effective date with the amended rule's effective date.

Section 7.1301(b) is amended to update the reference to pre-codified Insurance Code Article 4.07 and "the article" with current Insurance Code §202.004 and "Insurance Code Chapter 202," respectively. Section 7.1301(b) is also amended to replace "shall be" with "is" for consistency with agency rule drafting style; and to replace "Texas Department of Insurance" with "department" for conciseness.

Section 7.1301(c) is amended to update the references to pre-codified Insurance Code Article 3.42 with current Insurance Code Chapter 1701 and to clarify the second sentence by adding "and governed by" before "Chapter 3" and deleting "and shall be governed thereby" at the end of that sentence.

Section 7.1301(d) is amended to update the references to pre-codified Insurance Code Chapters 1-3, 6-20, 20A, and 23 to current Insurance Code Titles 2 and 6-12, and to and replace "which" with "that" and "shall be" with "are" for consistency with agency grammar and rule drafting style. Subsection (d)(1) - (20) and (22) - (24) are amended to replace "shall be" with "is" for consistency with agency rule drafting style. The fees set in subsection (d)(2) - (24) are reduced to \$0. Subsection (d)(12) is amended to update the reference to pre-codified Insurance Code Article 22.19 with current Insurance Code Chapter 884, Subchapter K. Subsection (d)(13) is amended to update the reference to pre-codified Insurance Code Article 21.26 with current Insurance Code Chapter 828. Subsection (d)(14) is amended to update the reference to pre-codified Insurance Code Article 21.25 with current Insurance Code Chapter 824. Subsections (d)(15) and (d)(16) are amended to update the references to pre-codified Insurance Code Article 3.16 with current Insurance Code §425.002. Subsection (d)(18) is amended to update the reference to pre-codified Insurance Code Article 1.28 with current Insurance Code Chapter 803. Subsection (d)(20) - (21) is amended to update the references to pre-codified Insurance Code Article 21.49-1, §5, with current Insurance Code Chapter 823, Subchapters D and E. Subsection (d)(22) is amended to update the reference to pre-codified Insurance Code Article 21.49, §3, with current Insurance Code Chapter 823, Subchapter B. Subsection (d)(23) is amended to update the reference to pre-codified Insurance Code Article 21.49, §4, and Article 22.15 with current Insurance Code Chapter 823, Subchapter C, and Chapter 884, Subchapter L, respectively. Subsection (d)(24) is amended to update the reference to pre-codified Insurance

Code Article 21.49, §5(e), with current Insurance Code Chapter 823.164.

Section 7.1301(e) is amended to update the reference to pre-codified Insurance Code Article 4.07 with current Insurance Code Chapter 202 and to replace "shall be" with "is" for consistency with agency rule drafting style. Subsection (e)(1) - (3) is amended to replace "shall be" with "is" for consistency with agency rule drafting style and to reduce the fees set to \$0.

Section 7.1301(f)(1) is amended to replace "Texas Department of Insurance" with "department" for conciseness; to correct the reference to §7.1301(d)(11) - (15) with a reference to §7.1301(d)(10) - (14) to account for the renumbering of subsection (d) when amendments to §7.1301 were adopted effective April 23, 1996 (21 TexReg 3190); and to clarify the sentence by adding "the appropriate fee will be determined based on" before "the ceding or merged company" and deleting "will be the company upon which the determination of the appropriate fee to be assessed will be based." Subsection (f)(2) is amended to update the reference to pre-codified Insurance Code Article 21.49-1, §4, with current Insurance Code Chapter 823, Subchapter C; to replace "shall" with "will" for consistency with agency rule drafting style; to correct the reference to §7.1301(d)(24) with a reference to §7.1301(d)(23) to account for the renumbering of subsection (d) when amendments to §7.1301 were adopted effective April 23, 1996, (21 TexReg 3190); and to clarify the sentence by adding "based on" after "determined" and deleting "using" and "as a basis for such a fee." Subsection (f)(3) is amended to replace "Texas Department of Insurance" with "department" for conciseness; and to clarify the sentence by adding "the appropriate fee will be based on" before "the ceding company" and deleting "will be the insurer upon which the determination of the appropriate fee to be charged will be based." Subsection (f)(5) is amended to replace "shall" with "will" for consistency with agency rule drafting style. Subsection (f)(6) is amended to update the reference to pre-codified Insurance Code Article 21.49-1, §5, with current Insurance Code Chapter 823, Subchapters D and E; to correct the reference to §7.1301(d)(21) and (22) with a reference to §7.1301(d)(20) and (21) to account for the renumbering of subsection (d) when amendments to §7.1301 were adopted effective April 23, 1996 (21 TexReg 3190); and to replace "shall" with "will" for consistency with agency rule drafting style.

Section 7.1301(g) is amended to update the reference to pre-codified Texas Health Maintenance Organization Act, §32, with current Insurance Code §843.154, and to replace "shall be" with "are" for consistency with agency rule drafting style. Subsection (g)(1) is amended to replace "shall be" with "is" for consistency with agency rule drafting style and to reduce the fee set to \$0. Subsection (g)(2) is amended to replace "shall be" with "is" for consistency with agency rule drafting style. Subsection (g)(3) is amended to replace "Texas Department of Insurance" with "department" for conciseness, and to replace "shall be in such amounts as" with "will be an amount" and "shall certify" with "certifies" for clarity and consistency with agency rule drafting style. Subsection (g)(4) is amended to replace "shall be" with "is" for consistency with agency rule drafting style. Subsection (g)(5) is amended to replace "do" with "does" to correct the grammar of the sentence and to replace "shall be" with "is" for consistency with agency rule drafting style.

Existing §7.1301(h) is deleted because Senate Bill 1623, 86th Legislature, Regular Session (2019), repealed Insurance Code §961.212, which authorized the fees established by subsection

(h). Existing subsections (i) and (j) are redesignated as subsections (h) and (i), respectively, to account for the deletion of subsection (h).

Existing §7.1301(i) is amended to update the references to pre-codified Insurance Code Article 3.53 with current Insurance Code Chapter 1153 and to clarify the second sentence by adding "and governed by" before "Chapter 3" and deleting "and shall be governed thereby."

Existing §7.1301(j) is amended to update the reference to pre-codified Insurance Code Chapter 3 with current Insurance Code Chapter 841. Existing subsection (j)(1) and (2) are deleted because House Bill 1849, 80th Legislature, Regular Session (2007), repealed the fee for valuing life insurance policies in Insurance Code §202.052(a)(1). The existing fee set for the filing of an annual statement in existing subsection (j)(2) is added as the second sentence in subsection (j) and the word "fees" is replaced with "fee for filing an annual statement" in the first sentence.

In addition to the amendments previously noted, amendments are made throughout the section to remove the word "the" before "Insurance Code" where appropriate for consistency with agency rule drafting style.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years the proposed new section and amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Walker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed new section and amendments are in effect, Ms. Walker expects that administering the proposed new section and amendments will have the public benefits of reducing the regulatory burden and costs on regulated persons and promoting administrative efficiency and reducing costs for TDI.

Ms. Walker expects that the proposed new section and amendments will reduce the cost of compliance with Insurance Code §§202.051, 801.056, 801.101, and 843.154.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed new section and amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. The proposed new section and amendments will reduce the regulatory burden and costs on regulated persons and promote administrative efficiency and reduce costs for TDI. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a possible cost on regulated persons.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will result in a decrease in fees paid to the agency;
- will create a new regulation;
- will limit an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

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

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m. central time, on December 7, 2020. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m. central time, on December 7, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

## SUBCHAPTER E. ADMISSION PROCEDURES FOR FOREIGN INSURANCE COMPANIES

### 28 TAC §7.508

**STATUTORY AUTHORITY.** TDI proposes new §7.508 under Insurance Code §§801.056, 801.101, and 36.001.

Insurance Code §801.056 allows TDI to request fingerprints from an applicant, or corporate officer of an applicant, for an authorization issued by the department under Chapter 801.

Insurance Code §801.101 allows TDI to inquire into the competence, fitness, or reputation of an officer or director of an insurer or a person having control of an insurer.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**CROSS-REFERENCE TO STATUTE.** New §7.508 affects Insurance Code §801.056 and §801.101 and Insurance Code Chapter 982.

§7.508. Biographical Affidavit Requirements.

Form Number FIN354, Biographical Affidavit and Fingerprint Requirements, adopted in §7.507 of this title (relating to Forms Incorporated by Reference), is only required on request from the Texas Department of Insurance.

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

Filed with the Office of the Secretary of State on , 2020.

TRD-202004445

James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 676-6584



## SUBCHAPTER M. REGULATORY FEES

### 28 TAC §7.1301

STATUTORY AUTHORITY. TDI proposes §7.1301 under Insurance Code §§202.002, 202.051, 843.154, and 36.001.

Insurance Code §202.002 authorizes TDI to set the amount of the fees imposed under Insurance Code Chapter 202, subject to certain limits.

Insurance Code §202.051 authorizes TDI to impose 26 specified fees from each authorized insurer writing insurance in Texas, subject to certain limits.

Insurance Code §843.154 authorizes the Commissioner to impose certain fees on health maintenance organizations.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. New §7.508 affects Insurance Code §§202.002, 202.051, and 843.154.

#### *§7.1301. Regulatory Fees.*

(a) Regulated entities subject to fees. The regulated entities subject to the fees imposed by this section ~~shall~~ include all authorized insurers writing any class of insurance in this state which are regulated by ~~the~~ Insurance Code Titles 2 and 6-12 ~~;~~ ~~Chapters 1-3, 6-20, 20A, 22, and 23~~. For filings and other actions received by the department on and after the effective date of this section ~~June 1, 2003~~, the Texas Department of Insurance (department) ~~will~~ ~~shall~~ charge these entities fees in amounts in accordance with the provisions of this section. Filings or other actions received by the department ~~on or~~ before the effective date of this section ~~June 1, 2003~~, ~~will~~ ~~shall~~ be governed by this subchapter as it existed immediately prior to ~~that date~~ ~~June 1, 2003~~.

(b) Fees for insurers with annual gross premium receipts less than \$450,000. As provided in ~~the~~ Insurance Code §202.004, ~~Article 4.07,~~ any insurer to which Insurance Code Chapter 202 ~~the article~~ applies and whose gross premium receipts are less than \$450,000 according to its annual statement for the preceding year ending December 31, ~~is~~ ~~shall be~~ required to pay only one-half the amount of the fees required to be paid under subsection (d) or subsection (e) of this section.

The fees will be collected at the higher rate unless the applicant can provide the department ~~Texas Department of Insurance~~ with satisfactory documentation that gross premium receipts were less than \$450,000.

(c) Fees for specified filings pursuant to ~~the~~ Insurance Code Chapter 1701~~;~~ ~~Article 3.42~~. Fees for specified filings pursuant to ~~the~~ Insurance Code Chapter 1701~~;~~ ~~Article 3.42~~ are set forth in and ~~governed by~~ Chapter 3, Subchapter A of this title (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings) ~~and shall be governed thereby~~.

(d) Fees for authorized insurers writing classes of insurance in this state that ~~which~~ are regulated by ~~the~~ Insurance Code Titles 2 and 6-12 ~~;~~ ~~Chapters 1-3, 6-20, 20A, 22, and 23~~. For the following filings and actions, the fees are ~~shall be~~ as follows.

(1) For classes of insurance for which statutory authority exists for collecting annual statement fees, the fee for filing annual statements ~~is~~ ~~shall be~~ \$250 unless otherwise specified.

(2) For filing amendments to certificate of authority if charter is not amended, the fee ~~is~~ ~~shall be~~ \$50.

(3) For reservation of name, the fee ~~is~~ ~~shall be~~ \$100.

(4) For renewal of reservation of name, the fee ~~is~~ ~~shall be~~ \$25.

(5) For filing application for admission of a foreign or alien insurance company, including issuance of certificate of authority, the fee ~~is~~ ~~shall be~~ \$2,000.

(6) For filing original charter, including issuance of certificate of authority, the fee ~~is~~ ~~shall be~~ \$1,500.

(7) For filing amendment to charter, including issuance of certificate of authority, if a hearing is held, the fee ~~is~~ ~~shall be~~ \$250.

(8) For filing amendment to charter, including issuance of certificate of authority, if a hearing is not held, the fee ~~is~~ ~~shall be~~ \$125.

(9) For filing designation of attorney for service of process or amendment thereto, the fee ~~is~~ ~~shall be~~ \$25.

(10) For filing a total reinsurance agreement, the fee ~~is~~ ~~shall be~~ \$750.

(11) For filing a partial reinsurance agreement, the fee ~~is~~ ~~shall be~~ \$150.

(12) For filing a direct reinsurance agreement pursuant to ~~the~~ Insurance Code Chapter 884, Subchapter K, ~~Article 22.19,~~ the fee ~~is~~ ~~shall be~~ \$150.

(13) For filing for approval of reinsurance agreement pursuant to ~~the~~ Insurance Code Chapter 828, ~~Article 21.26,~~ the fee ~~is~~ ~~shall be~~ \$750.

(14) For filing for approval of merger pursuant to ~~the~~ Insurance Code Chapter 824, ~~Article 21.25,~~ the fee ~~is~~ ~~shall be~~ \$750.

(15) For accepting a security deposit, excluding deposits made pursuant to ~~the~~ Insurance Code §425.002, ~~Article 3.16,~~ the fee ~~is~~ ~~shall be~~ \$100.

(16) For substitution/amendment of a security deposit, excluding deposits made pursuant to ~~the~~ Insurance Code §425.002, ~~Article 3.16,~~ the fee ~~is~~ ~~shall be~~ \$50.

(17) For certification of statutory deposit, the fee ~~is~~ ~~shall be~~ \$10.

(18) For filing notice of intent to relocate the books/records pursuant to [the] Insurance Code Chapter 803, [Article 1-28,] the fee is \$0 [shall be \$150].

(19) For filing restated articles of incorporation for domestic/foreign companies, the fee is \$0 [shall be \$250].

(20) For filing a statement pursuant to [the] Insurance Code Chapter 823, Subchapters D and E, [Article 21.49-1, §5,] for the first \$9,900,000 of the purchase price or consideration, the fee is \$0 [shall be \$500].

(21) For filing a statement pursuant to [the] Insurance Code Chapter 823, Subchapters D and E, [Article 21.49-1, §5,] if the purchase price or consideration exceeds \$9,900,000, the fee is \$0 [an additional \$250 for each \$10 million exceeding \$9,900,000 but not more than a \$5,000 total fee].

(22) For filing registration statement pursuant to [the] Insurance Code Chapter 823, Subchapter B, [Article 21.49-1, §3,] the fee is \$0 [shall be \$150].

(23) For filing for review pursuant to [the] Insurance Code Chapter 823, Subchapter C, or Chapter 884, Subchapter L, [Article 21.49-1, §4 or Article 22.15,] the fee is \$0 [shall be \$250].

(24) For filing for an exemption pursuant to [the] Insurance Code §823.164, [Article 21.49-1, §5(e),] the fee is \$0 [shall be \$250].

(e) Other fees established by [the] Insurance Code Chapter 202 [; Article 4.07]. For the following filings, the fee is [shall be] as follows.

(1) For filing joint control agreement, the fee is \$0 [shall be \$50].

(2) For filing substitution/amendment to the joint control agreement, the fee is \$0 [shall be \$20].

(3) For filing a change in attorney in fact, the fee is \$0 [shall be \$500].

(f) Administrative procedures.

(1) When a reinsurance agreement or merger agreement is filed with the department [Texas Department of Insurance], as enumerated in subsection (d)(10)-(14) [(d)(11)-(15)] of this section, the appropriate fee will be determined based on the ceding or merged company [will be the company upon which the determination of the appropriate fee to be assessed will be based].

(2) The fee relating to reinsurance transactions entered into pursuant to [the] Insurance Code Chapter 823, Subchapter C, [Article 21.49-1, §4,] and subsection (d)(23) [(d)(24)] of this section will [shall] be determined based on [using] the ceding company [as a basis for such fee].

(3) When an amendment to a reinsurance agreement between affiliated insurers is filed with the department [Texas Department of Insurance], as mentioned in paragraph (1) of this subsection, the appropriate fee will be based on the ceding company [will be the insurer upon which the determination of the appropriate fee to be charged will be based].

(4) An amendment to the charter would constitute any change in the original charter, including, but not limited to, name change, home office change, increase in capital, conversion, and increase in lines.

(5) The fee relating to affixing the official seal and certifying to the seal will [shall] be applied to all requests for certification, irrespective of requesting party.

(6) The fees for filing an acquisition statement pursuant to [the] Insurance Code Chapter 823, Subchapters D and E, [Article 21.49-1, §5] and subsection(d)(20) and (21) [(d)(21) and (22)] of this section will [shall] apply to and be collected from the applicant whenever:

(A) the applicant is a regulated entity subject to this section; or

(B) the company being acquired is a regulated entity subject to this section.

(g) Fees pursuant to the Texas Health Maintenance Organization Act, Insurance Code Chapter 843 [§32]. For the following filings and actions, the fees are [shall be] as follows.

(1) For filing original application for certificate of authority, the fee is \$0 [shall be \$7,500].

(2) For filing annual report, the fee is [shall be] \$250.

(3) For all examinations made on behalf of the State of Texas by the department [Texas Department of Insurance] or under its authority, the fee will be an amount [shall be in such amounts as] the commissioner certifies [shall certify] to be just and reasonable.

(4) For filing evidence of coverage which requires approval, the fee is [shall be] \$100.

(5) For filing required by rule but which does [do] not require approval, the fee is [shall be] \$50.

[(h) Fees under the Insurance Code, Article 23.08. For the following filings and actions, the fees shall be as follows:]

[(1) For filing annual statement, the fee shall be \$200.]

[(2) For application for certificate of authority, the fee shall be \$1,500.]

[(3) For issuance of additional certificate of authority and amendment to same, the fee shall be \$50.]

[(h) [(i)] Fees for filings pursuant to [the] Insurance Code Chapter 1153 [; Article 3.53]. Fees for filings pursuant to [the] Insurance Code Chapter 1153 [; Article 3.53] are set forth in and governed by Chapter 3, Subchapter A of this title [and shall be governed thereby].

[(i) [(j)] Fee for filing an annual statement [Fees] under [the] Insurance Code Chapter 841. The fee for filing an annual statement is \$250. [; Chapter 3. For the following filings and actions, the fees shall be as follows:]

[(1) For valuing policies of life insurance, and for each \$1 million of insurance or fraction thereof, \$10.]

[(2) For filing the annual statement, \$250.]

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

Filed with the Office of the Secretary of State on October 22, 2020.

TRD-202004446

James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 676-6584



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## SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

### 28 TAC §7.1001

The Texas Department of Insurance (TDI) proposes amendments to 28 TAC §7.1001, concerning assessments to cover the expenses of examining domestic and foreign insurance companies, and self-insurance groups providing workers' compensation insurance.

**EXPLANATION.** The proposed amendments to §7.1001 provide for examination expenses to be levied against and collected from each domestic and foreign insurance company, and each self-insurance group providing workers' compensation insurance examined during each calendar year. The proposed amendments also provide for the rates of assessment to be levied against and collected from each domestic insurer, based on admitted assets and gross premium receipts for the calendar year prior to the assessment, and from each foreign insurer examined during the calendar year prior to the assessment using the same method.

The department proposes to adopt a standing rule which would allow for the rates to be specified by order annually. This would allow the Commissioner to maintain transparency on how the rates are calculated in the rule, but also help avoid delays that can result from the rulemaking process. The Commissioner will be able to set the rates by order sooner than can be done by rule, which benefits stakeholders and preserves agency resources.

The proposed amendments to the section are described in the following paragraphs.

**Section 7.1001 Heading.** The amendment to the section heading reflects that the proposed examination assessments no longer apply to a specific year.

**Section 7.1001(b)(1) and (2), (c)(1), (c)(2)(A) and (B), (c)(3), and (d).** Amendments to §7.1001(b)(1) and (2), (c)(1), (c)(2)(A) and (B), (c)(3), and (d) reflect that the proposed examination assessments apply each year instead of to a specific year.

**Section 7.1001(b)(1), (c)(1), and (d).** Amendments to §7.1001(b)(1), (c)(1), and (d) provide that an examiner's and other department employee's salary will be based on an average annual examiner's and other department employee's salary instead of an individual examiner's and other department employee's salary. The amendments to §7.1001(c)(1) and (d) remove the word "actual" for the same reason. It is cumbersome for the department to determine each examiner's and other department employee's actual salary when an examiner's and other department employee's salary may change during the year. The department believes using an average annual examiner's and other department employee's salary, as applicable, and to the extent permitted by law, is just and reasonable. Also, the department will calculate the assessment on the number of working hours in a year instead of days in a year to reflect the process the department will use.

**Section 7.1001(b)(2).** The amendments to §7.1001(b)(2) provide that a foreign insurance company examined beginning in one year and completed the next year will be assessed using the rate for the year the exam began.

**Section 7.1001(c)(1).** For consistency with agency style, amendments to §7.1001(c)(1) reflect the active rather than the passive

voice. The language "divides" replaces "is to be divided" and "is to be assessed" becomes "assesses."

**Section 7.1001(c)(2)(A) and (B).** Amendments to §7.1001(c)(2)(A) and (B) reflect that the Commissioner will set the examination assessment rates by order each relevant year, instead of by rule amendment. The rates will reflect the method the department sets out in this rule.

**Section 7.1001(c)(3).** The amendment to §7.1001(c)(3) removes language about redomestication to allow proportional assessments in situations where an insurance company comes to Texas or leaves Texas during a year. This results in cost savings to companies that are only domesticated in Texas for a portion of a year. The proportional assessment does not apply to a foreign insurance company that merges with a Texas domestic insurance company.

**Section 7.1001(c)(5).** The amendments to §7.1001(c)(5) clarify that gross premiums receipts, for §7.1001 only, include direct written and assumed premiums, as reported in the annual statements.

**Section 7.1001(e) and (g).** The amendments to §7.1001(e) remove language about payment; this language is inserted as new §7.1001(g) so that it is at the end of the text. New language added to §7.1001(e) states that the Commissioner will set the average annual examiner's and other department employee's salary rate and overhead assessment rates by order each year.

**Section 7.1001(f).** New §7.1001(f) explains the method the department will use to calculate the overhead assessment revenue need and rates set each year in the Commissioner order.

The following paragraphs provide an explanation of the method the department uses to determine examination overhead assessments.

In general, the department determines its revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; premium finance exam assessments; and funds in the self-directed budget account, as established under Insurance Code §401.252) by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from the previous fiscal year.

To determine total cost need, the department combines costs from the following: (i) appropriations set out in the current General Appropriations Act, which come from two funds, the General Revenue Dedicated "Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund" Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Subchapters D and F of Chapter 401 as approved by the Commissioner of Insurance for the self-directed budget account in the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the current fiscal year until the assessment collection period in the next fiscal year. From these combined costs, the department subtracts costs allocated to the Division of Workers' Compensation, including the

Office of Injured Employee Counsel, and the Workers' Compensation Research and Evaluation Group.

The department determines how to allocate the revenue need to be attributed to each funding source using the following method:

Each section within the department that provides services directly to the public or the insurance industry allocates the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, the self-directed budget account as limited by Insurance Code §401.252, or another funding source. The department applies these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculates a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The department uses this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the Commissioner's administration, and information technology. The department calculates the total of direct costs and administrative support costs for each funding source.

To complete the calculation of the revenue need, the department combines the costs allocated to the examination overhead assessment source and the self-directed budget account source. The department then subtracts the current fiscal year estimated amount of examination direct billing revenue from the amount of the combined costs of the examination overhead assessment source and the self-directed budget account source. The resulting balance is the amount of the examination revenue need for the purpose of calculating the examination overhead assessment rates.

To calculate the assessment rates, the department allocates 50% of the revenue need to admitted assets and 50% to gross premium receipts. The department divides the revenue need for gross premium receipts by the total estimated gross premium receipts for the previous calendar year to determine the proposed rate of assessment for gross premium receipts. The department divides the revenue need for admitted assets by the total estimated admitted assets for the previous calendar year to determine the proposed rate of assessment for admitted assets.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Robert Palm, program specialist in the Financial Services Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections imposed by statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Palm does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each of the first five years the proposed amendments are in effect, Mr. Palm expects that administering and enforcing the proposed amendments will have the public benefit of ensuring that the department's rules properly implement Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; and 843.156(h); and Labor Code §407A.252(b). Additionally, the amendments will allow for

the rates to be set by order sooner than can be done by rule, which benefits stakeholders, and preserves agency resources.

Mr. Palm expects that the proposed amendments will not increase the cost of compliance with Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; and 843.156(h); and Labor Code §407A.252(b), because they do not impose requirements beyond those in statute. Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; and 843.156(h); and Labor Code §407A.252(b), require that the Commissioner annually determine the rate of assessment of examination expenses. Any cost associated with the department collecting examination expenses, including the requirement that the department examine insurers and allocate the cost among entities regulated by the department, results from enforcing and administering statute, not from the proposed amendments.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** The department has determined the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. The proposed rule is designed to implement Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; and 843.156(h); and Labor Code §407A.252(b), and any economic impact results from these statutes. The proposed amendments do not impose requirements beyond those in statute and will not create an increase in cost of compliance with statute. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** The department has determined that this proposal does not impose a possible cost on regulated persons.

**GOVERNMENT GROWTH IMPACT STATEMENT.** During the first five years that the proposed rule would be in effect, the proposed amendments, or their implementation:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create new regulation;
- will not expand, limit, or repeal existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

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

**REQUEST FOR PUBLIC COMMENT.** The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, December 7, 2020. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or

to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on December 7, 2020. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** The department proposes amendments to §7.1001 under Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; 843.156(h); and 36.001; and Labor Code §407A.252(b).

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the Commissioner or Comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the Commissioner administers money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §401.151 provides that a domestic insurer examined by the department or under the department's authority must pay the expenses of the examination in an amount the Commissioner certifies as just and reasonable. Insurance Code §401.151 also provides that the department collect an assessment at the time of the examination to cover all expenses attributable directly to that examination, including the salaries and expenses of department employees and expenses described by Insurance Code §803.007. Section 401.151 also requires that the department impose an annual assessment on domestic insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of Texas relating to the examination of insurers. Additionally, §401.151 states that, in determining the amount of assessment, the department consider the insurer's annual premium receipts or admitted assets, or both, that are not attributable to 90% of pension plan contracts as defined by §818(a), Internal Revenue Code of 1986; or the total amount of the insurer's insurance in force.

Insurance Code §401.152 provides that an insurer not organized under the laws of Texas must reimburse the department for the salary and expenses of each examiner participating in an examination of the insurer and for other department expenses that are properly allocable to the department's participation in the examination. Section 401.152(a-1) requires that the department also impose an annual assessment on insurers not organized under the laws of this state subject to examination as described by the section in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of this state relating to the examination of insurers, and the amount imposed must be computed in the same manner as the amount imposed under §401.151(c) for domestic insurers. Section 401.152 also requires an insurer to pay the expenses under the section directly to the department on presentation of an itemized written statement from the Commissioner. Additionally, §401.152 pro-

vides that the Commissioner determine the salary of an examiner participating in an examination of an insurer's books or records located in another state based on the salary rate recommended by the National Association of Insurance Commissioners or the examiner's regular salary rate.

Insurance Code §401.155 requires the department to impose additional assessments against insurers on a pro rata basis as necessary to cover all expenses and disbursements required by law and to comply with Insurance Code Chapter 401, Subchapter D, and §§401.103, 401.104, 401.105, and 401.106.

Insurance Code §843.156(h) provides that Insurance Code Chapter 401, Subchapter D, applies to an HMO, except to the extent that the Commissioner determines that the nature of the examination of an HMO renders the applicability of those provisions clearly inappropriate.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of Texas.

Labor Code §407A.252(b) provides that the Commissioner of Insurance may recover the expenses of an examination of a workers' compensation self-insurance group under Insurance Code Article 1.16, which was recodified as Insurance Code §§401.151, 401.152, 401.155, and 401.156 by House Bill 2017, 79th Legislature, Regular Session (2005), to the extent the maintenance tax under Labor Code §407A.302 does not cover those expenses.

**CROSS-REFERENCE TO STATUTE.** Section 7.1001 implements Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; and 843.156(h); and Labor Code §407A.252(b).

*§7.1001. Examination Assessments for Domestic and Foreign Insurance Companies and Self-Insurance Groups Providing Workers' Compensation Insurance* [2020].

(a) Under Insurance Code §843.156 and for purposes of this section, the term "insurance company" includes a health maintenance organization as defined in Insurance Code §843.002.

(b) An insurer not organized under the laws of Texas (foreign insurance company) must pay the costs of an examination as specified in this subsection.

(1) Under Insurance Code §401.152, a foreign insurance company must reimburse the department for the salary and examination expenses of each examiner and other department employee participating in an examination of the insurance company allocable to an examination of the company. To determine the allocable salary for each examiner and other department employee, the department divides the average annual examiner's and other department employee's salary [of each examiner] by the [total] number of working hours [days] in a year. The department assesses the company the part of the annual salary attributable to each working hour [day] the examiner and other department employee examines the company during a year [2020]. The expenses the department assesses are those actually incurred by the examiner and other department employee to the extent permitted by law.

(2) Under Insurance Code §401.152(a-1), a foreign insurance company examined [in 2019] entirely in a single year, or an exam beginning in one year [2019] and completed in the next year will be assessed using the rate for the year the exam began [2020], and must pay an annual assessment in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of this state relating to the examination of insurers. The amount imposed must be

computed in the same manner as the amount imposed for domestic insurers as applicable under subsection (c) of this section.

(3) A foreign insurance company must pay the reimbursements and payments required by this subsection to the department as specified in each itemized bill the department provides to the foreign insurance company.

(c) Under Insurance Code §401.151, §401.155, and Chapter 803, a domestic insurance company must pay examination expenses and rates of overhead assessment in accordance with this subsection.

(1) A domestic insurance company must pay the [actual] salaries and expenses of the examiners and other department employees allocable to an examination of the company. The department divides the average annual examiner's and other department employee's salary [of each examiner is to be divided] by the [total] number of working hours [days] in a year, and assesses the company [is to be assessed] the part of the annual salary attributable to each working hour [day] the examiner and other department employee examines the company during a year [2020]. The expenses assessed must be those actually incurred by the examiner and other department employee to the extent permitted by law.

(2) Except as provided in paragraphs (3) and (4) of this subsection, the overhead assessment to cover administrative departmental expenses attributable to examination of companies is:

(A) a percentage, as specified in the Commissioner order addressed in subsection (e) of this section, [.00141 of 1 percent] of the admitted assets of the company as of December 31 each relevant year, [2019,] taking into consideration the annual admitted assets that are not attributable to 90 percent of pension plan contracts as defined in §818(a) of the Internal Revenue Code of 1986 (26 U.S.C. §818(a)); and

(B) a percentage, as specified in the Commissioner order addressed in subsection (e) of this section, [.00441 of 4 percent] of the gross premium receipts of the company for each relevant [the] year [2019], taking into consideration the annual premium receipts that are not attributable to 90 percent of pension plan contracts as defined in §818(a) of the Internal Revenue Code of 1986 (26 U.S.C. §818(a)).

(3) Except as provided in paragraph (4) of this subsection, if a company was a domestic insurance company for less than a full year during a calendar year [2019 because of a redomestication], the overhead assessment for the company is the overhead assessment required under paragraph (2)(A) and (B) of this subsection divided by 365 and multiplied by the number of days the company was a domestic insurance company during that calendar year [2019].

(4) If the overhead assessment required under paragraph (2)(A) and (B) of this subsection or paragraph (3) of this subsection produces an overhead assessment of less than \$25, a domestic insurance company must pay a minimum overhead assessment of \$25.

(5) The department will base the overhead assessments on the assets and premium receipts, including direct written and assumed premiums, reported in the annual statements.

(6) For the purpose of applying paragraph (2)(B) of this subsection, the term "gross premium receipts" does not include insurance premiums for insurance contracted for by a state or federal government entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of the Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. §§301 et seq.).

(d) Under Labor Code §407A.252, a workers' compensation self-insurance group must pay the [actual] salaries and expenses of the

examiners and other department employees allocable to an examination of the group. To determine the allocable salary for each examiner and other department employee, the department divides the average annual examiner's and other department employee's salary [of each examiner] by the [total] number of working hours [days] in a year. The department assesses the group the part of the annual salary attributable to each working hour [day] the examiner and other department employee examines the company during a year [2020]. The expenses the department assesses are those actually incurred by the examiner and other department employee to the extent permitted by law.

(e) The Commissioner will set the average annual examiner's and other department employee's salary rate and overhead assessment rates for each year by Commissioner order. [A domestic insurance company must pay the overhead assessment required under subsection (e) of this section to the Texas Department of Insurance as provided in the invoice not later than 30 days from the invoice date.]

(f) The overhead assessment rates set in the Commissioner order addressed in subsection (e) of this section are calculated as described in paragraphs (1) and (2) of this subsection.

(1) Overhead assessment revenue need is calculated as the amount of revenue needed to reach the targeted year-end fund balance, taking into account the beginning balance, expected direct billing revenues, and estimated expenditures.

(2) To calculate the assessment rates, the department allocates a percentage of the revenue need to admitted assets and a percentage to gross premium receipts, the assessment bases. Then the department divides the revenue need allocated to each assessment base by the assessment base.

(g) A domestic insurance company must pay the overhead assessment required under subsection (c) of this section to the Texas Department of Insurance as provided in the invoice not later than 30 days from the invoice date.

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

Filed with the Office of the Secretary of State on October 26, 2020.

TRD-202004471

James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 676-6584



## TITLE 34. PUBLIC FINANCE

### PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

#### CHAPTER 47. QUALIFIED DOMESTIC RELATIONS ORDERS

##### 34 TAC §47.17

The Teacher Retirement System of Texas (TRS) proposes amendments to §47.17 relating to calculation of alternate payee benefits before a member's benefit begins.

## BACKGROUND AND PURPOSE

TRS proposes amendments to TRS §47.17 relating to calculation of alternate payee benefits before a member's benefit begins. The proposed amendments change how reductions to member standard annuity payments are calculated after an alternate payee of a TRS member has elected to receive benefits under Texas Government Code §804.005. Recently, TRS has encountered multiple situations in which the reductions were so great that a member's standard annuity ended up being negative. The proposed amendments would prevent this outcome, simplify how TRS calculates the reductions, and be actuarially neutral to the fund. In addition, while some TRS members may face an increased reduction to their annuity payments in certain limited circumstances under the proposed amended rule, this increased reduction will never exceed the reduction those TRS members would have incurred if the member had retired before their former spouse elected for benefits under TRS §47.17 and the member's benefits were divided under the applicable qualified domestic relations order (QDRO).

Government Code §804.005 and TRS §47.17 authorize an alternate payee to elect to receive a portion of the actuarial equivalent of a member's accrued retirement benefit at the time of election in lieu of the interest awarded to the alternate payee under a QDRO. The alternate payee can make this election once the member is 62 years old or eligible for normal-age retirement, whichever is later, so long as the member has not yet retired.

If an alternate payee elects to receive these benefits, TRS must reduce the member's monthly standard annuity benefit when the member eventually retires based on the payments to the alternate payee. Under the existing rule, TRS bases the reduction on the actuarial equivalent of the alternate payee's benefits at the time the member retires, which means that the reduction to the member's benefit increases over time after the alternate payee elects to receive Section 804.005 benefits. In some instances, the increase to the reduction can become so great that the member ends up with a negligible or negative annuity at the time of retirement.

To remedy this issue, TRS proposes reducing the member's standard annuity at the time of retirement by the alternate payee's unadjusted QDRO share of the member's accrued benefit at the time of the alternate payee's Section 804.005 election. This calculation bases the reduction to the member's annuity on the actuarial equivalent of the alternate payee's benefits at the time the alternate payee elected to receive the payments. For example, if at the time of an alternate payee's election a member's accrued benefit was \$1,000 and the alternate payee's QDRO interest was 50%, the reduction to the member's standard annuity at the time of retirement would simply be \$500. In addition, the reduction to the member's standard annuity would not increase in the time between the alternate payee's Section 804.005 election and the member's retirement as it would under the current rule, which means that a member will never have a negative annuity under the proposed rule.

In addition to this proposed amended calculation, TRS staff also proposes several non-substantive amendments to TRS §47.17 that streamline the rule and improve its readability. Under the proposed amended rule, TRS also removes the Tables for Interest Annuity Factors and Interest Accumulation Factors provided by the TRS actuary of record because the tables are no longer necessary to calculate benefits under the proposed amended rule. The new proposed actuarial table will only include the Life

Annuity Factors originally adopted to be effective September 1, 2019.

Lastly, TRS has determined that the proposed amended rule shall only apply to member retirements with effective dates of retirement or other distribution events that occur after the effective date of the rule. The rule will also only apply to alternate payee elections made after the effective date of the rule.

## FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended rule will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed amended rule.

## PUBLIC COST/BENEFIT

For each year of the first five years the proposed amended rule will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the amended rule will be to reduce the actuarial reduction for most TRS members whose alternate payees elected to receive benefits under Government Code §804.005. In addition, Mr. Green has determined that the amendments to the rule will enhance its readability. TRS's actuary of record, Gabriel, Roeder, Smith & Company, has stated that the change is actuarially sound and would not harm the fund.

Mr. Green has also determined that it is possible that some members may incur an increased reduction to their standard annuity based on the proposed amended rule though this should only occur under certain narrow circumstances. The circumstances include if the member's alternate payee dies after electing Government Code §804.005 benefits but before the member retires or if the member retires very shortly after the alternate payee has elected benefits and the alternate payee has had a birthday in the interim but the member has not. TRS cannot determine the exact amount of these increases because there are too many variables (such as member age, alternate payee age, and dates of death or retirement) in any given case that would modify that amount of the increase.

Under the proposed amended rule, however, the amount of the reduction to a member's standard annuity will never exceed the reduction a member would have incurred had the member retired at the time of the Government Code §804.005 election and had his or her benefits divided under the QDRO. In addition, TRS anticipates that the number of cases in which a member may face an increased reduction will be far outweighed by the number of cases in which members will have a reduced reduction.

## ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

## LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amended rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

## GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amended rule is in effect, the proposed amendments will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not create a new regulation; will not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

#### TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed amended rule, therefore, a takings impact assessment is not required under Government Code §2007.043.

#### COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amended rule because while some members may face an increased reduction to their standard annuities under the proposed amended calculation, the rule generally decreases the standard annuity reduction for most members subject to the proposed amended rule and is, therefore, excepted from this requirement under Government Code §2001.0045(c)(2).

#### COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

#### STATUTORY AUTHORITY

The amendments are proposed under the authority of Government Code §804.005, which provides that a public retirement system may adopt rules relating to the administration of that section; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

#### CROSS-REFERENCE TO STATUTE

The proposed amendments affect the following statutes: Government Code §804.002, which relates to the division of member benefits to an alternate payee pursuant to a QDRO; and Government Code §804.005, which establishes how an alternate payee of a TRS member may elect to receive benefits in lieu of the benefits awarded under a QDRO.

*§47.17. Calculation for Alternate Payee Benefits Before a Member's Benefit Begins.*

[(a)] A "qualified domestic relations order" (QDRO) means a domestic relations order which creates or recognizes the existence of an alternate payee's right or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a member or retiree under a public retirement system, which directs the public retirement system to disburse benefits to an alternate payee, and which meets the requirements of Government Code, §804.003 and Internal Revenue Code §414(p)(1)(A)(i) and §414(p)(1)(B).]

[(a)] [(b)] An alternate payee of a TRS member is eligible to receive the benefits described by Government Code §804.005 if: [The retirement system shall pay any eligible alternate payee who]

[(1)] the alternate payee has a qualified domestic relations order ("QDRO") [QDRO] approved by TRS ; [the retirement system]

[(2)] the alternate payee submits a written request to TRS to receive these benefits; and

[(3)] the member meets the requirements of subsection (b) of this section [and who elects such payments, an amount that is the alternate payee's portion of the actuarial equivalent of the accrued benefit of the member of the retirement system, determined as if the member retired on the date of the alternate payee's election. The amount will become payable, upon receipt of a written request and a certified copy of a domestic relations order determined to be qualified, in accordance with the order, and in the form of an annuity payable in equal monthly installments for the life of the alternate payee.].

[(b)] [(e)] The alternate payee of a TRS member may only elect to receive benefits under this section if the [This method of distribution may be elected only when there is a] member [whose benefits are subject to partial payment under the law;]

[(1)] [who] has not retired;

[(2)] [who] has attained the greater of either the age of 62 and is eligible to retire without reduction for early age retirement, or normal retirement age and service requirements for service retirement; and

[(3)] [who] retains credit and contributions in TRS [the retirement system] attributable to that service.

[(c)] [(d)] If an alternate payee elects to receive benefits [be paid] under this section, the benefits will become payable once TRS receives a written request for the benefits and a certified copy of the qualified domestic relations order determined to be a QDRO [the retirement system shall reduce the benefit payable by the system to the member or the member's beneficiary by the alternate payee's portion of the actuarial equivalent determined under this section ].

[(d)] [(e)] In figuring these benefits for the alternate payee and the adjusted standard annuity of the member's benefit as set forth in this section, TRS [the system] shall consider the member's benefit as a normal age standard service retirement annuity[;] without regard to any optional annuity chosen or beneficiary designated by the member.

[(e)] [(f)] The beginning of monthly payments under this section terminates any interest that the alternate payee who receives the payment might otherwise have in benefits that accrue to the account of the member after the date the initial payment to the alternate payee is made.

[(f)] [(g)] An alternate payee who elects this method of payment has only a right to receive an annuity for life as calculated in this section and does not have the right to pass on any portion of his/her benefit upon his/her death. There is no reversion of the alternate payee's benefit to the member upon the alternate payee's death, irrespective of whether the death occurs before or after the member's benefit commencement.

[(g)] [(h)] TRS will use Tables for Life Annuity Factors [, Interest Annuity Factors, and Interest Accumulation Factors] furnished by the TRS actuary of record to calculate the actuarially equivalent portion of the member's accrued benefit payable to an alternate payee under this section.

Figure: 34 TAC §47.17(g)

[Figure 34 TAC §47.17(h)]

[(h)] [(i)] Except as otherwise provided by this section, TRS shall calculate the alternate payee's actuarial equivalent benefit in the following manner [To calculate the alternate payee's actuarial equivalent benefit, the following procedure will be followed]:

[(1)] Determine the member's accrued monthly benefit as of the alternate payee's benefit commencement date.

(2) Determine the member's age and the alternate payee's age as of the alternate payee's benefit commencement date.

(3) Determine the appropriate percent of the member's accrued benefit payable to the alternate payee under the terms of the QDRO.

(4) ~~[Calculate the alternate payee's actuarial equivalent monthly benefit by multiplying]~~ Multiply the member's accrued benefit times the life annuity factor at member's age times the alternate payee's percent. Then, divide that figure by the life annuity factor at alternate payee's age.

(i) ~~[(j)]~~ Except as otherwise provided by this section, TRS shall calculate a member's adjusted standard annuity by reducing the member's standard annuity monthly benefit at the time of retirement by an amount equal to the percent of the member's benefit payable to the alternate payee under the QDRO multiplied by the member's accrued monthly benefit as of the alternate payee's benefit commencement date. ~~[To calculate the member's adjusted standard annuity, there are two scenarios:~~

~~[(1) the alternate payee elects a monthly income and survives until the member annuity commencement date (MACD); or]~~

~~[(2) the alternate payee elects monthly income and dies before the MACD.]~~

~~[(k) When the alternate payee elects under subsection (j)(1) of this section, the formula used to reduce the member's standard annuity is the member's standard annuity monthly benefit amount minus the figure derived by dividing the total reserve for benefits to the alternate payee by the life annuity factor of the member at the member's age at MACD. The total reserve for the benefits to the alternate payee is the reserve for payments made to the alternate payee prior to MACD plus the reserve for payments made to the alternate payee after MACD. The reserve for payments made to the alternate payee after MACD is the alternate payee monthly benefit amount times the life annuity factor of the alternate payee at the alternate payee age at MACD. The reserve for payments made to the alternate payee prior to MACD is the alternate payee monthly benefit amount times the interest annuity factor to reflect payments of the number of payments before MACD.]~~

~~[(l) When the alternate payee elects under subsection (j)(2) of this section, the formula used to reduce the member's standard annuity monthly benefit amount is the member's standard annuity monthly benefit amount before the reflection of payments to the alternate payee under this section minus the figure derived by dividing the total reserve for payments made to the alternate payee by the life annuity factors of the member at the member's age at MACD. The total reserve for payments made to the alternate payee is the alternate payee monthly benefit amount times the interest annuity factor to reflect payment of the number of payments before death times the interest accumulation factor to reflect interest of the number of full months from the date of death of the alternate payee to the MACD.]~~

(j) ~~[(m)]~~ If the member dies before retiring: [MACD and]

(1) the member's adjusted standard annuity must be used for any benefit due after death if a standard annuity is used to calculate that [any] benefit; [due after death, benefits payable on behalf of the member must be based on the member's adjusted standard annuity.]

(2) the [The] balance of the accumulated contributions in the member savings account payable to a beneficiary must [also] be adjusted to reflect the payment to the alternate payee by reducing the accumulated contributions in the member savings account by the QDRO percentage described in subsection (h)(3) [(i)(3)] of this section; and[.]

(3) a [A] benefit [of an amount equal to twice the member's annual compensation for the school year immediately preceding the school year in which the member dies; or twice the member's rate of annual compensation for the school year in which the member dies] payable under Government Code[.] §824.402(a)(1) and (2)[.] or a lump sum payment of \$2,500.00 plus an applicable monthly benefit as described in Government Code[.] §824.404[.] is not reduced by payments made to the alternate payee under this section [Government Code, §804.005].

(k) ~~[(n)]~~ If the member dies after retiring: [MACD:]

(1) the \$10,000.00 lump sum survivor benefits or the \$2,500.00 lump sum payment plus an applicable monthly benefit payable to a beneficiary under Government Code[.] §824.501 and §824.404, are not reduced as a result of payments to an alternate payee under this section; and [rule.]

(2) any [Any] payments paid pursuant to Government Code[.] §824.407 must be reduced by first reducing the account balance at the time of retirement by the QDRO percentage described in subsection (h)(3) [(i)(3)] of this section.

(l) ~~[(o)]~~ If the member elects to terminate membership in TRS before retirement [MACD], the accumulated [member] contributions in the member account before a refund is processed[.] must be reduced by the QDRO percentage described in subsection (h)(3) [(i)(3)] of this section.

(m) ~~[(p)]~~ When new law provides for an increase in the benefit payable to the member after the commencement of the payment of an annuity to the member, the increase will be distributed by increasing the member's and the alternate payee's benefit as provided by the law for an increase to the member's benefit so long as there is no additional actuarial cost to TRS [the system] or unless provided otherwise by the legislature.

(n) ~~[(q)]~~ To reinstate withdrawn service reduced under subsection (l) of this section, a A] person [; who has previously withdrawn service that was reduced by a QDRO percentage as described in subsection (o) of this section and who wishes to reinstate the service;] must deposit the amount withdrawn or refunded and the fees required by law. Benefits payable based wholly or [even] in part on the terminated service will be reduced as described in this section as if the service had not been terminated.

(r) When a member who has an alternate payee drawing benefits enters a Deferred Retirement Option Plan (DROP) DO YOU WANT; TRS will use the adjusted standard annuity in the calculation for the member's DROP.]

(s) When a member who is participating in DROP has an alternate payee to begin a distribution under the Government Code, §804.005, the retirement system will use the adjusted standard annuity to calculate all future DROP transfers beginning with the initial month that a distribution is payable to the alternate payee. When calculating the member's adjusted standard annuity, the amount of the annuity paid to the alternate payee that represents the annuitized portion of the DROP balance shall not be included in the calculation. TRS shall use only the portion of the payment to the alternate payee that represents the alternate payee's share of the monthly annuity.]

(o) ~~[(t)]~~ When a member who has an alternate payee receiving [drawing] benefits under this section elects a partial lump-sum option, TRS will use the member's adjusted standard annuity in the calculation for the member's partial lump-sum payment.

(p) ~~[(u)]~~ If [In the event] the total distribution amount awarded to the alternate payee in a QDRO is limited to a specific dollar amount,

TRS shall [the following procedure will be followed to] calculate the alternate payee's actuarial equivalent benefit as follows:

(1) Determine the alternate payee's age as of the alternate payee's benefit commencement date.

(2) Calculate the alternate payee's actuarial equivalent monthly benefit by multiplying the member's accrued benefit times the life annuity factor at member's age times the alternate payee's percent. Compare the product to the specific dollar limit amount. If the specific dollar limit amount is the smaller amount, divide the specific dollar limit amount awarded to the alternate payee by the life annuity factor at alternate payee's age to determine the alternate payee's monthly benefit. If the specific dollar limit amount is larger than the product of the member's accrued benefit times the life annuity factor at member's age times the alternate payee's percent, divide the product by life annuity factor at alternate payee's age to determine the alternate payee's monthly benefit.

~~[(v)] In the event the alternate payee dies prior to receiving the total limited distribution awarded to the alternate payee in a QDRO and before the MACD, calculate the member's adjusted standard annuity as described in subsection (j)(2) of this section.]~~

~~(q) [(w)] When a member who is participating in the deferred retirement option plan ("DROP") [DROP] has an alternate payee [to] begin a distribution under this section [the Government Code, §804.005], TRS will calculate the alternate payee's actuarial equivalent benefit by multiplying the member's accrued benefit times the life annuity factor at member's age plus the balance of the DROP times the alternate payee's percent. That figure shall then be divided by the life annuity factor at alternate payee's age.~~

~~(r) [(x)] When a member who is participating in DROP has an alternate payee [to] begin a distribution under this section [the Government Code, §804.005], TRS will reduce the DROP account by applying the percentage of the member's accrued benefit payable to the alternate payee under the terms of the qualified domestic relations order beginning with the initial month that a distribution is payable to the alternate payee.~~

~~(s) [(y)] If [In the event] the amount of monthly retirement benefit awarded to the alternate payee in the QDRO is a stated monthly amount rather than a percentage, TRS shall determine the alternate payee's actuarial equivalent benefit by multiplying the stated monthly amount times the life annuity factor at the member's age and then dividing the product by the life annuity factor at the alternate payee's age.~~

~~(t) [(z)] If [In the event] the amount of monthly retirement benefit awarded to the alternate payee in the QDRO is a percentage of the benefit but limited to no more than a stated monthly amount, TRS shall determine the alternate payee's actuarial equivalent benefit by multiplying the member's accrued benefit times the life annuity factor at member's age times the alternate payee's percent, then dividing that product by the life annuity factor at alternate payee's age. If the amount derived from this calculation is smaller than the stated monthly amount, the amount calculated is the alternate payee's actuarial equivalent benefit. If the amount derived from this calculation is larger than the stated monthly amount, the alternate payee's actuarial equivalent benefit is calculated by dividing the stated monthly amount by the life annuity factor at the alternate payee's age.~~

~~(u) If the amount of the monthly retirement benefit awarded to the alternate payee in the QDRO is a percentage of the benefit but limited to no more than a stated monthly amount, TRS shall determine the member's adjusted standard annuity by reducing the member's standard annuity monthly benefit at the time of retirement by the lesser of~~

~~the stated monthly amount and the amount of the reduction calculated under subsection (i) of this section.~~

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

Filed with the Office of the Secretary of State on October 23, 2020.

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Don Green

Chief Financial Officer

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6560



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

#### CHAPTER 700. CHILD PROTECTIVE SERVICES

The Department of Family and Protective Services (DFPS) proposes amendments to §700.332 and §700.1013 in Title 40, Texas Administrative Code (TAC), Chapter 700, relating to Child Protective Services, in Subchapters C relating to Eligibility for Child Protective Services and J, relating to Assistance Programs for Relatives and Other Caregivers.

#### BACKGROUND AND PURPOSE

Currently, the Texas Administrative Code allows the Department to authorize funding for day care (also referred to as child-care) for a child in a foster care placement or in a relative or other designated caregiver placement if certain criteria are met. The rules currently provide that the Assistant Commissioner for Child Protective Services (CPS) may grant a good cause waiver of some of the requirements if the Assistant Commissioner determines that the child's placement cannot be or is unlikely to be sustained if the caregiver cannot receive day care, there is no reasonable alternative to the provision of day care, and the day care is only authorized for the periods of time the caregiver must be outside the home for employment.

However, although a request for day care services may be initiated by Child Protective Investigations (CPI) staff, the current rules do not address the authority of the Associate Commissioner for CPI to grant a waiver as the CPI Associate Commissioner position was only recently created in 2017 to oversee the newly created Investigations division of DFPS which includes child abuse and neglect investigations formerly under the CPS program. The current rules also do not allow for delegation of waiver decisions. This can lead to delays in the granting of waivers when an Associate Commissioner is unavailable. For foster or relative caregivers with a critical need for day care services for a child placed with them, a delay in receiving day care could lead to a placement breakdown and a loss of stability for the child.



Accordingly, the proposed amendments to the rules have three main purposes: (1) updating terminology, including changing Assistant Commissioner to Associate Commissioner to accurately reflect position titles; (2) allowing the Associate Commissioner for CPI to grant a good cause waiver of certain requirements related to payment for day care services for a child in the Department's conservatorship; and (3) allowing the CPI and CPS Associate Commissioners to delegate the authority for granting the waiver.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §700.332: (1) changes the title of the Assistant Commissioner for Child Protective Services to the Associate Commissioner for Child Protective Services, (2) adds the Associate Commissioner for Child Protective Investigations to the purview of the rule, and (3) allows both Associate Commissioners to delegate authority for granting a good cause waiver of certain requirements related to payment for day care services for a child in the Department's conservatorship who is placed with a foster parent(s).

The proposed amendment to §700.1013: (1) changes the title of the Assistant Commissioner for Child Protective Services to the Associate Commissioner for Child Protective Services, (2) adds the Associate Commissioner for Child Protective Investigations to the purview of the rule; and (3) allows both Associate Commissioners to delegate authority for granting a good cause waiver of certain requirements related to payment for day care services for a child in the Department's conservatorship who is placed with a relative or other designated caregiver.

#### FISCAL NOTE

David Kinsey, Chief Financial Officer of DFPS, 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.

#### GOVERNMENT GROWTH IMPACT STATEMENT

DFPS has determined that during the first five years that the section(s) will be in effect:

- (1) the proposed rule amendments will not create or eliminate a government program;
- (2) implementation of the proposed rule amendments will not affect the number of employee positions;
- (3) implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule amendments will not affect fees paid to the agency;
- (5) the proposed rule amendments will not create a new regulation;
- (6) the proposed rule amendments will not limit, or repeal an existing regulation but will expand a regulation in that they will allow the Associate Commissioner for CPI to grant waivers in addition to the Associate Commissioner for CPS, and they will authorize both Associate Commissioners to delegate authority to a designee to grant the waivers;
- (7) the proposed amendment will not increase the number of individuals subject to the rule; and
- (8) the proposed rule amendments will not affect the state's economy.

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Mr. Kinsey has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

The proposed amendment will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Pursuant to subsection (c)(7) of Texas Government Code §2001.0045, the statute does not apply to a rule that is adopted by the Department of Family and Protective Services.

#### PUBLIC BENEFIT

The Associate Commissioner for Child Protective Services and the Associate Commissioner for Child Protective Investigations have determined that for each year of the first five years the sections are in effect, the public will benefit from the Department being able to make decisions more quickly to ensure eligible children in DFPS conservatorship and their caregivers have access to day care services in cases where a waiver of requirements must be granted by the Associate Commissioner for Child Protective Services or the Associate Commissioner for Child Protective Investigations but those individuals are not immediately available.

#### REGULATORY ANALYSIS

The department has determined that this proposal is not a major environmental rule as defined by Government Code, §2001.0225.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Electronic comments and questions may be submitted to [RULES@dfps.state.tx.us](mailto:RULES@dfps.state.tx.us). Written comments on the proposal may be submitted to the Texas Register Liaison, Legal Services 19R14, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication of this proposal in the *Texas Register*.

#### SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

##### 40 TAC §700.332

#### STATUTORY AUTHORITY

The amendments are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the Department.

Section 700.332 implements Texas Family Code Sec. 264.124, which authorizes the Department, in accordance with Department rules, to implement a process to verify that each foster parent who is seeking monetary assistance from the department for day care for a foster child has attempted to find appropriate day-care services for the foster child through community ser-

vices, including Head Start programs, prekindergarten classes, and early education programs offered in public schools.

The statute requires the Department to specify the documentation the foster parent must provide to the Department to demonstrate compliance with the requirements established under the law. The Department may not provide monetary assistance to a foster parent for day care for a foster child without the required verification unless the Department determines the verification would prevent an emergency placement that is in the child's best interest.

§700.332. *Eligibility for Foster Care Day Care Services.*

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

(g) The Associate ~~[Assistant]~~ Commissioner for Child Protective Services, the Associate Commissioner for Child Protective Investigations, or the Associate Commissioners' designees, may grant a good cause waiver of any of the requirements in subsection (b) or (d) of this section, if that person determines that:

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

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

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

Filed with the Office of the Secretary of State on October 22, 2020.

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Tiffany Roper

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: December 6, 2020

For further information, please call: (512) 438-3397



## SUBCHAPTER J. ASSISTANCE PROGRAMS FOR RELATIVES AND OTHER CAREGIVERS

### DIVISION 1. RELATIVE AND OTHER DESIGNATED CAREGIVER PROGRAM

#### 40 TAC §700.1013

#### STATUTORY AUTHORITY

The amendments are proposed under Human Resources Code (HRC) §40.027, which provides that the Department of Family

and Protective Services commissioner shall adopt rules for the operation and provision of services by the Department.

Section 700.1013 implements Texas Family Code Sec. 264.775, which authorizes the Department, in accordance with Department rules, to implement a process to verify that each relative and designated caregiver who is seeking monetary assistance from the department for day care for a child in their care has attempted to find appropriate day-care services for the child through community services, including Head Start programs, prekindergarten classes, and early education programs offered in public schools.

The statute requires the Department to specify the documentation the relative or other designated caregiver must provide to the Department to demonstrate compliance with the requirements established under the law. The Department may not provide monetary assistance to a relative or other designated caregiver for day care for a child without the required verification unless the Department determines the verification would prevent an emergency placement that is in the child's best interest.

§700.1013. *Who is eligible for child-care services?*

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

(g) The Associate ~~[Assistant]~~ Commissioner for Child Protective Services, the Associate Commissioner for Child Protective Investigations, or the Associate Commissioners' designees, may grant a good cause waiver of any of the requirements in subsection (b) of this section if that person determines that:

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

(h) (No change.)

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

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Tiffany Roper

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3397

