TEXAS REGISTER

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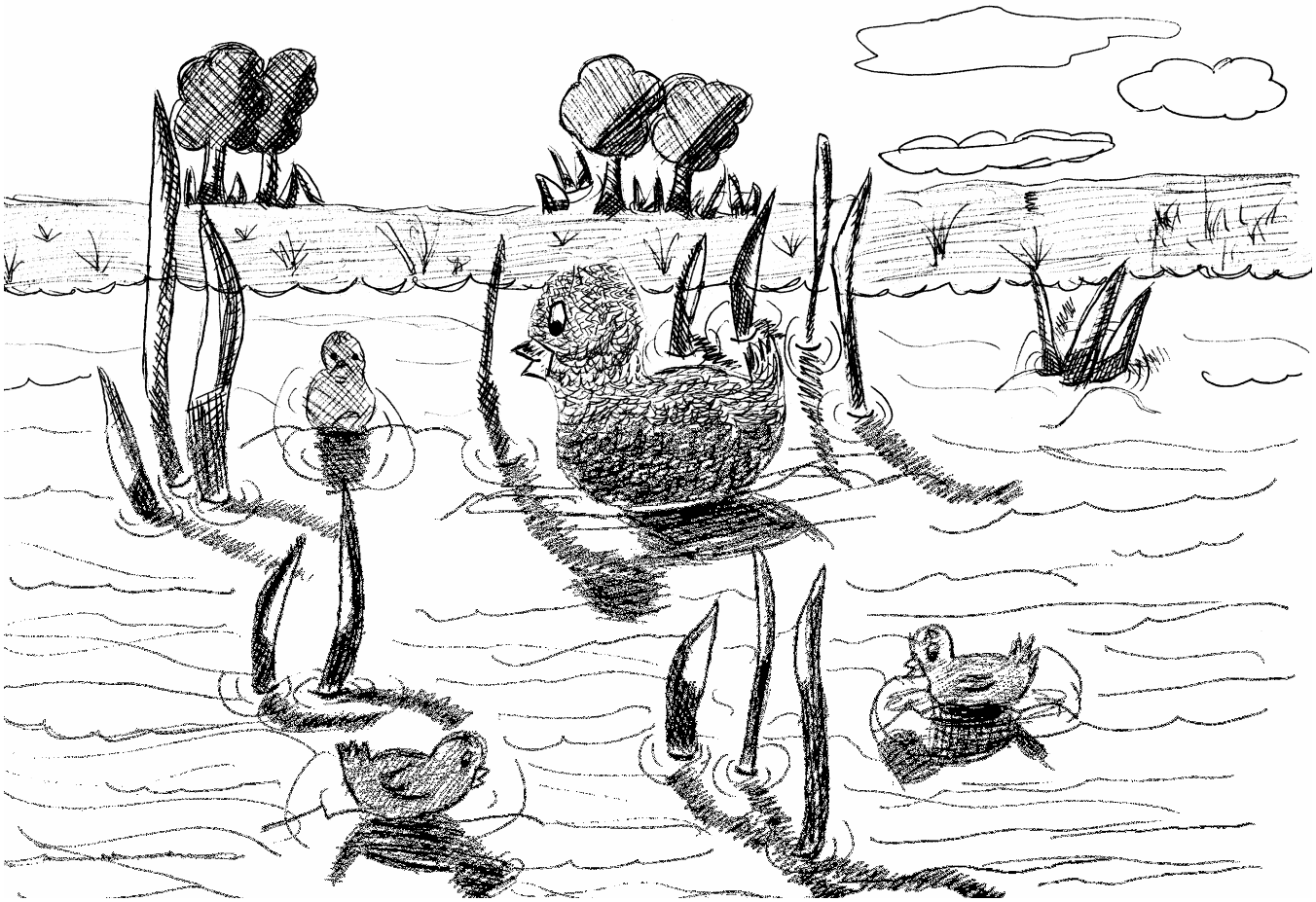
Danielle Pelletier



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

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IN THIS ISSUE

THE ATTORNEY GENERAL

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

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

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

Requests for Opinion

RQ-0578-GA

Requestor:

Mr. Timothy A. Braaten, Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

6330 U.S. Highway 290 East, Suite 200

Austin, Texas 78723

Re: Whether the Equal Protection Clauses of the United States and Texas Constitutions permit a private association to charge reduced fees to its members for continuing education courses approved by the Texas Commission on Law Enforcement Officer Standards and Education (RQ-0578-GA)

Briefs requested by May 9, 2007

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

TRD-200701371
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: April 11, 2007

♦ ♦ ♦

Opinion

Opinion No. GA-0535

The Honorable Homero Ramirez

Webb County Attorney

Post Office Box 420268

Laredo, Texas 78042-0268

Re: Whether the trustees of an independent school district must change the terms of office of trustees from three to four years to comply with a statute requiring school districts to conduct joint elections with other political subdivisions (RQ-0538-GA)

S U M M A R Y

Section 11.0581 of the Education Code requires an independent school district to hold trustee elections as a joint election on the same uniform election date as the election for members of the governing body of a municipality located in the school district or the general election for state and county officers. If a school district with three-year trustee terms cannot comply with the election requirements stated in section 11.0581, it must change to four-year trustee terms.

Sections 11.0581 and 11.059 of the Education Code authorize the board of trustees of an independent school district to change three-year trustee terms to four-year terms. An expired subsection of section 11.059 has no force or effect.

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

TRD-200701370
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: April 11, 2007

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EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 137. DISABILITY MANAGEMENT

SUBCHAPTER D. TREATMENT PLANNING

28 TAC §137.300

The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division) adopts on an emergency basis an amendment to §137.300, concerning Required Treatment Planning, to change the applicability date for required treatment planning from health care provided on or after May 1, 2007, to health care provided on or after September 1, 2007. Section 137.300 is part of rules adopted relating to disability management. The disability management rules include 28 Texas Administrative Code §§137.10, 137.100, 137.300, and were adopted and published in the January 12, 2007, issue of the *Texas Register* (32 TexReg 163). Section 137.300(g) established an effective date for the implementation of the required treatment planning section of disability management rules.

Since publication of the adopted rules, workers' compensation system participants, including insurance carriers, health care providers, and associations, expressed the need for additional time to establish systems and processes to appropriately address required treatment planning. The system participants expressed a concern that delay in treatment and services may be imminent because neither the health care providers that treat injured employees nor the workers' compensation insurance carriers that process the claims are prepared to initiate treatment planning as required under the newly adopted disability management rules. The system participants need additional time to communicate and develop treatment planning parameters that are mutually acceptable. System participants also indicated additional time is needed to determine approximately how many injured employees will require a treatment plan. Once the rule becomes effective, treatment planning may apply to many injured employees, new and existing. This could result in a significant number of treatment plans that need to be developed by the health care providers and approved by the insurance carriers. In order to avoid any lapse in an injured employee's health care, the system participants must be fully capable of implementing treatment planning.

Pursuant to §8.005(e), House Bill 7, enacted by the 79th Texas Legislature, Regular Session 2005, the Commissioner of Workers' Compensation may adopt emergency rules and is not required to make the finding described by Government Code §2001.034(a).

Considering the concerns expressed, it is evident that providing workers compensation system participants with additional time to implement treatment planning into their processing systems and business operations will help facilitate a smoother transition of the treatment planning requirements in the disability management rules. It is necessary to adopt this amendment on an emergency basis to change the applicability date of §137.300 prior to May 1, 2007. This will allow the carriers and providers sufficient time to establish mutually acceptable parameters for required treatment planning and to prepare their processing systems and business practices.

The amendment is adopted on an emergency basis under Labor Code §§413.011(e), 413.011(g), 401.011, 413.021, 409.005, 408.023, 408.025, 413.017, 413.018, 413.013, 408.021, 402.00111, 402.061, as well as §8.005(e), House Bill 7 enacted by the 79th Legislature, Regular Session, effective September 1, 2005, and the Administrative Procedures Act, Texas Government Code §2001.034. Section 413.011(e) provides that the Commissioner by rule shall adopt treatment guidelines and return-to-work guidelines and may adopt individual treatment protocols with specific criteria for such adoption. Section 413.011(g) provides that the Commissioner may adopt rules relating to disability management that are designed to promote appropriate health care at the earliest opportunity after the injury to maximize injury healing and improve stay-at-work and return-to-work outcomes through appropriate management of work-related injuries or conditions. Section 401.011 contains definitions used in the Texas workers' compensation system (in particular, §401.011(18-a), the definition of "evidence-based medicine," §401.011(22-a), the definition of "health care reasonably required" and §401.011(42), the definition of "treating doctor"). Section 413.021 requires an insurance carrier to provide the employer with return-to-work coordination services as necessary to facilitate an employee's return to employment. Section 409.005 provides the procedure for filing a report of injury, the format to be used, authorizes the adoption of rules regarding the information that must be included in the report, and requires the employer to notify the employee, the treating doctor, and the insurance carrier of the existence or absence of opportunities for modified duty or a modified duty return-to-work program available through the employer. Section 408.023 requires the Division to develop a list of doctors licensed in Texas who are approved to provide health care services under the Workers' Compensation Act and authorizes the Commissioner to adopt rules to define the role of the treating doctor and to specify outcome information to be collected for a treating doctor. Section 408.025 authorizes the Commissioner by rule to adopt requirements for reports and records, and provides that the treating doctor is responsible for maintaining efficient utilization of health care. Section 413.017 provides that certain medical

services are presumed reasonable. Section 413.018 provides that the commissioner by rule shall provide for the periodic review of medical care provided in claims in which guidelines for expected or average return to work time frames are exceeded and the Division shall review the medical treatment provided in a claim that exceeds the guidelines and may take appropriate action to ensure that necessary and reasonable care is provided. Section 413.013 authorizes the Commissioner by rule to establish programs for prospective, concurrent, and retrospective review and resolution of disputes regarding health care treatments and services, for the systematic monitoring of the necessity of treatments administered and fees charged and paid for medical treatments to ensure that the medical policies or guidelines are not exceeded, to detect practices and patterns by insurance carriers, and to increase the intensity of review for compliance with the medical policies or fee guidelines. Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed (specifically health care that enhances the ability of the employee to return to or retain employment) and provides that, except in an emergency, all health care must be approved or recommended by the employee's treating doctor. Section 402.00111 provides that the Commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the Commissioner of workers' compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act. Government Code §2004.034 provides for the adoption of administrative rules on an emergency basis without notice and comment.

§137.300. Required Treatment Planning.

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

(g) This section applies to health care provided on or after September [~~May~~] 1, 2007.

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

Filed with the Office of the Secretary of State on April 5, 2007.

TRD-200701305
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective Date: April 5, 2007
Expiration Date: August 2, 2007
For further information, please call: (512) 804-4715

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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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER T. NOXIOUS AND INVASIVE PLANTS

4 TAC §19.300

The Texas Department of Agriculture (the department) amends §19.300, concerning a list of noxious and invasive plants. Amendments to §19.300 are necessary to implement the establishment of an invasive plant list in accordance with Texas Agriculture Code (the Code), §71.151, which requires the department, by rule, to publish a list of noxious and invasive plant species that have serious potential to cause economic or ecological harm to the state. The department has consulted with representatives from the agriculture industry, the horticulture industry, the Texas Cooperative Extension, the Texas Department of Transportation, the State Soil and Water Conservation Board, and the Texas Department of Parks and Wildlife in the preparation of this list. The department has considered scientific data and the economic impact of each plant species listed. Amendments to §19.300 establishes a list of invasive plants for Texas. Four plants are proposed for designation as invasive: Chinese tallowtree (*Triadica sebiferum*), kudzu (*Pueraria montana* var. *lobata*), saltcedar (*Tamarix* spp.), and tropical soda apple (*Solanum viarum*).

Dr. Awinash Bhatkar, Coordinator of Plant Quality Programs, has determined that, for the first five years the new section is in effect, there will be no fiscal implications for state or local government.

Dr. Bhatkar has also determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing and administering the new section will be the recognition of plants in Texas that may cause economic or ecological harm to the state. By law, the noxious and invasive plants listed may not be sold, distributed, or imported in Texas. There will be no cost to microbusinesses, small businesses, or individuals required to comply with this proposal.

Comments on the proposal may be submitted to Dr. Awinash Bhatkar, Coordinator of Plant Quality Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §19.300 are proposed under the Texas Agriculture Code (the code), §71.151, which authorizes the department to publish by rule a list of noxious and invasive plant species that have serious potential to cause economic or ecological harm to the state.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.300. Noxious and Invasive Plant List.

(a) The following plants have serious potential to cause economic or ecological harm to the state.
Figure: 4 TAC §19.300(a)
[~~Figure: 4 TAC §19.300(a)~~]

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

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

Filed with the Office of the Secretary of State on April 9, 2007.

TRD-200701310
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: May 20, 2007
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §402.204

The Texas Lottery Commission (Commission) proposes new Title 16, Part 9, Chapter 402, Subchapter B, §402.204 (relating to Prohibited Price Fixing). New §402.204 will provide additional information to manufacturers, distributors, and authorized organizations relating to Texas Occupations Code §2001.556 regarding prohibited price fixing. The proposed new rule is being filed concurrently with the withdrawal of an incorrect version of the proposed rule §402.204 which was published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1178). The rule is being withdrawn because it was the incorrect version of the proposed rule. It was not the version the Commission voted to

propose for public comment. The error was discovered on April 4, 2007.

New subsection (a) sets forth definitions for horizontal price fixing, price fixing agreement, supplier, and vertical price fixing.

New subsection (b) sets forth prohibition of horizontal price fixing.

New subsection (c) sets forth prohibition of vertical price fixing.

New subsection (d) states that it is not a defense to horizontal or vertical price fixing that the fixed or agreed upon price is reasonable.

Finally, new subsection (e) addresses recordkeeping requirements.

The new rules are promulgated under Occupations Code §2001.054, which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Kathy Pyka, Controller, has determined that for the first five-year period there will be no significant fiscal impact for state or local government as a result of enforcing this new rule. Any costs to the State could be absorbed by current resources. There will be no adverse effect on small businesses, micro businesses, or local or state employment.

Philip D. Sanderson, Assistant Director of the Charitable Bingo Operations Division, has determined that for each of the first five years the new rules are in effect, licensees will benefit because the new section is designed to provide clarification relating to prohibited price fixing. The new rule will provide licensees with additional information to assist them in remaining in compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

Comments on the proposed new rule may be submitted to Sandra Joseph, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. Comments may also be submitted online at www.txlottery.org. The Commission will hold a public hearing on this proposal at 9:00 a.m. on May 2, 2007, at 611 E. 6th Street, Austin, Texas. Comments must be received within 30 days after publication of this proposed new rule in order to be considered.

The new section is proposed pursuant to Occupations Code §2001.054, which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

The new rule implements Occupations Code, Chapter 2001.

§402.204. Prohibited Price Fixing.

(a) Definitions.

(1) horizontal price fixing--a price fixing agreement:

(A) between competitors on the same level of distribution, such as a price fixing agreement between two or more bingo equipment or supplies manufacturers; or

(B) between two or more bingo equipment or supplies distributors; or

(C) between two or more suppliers.

(2) price fixing agreement--an express or implied agreement to fix, set, control, maintain, or stabilize prices at any level.

(3) supplier--a licensed or unlicensed manufacturer or distributor of bingo equipment or supplies or any person, group, or entity with an ownership interest of 5% or greater in a manufacturer or distributor of bingo equipment or supplies.

(4) vertical price fixing--a price fixing agreement between parties on different levels of the same chain of distribution regarding the price that one of the parties will charge further down the distribution chain, such as an agreement between a bingo equipment or supplies manufacturer and a bingo equipment or supplies distributor regarding the price that the bingo equipment or supplies distributor will charge to the licensed authorized organization.

(b) Horizontal Price Fixing Prohibited.

(1) Horizontal price fixing agreements are prohibited.

(2) Evidence of uniform prices or exchange of past or historical price information alone shall not be sufficient to establish a violation of paragraph (1) of this subsection or Texas Occupations Code §2001.556.

(c) Vertical Price Fixing Prohibited.

(1) Vertical price fixing agreements are prohibited.

(2) Each distributor shall have full discretion in setting the distributor's sales or lease prices for bingo equipment or supplies to authorized organizations.

(3) A manufacturer may not set or control the sales or lease price that a distributor charges a licensed authorized organization for bingo equipment or supplies.

(4) A manufacturer may not set a minimum price on any sales or lease price that a distributor charges a licensed authorized organization for bingo equipment or supplies.

(5) A manufacturer may not prohibit a distributor from offering price discounts, rebates, credits, promotional allowances, or any other arrangement affecting the price paid by the purchaser or lessee of bingo equipment or supplies, to a licensed authorized organization.

(6) A manufacturer may not terminate a distributor's contract for failure to charge the manufacturer's suggested retail price.

(7) Discussions, suggestions, or the exchange of information between a manufacturer and a distributor regarding the sales or lease price charged by a distributor to a licensed authorized organization are not, in and of themselves, violations of this paragraph and of Texas Occupations Code §2001.556, so long as the distributor retains discretion to establish its sales or lease price to licensed authorized organizations.

(8) Nothing in Texas Occupations Code §2001.556 shall prevent a manufacturer and distributor from negotiating or establishing the sales or lease price that the distributor will pay to the manufacturer for bingo equipment or supplies.

(d) It is not a defense to horizontal or vertical price fixing that the fixed or agreed upon price is reasonable.

(e) Recordkeeping Requirements. Manufacturers and distributors shall retain contracts, invoices or other documents sufficient to show wholesale and retail pricing information for a period of three years. This documentation shall be made available to the Commission upon request, in accordance with §2001.216, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on April 9, 2007.

TRD-200701307

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 20, 2007
For further information, please call: (512) 344-5113

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

The Texas Education Agency (TEA) proposes amendments to §§89.1011, 89.1040, 89.1045, 89.1047, 89.1049, 89.1050, 89.1052, 89.1053, 89.1055, 89.1056, 89.1065, 89.1070, 89.1075, 89.1076, 89.1085, 89.1090, 89.1096, 89.1125, 89.1131, 89.1141, 89.1150, 89.1151, 89.1165, 89.1180, 89.1185, and 89.1191, and the repeal of §89.1060, concerning special education services. The proposed amendments and repeal would reflect changes required by the Individuals with Disabilities Education Improvement Act (IDEA 2004) Amendments of 2004, 34 Code of Federal Regulations (CFR), and Texas Education Code (TEC).

On December 3, 2004, President Bush signed into law the Individuals with Disabilities Education Improvement Act (IDEA 2004) Amendments of 2004, which contain many changes to the federal law pertaining to the education of students with disabilities. On October 13, 2006, the United States Department of Education, Office of Special Education Programs, published final federal regulations. As a result of the changes to the federal special education law and regulations, 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Commissioner's Rules Concerning Special Education Services, must be amended to reflect these changes to ensure school district compliance with new procedural and reporting requirements. The proposed rule actions for 19 TAC Chapter 89, Subchapter AA, add, revise, and delete text and update references to statutory citations to reflect changes in the IDEA 2004, 34 CFR, and the TEC and to reflect minor, technical corrections, as follows.

Division 2. Clarification of Provisions in Federal Regulations and State Law

Section 89.1011, Referral for Full and Individual Initial Evaluation, would be amended to reflect proposed revisions in 19 TAC §89.1040, relating to consideration of scientific, research-based intervention and other academic or behavior support services for all students prior to referral for possible special education services.

Section 89.1040, Eligibility Criteria, would be amended to reflect changes in the new IDEA regulations regarding learning disability eligibility, as well as stakeholder recommendations regarding mental retardation eligibility. Stakeholder recommendations indicate that the current definition regarding eligibility criteria for mental retardation in subsection (c)(5) is outdated and inconsistent with current research. Proposed new text in subsection (c)(5) would address this recommendation. Proposed new text in subsection (c)(9) would address changes in the new IDEA regulations regarding learning disability eligibility that require states to develop rules defining eligibility criteria for learning disabilities that are consistent with the new IDEA regulations. Clarification about other health impairments would be made in subsection (c)(8). Additional changes would be made throughout the section to reflect the renumbering of the new IDEA regulations.

Section 89.1045, Notice to Parents for Admission, Review, and Dismissal (ARD) Committee Meetings, would be amended to reflect the renumbering of the new IDEA regulations.

Section 89.1047, Procedures for Surrogate and Foster Parents, would be amended to be consistent with the new IDEA regulations and an amendment made to §89.1055(g), relating to transition services in 2004. Throughout §89.1047, citations to the IDEA regulations would be updated to reflect the renumbering of the new IDEA regulations. Subsection (a)(1)(D), concerning training for transition services, would be updated to reflect an amendment made to §89.1055(g) in 2004 concerning the consideration of transition services in the development of an individualized education program. In addition, deadlines for completing training when §89.1047 was initially adopted would be deleted from subsections (a)(3) and (4) and (b)(1) and (2) because they are obsolete. References to the Texas Department of Protective and Regulatory Services would be updated to reflect the agency's new name, the Texas Department of Family and Protective Services.

Section 89.1049, Parental Rights Regarding Adult Students, would be amended to reflect the renumbering of the new IDEA regulations.

Section 89.1050, The Admission, Review, and Dismissal (ARD) Committee, would be amended to reflect requirements of and update references to the new IDEA regulations. A new subsection (c) would address membership, attendance, and the excusal of ARD committee members. In addition, subsection (f) would be revised to address the interstate and intrastate transfers of students between school districts during the same school year.

Section 89.1052, Discretionary Placements in Juvenile Justice Alternative Education Programs (JJAEP), would be amended to reference the TEC, §37.007, rather than the TEC, §37.004, when addressing the expulsion of a student with a disability. Section 89.1052 originally addressed statutory provisions in the TEC, §37.004(e) - (f), however, the TEC, §37.004(e) - (g), expired September 1, 2005. The proposed amendment to §89.1052 would incorporate elements of the expired TEC, §37.004(e) - (f), into the commissioner's rule as new subsections (b) and (c) pursuant to the TEC, §29.001(7), which gives the Texas Education Agency rulemaking authority to ensure that an individualized education program for each student is properly developed, implemented, and maintained in the least restrictive environment that is appropriate to meet the student's educational needs. Another change would add proposed new subsection (a) to set forth the serious offenses cited in the TEC, §37.007, that would warrant expulsion. Changes would also be made in the section as applicable to reflect the renumbering of the new IDEA regulations.

Section 89.1053, Procedures for Use of Restraint and Time-Out, would be amended to remove specified outdated timeframes throughout the section. A reference to the new IDEA regulations would also be updated.

Section 89.1055, Content of the Individualized Education Program (IEP), would be amended to reflect recommendations of the Autism Rule Study Group regarding IEP considerations for

students with autism, as required in the TEC, §25.0051. The law required a rule study group to meet and provide recommendations to the commissioner of education, resulting in the clarification of existing considerations and the addition of new IEP considerations. Revisions in subsections (e) and (f) would address IEPs for students with autism spectrum disorders. In addition, subsection (b) would be revised to reflect changes in the new IDEA regulations regarding accommodations in the administration of assessment instruments developed in accordance with the TEC, §39.023. Changes would also be made in the section as applicable to reflect the renumbering of the new IDEA regulations.

Section 89.1056, Transfer of Assistive Technology Devices, would be amended to reflect the renumbering of the new IDEA regulations.

Section 89.1060, Definitions of Certain Related Services, would be repealed because of changes in the new IDEA regulations that now designate interpreting services as a related service. Due to this change in federal regulation, §89.1060 is no longer necessary.

Section 89.1065, Extended School Year Services (ESY Services), would be amended to reflect the renumbering of the new IDEA regulations.

Section 89.1070, Graduation Requirements, would be amended to clarify assessment requirements for graduation and to meet requirements of the new IDEA regulations. Revisions in subsection (b) would clarify the requirement of satisfactory performance on an alternate assessment instrument. Subsection (c) would be reorganized to clarify additional conditions that would satisfy graduation requirements consistent with a student's IEP. Subsection (e) would be substituted with new language describing provisions that must be addressed in a summary of academic achievement and functional performance. Subsection (h) would be deleted due to a change in the TEC, §39.024, and the subsequent subsection would be re-lettered accordingly.

Section 89.1075, General Program Requirements and Local District Procedures, would be amended to reflect the renumbering of the new IDEA regulations.

Section 89.1076, Interventions and Sanctions, would be amended to provide clarification regarding the new IDEA regulations, including reference to program effectiveness as well as compliance with federal and state requirements. The restriction that technical assistance be obtained from the education service center would be removed from paragraph (4). Other clarifications relating to monitoring, interventions, and sanctions would be provided in paragraphs (11) and (12).

Section 89.1085, Referral for the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf Services, would be amended to eliminate the current requirement in subsection (c)(1) that a school must list special education services it is unable to provide when referring a student to the Texas School for the Blind (TSBVI) or the Texas School for the Deaf (TSD). The requirement may discourage schools from referring students to TSD or TSBVI due to the perception it may leave the school open to legal action by the parent for failure to provide adequate services. The section would also be amended to update references to the United States Code.

Section 89.1090, Transportation of Students Placed in a Residential Setting, Including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf, would be amended to incorporate minor technical corrections.

Section 89.1096, Provision of Services for Students Placed by their Parents in Private Schools or Facilities, would be amended to add an option for students ages 3 or 4 placed by their parents in a private school to receive limited special education and related services through a services plan. This amendment would add an option in proposed new subsection (d) which would allow students with disabilities ages 3 or 4 to be dually enrolled in both public and private schools and to receive the services and protections available under an individualized education plan. Subsection (a) would be modified to add a definition of private school, which is now required as a result of the new IDEA regulations. The section would also be modified to reflect the renumbering of the new IDEA regulations and to re-letter subsections accordingly.

Division 4. Special Education Funding

Section 89.1125, Allowable Expenditures of State Special Education Funds, would be amended to remove reference to 34 CFR in keeping with changes resulting from the new IDEA regulations.

Division 5. Special Education and Related Service Personnel

Section 89.1131, Qualifications of Special Education, Related Service, and Paraprofessional Personnel, would be amended to reflect changes in the new IDEA regulations. Qualification requirements found in subsection (b)(3) for teachers of students meeting eligibility requirements for orthopedically impaired or other health impaired would be removed due to federal requirements of the new IDEA regulations regarding highly qualified personnel. Subsequent provisions would be re-numbered accordingly. Requirements found in re-numbered subsections (b)(3) and (4) regarding the attendance of teachers of students with visual or auditory impairments at ARD committee meetings would be deleted from this rule and included in the proposed amendment to 19 TAC §89.1050(c)(4). Other changes proposed in re-numbered subsection (b)(6) and subsection (d) with regard to emergency certifications of interpreters would reflect changes in the new IDEA regulations.

Division 6. Regional Education Service Center Special Education Programs

Section 89.1141, Education Service Center Regional Special Education Leadership, would be amended to reflect the renumbering of the new IDEA regulations.

Division 7. Resolution of Disputes Between Parents and School Districts

Section 89.1150, General Provisions, would be amended to reflect the renumbering of the new IDEA regulations.

Section 89.1151, Due Process Hearings, would be amended to reflect the renumbering of the new IDEA regulations. In addition, an outdated timeframe specified in subsection (c) would be deleted.

Section 89.1165, Request for Hearing, would be amended to reflect changes made as a result of the adoption of 34 CFR, §300.508. Subsection (a) would be changed to address the commencement of timelines applicable to due process hearings. New subsection (b) would be added to clarify that the party filing a hearing request must provide a copy of the request to the other party. Existing subsection (b) would be deleted and new

subsections (c) and (d) would be added to address information that must be included in the request for due process hearing.

Section 89.1180, Prehearing Procedures, would be amended to reflect changes made as a result of the adoption of 34 CFR, §300.508. Changes throughout the section would address the inclusion of specific items to be set out in a prehearing order by the hearing officer as a result of amendments to the IDEA 2004, including the resolution session and the opportunity to contest the sufficiency of the complaint. The requirement of a transcription of the prehearing conference by a certified court reporter would be added in new subsection (c) and existing subsections would be re-lettered accordingly. The language in existing subsection (h) related to dismissal or nonsuit after the Disclosure Deadline would be deleted in keeping with changes to 34 CRF, §300.508.

Section 89.1185, Hearing, would be amended to reflect changes made in applicable timelines for final resolution of due process hearings as a result of the adoption of 34 CFR, §300.510, which added the obligation of the resolution session into the due process hearings procedure. Subsections (a), (k), (l), and re-lettered (n) would be revised to address changes to timelines. Existing subsection (n) would be deleted and subsequent subsections re-lettered accordingly. The proposed amendment would also reflect the renumbering of the new IDEA regulations throughout the section.

Section 89.1191, Special Rule for Expedited Due Process Hearings, would be amended to reflect the renumbering of the new IDEA regulations.

Susan Barnes, associate commissioner for standards and programs, has determined that for the first five-year period the amendments and repeal are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments and repeal.

Dr. Barnes has determined that for each year of the first five years the amendments and repeal are in effect the public benefit anticipated as a result of enforcing the amendments and repeal will be consistent linkage to the IDEA Amendments of 2004 and its implementing regulations. School districts, the public, and students will benefit by having specific reference to the new federal requirements that provide for the education of students with disabilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and repeal.

Stakeholder meetings of parents, advocates, school districts, education service centers, support personnel organizations, and teacher and administrator organizations were convened in November 2006 and January 2007 during the development of the proposed rule changes. The public comment period on the proposed amendments and repeal to 19 TAC Chapter 89, Subchapter AA, begins April 20, 2007, and ends June 19, 2007. In addition, statewide public hearings will be scheduled for May 2007. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments and repeal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS AND STATE LAW

19 TAC §§89.1011, 89.1040, 89.1045, 89.1047, 89.1049, 89.1050, 89.1052, 89.1053, 89.1055, 89.1056, 89.1065, 89.1070, 89.1075, 89.1076, 89.1085, 89.1090, 89.1096

The amendments are proposed under 34 CFR, Part 300, which requires states to have policies and procedures in place to ensure the following: 34 CFR, §§300.100, the provision of a free appropriate public education to children with disabilities; 300.111, all children with disabilities are identified, located, and evaluated; 300.114, public agencies meet least restrictive environment requirements; 300.121, children with disabilities and their parents are afforded procedural safeguards; 300.124, the effective transition of children with disabilities from early intervention programs under Part C of the Individuals with Disabilities Education Act 2004 (IDEA 2004) to preschool programs under Part B of IDEA 2004; 300.129, local educational agencies meet requirements for parentally-placed private school children with disabilities; and 300.307, which requires states to adopt criteria for determining whether a child has a specific learning disability as defined in 34 CFR, §300.8(c)(10); and TEC, §§29.001, which authorizes the commissioner of education to adopt rules for the administration and funding of the special education program; 29.003, which authorizes the commissioner to develop specific eligibility criteria for the special education program; 29.005, which authorizes the commissioner to adopt a rule concerning requirements for the individualized education program of a student with autism or another pervasive developmental disorder; 29.010, which authorizes the commissioner to adopt rules to implement a system of sanctions for school districts whose most recent monitoring visit shows a failure to comply with major requirements of the IDEA, federal regulations, state statutes, or agency requirements necessary to carry out federal law or regulations or state law relating to special education; 29.011, which authorizes the commissioner to by rule adopt procedures for compliance with federal requirements relating to transition; 29.015, which authorizes the commissioner to adopt a rule that sets standards for foster and surrogate parent training; 29.017, which authorizes the commissioner to adopt rules concerning the transfer of parental rights to students with disabilities who are 18 years of age; 30.0015, which authorizes the commissioner to adopt a rule that sets standards for the transfer of assistive technology devices; 30.002, which authorizes the commissioner to adopt rules for the administration of the statewide plan for education students with visual impairments; 30.083, which authorizes the commissioner to adopt rules for the administration of the statewide plan for educating students who are deaf or hard of hearing; and 37.0021, which authorizes the commissioner to by rule adopt procedures for the use of restraint and time-out.

The amendments implement 34 CFR, §§300.100; 300.111; 300.114; 300.121; 300.124; 300.129; 300.307; and TEC, §§29.001; 29.003; 29.005; 29.010; 29.011; 29.015; 29.017; 30.0015; 30.002; 30.083; and 37.0021.

§89.1011. Referral for Full and Individual Initial Evaluation.

Referral of students for a full and individual initial evaluation for possible special education services shall be a part of the district's overall, general education referral or screening system. Prior to referral, students experiencing difficulty in the general classroom should be considered for all support services available to all students, such as tutorial;

[,] remedial; [,] compensatory; [,] response to scientific, research-based intervention; and other academic or behavior support services. If the student continues to experience difficulty in the general classroom after the provision of interventions, district personnel must refer the student for a full and individual initial evaluation. This referral for a full and individual initial evaluation may be initiated by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.

§89.1040. Eligibility Criteria.

(a) Special education services. To be eligible to receive special education services, a student must be a "child with a disability," as defined in 34 Code of Federal Regulations (CFR), §300.8(a), [~~§300.7(a),~~] subject to the provisions of 34 CFR, §300.8(c), [~~§300.7(c)~~] the Texas Education Code (TEC), §29.003, and this section. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law.

(b) Eligibility determination. The determination of whether a student is eligible for special education and related services is made by the student's admission, review, and dismissal (ARD) committee. Any evaluation or re-evaluation of a student shall be conducted in accordance with 34 CFR, §§300.301 - 300.306 and 300.122. [~~§§300.530 - 300.536.~~] The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility must include, but is not limited to, the following:

(1) a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability; or

(2) a licensed or certified professional for a specific eligibility category defined in subsection (c) of this section.

(c) Eligibility definitions.

(1) Autism. A student with autism is one who has been determined to meet the criteria for autism as stated in 34 CFR, §300.8(c)(1). [~~§300.7(c)(1).~~] Students with pervasive developmental disorders are included under this category. The team's written report of evaluation shall include specific recommendations for behavioral interventions and strategies.

(2) Deaf-blindness. A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness as stated in 34 CFR, §300.8(c)(2). [~~§300.7(c)(2).~~] In meeting the criteria stated in 34 CFR, §300.8(c)(2), [~~§300.7(c)(2),~~] a student with deaf-blindness is one who, based on the evaluations specified in subsections (c)(3) and (c)(12) of this section:

(A) meets the eligibility criteria for auditory impairment specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;

(B) meets the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but a speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;

(C) has documented hearing and visual losses that, if considered individually, may not meet the requirements for auditory impairment or visual impairment, but the combination of such losses adversely affects the student's educational performance; or

(D) has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without special education intervention, will adversely affect the student's educational performance.

(3) Auditory impairment. A student with an auditory impairment is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.8(c)(3), [~~§300.7(c)(3),~~] or for hearing impairment as stated in 34 CFR, §300.8(c)(5). [~~§300.7(c)(5).~~] The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on an auditory impairment must include an otological examination performed by an otologist or by a licensed medical doctor, with documentation that an otologist is not reasonably available. An audiological evaluation by a licensed audiologist shall also be conducted. The evaluation data shall include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification.

(4) Emotional disturbance. A student with an emotional disturbance is one who has been determined to meet the criteria for emotional disturbance as stated in 34 CFR, §300.8(c)(4). [~~§300.7(c)(4).~~] The written report of evaluation shall include specific recommendations for behavioral supports and interventions.

(5) Mental retardation. A student with mental retardation is one who has been determined to meet the criteria for mental retardation as stated in 34 CFR, §300.8(c)(6). [~~§300.7(c)(6).~~] In meeting the criteria stated in 34 CFR, §300.8(c)(6), [~~§300.7(c)(6),~~] a student with mental retardation is one who: [~~has been determined to be functioning at two or more standard deviations below the mean on individually administered scales of verbal ability, and either performance or nonverbal ability, and who concurrently exhibits deficits in adaptive behavior.~~]

(A) has been determined to have significantly sub-average intellectual functioning as measured by a standardized, individually administered test of cognitive ability in which the overall test score is at least two standard deviations below the mean, when taking into consideration the standard error of measurement of the test; and

(B) concurrently exhibits deficits in at least two of the following areas of adaptive behavior: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.

(6) Multiple disabilities.

(A) A student with multiple disabilities is one who has been determined to meet the criteria for multiple disabilities as stated in 34 CFR, §300.8(c)(7). [~~§300.7(c)(7).~~] In meeting the criteria stated in 34 CFR, §300.8(c)(7), [~~§300.7(c)(7),~~] a student with multiple disabilities is one who has a combination of disabilities defined in this section and who meets all of the following conditions:

(i) the student's disability is expected to continue indefinitely; and

(ii) the disabilities severely impair performance in two or more of the following areas:

(I) psychomotor skills;

(II) self-care skills;

(III) communication;

(IV) social and emotional development; or

(V) cognition.

(B) Students who have more than one of the disabilities defined in this section but who do not meet the criteria in subparagraph (A) of this paragraph shall not be classified or reported as having multiple disabilities.

(7) Orthopedic impairment. A student with an orthopedic impairment is one who has been determined to meet the criteria for orthopedic impairment as stated in 34 CFR, §300.8(c)(8). [~~§300.7(c)(8).~~] The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on an orthopedic impairment must include a licensed physician.

(8) Other health impairment. A student with other health impairment is one who has been determined to meet the criteria for other health impairment due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Disorder as stated in 34 CFR, §300.8(c)(9). [~~§300.7(c)(9). Students with attention deficit disorder or attention deficit hyperactivity disorder are included under this category.~~] The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on other health impairment must include a licensed physician.

(9) Learning disability.

(A) Prior to and as part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR, §§300.307 - 300.311, and in order to ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics, the following must be considered:

(i) data that demonstrates the child was provided appropriate instruction in reading (as described in 20 USC, §6368(3)), and/or mathematics within general education settings delivered by qualified personnel; and

(ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program.

[~~(A) A student with a learning disability is one who has been determined by a multidisciplinary team to meet the criteria for specific learning disability as stated in 34 CFR, §300.7(c)(10), and in whom the team has determined whether a severe discrepancy between achievement and intellectual ability exists in accordance with the provisions in 34 CFR, §§300.540 - 300.543. A severe discrepancy exists when the student's assessed intellectual ability is above the mentally retarded range, but the student's assessed educational achievement in areas specified in 34 CFR, §300.541, is more than one standard deviation below the student's intellectual ability.~~]

(B) A student with a learning disability is one who:

(i) has been determined through a variety of assessment tools and strategies to meet the criteria for a specific learning disability as stated in 34 CFR, §300.8(c)(10), in accordance with the provisions in 34 CFR, §§300.307 - 300.311; and

(ii) does not achieve adequately for the child's age or meet state-approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving when provided appropriate instruction; and

(I) does not make sufficient progress when provided a process based on the child's response to scientific, research-based intervention (as defined in 20 USC, §7801(37)); or

(II) exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, grade-level standards, or intellectual ability.

[~~(B) If the multidisciplinary team cannot establish the existence of a severe discrepancy in accordance with subparagraph (A) of this paragraph because of the lack of appropriate evaluation instruments, or if the student does not meet the criteria in subparagraph (A) of this paragraph but the team believes a severe discrepancy exists, the team must document in its written report the areas identified under subparagraph (A) of this paragraph and the basis for determining that the student has a severe discrepancy. The report shall include a statement of the degree of the discrepancy between intellectual ability and achievement.~~]

(10) Speech impairment. A student with a speech impairment is one who has been determined to meet the criteria for speech or language impairment as stated in 34 CFR, §300.8(c)(11). [~~§300.7(c)(11).~~] The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a speech impairment must include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist.

(11) Traumatic brain injury. A student with a traumatic brain injury is one who has been determined to meet the criteria for traumatic brain injury as stated in 34 CFR, §300.8(c)(12). [~~§300.7(c)(12).~~] The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a traumatic brain injury must include a licensed physician, in addition to the licensed or certified practitioners specified in subsection (b)(1) of this section.

(12) Visual impairment.

(A) A student with a visual impairment is one who has been determined to meet the criteria for visual impairment as stated in 34 CFR, §300.8(c)(13). [~~§300.7(c)(13).~~] The visual loss should be stated in exact measures of visual field and corrected visual acuity at a distance and at close range in each eye in a report by a licensed ophthalmologist or optometrist. The report should also include prognosis whenever possible. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. In meeting the criteria stated in 34 CFR, §300.8(c)(13), [~~§300.7(c)(13),~~] a student with a visual impairment is one who:

(i) has been determined by a licensed ophthalmologist or optometrist:

(I) to have no vision or to have a serious visual loss after correction; or

(II) to have a progressive medical condition that will result in no vision or a serious visual loss after correction.

(ii) has been determined by the following evaluations to have a need for special services:

(I) a functional vision evaluation by a professional certified in the education of students with visual impairments or a certified orientation and mobility instructor. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation and an orientation and mobility evaluation; and

(II) a learning media assessment by a professional certified in the education of students with visual impairments. The learning media assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning media

are appropriate for the student and whether or not there is a need for ongoing evaluation in this area.

(B) A student with a visual impairment is functionally blind if, based on the preceding evaluations, the student will use tactual media (which includes Braille) as a primary tool for learning to be able to communicate in both reading and writing at the same level of proficiency as other students of comparable ability.

(13) Noncategorical. A student between the ages of 3-5 who is evaluated as having mental retardation, emotional disturbance, a specific learning disability, or autism may be described as noncategorical early childhood.

§89.1045. Notice to Parents for Admission, Review, and Dismissal (ARD) Committee Meetings.

(a) A district shall invite the parents and adult student to participate as members of the admission, review, and dismissal (ARD) committee by providing written notice in accordance with 34 Code of Federal Regulations (CFR), §§300.300, 300.322, and 300.503. [~~§§300.345, 300.503, and 300.505, and Part 300, Appendix A.~~]

(b) A parent may request an ARD committee meeting at any mutually agreeable time to address specific concerns about his or her child's special education services. The school district must respond to the parent's request either by holding the requested meeting or by requesting assistance through the Texas Education Agency's mediation process. The district should inform parents of the functions of the ARD committee and the circumstances or types of problems for which requesting an ARD committee meeting would be appropriate.

§89.1047. Procedures for Surrogate and Foster Parents.

(a) An individual assigned to act as a surrogate parent for a student with a disability, in accordance with 34 Code of Federal Regulations (CFR), §300.519, [~~§300.515,~~] relating to surrogate parents, must comply with the requirements specified in Texas Education Code (TEC), §29.001(10).

(1) Pursuant to TEC, §29.001(10)(A), an individual assigned to act as a surrogate parent must complete a training program in which the individual is provided with an explanation of the provisions of federal and state laws, rules, and regulations relating to:

(A) the identification of a student with a disability;

(B) the collection of evaluation and re-evaluation data relating to a student with a disability;

(C) the admission, review, and dismissal (ARD) committee process;

(D) the development of an individualized education program (IEP), including the consideration of transition services for a student who is at least 14 years of age; [~~and, for a student who is at least 16 years of age, an individual transition plan (ITP);~~]

(E) the determination of least restrictive environment;

(F) the implementation of an IEP;

(G) the procedural rights and safeguards available under 34 CFR, §§300.148, 300.151 - 300.153, 300.229, 300.300, 300.50 - 300.520, 300.530 - 300.537, and 300.61 - 300.627, [~~§§300.403, 300.500-300.529, 300.560-300.577, and 300.660-300.662,~~] relating to the issues described in 34 CFR, §300.504(c); [~~§300.504(b);~~] and

(H) the sources that the surrogate parent may contact to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities.

(2) The training program described in subsection (a)(1) of this section must be provided in the native language or other mode of communication used by the individual who is to serve as a surrogate parent.

(3) The individual assigned to act as a surrogate parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after [~~the effective date of this rule or~~] the date of initial assignment as a surrogate parent. [~~, whichever comes later.~~] Once an individual has completed a training program conducted or provided by or through the Texas Department of Family and Protective Services (TDFPS), [~~Protective and Regulatory Services (PRS),~~] a school district, an education service center, or any entity that receives federal funds to provide Individuals with Disabilities Education Act (IDEA) training to parents, the individual shall not be required by any school district to complete additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities. School districts may provide ongoing or additional training to surrogate parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as a surrogate parent on the grounds that the individual has not been trained.

(4) A [~~school district shall provide, or arrange for the provision of, the training program described in subsection (a)(1) of this section, within 90 calendar days after the effective date of this rule for individuals serving as surrogate parents as of the effective date of this rule. Thereafter, a~~] school district should provide or arrange for the provision of the training program described in subsection (a)(1) of this section prior to assigning an individual to act as a surrogate parent but no later than 90 calendar days after assignment.

(b) A foster parent may act as a parent of a child with a disability, in accordance with 34 CFR, §300.30, [~~§300.20,~~] relating to the definition of parent, if he/she complies with the requirements of TEC, §29.015(b), relating to foster parents, including the completion of the training program described in subsection (a)(1) of this section.

(1) The foster parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after [~~the effective date of this rule or~~] the date of initial assignment as the parent. [~~, whichever comes later.~~] Once a foster parent has completed a training program conducted or provided by the TDFPS, [~~PRS,~~] a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the foster parent shall not be required by any school district to complete additional training in order to continue serving as his/her child's surrogate parent or parent or to serve as the surrogate parent or parent for other students with disabilities. School districts may provide ongoing or additional training to foster parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as the parent on the grounds that the individual has not been trained.

(2) A [~~school district shall provide, or arrange for the provision of, the training program described in subsection (a)(1) of this section, within 90 calendar days after the effective date of this rule for foster parents who are serving as parents as of the effective date of this rule. Thereafter, a~~] school district should provide or arrange for the provision of the training program described in subsection (a)(1) of this section prior to assigning a foster parent to act as a parent but no later than 90 calendar days after assignment.

(c) Each school district or shared services arrangement shall develop and implement procedures for conducting an analysis of whether a foster parent or potential surrogate parent has an interest that conflicts with the interests of his/her child. A foster parent in a home which is verified by the TDFPS [~~PRS~~] or a child-placing agency

shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In addition, issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to TDFPS. [~~PRS.~~]

(d) If a school district denies a foster parent the right to serve as a surrogate parent or parent, the school district must provide the foster parent with written notice of such denial within seven calendar days after the date on which the decision is made. The written notice shall:

(1) specify the reason(s) the foster parent is being denied the right to serve as the surrogate parent or parent (the notice must specifically explain the interests of the foster parent that conflict with the interests of his/her child); and

(2) inform the foster parent of his/her right to file a complaint with the Texas Education Agency in accordance with 34 CFR, §§300.151 - 300.153, [~~§§300.660-300.662,~~] relating to complaint procedures.

§89.1049. Parental Rights Regarding Adult Students.

(a) In accordance with 34 Code of Federal Regulations (CFR), §300.320(c) [~~§300.347(c)~~] and §300.520, [~~§300.517,~~] and Texas Education Code (TEC), §29.017, beginning at least one year before a student reaches 18 years of age, the student's individualized education program (IEP) must include a statement that the student has been informed that, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship, all rights granted to the parent under the Individuals with Disabilities Education Act (IDEA), Part B, other than the right to receive any notice required under IDEA, Part B, will transfer to the student upon reaching age 18. After the student reaches the age of 18, except as provided by subsection (b) of this section, the school district shall provide any notice required under IDEA, Part B, to both the adult student and the parent.

(b) In accordance with 34 CFR, §300.520(a)(2), [~~§300.517(a)(2),~~] and TEC, §29.017(a), all rights accorded to a parent under IDEA, Part B, including the right to receive any notice required by IDEA, Part B, will transfer to an 18-year-old student who is incarcerated in an adult or juvenile, state or local correctional institution, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship.

(c) In accordance with 34 CFR, §300.520(a)(3), [~~§300.517(a)(3),~~] a school district must notify in writing the adult student and parent of the transfer of parental rights, as described in subsections (a) and (b) of this section, at the time the student reaches the age of 18. This notification is separate and distinct from the requirement that the student's IEP include a statement relating to the transfer of parental rights beginning at least one year before the student reaches the age of 18. This notification is not required to contain the elements of notice referenced in 34 CFR, §300.503, but must include a statement that parental rights have transferred to the adult student and provide contact information for the parties to use in obtaining additional information.

(d) A notice under IDEA, Part B, which [~~that~~] is required to be given to an adult student and parent does not create a right for the parent to consent to or participate in the proposal or refusal to which the notice relates. For example, a notice of an admission, review, and dismissal (ARD) committee meeting does not constitute invitation to, or create a right for, the parent to attend the meeting. However, in accordance with 34 CFR, §300.321(a)(6), [~~§300.344(a)(6),~~] the adult student or the school district may invite individuals who have knowledge or special expertise regarding the student, including the parent.

(e) Nothing in this section prohibits a valid power of attorney from being executed by an individual who holds rights under IDEA, Part B.

§89.1050. The Admission, Review, and Dismissal (ARD) Committee.

(a) Each school district shall establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full and individual initial evaluation is conducted pursuant to §89.1011 of this title (relating to Referral for Full and Individual Initial Evaluation). The ARD committee shall be the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.321. [~~§300.344.~~] The school district shall be responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law, including, specifically, the following:

(1) 34 CFR, §§300.320 - 300.325, [~~§§300.340-300.349,~~] and Texas Education Code (TEC), §29.005 (individualized education programs); [~~(Individualized Education Program);~~]

(2) 34 CFR, §§300.145 - 300.147 [~~§§300.400-300.402~~] (relating to placement of eligible students in private schools by a school district);

(3) 34 CFR, §§300.132, 300.138, and 300.139 [~~§§300.452, 300.455, and 300.456~~] (relating to the development and implementation of service plans for eligible students placed by parents in private school who have been designated to receive special education and related services);

(4) 34 CFR, §300.530 and §300.531, [~~§§300.520, 300.522, and 300.523,~~] and TEC, §37.004 (disciplinary placement of students with disabilities); [~~(Placement of Students with Disabilities);~~]

(5) 34 CFR, §§300.302 - 300.306 [~~§§300.532-300.536~~] (relating to evaluations, re-evaluations, and determination of eligibility);

(6) 34 CFR, §§300.114 - 300.117 [~~§§300.550-300.553~~] (relating to least restrictive environment);

(7) TEC, §28.006 (Reading Diagnosis);

(8) TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);

(9) TEC, §28.0212 (Personal Graduation Plan);

(10) TEC, §28.0213 (Intensive Program of Instruction);

(11) TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);

(12) TEC, §30.002 (Education of Children with Visual Impairments);

(13) TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);

(14) TEC, §33.081 (Extracurricular Activities);

(15) TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and

(16) TEC, §42.151 (Special Education).

(b) For a child from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in

accordance with 34 CFR, §§300.320 - 300.324, [§§303.340-303.346,] and the memorandum of understanding between the Texas Education Agency (TEA) and Texas Interagency Council on Early Childhood Intervention. For students three years of age and older, school districts must develop an IEP.

(c) ARD committee membership.

(1) ARD committees shall include those persons identified in 34 CFR, §300.321(a), as follows:

(A) the parent(s) of the child;

(B) not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

(C) not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;

(D) a representative of the school district who:

(i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(ii) is knowledgeable about the general education curriculum; and

(iii) is knowledgeable about the availability of resources of the school district;

(E) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subparagraphs (B) - (F) of this paragraph;

(F) at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate; and

(G) whenever appropriate, the child with a disability.

(2) The regular education teacher who serves as a member of a student's ARD committee should be a regular education teacher who is responsible for implementing a portion of the student's IEP.

(3) The special education teacher or special education provider that participates in the ARD committee meeting in accordance with 34 CFR, §300.321(a)(3), must be appropriately certified or licensed as required by 34 CFR, §300.18 and §300.156.

(4) If the student is:

(A) a student with a suspected or documented visual impairment, the ARD committee shall include a teacher who is certified in the education of students with visual impairments;

(B) a student with a suspected or documented auditory impairment, the ARD committee shall include a teacher who is certified in the education of students with auditory impairments; or

(C) a student with suspected or documented deaf-blindness, the ARD committee shall include a teacher who is certified in the education of students with visual impairments or auditory impairments.

(5) An ARD committee member, including a member described in subsection (c)(4) of this section, is not required to attend an ARD committee meeting if the conditions of either 34 CFR, §300.321(e)(1), regarding attendance, or 34 CFR, §300.321(e)(2), regarding excusal, have been met.

[(c) At least one general education teacher of the student (if the student is, or may be, participating in the general education environment) shall participate as a member of the ARD committee. The special education teacher or special education provider that participates in the ARD committee meeting in accordance with 34 CFR, §300.344(a)(3), must be certified in the child's suspected areas of disability. When a specific certification is not required to serve certain disability categories, then the special education teacher or special education provider must be qualified to provide the educational services that the child may need. Districts should refer to §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel) to ensure that appropriate teachers and/or service providers are present and participate at each ARD committee meeting.]

(d) The ARD committee shall make its decisions regarding students referred for a full and individual initial evaluation within 30 calendar days from the date of the completion of the written full and individual initial evaluation report. If the 30th day falls during the summer and school is not in session, the ARD committee shall have until the first day of classes in the fall to finalize decisions concerning the initial eligibility determination, the IEP, and placement, unless the full and individual initial evaluation indicates that the student will need extended school year (ESY) services during that summer.

(e) The written report of the ARD committee shall document the decisions of the committee with respect to issues discussed at the meeting. The report shall include the date, names, positions, and signatures of the members participating in each meeting in accordance with 34 CFR, §§300.321, 300.322, 300.324, and 300.325. [§§300.344, 300.345, 300.348, and 300.349.] The report shall also indicate each member's agreement or disagreement with the committee's decisions. In the event TEC, §29.005(d)(1), applies, the district shall provide a written or audio-taped [audiotaped] copy of the student's IEP, as defined in 34 CFR, §300.324 [§300.346] and §300.320. [§300.347.] In the event TEC, §29.005(d)(2), applies, the district shall make a good faith effort to provide a written or audio-taped [audiotaped] copy of the student's IEP, as defined in 34 CFR, §300.324 [§300.346] and §300.320. [§300.347.]

(f) A school district shall comply with the following for [For] a student who is newly enrolled in [new to] a school district. [:]

(1) If the student was in the process of being evaluated for special education eligibility in the student's previous school district, the student's current school district shall coordinate with the student's previous school district as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation in accordance with 34 CFR, §300.301(d)(2)(e) and §300.304(c)(5). The evaluation shall be completed within 60 calendar days from the date the student was verified as a student being evaluated for special education eligibility.

[(1) when a student transfers within the state, the ARD committee may, but is not required to, meet when the student enrolls and a copy of the student's IEP is available, the parent(s) indicate in writing that they are satisfied with the current IEP, and the district determines that the current IEP is appropriate and can be implemented as written; or]

(2) When a student transfers within the state and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the school district must meet the requirements of 34 CFR, §300.323(e), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(e)(1) or (2), shall be 30 school days from the date the student is verified as being a student eligible for special education services.

[(2) if the conditions of subsection (f)(1) of this section are not met, then the ARD committee must meet when the student enrolls and the parents verify that the student was receiving special education services in the previous school district, or the previous school district verifies in writing or by telephone that the student was receiving special education services. At this meeting, the ARD committee must do one of the following:]

[(A) the ARD committee may determine that it has appropriate evaluation data and other information to develop and begin implementation of a complete IEP for the student; or]

[(B) the ARD committee may determine that valid evaluation data and other information from the previous school district are insufficient or unavailable to develop a complete IEP. In this event, the ARD committee may authorize the provision of temporary special education services pending receipt of valid evaluation data from the previous school district or the collection of new evaluation data by the current school district. In this situation, a second ARD committee meeting must be held within 30 school days from the date of the first ARD committee meeting to finalize or develop an IEP based on current information.]

(3) When a student transfers from another state and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the school district must meet the requirements of 34 CFR, §300.323(f), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(f)(1) and (2), shall be 30 school days from the date the student is verified as being a student eligible for special education services.

(4) [(3)] In accordance with TEC, §25.002, and 34 CFR, §300.323, the school district in which the student was previously enrolled shall furnish the new school district with a copy of the student's records, including the child's special education records, not later than the 30th calendar day after the student was enrolled in the new school district. The Family Educational Rights and Privacy Act (FERPA), 20 United States Code, [U.S.C.,] §1232g, does not require the student's current and previous school districts to obtain parental consent before requesting or sending the student's special education records if the disclosure is conducted in accordance with 34 CFR, §99.31(a)(2) and §99.34.

(g) All disciplinary actions regarding students with disabilities shall be determined in accordance with 34 CFR, §§300.101(a) and 300.530 - 300.536 [§§300.121 and 300.519- 300.529] (relating to disciplinary actions and procedures), the TEC, Chapter 37, Subchapter A (Alternative Settings for Behavior Management), and §89.1053 of this title (relating to Procedures for Use of Restraint and Time-Out).

(h) All members of the ARD committee shall have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the committee concerning required elements of the IEP shall be made by mutual agreement of the required members if possible. The committee may agree to an annual IEP or an IEP of shorter duration.

(1) When mutual agreement about all required elements of the IEP is not achieved, the party (the parents or adult student) who disagrees shall be offered a single opportunity to have the committee recess for a period of time not to exceed ten school days. This recess is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense which may lead to a placement in an alternative education program (AEP). The requirements of this subsection (h) do not prohibit the members of the ARD committee from recessing an ARD committee meeting for reasons other than the failure of the parents and the school district from reaching mutual agreement about all required elements of an IEP.

(2) During the recess the committee members shall consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons which may assist in enabling the ARD committee to reach mutual agreement.

(3) The date, time, and place for continuing the ARD committee meeting shall be determined by mutual agreement prior to the recess.

(4) If a ten-day recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the district shall implement the IEP which it has determined to be appropriate for the student.

(5) When mutual agreement is not reached, a written statement of the basis for the disagreement shall be included in the IEP. The members who disagree shall be offered the opportunity to write their own statements.

(6) When a district implements an IEP with which the parents disagree or the adult student disagrees, the district shall provide prior written notice to the parents or adult student as required in 34 CFR, §300.503.

(7) Parents shall have the right to file a complaint, request mediation, and [or] request a due process hearing at any point when they disagree with decisions of the ARD committee.

§89.1052. Discretionary Placements in Juvenile Justice Alternative Education Programs (JJAEP).

(a) This section applies only to the expulsion of a student with a disability under:

(1) Texas Education Code (TEC), §37.007(b), (c), or (f); or

(2) TEC, §37.007(d), as a result of conduct that contains the elements of any offense listed in TEC, §37.007(b)(2)(C), against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district.

(b) [(a)] In a county with a JJAEP, a local school district shall invite the administrator of the JJAEP or the administrator's designee to an admission, review, and dismissal (ARD) committee meeting convened to discuss the [a student's] expulsion of a student with a disability under one of the provisions listed in subsection (a) of this section, [Texas Education Code (TEC), §37.004(e),] relating to offenses for which a school district may expel a student. The reasonable notice of the ARD committee meeting must be provided consistent with 34 Code of Federal Regulations (CFR), §300.322 [CFR,§300.345] and §300.503, and §89.1015 of this title (relating to Time Line for All Notices). [, and a] A copy of the student's current individualized education program (IEP) must be provided to the JJAEP administrator or designee with the notice. If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's placement in the JJAEP and implementation of the student's current IEP in the JJAEP.

(c) [(b)] For a student with a disability who was expelled under one of the provisions listed in subsection (a) of this section, an ARD committee meeting must be convened to reconsider placement of the student in the JJAEP, if the JJAEP administrator or designee provides written notice to the school district of specific concerns that the stu-

dent's educational or behavioral needs cannot be met in the JJAEP. [~~In accordance with TEC, §37.004(f), when the JJAEP administrator or designee provides written notice of specific concerns to the school district from which a student was expelled under one of the provisions listed in TEC, §37.004(e), relating to offenses for which a school district may expel a student, an ARD committee meeting must be convened to reconsider placement of the student in the JJAEP.~~] The reasonable notice of the ARD committee meeting must be provided consistent with 34 CFR, §300.322 [~~§300.345~~] and §300.503, and §89.1015 of this title (relating to Time Line for All Notices). If the JJAEP representative is unable to attend the ARD committee meeting, the representative must be given the opportunity to participate in the meeting through alternative means including conference telephone calls. The JJAEP representative may participate in the meeting to the extent that the meeting relates to the student's continued placement in the JJAEP.

§89.1053. Procedures for Use of Restraint and Time-Out.

(a) Requirement to implement. In addition to the requirements of 34 Code of Federal Regulations (CFR), §300.324(a)(2)(i) and (c), [~~§300.346(a)(2)(i) and (c),~~] school districts and charter schools must implement the provisions of this section regarding the use of restraint and time-out. In accordance with the provisions of Texas Education Code (TEC), §37.0021 (Use of Confinement, Restraint, Seclusion, and Time-Out), it is the policy of the state to treat with dignity and respect all students, including students with disabilities who receive special education services under TEC, Chapter 29, Subchapter A.

(b) Definitions.

(1) Emergency means a situation in which a student's behavior poses a threat of:

(A) imminent, serious physical harm to the student or others; or

(B) imminent, serious property destruction.

(2) Restraint means the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of the student's body.

(3) Time-out means a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting:

(A) that is not locked; and

(B) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.

(c) Use of restraint. A school employee, volunteer, or independent contractor may use restraint only in an emergency as defined in subsection (b) of this section and with the following limitations.

(1) Restraint shall be limited to the use of such reasonable force as is necessary to address the emergency.

(2) Restraint shall be discontinued at the point at which the emergency no longer exists.

(3) Restraint shall be implemented in such a way as to protect the health and safety of the student and others.

(4) Restraint shall not deprive the student of basic human necessities.

(d) Training on use of restraint. Training for school employees, volunteers, or independent contractors shall be provided according to the following requirements.

(1) A [~~Not later than April 1, 2003, a~~] core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint.

(2) Personnel [~~After April 1, 2003, personnel~~] called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint.

(3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint.

(4) All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.

(e) Documentation and notification on use of restraint. In a case in which restraint is used, school employees, volunteers, or independent contractors shall implement the following documentation requirements.

(1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint.

(2) On the day restraint is utilized, a good faith effort shall be made to verbally notify the parent(s) regarding the use of restraint.

(3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint.

(4) Written documentation regarding the use of restraint must be placed in the student's special education eligibility folder in a timely manner so the information is available to the ARD committee when it considers the impact of the student's behavior on the student's learning and/or the creation or revision of a behavioral intervention plan (BIP).

(5) Written notification to the parent(s) and documentation to the student's special education eligibility folder shall include the following:

(A) name of the student;

(B) name of the staff member(s) administering the restraint;

(C) date of the restraint and the time the restraint began and ended;

(D) location of the restraint;

(E) nature of the restraint;

(F) a description of the activity in which the student was engaged immediately preceding the use of restraint;

(G) the behavior that prompted the restraint;

(H) the efforts made to de-escalate the situation and alternatives to restraint that were attempted; and

(I) information documenting parent contact and notification.

(f) Clarification regarding restraint. The provisions adopted under this section do not apply to the use of physical force or a mechanical device which does not significantly restrict the free movement of all or a portion of the student's body. Restraint that involves significant restriction as referenced in subsection (b)(2) of this section does not include:

(1) physical contact or appropriately prescribed adaptive equipment to promote normative body positioning and/or physical functioning;

(2) limited physical contact with a student to promote safety (e.g., holding a student's hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort;

(3) limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in ongoing, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the individualized education program (IEP) as required by 34 CFR, §300.324(a)(2)(i) and (c) [~~34 CFR §300.346(a)(2)(i) and (c)~~] to promote student learning and reduce and/or prevent the need for ongoing intervention; or

(4) seat belts and other safety equipment used to secure students during transportation.

(g) Use of time-out. A school employee, volunteer, or independent contractor may use time-out in accordance with subsection (b)(3) of this section with the following limitations.

(1) Physical force or threat of physical force shall not be used to place a student in time-out.

(2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student's IEP and/or BIP if it is utilized on a recurrent basis to increase or decrease a targeted behavior.

(3) Use of time-out shall not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(h) Training on use of time-out. Training for school employees, volunteers, or independent contractors shall be provided according to the following requirements.

(1) General [~~Not later than April 1, 2003, general~~] or special education personnel who implement time-out based on requirements established in a student's IEP and/or BIP must be trained in the use of time-out.

(2) Newly-identified [~~After April 1, 2003, newly-identified~~] personnel called upon to implement time-out based on requirements established in a student's IEP and/or BIP must receive training in the use of time-out within 30 school days of being assigned the responsibility for implementing time-out.

(3) Training on the use of time-out must be provided as part of a program which addresses a full continuum of positive behavioral intervention strategies, and must address the impact of time-out on the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student's IEP.

(4) All trained personnel shall receive instruction in current professionally accepted practices and standards regarding behavior management and the use of time-out.

(i) Documentation on use of time-out. Necessary documentation or data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. The admission, review, and dismissal (ARD) committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.

(j) Student safety. Any behavior management technique and/or discipline management practice must be implemented in such a way as to protect the health and safety of the student and others. No discipline management practice may be calculated to inflict injury, cause harm, demean, or deprive the student of basic human necessities.

(k) Data reporting. With [~~Beginning with the 2003-2004 school year, with~~] the exception of actions covered by subsection (f) of this section, data regarding the use of restraint must be electronically reported to the Texas Education Agency in accordance with reporting standards specified by the agency [~~Agency~~] .

(l) The provisions adopted under this section do not apply to:

(1) a peace officer while performing law enforcement duties;

(2) juvenile probation, detention, or corrections personnel; or

(3) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

§89.1055. Content of the Individualized Education Program (IEP).

(a) The individualized education program (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability shall comply with the requirements of 34 Code of Federal Regulations (CFR), §300.320 and §300.324, [~~§300.346 and §300.347,~~] and Part 300, Appendix A.

(b) The IEP must include a statement of any individual appropriate [~~allowable~~] accommodations in the administration of assessment instruments developed in accordance with Texas Education Code (TEC), §39.023(a) - (c), or district-wide assessments of student achievement that are necessary to measure the academic achievement and functional performance of the child on the assessments. [~~needed in order for the student to participate in the assessment.~~] If the ARD committee determines that the student will not participate in a particular state- or district-wide assessment of student achievement (or part of an assessment), the IEP must include a statement of:

(1) why the child cannot participate in the regular assessment; and

[~~(1) why that assessment is not appropriate for the child; and~~]

(2) why the particular alternate assessment selected is appropriate for the child.

[~~(2) how the child will be assessed using a locally developed alternate assessment.~~]

(c) If the ARD committee determines that the student is in need of extended school year (ESY) services, as described in §89.1065 of this title (relating to Extended School Year Services (ESY Services)), then the IEP must also include goals and objectives for ESY services from the student's current IEP.

(d) For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan (IFSP) shall also meet the requirements of TEC, §30.002(e).

(e) For students with autism spectrum disorders (ASD), the strategies described in paragraphs (1) - (11) of this subsection shall be considered, based on peer-reviewed and/or research-based educational programming practices, and addressed in the IEP:

(1) extended educational programming, including extended day and/or extended school year services, that considers the

duration of programs/settings based on assessment of behavior, social skills, communication, academics, and self-help skills;

(2) daily schedules reflecting minimal unstructured time and active engagement in learning activities, including lunch, snack, and recess, and providing flexibility within routines that are adaptable to individual skill levels and assist with schedule changes, such as field trips, substitute teachers, and pep rallies;

(3) in-home and community-based training or viable alternatives that assist the student with acquisition of social/behavioral skills, including strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community;

(4) positive behavior support strategies based on information, such as:

(A) antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and

(B) a Behavior Intervention Plan developed from a Functional Behavioral Assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings;

(5) beginning at any age, futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;

(6) parent/family training and support, provided by qualified personnel with experience in ASD, that:

(A) provides a family with skills necessary for a child to succeed in the home/community setting;

(B) includes information regarding resources such as parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching/management techniques related to the child's curriculum; and

(C) facilitates parental carryover of in-home training and includes strategies for behavior management and developing structured home environments and/or communication training so that parents are active participants in promoting the continuity of interventions across all settings;

(7) suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the child's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence as determined by:

(A) adaptive behavior evaluation results;

(B) behavioral accommodation needs across settings; and

(C) transitions within the school day;

(8) communication interventions, including language forms and functions that enhance effective communication across settings, such as augmentative, incidental, and naturalistic teaching;

(9) social skills supports and strategies based on social skills assessment/curriculum and provided across settings, such as trained peer facilitators (e.g., circle of friends), video modeling, social stories, and role playing;

(10) professional educator/staff support, such as training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP; and

(11) teaching strategies based on peer reviewed and/or research-based practices for students with ASD, such as those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training.

[(e) For students with autism/pervasive developmental disorders, information about the following shall be considered and, when needed, addressed in the IEP:]

[(1) extended educational programming;]

[(2) daily schedules reflecting minimal unstructured time;]

[(3) in-home training or viable alternatives;]

[(4) prioritized behavioral objectives;]

[(5) prevocational and vocational needs of students 12 years of age or older;]

[(6) parent training; and]

[(7) suitable staff-to-students ratio.]

(f) If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (e)(1) - (11) [(e)(1) - (7)] of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.

(g) For [In accordance with 34 CFR §300.29, §300.344, and §300.347, for] each student with a disability, beginning at age 14 (prior to the date on which a student turns 14 years of age) or younger, if determined appropriate by the ARD committee, the following issues must be considered in the development of the IEP, and, if appropriate, integrated into the IEP:

(1) appropriate student involvement in the student's transition to life outside the public school system;

(2) if the student is younger than 18 years of age, appropriate parental involvement in the student's transition;

(3) if the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or the school district in which the student is enrolled;

(4) any postsecondary education options;

(5) a functional vocational evaluation;

(6) employment goals and objectives;

(7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments;

(8) independent living goals and objectives; and

(9) appropriate circumstances for referring a student or the student's parents to a governmental agency for services.

§89.1056. Transfer of Assistive Technology Devices.

(a) Unless otherwise specifically defined in this section, the terms used in this section shall have the meanings ascribed to such terms in Texas Education Code (TEC), §30.0015, (Transfer of Assistive Technology Devices).

(b) A transfer of an assistive technology device (ATD) pursuant to TEC, §30.0015, shall be in accordance with a transfer agreement which incorporates the standards described in TEC, §30.0015(c), and which includes, specifically, the following.

(1) The transferor and transferee must represent and agree that the terms of the transfer are based on the fair market value of the

ATD, determined in accordance with generally accepted accounting principles.

(2) The informed consent of the parent of the student with a disability for whom the ATD is being transferred must be obtained before the transfer of an ATD pursuant to TEC, 30.0015. The procedures employed by a school district in obtaining such informed consent shall be consistent with the procedures employed by the district to obtain parental consent under 34 Code of Federal Regulations (CFR), §300.300. [~~§300.505.~~] If the student has the legal capacity to enter into a contract, the informed consent may be obtained from the student. Consistent with 34 CFR, §300.505(c), informed parental or adult student consent need not be obtained if the school district can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent or the adult student has failed to respond. To meet the reasonable measures requirement, the school district must use procedures consistent with those described in 34 CFR, §300.322(d). [~~§300.345(d).~~]

(3) If the transfer is a sale, then the sale of the ATD shall be evidenced by a "Uniform Transfer Agreement" (UTA) which includes the following:

(A) the names of the transferor and the transferee (which may be any individual or entity identified in TEC, §30.0015(b));

(B) the date of the transfer;

(C) a description of the ATD being transferred;

(D) the terms of the transfer (including the transfer of warranties, to the extent applicable); and

(E) the signatures of authorized representatives of both the transferor and the transferee.

(c) The Texas Education Agency shall annually disseminate to school districts the standards for a school district's transfer of an ATD pursuant to TEC, §30.0015.

(d) Nothing in this section or in TEC, §30.0015, shall:

(1) alter any existing obligation under federal or state law to provide ATDs to students with disabilities;

(2) require a school district to transfer an ATD to any person or entity;

(3) limit a school district's right to sell, lease, loan, or otherwise convey or dispose of property as authorized by federal or state laws, rules, or regulations; or

(4) authorize any transfer of an ATD that is inconsistent with any restriction on transferability imposed by the manufacturer or developer of the ATD or applicable federal or state laws, rules, or regulations.

§89.1065. Extended School Year Services (ESY Services).

Extended school year (ESY) services are defined as individualized instructional programs beyond the regular school year for eligible students with disabilities.

(1) The need for ESY services must be determined on an individual student basis by the admission, review, and dismissal (ARD) committee in accordance with 34 Code of Federal Regulations (CFR), §300.106, [~~§300.309,~~] and the provisions of this section. In determining the need for and in providing ESY services, a school district may not:

(A) limit ESY services to particular categories of disability; or

(B) unilaterally limit the type, amount, or duration of ESY services.

(2) The need for ESY services must be documented from formal and/or informal evaluations provided by the district or the parents. The documentation shall demonstrate that in one or more critical areas addressed in the current individualized education program (IEP) objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time. Severe or substantial regression means that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services.

(3) The reasonable period of time for recoupment of acquired critical skills shall be determined on the basis of needs identified in each student's IEP. If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm to the student or to others, ESY services may be justified without consideration of the period of time for recoupment of such skills. In any case, the period of time for recoupment shall not exceed eight weeks.

(4) A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following occurrences during the first eight weeks of the next regular school year:

(A) placement in a more restrictive instructional arrangement;

(B) significant loss of acquired skills necessary for the student to appropriately progress in the general curriculum;

(C) significant loss of self-sufficiency in self-help skill areas as evidenced by an increase in the number of direct service staff and/or amount of time required to provide special education or related services;

(D) loss of access to community-based independent living skills instruction or an independent living environment provided by noneducational sources as a result of regression in skills; or

(E) loss of access to on-the-job training or productive employment as a result of regression in skills.

(5) If the district does not propose ESY services for discussion at the annual review of a student's IEP, the parent may request that the ARD committee discuss ESY services pursuant to 34 CFR, §300.321. [~~§300.344.~~]

(6) If a student for whom ESY services were considered and rejected loses critical skills because of the decision not to provide ESY services, and if those skills are not regained after the reasonable period of time for recoupment, the ARD committee shall reconsider the current IEP if the student's loss of critical skills interferes with the implementation of the student's IEP.

(7) For students enrolling in a district during the school year, information obtained from the prior school district as well as information collected during the current year may be used to determine the need for ESY services.

(8) The provision of ESY services is limited to the educational needs of the student and shall not supplant or limit the responsibility of other public agencies to continue to provide care and treatment services pursuant to policy or practice, even when those services are similar to, or the same as, the services addressed in the student's IEP. No student shall be denied ESY services because the student receives care and treatment services under the auspices of other agencies.

(9) Districts are not eligible for reimbursement for ESY services provided to students for reasons other than those set forth in this section.

§89.1070. Graduation Requirements.

(a) Graduation with a regular high school diploma under subsection (b) or (d) of this section terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act (IDEA), 20 United States Code, §§1400 et seq. In addition, as provided in Texas Education Code (TEC), §42.003(a), graduation with a regular high school diploma under subsection (b) or (d) of this section terminates a student's entitlement to the benefits of the Foundation School Program.

(b) A student receiving special education services may graduate and be awarded a regular high school diploma if:

(1) the student has satisfactorily completed the state's or district's (whichever is greater) minimum curriculum and credit requirements for graduation applicable to students in general education, including satisfactory performance on the exit level assessment instrument; or

(2) the student has satisfactorily completed the state's or district's (whichever is greater) minimum curriculum and credit requirements for graduation applicable to students in general education, including satisfactory performance on an alternate assessment instrument as determined by the student's admission, review, and dismissal (ARD) committee. [and has been exempted from the exit-level assessment instrument under TEC, §39.027(a)(2)(B).]

(c) A student receiving special education services may also graduate and receive a regular high school diploma when the student's ARD [admission, review, and dismissal (ARD)] committee has determined that the student has successfully completed:

(1) the student's individualized education program (IEP);

(2) [(1)] [the student's individualized education program (IEP) and met] one of the following conditions, consistent with the student's IEP:

(A) full-time employment, based on the student's abilities and local employment opportunities, in addition to sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district;

(B) demonstrated mastery of specific employability skills and self-help skills which do not require direct ongoing educational support of the local school district; or

(C) access to services which are not within the legal responsibility of public education, or employment or educational options for which the student has been prepared by the academic program;

(3) [(2)] the state's or district's (whichever is greater) minimum credit requirements for students without disabilities; and

(4) [(3)] the state's or district's minimum curriculum requirements to the extent possible with modifications/substitutions only when it is determined necessary by the ARD committee for the student to receive an appropriate education.

(d) A student receiving special education services may also graduate and receive a regular high school diploma upon the ARD committee determining that the student no longer meets age eligibility requirements and has completed the requirements specified in the IEP.

(e) All students graduating under this section shall be provided with a summary of academic achievement and functional performance as described in 34 Code of Federal Regulations (CFR), §300.305(e)(3). This summary shall consider, as appropriate, the views of the parent and student and written recommendations from adult service agencies on how to assist the student in meeting postsecondary goals. An evaluation as required by 34 CFR, §300.305(e)(1), shall be included as part of the summary for a student graduating under subsection (c) of this section.

[(e) When considering a student's graduation under subsection (c) of this section, the student shall be evaluated prior to graduation as required by 34 CFR, §300.534(c), and the ARD committee shall consider the evaluation, the views of the parent and/or student as appropriate, and, when appropriate, seek in writing and consider written recommendations from adult service agencies.]

(f) Students who participate in graduation ceremonies but who are not graduating under subsection (c) of this section and who will remain in school to complete their education do not have to be evaluated in accordance with subsection (e) of this section.

(g) Employability and self-help skills referenced under subsection (c) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.

[(h) Students with disabilities who are eligible to take the exit level assessment instrument but have not performed satisfactorily are eligible for instruction in accordance with the TEC, §39.024.]

(h) [(i)] For students who receive a diploma according to subsection (c) of this section, the ARD committee shall determine needed educational services upon the request of the student or parent to resume services, as long as the student meets the age eligibility requirements.

§89.1075. General Program Requirements and Local District Procedures.

(a) Each school district shall maintain an eligibility folder for each student receiving special education services, in addition to the student's cumulative record. The eligibility folder must include, but need not be limited to: copies of referral data; documentation of notices and consents; evaluation reports and supporting data; admission, review, and dismissal (ARD) committee reports; and the student's individualized education programs (IEPs).

(b) For school districts providing special education services to students with visual impairments, there shall be written procedures as required in the Texas Education Code (TEC), §30.002(c)(10).

(c) Each school district shall have procedures to ensure that each teacher involved in a student's instruction has the opportunity to provide input and request assistance regarding the implementation of the student's IEP. These procedures must include a method for a student's regular or special education teachers to submit requests for further consideration of the student's IEP or its implementation. In response to this request, the district's procedures shall include a method for the district to determine whether further consideration is necessary and whether this consideration will be informal or will require an ARD committee meeting. If the district determines that an ARD committee meeting is necessary, the student's current regular and special education teachers shall have an opportunity to provide input. The school district shall also ensure that each teacher who provides instruction to a student with disabilities receives relevant sections of the student's current IEP and that each teacher be informed of specific responsibilities related to implementing the IEP, such as goals and benchmarks, and of needed accommodations, modifications, and supports for the child.

(d) Students with disabilities shall have available an instructional day commensurate with that of students without disabilities. The ARD committee shall determine the appropriate instructional setting

and length of day for each student, and these shall be specified in the student's IEP.

(e) School districts that jointly operate their special education programs as a shared services arrangement, in accordance with TEC, §29.007, shall do so in accordance with procedures developed by the Texas Education Agency (TEA).

(f) School districts that contract for services from non-public day schools shall do so in accordance with 34 Code of Federal Regulations, §300.147, [~~§300.402,~~] and procedures developed by the TEA.

§89.1076. Interventions and Sanctions.

The Texas Education Agency (TEA) shall establish and implement a system of interventions and sanctions, in accordance with the Individuals with Disabilities Education Act, 20 United States Code, [~~USC,~~] §§1400 et seq., Texas Education Code (TEC), §29.010, and TEC, Chapter 39, as necessary to ensure program effectiveness and compliance with federal and state requirements regarding the implementation of special education and related services. In accordance with TEC, §39.131(a), the TEA may combine any intervention and sanction. The system of interventions and sanctions will include, but not be limited to, the following:

(1) on-site review for failure to meet program or compliance requirements;

(2) required fiscal audit of specific program(s) and/or of the district, paid for by the district;

(3) required submission of corrective action(s), including compensatory services, paid for by the district;

(4) required technical assistance [~~from the education service center~~] , paid for by the district;

(5) public release of program or compliance review findings;

(6) special investigation and/or follow-up verification visits;

(7) required public hearing conducted by the local school board of trustees;

(8) assignment of a special purpose monitor, conservator, or management team, paid for by the district;

(9) hearing before the commissioner of education or designee;

(10) reduction in payment or withholding of funds; [~~and/or~~]

(11) lowering of the special education monitoring/compliance [~~compliance~~] status and/or the accreditation rating of the district; and/or [~~.~~]

(12) other authorized interventions and sanctions as determined by the commissioner.

§89.1085. Referral for the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf Services.

(a) A student's admission, review, and dismissal (ARD) committee may place the student at the Texas School for the Blind and Visually Impaired (TSBVI) or the Texas School for the Deaf (TSD) in accordance with the provisions of 34 Code of Federal Regulations (CFR), Part 300, the Texas Education Code (TEC), including, specifically, §§30.021, 30.051, and 30.057, and the applicable rules of this subchapter.

(b) In the event that a student is placed by his or her ARD committee at either the TSBVI or the TSD, the student's "resident school district," as defined in subsection (e) of this section, shall be responsible for assuring that a free appropriate public education (FAPE) is provided to the student at the TSBVI or the TSD, as applicable, in accordance with the Individuals with Disabilities Education Act (IDEA), 20 United States Code (USC), §§1400 et seq., 34 CFR, Part 300, state statutes, and rules of the State Board of Education (SBOE) and the commissioner of education. If representatives of the resident school district and representatives of the TSBVI or the TSD disagree, as members of a student's ARD committee, with respect to a recommendation by one or more members of the student's ARD committee that the student be evaluated for placement, initially placed, or continued to be placed at the TSBVI or TSD, as applicable, the representatives of the resident school district and the TSBVI or TSD, as applicable, may seek resolution through the mediation procedures adopted by the Texas Education Agency or through any due process hearing to which the resident school district or the TSBVI or the TSD are entitled under the IDEA, 20 USC, §§1400, [~~§§1401,~~] et seq.

(c) When a student's ARD committee places the student at the TSBVI or the TSD, the student's resident school district shall comply with the following requirements.

(1) For each student, the resident school district shall list those services in the student's individualized education program (IEP) [~~which the district cannot appropriately provide in a local program and~~] which the TSBVI or the TSD can appropriately provide.

(2) The district may make an on-site visit to verify that the TSBVI or the TSD can and will offer the services listed in the individual student's IEP and to ensure that the school offers an appropriate educational program for the student.

(3) For each student, the resident school district shall include in the student's IEP the criteria and estimated time lines for returning the student to the resident school district.

(d) In addition to the provisions of subsections (a) - (c) of this section, and as provided in TEC, §30.057, the TSD shall provide services in accordance with TEC, §30.051, to any eligible student with a disability for whom the TSD is an appropriate placement if the student has been referred for admission by the student's parent or legal guardian, a person with legal authority to act in place of the parent or legal guardian, or the student, if the student is age 18 or older, at any time during the school year if the referring person chooses the TSD as the appropriate placement for the student rather than placement in the student's resident school district or regional program determined by the student's ARD committee. For students placed at the TSD pursuant to this subsection, the TSD shall be responsible for assuring that a FAPE is provided to the student at the TSD, in accordance with IDEA, 20 USC, §§1400, [~~§§1401~~] et seq., 34 CFR, Part 300, state statutes, and rules of the SBOE and the commissioner of education.

(e) For purposes of this section and §89.1090 of this title (relating to Transportation of Students Placed in a Residential Setting, Including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf), the "resident school district" is the school district in which the student would be enrolled under TEC, §25.001, if the student were not placed at the TSBVI or the TSD.

§89.1090. Transportation of Students Placed in a Residential Setting, Including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf.

For each student placed in a residential setting by the student's admission, review, and dismissal (ARD) committee, including those students placed in the Texas School for the Blind and Visually Impaired [~~TSBVI~~] and the Texas School for the Deaf [~~TSD~~] , the resident school district shall be responsible for transportation at the beginning and end of the term and for regularly scheduled school holidays when students

are expected to leave the residential campus. The resident school district is not responsible for transportation costs for students placed in residential settings by their parents. Transportation costs shall not exceed state approved per diem and mileage rates unless excess costs can be justified and documented. Transportation shall be arranged using the most cost efficient means. When it is necessary for the safety of the student, as determined by the ARD committee, for an adult designated by the ARD committee to accompany the student, round-trip transportation for that adult shall also be provided. The resident school district and the residential facility shall coordinate to ensure that students are transported safely, including the periods of departure and arrival.

§89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities.

(a) Except as specifically provided in this section, in accordance with 34 Code of Federal Regulations (CFR), §300.137, [~~§300.454,~~] no eligible student who has been placed by his or her parent(s) in a private school [~~or facility~~] has an individual right to receive some or all of the special education and related services that the student would receive if he or she were enrolled in a public school district. Except as specifically set forth in this section, a school district's obligations with respect to students placed by their parents in private schools are governed by 34 CFR, §§300.130 - 300.144. [~~§§300.450 - 300.462.~~]

(1) For purposes of this section only, private school is defined as a private elementary or secondary school, including any preschool, day care, religious school, and institutional day or residential school, that:

(A) as required by 34 CFR, §300.13 and §300.130, is a nonprofit entity that meets the definition of nonprofit in 34 CFR, §77.1; and

(B) provides elementary or secondary education that incorporates an adopted curriculum designed to meet basic educational goals, including scope and sequence of courses, and formal review and documentation of student progress.

(2) A home school must meet the requirements of paragraph (1)(B) of this subsection, but not paragraph (1)(A) of this subsection, to be considered a private school for purposes of this section.

(b) When a student with a disability who has been placed by his or her parents directly in a private school [~~or facility~~] is referred to the local school district, the local district shall convene an admission, review, and dismissal (ARD) committee meeting to determine whether the district can offer the student a free appropriate public education (FAPE). If the district determines that it can offer a FAPE to the student, the district is not responsible for providing educational services to the student, except as provided in 34 CFR, §§300.130 - 300.144, [~~§§300.450-300.462~~] or subsection (e) [~~(d)~~] of this section, until such time as the parents choose to enroll the student in public school full time [~~full-time~~] .

(c) Parents of an eligible student ages 3 or 4 shall have the right to "dual enroll" their student in both the public school and the private school beginning on the student's third birthday and continuing until the end of the school year in which the student turns five or until the student is eligible to attend a district's public school kindergarten program, whichever comes first, subject to paragraphs (1) - (3) of this subsection. The public school district where a student resides is responsible for providing special education and related services to a student whose parents choose dual enrollment. [~~the following.~~]

(1) The student's ARD committee shall develop an individualized education program (IEP) designed to provide the student with a FAPE in the least restrictive environment appropriate for the student.

(2) From the IEP, the parent and the district shall determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the least restrictive environment set forth in 34 CFR, §§300.114 - 300.120, [~~§§300.550-300.553,~~] and the policies and procedures of the district.

(3) For students served under the provisions of this subsection, the school district shall be responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be consistent with those provided for students enrolled only in the public school and shall remain the property of the school district.

(d) Parents of an eligible student ages 3 or 4 who decline dual enrollment for their student may request a services plan as described in 34 CFR, §§300.130 - 300.144. The public school district where the private school is located is responsible for the development of a services plan, if the student is designated to receive services under 34 CFR, §300.132.

(e) [~~(d)~~] The school district shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the special education and related services (if any) set forth in the IEP.

(f) [~~(e)~~] Complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c) of this section may be filed with the Texas Education Agency under the procedures in 34 CFR, §§300.151 - 300.153. Additionally, parents may request mediation as outlined in 34 CFR, 300.506. [~~§§300.660-300.662.~~] The procedures in 34 CFR, §§300.300, 300.504, 300.507, 300.508, and 300.510 - 300.518 [~~§§300.504-300.515~~] (relating to due process hearings) do not apply to complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (c).

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

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19 TAC §89.1060

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

The repeal is proposed under 34 CFR, §300.100, which requires states to have policies and procedures in place to ensure the provision of a free appropriate public education to children with disabilities; and TEC, §29.001, which authorizes the commissioner of education to adopt rules for the administration and funding of the special education program; and TEC, §30.083, which authorizes the commissioner to adopt rules for the administration of

the statewide plan for educating students who are deaf or hard of hearing.

The repeal implements 34 CFR, §300.100; and TEC, §29.001, and §30.083.

§89.1060. Definitions of Certain Related Services.

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

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DIVISION 4. SPECIAL EDUCATION FUNDING

19 TAC §89.1125

The amendment is proposed under 34 CFR, §300.100, which requires states to have policies and procedures in place to ensure the provision of a free appropriate public education to children with disabilities; and TEC, §29.001, which authorizes the commissioner of education to adopt rules for the administration and funding of the special education program.

The amendment implements 34 CFR, §300.100; and TEC, §29.001.

§89.1125. Allowable Expenditures of State Special Education Funds.

(a) Persons paid from special education funds shall be assigned to instructional or other duties in the special education program and/or to provide support services to the regular education program in order for students with disabilities to be included in the regular program. Support services shall include, but not be limited to, collaborative planning, co-teaching, small group instruction with special and regular education students, direct instruction to special education students, or other support services determined necessary by the admission, review, and dismissal (ARD) committee for an appropriate program for the student with disabilities. Assignments may include duties supportive to school operations equivalent to those assigned to regular education personnel.

(b) Personnel assigned to provide support services to the regular education program as stated in subsection (a) of this section may be fully funded from special education funds.

(c) If personnel are assigned to special education on less than a full-time basis, except as stated in subsection (a) of this section, only that portion of time for which the personnel are assigned to students with disabilities shall be paid from state special education funds.

(d) State special education funds may be used for special materials, supplies, and equipment which are directly related to the development and implementation of individualized education programs (IEPs) of students and which are not ordinarily purchased for the regular classroom. Office and routine classroom supplies are not allowable. Special equipment may include instructional and assistive technology devices, audiovisual equipment, computers for instruction or assessment purposes, and assessment equipment only if used directly with students.

(e) State special education funds may be used to contract with consultants to provide staff development, program planning and evaluation, instructional services, assessments, and related services to students with disabilities.

(f) State special education funds may be used for transportation only to and from residential placements. Prior to using federal funds for transportation costs to and from a residential facility, a district must use state or local funds based on actual expenses up to the state transportation maximum for private transportation contracts.

(g) State special education funds may be used to pay staff travel to perform services directly related to the education of eligible students with disabilities. Funds may also be used to pay travel of staff (including administrators, general education teachers, and special education teachers and service providers) to attend staff development meetings for the purpose of improving performance in assigned positions directly related to the education of eligible students with disabilities. In no event shall the purpose for attending such staff development meetings include time spent in performing functions relating to the operation of professional organizations. Funds [~~In accordance with 34 Code of Federal Regulations, §300.382(j), funds~~] may also be used to pay for the joint training of parents and special education, related services, and general education personnel.

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

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DIVISION 5. SPECIAL EDUCATION AND RELATED SERVICE PERSONNEL

19 TAC §89.1131

The amendment is proposed under 34 CFR, §300.100, which requires states to have policies and procedures in place to ensure the provision of a free appropriate public education to children with disabilities; and TEC, §29.001, which authorizes the commissioner of education to adopt rules for the administration and funding of the special education program.

The amendment implements 34 CFR, §300.100; and TEC, §29.001.

§89.1131. Qualifications of Special Education, Related Service, and Paraprofessional Personnel.

(a) All special education and related service personnel shall be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulations (CFR), §300.156; [~~§300.23 and §300.136;~~] the Texas Education Code (TEC), §§21.002, 21.003, and 29.304; or appropriate state agency credentials.

(b) A teacher who holds a special education certificate or an endorsement may be assigned to any level of a basic special education instructional program serving eligible students 3-21 years of age, as defined in §89.1035(a) of this title (relating to Age Ranges for Student

Eligibility), in accordance with the limitation of their certification, except for the following.

(1) Persons assigned to provide speech therapy instructional services must hold a valid Texas Education Agency (TEA) certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech/language pathologist.

(2) Teachers holding only a special education endorsement for early childhood education for children with disabilities shall be assigned only to programs serving infants through Grade 6.

[(3) Teachers assigned full-time to teaching students who are orthopedically impaired or other health impaired with the teaching station in the home or a hospital shall not be required to hold a special education certificate or endorsement as long as the personnel file contains an official transcript indicating that the teacher has completed a three-semester-hour survey course in the education of students with disabilities and three semester hours directly related to teaching students with physical impairments or other health impairments.]

(3) [(4)] Teachers certified in the education of students with visual impairments must be available to students with visual impairments, including deaf-blindness, through one of the school district's instructional options, a shared services arrangement with other school districts, or an education service center (ESC). [A teacher who is certified in the education of students with visual impairments must attend each admission, review, and dismissal (ARD) committee meeting or individualized family service plan (IFSP) meeting of a student with a visual impairment, including deaf-blindness.]

(4) [(5)] Teachers certified in the education of students with auditory impairments must be available to students with auditory impairments, including deaf-blindness, through one of the school district's instructional options, a regional day school program for the deaf, or a shared services arrangement with other school districts. [, or an ESC. A teacher who is certified in the education of students with auditory impairments must attend each ARD committee meeting or IFSP meeting of a student with an auditory impairment, including deaf-blindness.]

(5) [(6)] The following provisions apply to physical education.

(A) When the ARD committee has made the determination and the arrangements are specified in the student's individualized education program (IEP), physical education may be provided by the following personnel:

(i) special education instructional or related service personnel who have the necessary skills and knowledge;

(ii) physical education teachers;

(iii) occupational therapists;

(iv) physical therapists; or

(v) occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.

(B) When these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to, inservice records, evidence of attendance at seminars or workshops, or transcripts of college courses.

(6) [(7)] Teachers assigned full-time or part-time to instruction of students from birth through age two with visual impairments, including deaf-blindness, shall be certified in the education of students with visual impairments. Teachers assigned full-time or part-time to instruction of students from birth through age two who are deaf, including deaf-blindness, shall be certified in education for students who are deaf and severely hard of hearing. [Other certifications for serving these students shall require prior approval from TEA.]

(7) [(8)] Teachers with secondary certification with the generic delivery system may be assigned to teach Grades 6-12 only.

(c) Paraprofessional personnel must be certified and may be assigned to work with eligible students, general and special education teachers, and related service personnel. Aides may also be assigned to assist students with special education transportation, serve as a job coach, or serve in support of community-based instruction. Aides paid from state administrative funds may be assigned to the Special Education Resource System (SERS), the Special Education Management System (SEMS), or other special education clerical or administrative duties.

(d) Interpreting services for students who are deaf shall be provided by an interpreter who is certified in the appropriate language mode(s), if certification in such mode(s) is available. If certification is available, the interpreter must be certified by the Registry of Interpreters for the Deaf (RID) or the Texas Board for Evaluation of Interpreters (BEI), Department of Assistive and Rehabilitative Services (DARS), Office for Deaf and Hard of Hearing Services (DHHS). [Texas Commission for the Deaf and Hard of Hearing, unless the interpreter has been granted an emergency permit by the commissioner of education to provide interpreting services for students who are deaf. The commissioner shall consider applications for the issuance of an emergency permit to provide interpreting services for students who are deaf on a case-by-case basis in accordance with requirements set forth in 34 CFR, §300.136, and standards and procedures established by the TEA. In no event will an emergency permit allow an uncertified interpreter to provide interpreting services for more than a total of three school years to students who are deaf.]

(e) Orientation and mobility instruction must be provided by a certified orientation and mobility specialist (COMS) who is certified by the Academy for Certification of Vision Rehabilitation and Education Professionals.

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

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DIVISION 6. REGIONAL EDUCATION SERVICE CENTER SPECIAL EDUCATION PROGRAMS

19 TAC §89.1141

The amendment is proposed under 34 CFR, §300.100, which requires states to have policies and procedures in place to ensure the provision of a free appropriate public education to children with disabilities; and TEC, §§29.001, which authorizes the com-

missioner of education to adopt rules for the administration and funding of the special education program; 30.001, which authorizes the commissioner to adopt rules concerning the coordination of services to children with disabilities in each region served by a regional education service center; and 30.002, which authorizes the commissioner to adopt rules for the administration of the statewide plan for education students with visual impairments.

The amendment implements 34 CFR, §300.100; and TEC, §§29.001; 30.001, and 30.002.

§89.1141. Education Service Center Regional Special Education Leadership.

(a) Each regional education service center (ESC) will provide leadership, training, and technical assistance in the area of special education for students with disabilities in accordance with the Texas Education Agency's (TEA) focus on increasing student achievement and Texas Education Code (TEC), §8.051(d)(2) and (5), and will assist TEA in the implementation of 34 Code of Federal Regulations (CFR) §300.119. [~~§300.382 and §300.555.~~]

(b) Each regional ESC will provide technical assistance, support, and training in the area of special education to school districts based on the results of a comprehensive needs assessment process. Each regional ESC will continue to serve as first point of contact for school districts, parents, and other community stakeholders, and will[~~, in accordance with 34 CFR §300.382(j),~~] provide for the joint training of parents and special education, related services, and general education personnel.

(c) - (g) (No change.)

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

Filed with the Office of the Secretary of State on April 9, 2007.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: May 20, 2007
For further information, please call: (512) 475-1497

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DIVISION 7. RESOLUTION OF DISPUTES BETWEEN PARENTS AND SCHOOL DISTRICTS

19 TAC §§89.1150, 89.1151, 89.1165, 89.1180, 89.1185, 89.1191

The amendments are proposed under 34 CFR, §300.100, which requires states to have policies and procedures in place to ensure the provision of a free appropriate public education to children with disabilities; and §300.121, which requires states to have policies and procedures in place to ensure children with disabilities and their parents are afforded procedural safeguards; and TEC, §29.001, which authorizes the commissioner of education to adopt rules for the administration and funding of the special education program.

The amendments implement 34 CFR, §300.100; and §300.121; and TEC, §29.001.

§89.1150. General Provisions.

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

(c) The possible options for resolving disputes include, but are not limited to:

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

(5) filing a complaint with the TEA in accordance with 34 CFR, §300.153; [~~§§300.600-300.662;~~] or

(6) (No change.)

§89.1151. Due Process Hearings.

(a) (No change.)

(b) The Texas Education (TEA) shall implement a one-tier system of due process hearings under the IDEA. The proceedings in due process hearings shall be governed by the provisions of 34 CFR, §§300.507-300.514, and 34 CFR, §300.532, [~~§300.528,~~] if applicable, and §§89.1151, 89.1165, 89.1170, 89.1180, 89.1185 and 89.1191 of this subchapter.

(c) A [~~Effective with requests for due process hearings filed on or after August 1, 2002, a~~] parent or public education agency must request a due process hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the hearing request.

§89.1165. Request for Hearing.

(a) A request for a due process hearing (due process complaint) must be in writing and must be filed with the Texas Education Agency, 1701 N. Congress Avenue, Austin, Texas 78701. The request for a due process hearing may be filed by mail, hand-delivery, or facsimile. The Individuals with Disabilities Education Act (IDEA) timelines applicable to due process hearings shall commence when the non-filing party first receives the request for a due process hearing. Unless rebutted, it will be presumed that the non-filing party first received the hearing request on the date it is sent to the parties by [~~and shall be deemed filed only when actually received by the office responsible for legal services at~~] the Texas Education Agency (TEA). The TEA has developed a model form which may be used by a parent to initiate a due process hearing. The form is available on request from TEA, all regional education service centers, and all school districts. The form is also available on TEA's website.

(b) The party filing a request for a due process hearing must provide a copy of the request to the other party.

[~~(b) If the request for a due process hearing does not specify the issues to be heard and the relief requested, the hearing officer shall require the complaining party to supplement the request, orally or in writing, to clarify the issues to be heard at the hearing and the relief sought by the complaining party.~~]

(c) The request for due process hearing must include:

(1) the name of the child;

(2) the address of the residence of the child;

(3) the name of the school the child is attending;

(4) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Assistance Act (42 United States Code §11434a(2)), available contact information for the child, and the name of the school the child is attending;

(5) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(6) a proposed resolution of the problem to the extent known and available to the party at the time.

(d) A party may not have a due process hearing until the party, or the attorney representing the party, files a request for a due process hearing that meets the requirements of paragraph (c) of this section.

§89.1180. Prehearing Procedures.

(a) Promptly upon being assigned to a hearing, the hearing officer will forward to the parties a scheduling order which sets the time, date, and location of the hearing and contains the timelines for the following actions, as applicable: [~~schedule a prehearing conference to be held at a time reasonably convenient to the parties to the hearing. The prehearing conference shall be held by telephone unless the hearing officer determines that circumstances require an in-person conference.~~]

(1) Response to Complaint (34 Code of Federal Regulations (CFR), §300.508(f));

(2) Resolution Meeting (34 CFR, §300.510(a));

(3) Contesting Sufficiency of the Complaint (34 CFR, §300.508(d));

(4) Resolution Period (34 CFR, §300.510(b));

(5) Five-Business Day Disclosure (34 CFR, §300.512 (a)(3)); and

(6) the date by which the final decision of the hearing officer shall be issued (34 CFR, §300.515 and §300.532(c)(2)).

(b) The hearing officer shall schedule a prehearing conference to be held at a time reasonably convenient to the parties to the hearing. The prehearing conference shall be held by telephone unless the hearing officer determines that circumstances require an in-person conference.

[~~(b) The hearing officer shall ensure that a written, or, at the option of either party, an electronic, verbatim record of the prehearing conference is made.~~]

(c) The prehearing shall be recorded and transcribed by a reporter, who shall immediately prepare a transcript of the prehearing for the hearing officer with copies to each of the parties.

(d) [~~(c)~~] The purpose of the prehearing conference shall be to consider any of the following:

(1) specifying [~~and simplifying~~] issues as set forth in the due process complaint notice;

(2) admitting certain assertions of fact or stipulations;

(3) establishing any limitation of the number of witnesses and the time allotted for presenting each party's case; and/or

(4) discussing other matters which may aid in simplifying the proceeding or disposing of matters in controversy, including settling matters in dispute.

(e) [~~(d)~~] Promptly upon the conclusion of the prehearing conference, the hearing officer will issue and deliver to the parties, or their legal representatives, a written prehearing order which confirms and/or identifies:

(1) the time, place, and date of the hearing;

(2) the issues to be adjudicated [~~resolved~~] at the hearing;

(3) the relief being sought at the hearing;

(4) the deadline for disclosure of evidence and identification of witnesses, which must be at least five business days prior to the scheduled date of the hearing (hereinafter referred to as the "Disclosure Deadline");

(5) the date by which the final decision of the hearing officer shall be issued; and

(6) other information determined to be relevant by the hearing officer.

(f) [~~(e)~~] No pleadings, other than the request for hearing, and Response to Complaint, if applicable, are mandatory, unless ordered by the hearing officer. Any pleadings after the request for a due process hearing shall be filed with the hearing officer. Copies of all pleadings shall be sent to all parties of record in the hearing and to the hearing officer. If a party is represented by an attorney, all copies shall be sent to the attorney of record. Telephone facsimile copies may be substituted for copies sent by other means. An affirmative statement that a copy of the pleading has been sent to all parties and the hearing officer is sufficient to indicate compliance with this rule.

(g) [~~(f)~~] Discovery methods shall be limited to those specified in the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and may be further limited by order of the hearing officer. Upon a party's request to the hearing officer, the hearing officer may issue subpoenas and commissions to take depositions under the APA. Subpoenas and commissions to take depositions shall be issued in the name of the Texas Education Agency.

(h) [~~(g)~~] On or before the Disclosure Deadline (which must be at least five business days prior to a scheduled due process hearing), each party must disclose and provide to all other parties and the hearing officer copies of all evidence (including, without limitation, all evaluations completed by that date and recommendations based on those evaluations) which the party intends to use at the hearing. An index of the documents disclosed must be included with and accompany the documents. Each party must also include with the documents disclosed a list of all witnesses (including their names, addresses, phone numbers, and professions) which the party anticipates calling to testify at the hearing.

[~~(h) A party may request a dismissal or nonsuit of a due process hearing to the same extent that a plaintiff may dismiss or nonsuit a case under Texas Rules of Civil Procedure, Rule 162. However, if a party requests a dismissal or nonsuit of a due process hearing after the Disclosure Deadline has passed and, at any time within one year thereafter requests a subsequent due process hearing involving the same or substantially similar issues as those alleged in the hearing which was dismissed or nonsuited, then, absent good cause or unless the parties agree otherwise, the Disclosure Deadline for the subsequent due process hearing shall be the same date as was established for the hearing that was dismissed or nonsuited.~~]

§89.1185. Hearing.

(a) The hearing officer shall afford the parties an opportunity for hearing within the timelines set forth in 34 Code of Federal Regulations (CFR), §300.515 and §300.532, as applicable, [~~after reasonable notice of not less than ten days,~~] unless the parties agree otherwise , except that the parties must comply with the timelines for expedited hearings .

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

(d) Except as modified or limited by the provisions of 34 CFR, [~~Code of Federal Regulations (CFR),~~] §§300.507 - 300.514, or 300.532, [~~300.521, or 300.528,~~] or the provisions of §§89.1151 - 89.1191 of this subchapter, the Texas Rules of Civil Procedure shall govern the proceedings at the hearing and the Texas Rules of Evidence shall govern evidentiary issues.

(e) - (j) (No change.)

(k) Filing of post-hearing briefs shall be permitted only upon order of the hearing officer [~~and only upon a finding by the hearing officer that the legal issues involved in the hearing are novel or unsettled in the State of Texas or the Fifth Circuit. Any post-hearing briefs permitted by the hearing officer shall be limited to the legal issues specified by the hearing officer~~].

(l) The hearing officer shall issue a final decision, signed and dated, no later than 45 days after the expiration of the 30-day period under 34 CFR, §300.510(b), or the adjusted time periods described in 34 CFR, §300.510(c), after a request for hearing is received by the Texas Education Agency, unless the deadline for a final decision has been extended by the hearing officer as provided in subsection (n) [~~(o)~~] of this section. A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence presented at the hearing. The final decision shall be mailed to each party by the hearing officer. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.

(m) At the request of either party, the hearing officer shall include, in the final decision, specific findings of fact regarding the following issues:

(1) (No change.)

(2) if the parent was represented by an attorney, whether the parent's attorney provided the school district the appropriate information in the due process complaint in accordance with 34 CFR, §300.508(b). [~~§300.507(c).~~]

[~~(n) In making a finding regarding the issue described in subsection (m)(1) of this section, the hearing officer shall consider the extent to which each party had notice of, or the opportunity to resolve, the issues presented at the due process hearing prior to the date on which the due process hearing was requested. If, after the date on which a request for a due process hearing is filed, either the parent or the school district requests that a meeting of the admission, review, and dismissal (ARD) committee of the student who is the subject of the due process hearing be convened to discuss the issues raised in the request for a due process hearing, the hearing officer shall also consider the extent to which each party participated in the ARD committee meeting in a good faith attempt to resolve the issue(s) in dispute prior to proceeding to a due process hearing.~~]

(n) [~~(o)~~] A hearing officer may grant extensions of time for good cause beyond the time [~~45-day~~] period specified in subsection (l) of this section at the request of either party. Any such extension shall be granted to a specific date and shall be stated in writing by the hearing officer to each of the parties.

(o) [~~(p)~~] The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States, as provided in 20 United States Code (USC), §1415(i)(2), and 34 CFR, §300.516. [~~§300.512.~~]

(p) [~~(q)~~] In accordance with 34 CFR, §300.518(d), [~~§300.514(c),~~] a school district shall implement any decision of the hearing officer that is, at least in part, adverse to the school district in a timely manner within ten school days after the date the decision was rendered. School districts must provide services ordered by the hearing officer, but may withhold reimbursement during the pendency of appeals.

§89.1191. Special Rule for Expedited Due Process Hearings.

An expedited due process hearing requested by a party under 34 Code of Federal Regulations [~~(CFR)~~], §300.532, [~~§300.528,~~] shall be governed by the same rules as are applicable to due process hearings generally, except that the final decision of the hearing officer must be issued and mailed to each of the parties no later than 45 days after the date the request for the expedited hearing is received by the Texas Education Agency, without exceptions or extensions.

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

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.14

The Texas Parks and Wildlife Department proposes an amendment to §53.14, concerning Deer Management and Removal Permits.

The proposed amendment affects the Deer Management Permit (DMP) and the Permit to Trap, Transport, and Transplant Game Animals and Game Birds (popularly referred to as the "Triple T" permit).

The portion of the proposed amendment affecting the Triple T permit (which includes the urban white-tailed deer removal permit) would increase the fee for a Triple T application from $180 to $750. Elsewhere in this issue, the department has proposed an amendment to the Triple T rules that would require the payment of the prescribed Triple-T fee on a per-release site basis. In Fiscal Year 2006, the department issued 75 Triple T permits authorizing trapping activities at 63 sites and release activities at 163 sites. The department incurred costs of approximately $120,830 to process applications, perform site inspections, observe and enforce compliance, and prosecute violations of Triple T regulations; however, revenue from permit fees during the same time period was $13,500.

Under Parks and Wildlife Code, §43.061, the state may not incur any expense for the trapping, transporting, and transplanting of game animals and game birds under a permit issued under Parks and Wildlife Code, Chapter 43, Subchapter E, which is the authorizing statute for the Triple T permit. Therefore, the department must increase the fee in order to recoup the expense

to the state. The proposed fee of $750 was obtained by dividing the cost of program administration and enforcement by the number of release sites.

The portion of the proposed amendment affecting the DMP would provide a consistent application process for new applications and renewals. The department has determined that it does not recover the cost of administering the DMP program under current fee amounts. Under current rule, the fee for the initial issuance of a DMP is $1,000 and the permit may be renewed annually. The current fee for a renewal is $600. Under Parks and Wildlife Code, §43.603, the commission may establish a fee for new or renewed DMPs, but the fee for a DMP may not exceed $1,000.

The department has determined that it does not recover the cost of administering the DMP program. In Fiscal Year 2006, the department issued 38 new DMPs and renewed 40 DMPs, incurring expenses of approximately $92,000 to process applications, perform site and facility inspections, observe and enforce compliance, and prosecute violations of DMP regulations; however, revenue from permit fees was $62,000. Data from FY 07 is incomplete, but 58 new DMPs have been issued and 46 have been renewed, an increase of 67%. It is logical to assume that administrative and enforcement costs have also increased and continue to be greater than revenue. In fact, FY 07 revenue of $85,000 is still below the expenses from the previous year, when there were 67% fewer permits.

Therefore, the department has determined that an increase in the renewal fee is necessary in order to recoup administrative and enforcement expenses to the greatest extent possible.

Mr. Robert Macdonald, Regulations Coordinator, has determined that, for each of the first five years that the rule as proposed is in effect, there will be fiscal implications to state government as a result of enforcing or administering the rule. The department estimates that there will be an increase in revenue to the department of approximately $41,600 per year as a result of the administering and enforcing the proposed rule with respect to DMPs. This figure was derived by taking the total number of active DMP permits (104) and calculating the difference between the revenue obtained from the current renewal fee ($600) and the proposed fee for annual application ($1,000). This calculation assumes that every person currently holding a DMP will choose to continue engaging in permitted activities. The calculation does not address new permits, since the department has no method of determining how many persons will participate in the program in the future.

The department also estimates that there will be additional revenue of approximately $112,500 per year as a result of enforcing or administering the proposed rule with respect to Triple T permits. This estimate was obtained by taking the average number of release sites authorized over each of the last three years (150) and multiplying it by the proposed fee ($750).

There will be no fiscal implications for other units of state or local governments as a result of administering or enforcing the rule as proposed.

Mr. Macdonald also has determined that, for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be greater efficiency in program administration and clearer and more user-friendly regulations.

There may be an adverse economic effect on small businesses, microbusinesses, and persons required to comply with the amendment as proposed. Government Code, Chapter 2006, defines small and micro-businesses as entities "formed for the purpose of making a profit." Tex. Gov't Code §2006.00(1)(A) - (2)(A). DMP and Triple T permits are issued to individuals, rather than to entities. Some, but not all, individuals participate in activities covered by a DMP or a Triple T permit in an effort to enhance profit generating hunting operations. To the extent that such operations are considered small or microbusinesses, the following impact analysis is provided.

Each current DMP permittee will incur a direct additional cost of $400 per year to continue the activities authorized by a DMP. Some of the businesses affected will be small or microbusinesses; however, there is no difference in the cost of compliance between the largest business affected by the rule and the smallest business affected by the rule. Similarly, there is no disproportionate economic impact on small or microbusinesses. TPWD is not aware of a performance-oriented, voluntary, or market-based approach that would substitute for the proposed amendment. More specifically, if a business employed one employee, the cost of compliance would be $400 per employee per year. If a business employed 20 employees, the cost of compliance would be $20 per employee per year. If a business employed 100 employees, the cost of compliance would be $4 per employee per year.

Each Triple T permittee will incur a direct additional cost of $570 per permit if the permit lists only one release site. Some of the businesses affected will be small or microbusinesses. If a business employed one employee, the cost of compliance would be $570 per employee. If a business employed 20 employees, the cost of compliance would be $28.50 per employee. If a business employed 100 employees, the cost of compliance would be $5.70 per employee.

In addition, the proposed rule requires an additional cost of $750 for each release site listed on the permit. Therefore, for each additional release site, the cost of compliance will increase by $750 per employee for a business that employs only one employee, by $37.50 per employee for a business that employs 20 employees and by $7.50 per employee for a business that employs 100 employees.

However, there is no difference in the cost of compliance between the largest business affected by the rule and the smallest business affected by the rule. Similarly, there is no disproportionate economic impact on small or microbusinesses. TPWD is not aware of a performance-oriented, voluntary, or market-based approach that would substitute for the proposed amendment.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter R, which authorizes the

commission to issue a permit for the management of the wild white-tailed deer population on acreage enclosed by a fence capable of retaining white-tailed deer, and requires the commission to set a fee for the issuance or renewal of a permit in an amount not to exceed $1,000, and Chapter 43, Subchapter E, which authorizes the commission to issue permits to trap, transport, and transplant game animals and game birds, to issue permits for urban white-tailed deer removal, and to establish a fee for those permits.

The proposed amendment affects Parks and Wildlife Code, Chapter 43.

§53.14. Deer Management and Removal Permits.

(a) (No change.)

(b) Trap, transport and transplant permit application fees:

(1) nonrefundable application processing fee--$750 per release site [~~$180~~]; and

(2) nonrefundable application processing fee for amendment to existing permit--$30. If the amendment includes additional release sites, the fee prescribed by paragraph (1) of this subsection shall be imposed for each additional release site.

(c) Urban white-tailed deer removal permit:

(1) nonrefundable application processing fee--$750 [~~$180~~]; and

(2) nonrefundable application processing fee for amendment to existing permit--$30. If the amendment includes additional release sites, the fee prescribed by paragraph (1) of this subsection shall be imposed for each additional release site.

(d) Deer management permit and renewal--$1,000.[~~:~~]

[~~(1) deer management permit--$1,000; and~~]

[~~(2) renewal of deer management permit--$600.~~]

(e) (No change.)

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

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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CHAPTER 59. PARKS
SUBCHAPTER A. PARK ENTRANCE AND PARK USER FEES

31 TAC §59.3

The Texas Parks and Wildlife Department (department) proposes an amendment to §59.3, concerning Activity and Facility Use Fees.

The proposed amendment would incorporate special access permit fees as part of state park regulations. In another rulemaking published elsewhere in this issue of the *Texas Register*, the department proposes to create a special access permit valid for access to state parks for persons selected to participate in public hunting activities. The department wishes to differentiate between special permits issued for use on state parks and special permits issued for use on other units of public hunting lands such as wildlife management areas. The proposed amendment to §59.3 is necessary in order to comply with federal requirements that oblige the department to keep funds from the sale of permits for access to state parks separate from funds from the sale of permits for access to wildlife management areas. The proposed amendment would acknowledge that distinction by rule. The effect of the proposed amendment would be nonsubstantive; it does not create a new fee and does not impose the existing fee on additional users.

Mr. Robert Macdonald, Regulations Coordinator, has determined that, for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Macdonald also has determined that, for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be consistency of rules.

There will be no adverse economic effect on small businesses, microbusinesses, or persons required to comply with the amendment as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Vickie Fite, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: vickie.fite@tpwd.state.tx.us).

The amendment is proposed under the authority of Parks and Wildlife Code, §11.027, which authorizes the commission to commission by rule to establish and provide for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department, and §13.015, which authorizes the department to charge and collect park user fees for park services, and requires the commission to set the fees.

The proposed amendment affects Parks and Wildlife Code, Chapters 11 and 13.

§59.3. Activity and Facility Use Fees.

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

(d) Special access permits. Special access permits allow entry to state parks and are issued to persons selected for public hunting privileges in state parks.

(1) standard period--$75;

(2) extended period--$125.

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

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION
DIVISION 3. SEASONS AND BAG LIMITS--FISHING PROVISIONS

31 TAC §65.83

The Texas Parks and Wildlife Department proposes new §65.83, concerning Delegation of Authority.

Federal authorities are responsible for regulating the take of all species of marine life subject to the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. §1801 et seq.) in the Exclusive Economic Zone (EEZ). The EEZ extends from the seaward boundary of state waters (nine nautical miles) out to 200 nautical miles. When rules are changed in the EEZ, Texas often changes the rules governing the take of those same species in state waters to create consistency between federal and state regulations, to enhance enforcement of the rules (i.e., state and federal), and to minimize public confusion over what may be legally landed in Texas from the Gulf of Mexico.

Parks and Wildlife Code, §79.002, authorizes the Texas Parks and Wildlife Commission (the Commission) to delegate to the executive director its responsibility and authority to make rules as necessary to modify state coastal fisheries regulations in order to provide for consistency with federal regulations in the exclusive economic zone. The proposed new rule would make that delegation.

The proposed new rule would allow Texas regulations governing coastal fishing to be brought into conformity with federal regulations more rapidly than through the normal rulemaking process. Normally, the Commission meets no more than five times per year, and amends the coastal fisheries portion of the Statewide Hunting and Fishing Proclamation once per year. This normal process of amending coastal fisheries rules takes 60 days or longer. Given the normal scheduling of Commission meetings, this can take as long as 120 days. Delegating the rulemaking process to the Executive Director will allow Texas rules to be brought into conformity with federal rules within 60 days of adoption of the federal rule, or less time if necessary. Shortening the time period during which federal and Texas rules are inconsistent is expected to enhance species conservation, minimize confusion within the fishing community, and improve enforcement.

Robin Riechers, Director of Science and Policy, has determined that, for each of the first five years the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Riechers also has determined that, for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the continued ability of the department to discharge its statutory duty to protect and manage the coastal fisheries resources of the state.

The rule will not result in economic costs to businesses, microbusinesses, or persons required to comply with the rule.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Jerry L. Cooke, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4492 (e-mail: jerry.cooke@tpwd.state.tx.us).

The new section is proposed under Parks and Wildlife Code, §79.002, which provides the Commission the authority to delegate to the executive director its responsibility and authority for making rules as necessary to modify state coastal fisheries regulations in order to provide for consistency with federal regulations in the exclusive economic zone. Responsibility for adopting rules covering taking, attempting to take, possession, transportation, purchase, and sale of aquatic resources in the salt waters of Texas is set forth in Parks and Wildlife Code, Chapters 61, 66, 67, 68, 76, 77, and 78.

The amendment affects Parks and Wildlife Code, Chapters 61, 66, 67, 68, 76, 77, and 78.

§65.83. Delegation of Authority.

The executive director may, after notifying the Chairman of the Commission, adopt, repeal, or modify state coastal fisheries regulations in order to provide for consistency with federal regulations in the exclusive economic zone.

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

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

31 TAC §65.107

The Texas Parks and Wildlife Department (department) proposes an amendment to §65.107, concerning Permit Application and Processing.

The proposed amendment would require an applicant to pay a fee for each release site named on a single Permit to Trap, Transport, and Transplant Game Animals and Game Birds (popularly referred to as "Triple T" permits) and alter the composition of the review panel provided for by subsection (b). The proposed amendment also corrects the title of one of the permits in subsection (a)(2) inserting the word "deer."

Under current §65.107(a), an applicant may specify multiple trap and release sites on a single application for a Triple T permit. The department has determined that the current method of permit administration is not cost effective. In Fiscal Year 2006, the department issued 75 Triple T permits authorizing trapping activities at 63 sites and release activities at 163 sites. The department incurred costs of approximately $120,830 to process applications, perform site inspections, observe and enforce compliance, and prosecute violations of Triple T regulations; however, revenue from permit fees during the same time period was $13,500.

Under Parks and Wildlife Code, §43.061, the state may not incur any expense for the trapping, transporting, and transplanting of game animals and game birds under a Triple T permit. Therefore, the department must increase the fee in order to recoup the expense to the state. The department has proposed the actual fee increase in another proposed rulemaking published elsewhere in this issue, although a discussion of the fee is included in this preamble as a courtesy.

Current §65.107(b) provides that an applicant for a permit may request a review of an agency decision to deny or delay permit issuance. The review panel is composed of agency managers. The proposed amendment would add the Deputy Director of Operations (or his or her designee) to the review panel and remove "the Regional Director with jurisdiction" and the "White-tailed Deer or Mule Deer program leader." The change is necessary to include senior management in any situation calling for a review and provide consistency with other review panels associated with deer permits.

Mr. Robert Macdonald, Regulations Coordinator, has determined that, for each of the first five years that the rule as proposed is in effect, there will be fiscal implications to state government as a result of enforcing or administering the rule. Note: This fiscal note also appears as part of the proposed amendment to §53.14, which is published elsewhere in this issue. The department reproduces it here as a courtesy to the regulated community. The department also estimates that there will be additional revenue of approximately $112,500 per year as a result of enforcing or administering the proposed rule with respect to Triple T permits. This estimate was obtained by taking the average number of release sites authorized over each of the last three years (150) and multiplying it by the proposed fee ($750).

There will be no fiscal implications for other units of state or local governments as a result of administering or enforcing the rule as proposed.

Mr. Macdonald also has determined that, for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be greater efficiency in program administration and clearer and more user-friendly regulations.

There may be an adverse economic effect on small businesses, microbusinesses, and persons required to comply with the amendment as proposed. Government Code, Chapter 2006, defines small and microbusinesses as entities "formed for the purpose of making a profit." Tex. Gov't Code, §2006.00(1)(A) - (2)(A). DMP and Triple T permits are issued to individuals, rather than to entities. Some, but not all, individuals participate in activities covered by a DMP or a Triple T permit in an effort to enhance profit generating hunting operations. To the extent that such operations are considered small or microbusinesses, the following impact analysis is provided.

Each Triple T permittee will incur a direct additional cost of $570 per permit if the permittee lists only one release site. Some of the businesses affected will be small or microbusinesses. If a business employed one employee, the cost of compliance would be $570 per employee. If a business employed 20 employees, the cost of compliance would be $28.50 per employee. If a business employed 100 employees, the cost of compliance would be $5.70 per employee.

In addition, the proposed rule requires an additional cost of $750 for each release site listed on the permit. Therefore, for each additional release site, the cost of compliance will increase by $750 per employee for a business that employs only one employee, by $37.50 per employee for a business that employs 20 employees, and by $7.50 per employee for a business that employs 100 employees. However, there is no difference in the cost of compliance between the largest business affected by the rule and the smallest business affected by the rule. Similarly, there is no disproportionate economic impact on small or microbusinesses. TPWD is not aware of a performance-oriented, voluntary, or market-based approach that would substitute for the proposed amendment.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, §43.061, which requires the commission shall adopt rules for the trapping, transporting, and transplanting of game animals and game birds and authorizes the commission to set fees for review of permit applications or other department actions necessary to implement the provisions of §43.601.

The proposed amendments affect Parks and Wildlife Code, Chapter 43.

§65.107. Permit Application and Processing.

(a) Permit applications.

(1) Application for permits authorized under this subchapter shall be on a form prescribed by the department.

(2) A single application for a Trap, Transport, and Transplant Permit may specify multiple trap and/or release sites; however, the permit fee prescribed by Chapter 53 of this title shall be assessed on a per-release site basis.

(3) A single application for [~~or~~] an Urban White-tailed Deer Removal Permit may specify multiple trap and/or release sites. A single application for a Trap, Transport, and Process Surplus

White-tailed Deer Permit may specify multiple trap sites and/or processing facilities.

(4) [~~(3)~~] A single application may not specify multiple species of game birds and/or game animals.

(5) [~~(4)~~] The application must be signed by:

(A) the applicant;

(B) the landowner or agent of the trap site(s); and

(C) the landowner or agent of the release site(s) or the owner or agent of the processing facility or facilities.

(6) [~~(5)~~] The applicant may designate certain persons and/or companies that will be involved in the permitted activities, including direct handling, transport and release of game animals or game birds. In the absence of the permittee, at least one of the named persons and/or companies shall be present during the permitted activities.

(b) Review. An applicant for a permit under this subchapter may request a review of a decision of the department to deny issuance or delay processing of a permit.

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

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Deputy Executive Director for Operations, or his or her designee;

(B) [~~(A)~~] the Director of the Wildlife Division; and

[~~(B) the Regional Director and District Leader with jurisdiction;~~]

(C) the Big Game Program Director.[~~; and~~]

[~~(D) the White-tailed Deer or Mule Deer program leader, as appropriate.~~]

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

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

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER D. DEER MANAGEMENT PERMIT (DMP)

31 TAC §§65.131, 65.134 - 65.136

The Texas Parks and Wildlife Department (department) proposes amendments to §65.131 and §§65.134 - 65.136, concerning Deer Management Permits (DMP).

The proposed amendment to §65.131, concerning Deer Management Permit (DMP), would eliminate current subsection (d) and alter the composition of the review panel provided for by current subsection (e). Current subsection (d) provides that changes to an existing deer management plan are to be treated as a new application. The subsection is being eliminated because another facet of this rulemaking proposes to provide a consistent application process and fee for new applications and renewals. Therefore, subsection (d) is no longer necessary.

Current §65.131(e) provides that an applicant for a permit may request a review of an agency decision to deny or delay permit issuance. The review panel is composed of agency managers. The proposed amendment would add the Deputy Director of Operations (or his or her designee) to the review panel and remove "the Regional Director with jurisdiction" and the "White-tailed Deer or Mule Deer program leader." The change is necessary to include senior management in any situation calling for a review and provide consistency with other review panels associated with deer permits.

The proposed amendment to §65.134, concerning Facility Standards, would clarify that the maximum number of bucks and does that may be kept in a DMP pen does not include fawns born in the pen during the permit year. The provisions of current subsection (c) allow no more than one buck and 20 does to be kept in a pen between September 1 and January 31. Those dates were selected because other provisions of the subchapter prohibit the addition of deer between March 2 and January 31 and require that all deer in a DMP be released by August 31. In essence, the current regulation specifies the maximum number of deer that may be in a DMP pen during the time it is lawful to confine deer in a DMP pen. The proposed amendment simplifies and clarifies the provisions of the subsection by stating declaratively that a DMP pen may contain no more than one buck and 20 does at any time, exclusive of fawns born in the pen during the permit year.

The proposed amendment to §65.135, concerning Detention and Marking of Deer, would lengthen the period of time when it is unlawful to trap deer from the wild under a DMP and eliminate the requirement that deer within a DMP be ear-tagged.

Under current §65.135(a), deer may not be trapped between March 2 and August 31. The proposed amendment would extend the prohibition to the period from December 15 to August 31. The intent of the rule is to prevent the trapping of pregnant does, since the purpose of the subchapter is to authorize the trapping of wild does for breeding purposes. Department data indicate that by December 15 there is a high probability that pregnant does will be trapped. The proposed amendment is necessary to ensure that the intent and integrity of the program is maintained.

Under current §65.135(b), adult deer within a DMP facility must be ear-tagged. The department has determined that tagging is not necessary and has little value to the agency. Therefore, the provision is being eliminated. A DMP holder is not prohibited from marking deer that are legally detained under a permit. The proposed amendment is necessary to simplify the rules.

The proposed amendment to §65.136, concerning Release, would reduce the minimum footage of fencing that must be removed during release operations, allow multiple openings of at least 10 feet, and shorten the time that containment features must be removed in order to effect release of DMP deer. The provisions of the current rule allow for the use of release techniques that would otherwise be prohibited, provided they are approved by the department on a case-by-case basis. Since the inception of the permit in 1998, the department has approved numerous exceptions to the provisions of the section. In review-

ing the exceptions to the rule, the department has determined that more flexible standards can be safely implemented. The proposed amendment also would eliminate the provision for case-by-case approval of release techniques, as the department does not intend to approve any release techniques other than what is allowed by rule. The department has also determined that the current requirement that fences remain down for a period of 60 days may be safely shortened to 30 days. The proposed amendment is necessary to allow for the liberation of deer after fawning season but with time to apply for a new permit in time to be ready for the trapping season, which begins September 1. The proposed amendment would also clarify that the provisions mandating the removal of supplemental food and water apply in the DMP pens at the time deer are released. The current wording of the provision does not make that clear. The proposed amendment also clarifies that deer must be released in the pasture where they were originally captured, except for deer that the department has authorized for release elsewhere under a permit to trap, transport, and transplant game animals and game birds. The department wishes to make it clear that deer may not be released into a small enclosure or trap but must be released back into the same pasture or acreage that the deer management plan specified for the capture of the deer.

Mr. Robert Macdonald, Regulations Coordinator, has determined that, for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that, for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be greater efficiency in program administration and clearer and more user-friendly regulations.

There will be no adverse economic effects on small businesses, microbusinesses, or persons required to comply with the amendments as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter R, which authorizes the commission to issue a permit for the management of the wild white-tailed deer population on acreage enclosed by a fence capable of retaining white-tailed deer, subject to conditions established by the commission.

The proposed amendments affect Parks and Wildlife Code, Chapter 43.

§65.131. Deer Management Permit (DMP).

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

[~~(d) Changes to an approved Deer Management Plan shall be considered as a new application, unless the changes are necessary to comply with regulatory or statutory requirements implemented after the deer management plan was approved.~~]

(d) [~~(e)~~] An applicant for a permit under this subchapter may request that a decision by the department to deny issuance or delay processing of a permit or permit renewal be reviewed.

(1) An applicant seeking review of a decision of the department under this subsection shall contact the department within 10 working days of being notified by the department of permit denial.

(2) The department shall conduct the review and notify the applicant of the results within 10 working days of receiving a request for a review.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Deputy Executive Director for Operations (or his or her designee);

(B) [~~(A)~~] the Director of the Wildlife Division; and

[~~(B) the Regional Director with jurisdiction;~~]

(C) the Big Game Program Director.[~~; and~~]

[~~(D) the White-tailed Deer Program Leader.~~]

(4) The decision of the review panel is final.

(5) The department shall report on an annual basis to the White-tailed Deer Advisory Committee the number and disposition of all reviews under this subsection.

§65.134. Facility Standards.

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

(c) Except for fawns born in a DMP facility during the current permit year, [~~During the period from September 1 through January 31,~~] no pen at any time shall contain more than:

(1) one buck deer; and/or

(2) 20 doe deer.

§65.135. Detention [and Marking] of Deer.

[~~(a)~~] No trapping of deer under a DMP may take place between December 15 [~~March 2~~] and August 31 of any year.

[~~(b) Each deer detained under a DMP shall be marked by securely attaching a tag constructed of durable material to one ear. The tag must be of a size and color that is clearly visible from a distance of 50 feet. For the purposes of this subsection, 'durable material' means material that is not likely to disintegrate, decompose, or be easily dislodged or removed.~~]

§65.136. Release.

(a) Release of deer shall be effected by removing, for a total of at least 20 feet, [~~for a continuous distance of no less than 100 yards,~~] those components of a pen that serve to maintain deer in a state of detention within the pen; however, no opening shall be less than 10 feet in width. Such components shall be removed for no fewer than 30 [~~60~~] consecutive days. [~~The provisions of this subsection may be altered, provided the specific details of the release technique are included in the applicant's deer management plan and are approved by the department.~~]

(b) At any time that components of a pen are removed or manipulated for the purposes of releasing wild deer, all [~~All~~] externally provided food and water (i.e., food or water that does not naturally occur at the site) shall be removed or made inaccessible to deer for no fewer than 30 [~~60~~] days.

(c) (No change.)

(d) Except for deer authorized by the department for release elsewhere under a permit to trap, transport, and transplant game animals and game birds, all deer released from a DMP pen shall be released directly into the pasture where they were captured for the purposes of activities under this subchapter.

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

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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SUBCHAPTER H. PUBLIC LANDS PROCLAMATION

31 TAC §§65.191, 65.193, 65.201

The Texas Parks and Wildlife Department (department) proposes amendments to §§65.191, 65.193, and 65.201, concerning the Public Lands Proclamation.

The proposed amendment to §65.191, concerning Definitions, would add a definition for "special access permit." The special access permit will authorize access to a specific state park or part of a state park on a specific date for persons selected for public hunting privileges. The department wishes to differentiate between special permits issued for use on state parks and special permits issued for use on other units of public hunting lands, such as wildlife management areas. The proposed amendment is necessary in order to comply with federal requirements that oblige the department to keep funds from the sale of permits for access to state parks separate from funds from the sale of permits for access to wildlife management areas. The proposed amendment would acknowledge that distinction by rule. The effect of the proposed amendment would be nonsubstantive; it does not create a new fee and does not impose the existing fee on additional users.

The proposed amendment to §65.193, concerning Access Permit Required and Fees, would conform the language of the section as necessary to reflect the applicability of the section's provisions to the special access permit. The amendment is necessary for the same reasons stated in the discussion of the proposed amendment to §65.191 and will also be nonsubstantive in nature.

The proposed amendment to §65.201, concerning Motor Vehicles, would exempt disabled persons and persons assisting disabled persons from the provisions of 31 TAC Chapter 55, Subchapter J, which requires an off-highway vehicle (OHV) operated on public land to be affixed with a decal issued by the department for an $8 fee. The OHV fee was established to fund the purchase, development, and maintenance of OHV trails as part of a program administered by the department. The department's intent with respect to the funding of the OHV program is to rely on true off-road vehicle enthusiasts to fund the recreational trails created for that purpose. The department has determined that the use of mobility-enhancing conveyances by disabled persons participating in activities on public hunting lands is not consistent with the intent of Parks and Wildlife Code, Chapter 29 and should not be subject to the OHV fee.

Mr. Robert Macdonald, Regulations Coordinator, has determined that, for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules relating to special access permits. There could be an extremely minimal fiscal impact on the department as a result of waiving the decal requirement for disabled persons using OHVs on public hunting lands, but only with respect to OHVs used solely for public hunting purposes, as their use on any public land other than department land would still require the purchase of an OHV decal. The department estimates that the potential loss of revenue to the department will be less than $100. There will be no fiscal implications for other units of state or local government.

Mr. Macdonald also has determined that, for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be regulations that clearly delineate the function of various permits used in the department's public hunting programs, and the enhanced ability of disabled persons to use OHVs to access public hunting lands.

There will be no adverse economic effects on small businesses, microbusinesses, or persons required to comply with the amendments as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rule may be submitted to Vickie Fite, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4773 (e-mail: vickie.fite@tpwd.state.tx.us).

The amendments are proposed under Parks and Wildlife Code, Chapter 12, Subchapter A, which provides that a tract of land purchased primarily for a purpose authorized by the code may be used for any authorized function of the department if the commission determines that multiple use is the best utilization of the land's resources; §11.027, which authorizes the commission to commission by rule to establish and provide for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department; §13.015, which authorizes the department to charge and collect park user fees for park services, and requires the commission to set the fees; §29.004, which authorizes the commission to exempt persons from the fee for an off-highway vehicle decal; and Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to establish conditions for taking wildlife resources on wildlife management areas and public hunting lands.

The proposed amendments affect Parks and Wildlife Code, Chapters 11, 12, 13, 29, and 81.

§65.191. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned in §65.3 of this title (relating to Statewide Hunting and Fishing Proclamation).

(1) Adult--A person 17 years of age or older.

(2) All terrain vehicle (ATV)--Any vehicle meeting the definition of an ATV under Transportation Code, §663.001.

(3) Annual Public Hunting (APH) Permit--A permit, valid from issuance date through the following August 31, which allows entry to designated public hunting lands at designated times and the taking of wildlife resources as designated.

(4) Application fee--A non-refundable fee that may be required to accompany and validate an individual's application for a special permit.

(5) Authorized supervising adult--A parent, legal guardian, or individual at least 18 years of age who assumes liability responsibility for a youth.

(6) Blind--Any structure assembled of man-made or natural materials for the purpose or having the effect of promoting concealment or increasing the field of vision of a person.

(7) Buckshot--Lead pellets ranging in size from .24-inch to .36-inch in diameter normally loaded in a shotgun (includes, but is not limited to 0 and 00 buckshot).

(8) Camping--The use of public hunting lands for overnight accommodation, which includes sleeping, the storage of unattended personal possessions, or the use of a motor vehicle as a lodging.

(9) Competitive hunting dog event (field trial)--A department-sanctioned contest in which the skills of hunting dogs are tested.

(10) Concurrent hunt--A hunt that maintains the same permit requirements, hunt dates, means and methods, or shooting hours or combinations thereof for more than one species of animal, as designated and subject to any special provisions.

(11) Consumptive user--A person who takes or attempts to take wildlife resources.

(12) Designated campsite--A designated area where camping and camping activities are authorized.

(13) Designated days--Specific days within an established season or period of time as designated by the executive director.

(14) Designated road--A constructed roadway indicated as being open to the public by either signs posted to that effect or by current maps and leaflets distributed at the area. Roads closed to the public may additionally be identified by on-site signing, barricades at entrances, or informational literature made available to the public. Designated roads do not include county or state roads or highways.

(15) Designated target practice area--An area designated by on-site signing or by order of the executive director within which the discharge of firearms for target practice is authorized.

(16) Designated units of the state park system--Specific units of the state park system approved by the commission for application of provisions of this subchapter.

(17) Disabled person--A person who possesses a placard, license plate, or other documentation issued to that person by the State of Texas under the provisions of Transportation Code, Chapter 681.

(18) General Season--A specified time period, or designated days within a specified time period, during which more than one means or methods (as designated) may be used to take designated species.

(19) Headwear--Garment or item of apparel worn on or about the head.

(20) Immediate supervision--Control of a youth by an authorized supervising adult issuing verbal instructions in a normal voice level.

(21) Lands within a desert bighorn sheep cooperative--An aggregation of lands for which the concerned landowners and the Texas Parks and Wildlife Department have agreed to coordinate efforts to restore, manage, and harvest desert bighorn sheep.

(22) Limited Public Use (LPU) Permit--A permit, valid from issuance date through the following August 31, which allows access to designated wildlife management areas and public hunting lands at the same times that access is provided by an APH permit.

(23) Limited use zone--An area designated by order of the executive director and/or by boundary signs on the area, within which public use is prohibited or restricted to specified activities.

(24) Loaded firearm--A firearm containing a live round of ammunition within the chamber and/or the magazine, or if muzzleloading, one which has a cap on the nipple or a priming charge in the pan.

(25) Motor vehicle--As defined by Transportation Code, Chapter 541.

(26) Off-road vehicle--An ATV, a utility vehicle, a vehicle that may not lawfully be operated on a public roadway, or any vehicle that is manufactured or adapted for off-road use.

(27) On-site registration--The requirement for public users to register at designated places upon entry to and exit from specified public hunting lands, but does not constitute a permit.

(28) Permit--Documentation authorizing specified access and public use privileges on public hunting lands.

(29) Predatory animals--Coyotes and bobcats.

(30) Preference point system--A method of special permit distribution in which the probability of selection is progressively enhanced by prior unsuccessful applications within a given hunt category by individuals or groups.

(31) Public hunting area--A portion of public hunting lands designated as being open to the activity of hunting, and may include all or only a portion of a certain unit of public hunting land.

(32) Public hunting compartment--A defined portion of a public hunting area to which hunters are assigned and authorized to perform public hunting activity.

(33) Public hunting lands--Lands identified in §65.190 of this title (relating to Application) or by order of the executive director on which provisions of this subchapter apply.

(34) Recreational use--Any use or activity other than hunting or fishing.

(35) Regular Permit--A permit issued on a first-come-first-served basis, on-site, at the time of the hunt that allows the taking of designated species of wildlife on the issuing area.

(36) Restricted area--All or portions of public hunting lands identified by boundary signs as being closed to public entry or use.

(37) Sanctuary--All or a portion of public hunting lands identified by boundary signs as being closed to the hunting of specified wildlife resources.

(38) Slug--A metallic object designed for being fired as a single projectile by discharge of a shotgun.

(39) Special Access Permit--A permit, issued pursuant to a selection procedure, that allows access to a specified unit of the state park system at a specified time.

(40) [~~(39)~~] Special Permit--A permit, issued pursuant to a selection procedure, which allows the taking of designated species of wildlife.

(41) [~~(40)~~] Special package hunt--A public hunt conducted for promotional or fund raising purposes and offering the selected applicant(s) a high quality experience with enhanced provisions for food, lodging, transportation, and guide services.

(42) [~~(41)~~] Tagging fee--A fee which may be assessed in addition to the special permit fee for the harvest of alligators for commercial sale or prior to the attempted harvest of desert bighorn sheep or designated exotic mammals.

(43) [~~(42)~~] Wildlife management area (WMA)--A unit of public hunting lands which is intensively managed for the conservation, enhancement, and public use of wildlife resources and supporting habitats.

(44) [~~(43)~~] Wildlife resources--Game animals, game birds, furbearing animals, alligators, marine mammals, frogs, fish, crayfish, other aquatic life, exotic animals, predatory animals, rabbits and hares, and other wild fauna.

(45) [~~(44)~~] Wounded exotic mammal--An exotic mammal leaving a blood trail.

(46) [~~(45)~~] Youth--A person less than 17 years of age.

§65.193. Access Permit Required and Fees.

(a) It is an offense for a person without a valid access permit to enter public hunting lands, except:

(1) on areas or for activities where no permit is required;

(2) persons who are authorized by, and acting in an official capacity for the department or the landowners of public hunting lands;

(3) persons participating in educational programs, management demonstrations, or other scheduled activities sponsored or sanctioned by the department with written approval;

(4) persons owning or leasing land within the boundaries of public hunting lands, while traveling directly to or from their property;

(5) for a non-hunting or non-fishing adult who is assisting a permitted disabled person; or

(6) for youth under the supervision of an authorized supervising adult possessing an APH permit or a LPU permit.

(b) Annual Public Hunting (APH) Permit and Limited Public Use (LPU) Permit.

(1) It is an offense for a person 17 years of age or older to enter public hunting lands or take or attempt to take wildlife resources on public hunting lands at times when an APH permit is required without possessing an APH permit or to fail to display the APH permit, upon request, to a department employee or other official authorized to enforce regulations on public hunting lands.

(2) A person possessing a LPU permit may enter public hunting lands at times that access is allowed under the APH permit, and is authorized to fish but may not hunt.

(3) Persons possessing an APH permit or an LPU permit may use public hunting lands to access adjacent public waters, and may fish in adjacent public waters from riverbanks on public hunting lands.

(4) The permits required under paragraphs (1) - (3) of this subsection are not required for:

(A) persons who enter on United States Forest Service lands designated as a public hunting area or any portion of Units 902 and 903 for any purpose other than hunting;

(B) persons who enter on U.S. Army Corps of Engineers lands (Aquilla, Cooper, Dam B, Granger, Pat Mayse, Ray Roberts, Somerville, and White Oak Creek WMAs) designated as public hunting lands for purposes other than hunting or equestrian use;

(C) persons who enter Caddo Lake Wildlife Management Area and do not hunt or enter upon the land;

(D) persons who enter and hunt waterfowl within the Bayside Marsh Unit of Matagorda Island State Park and Wildlife Management Area; or

(E) persons who enter Zone C of the Guadalupe River Unit of the Guadalupe Delta Wildlife Management Area and do not hunt or fish.

(5) The permit required by paragraphs (1) - (3) of this subsection is not valid unless the signature of the holder appears on the permit.

(6) A person, by signature of the permit and by payment of a permit fee waives all liability towards the landowner (licensor) and Texas Parks and Wildlife Department (licensee).

(c) Regular Permit--A regular permit is issued on a first come-first served basis at the hunt area on the day of the scheduled hunt with the department reserving the right to limit the number of regular permits to be issued.

(d) Special Permit--A special permit is issued to an applicant selected in a drawing.

(e) Special Access Permit--A special access permit is issued to an applicant selected in a drawing.

(f) [~~(e)~~] Permits for hunting wildlife resources on public hunting lands shall be issued by the department to applicants by means of a fair method of distribution subject to limitations on the maximum number of permits to be issued.

(g) [~~(f)~~] The department may implement a system of issuing special permits or special access permits that gives preference to those applicants who have applied previously but were not selected to receive a permit.

(h) [~~(g)~~] Application fees.

(1) The department may charge a non-refundable fee, which may be required to accompany and validate an individual's application in a drawing for a special hunting permit or special access permit.

(2) The application fee for a special hunting permit or special access permit is waived for a person under 17 years of age; however, the youth must apply in conjunction with an authorized supervising adult to whom an application fee is assessed, except as provided in paragraphs (3) and (4) of this subsection.

(3) The application fee for a special permit or special access permit is waived for an adult who is making application to serve as a non-hunting authorized supervising adult for a youth in a youth-only drawn hunt category.

(4) Persons under 17 years of age may be disqualified from applying for special package hunts or may be assessed the application fee.

(5) The application fee for a special permit or special access permit is waived for on-site applications made under standby procedures at the time of a hunt.

(6) Incomplete or incorrectly completed applications will be disqualified.

(i) [~~(h)~~] Legal animals to be taken by special or regular permit shall be stipulated on the permit.

(j) [~~(i)~~] Only one special, special access, or regular permit fee will be assessed in the event of concurrent hunts for multiple species, and the fee for the legal species having the most expensive permit will prevail.

(k) [~~(j)~~] Any applicable special, special access, or regular permit fees will be waived for youth under the supervision of a duly permitted authorized supervising adult.

(l) [~~(k)~~] Any applicable regular permit fees will be waived for persons possessing an APH permit.

(m) [~~(l)~~] Certain hunts may be conducted totally or in part by regular permit. It is an offense to fail to comply with established permit requirements specifying whether a regular permit is required of all participants or required only of adult participants who do not possess an APH permit.

(n) [~~(m)~~] Any applicable regular permit fees for authorized activities other than hunting or fishing will be waived for persons possessing an APH permit or an LPU permit.

(o) [~~(n)~~] An access permit applies only to the individual to whom the permit is issued, and neither the permit nor the rights granted thereunder are transferable to another person.

(p) [~~(o)~~] A person who fails to obey the conditions of a permit issued under this subchapter commits an offense.

§65.201. Motor Vehicles.

(a) It is an offense to not confine motor vehicle use to designated roads, except parking is permitted on the shoulder of or immediately adjacent to designated roads, and as provided for a disabled person or for a person directly assisting a disabled person.

(b) It is unlawful to hunt any wildlife resource from a motor vehicle, motor-driven land conveyance, or possess a loaded firearm in or on the vehicle, except as provided for a disabled person.

(c) A disabled person may possess a loaded firearm in or on a motor vehicle and may hunt from a motor vehicle except only paraplegics and single or double amputees of legs may hunt migratory birds from a motor vehicle, provided the motor vehicle is not in motion, the engine is not running, and the motor vehicle is not located on a designated road, designated vehicle parking area, or designated campground.

(d) Except as authorized for specific areas and time periods by order of the executive director, or by written permission of the hunt supervisor or area manager, it is an offense for an individual other than a disabled person or a person directly assisting a disabled person to operate an off-road vehicle on public hunting lands.

(e) The provisions of Chapter 59, Subchapter J of this title (relating to Off-Highway Vehicle Trail and Recreational Area Program) do not apply to a disabled person or a person assisting a disabled person who is participating in department-sanctioned activities on public hunting lands.

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

Filed with the Office of the Secretary of State on April 9, 2007.

TRD-200701318
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 20, 2007
For further information, please call: (512) 389-4775

SUBCHAPTER O. COMMERCIAL NONGAME PERMITS

31 TAC §§65.325, 65.327, 65.331

The Texas Parks and Wildlife Department (department or TPWD) proposes amendments to §§65.325, 65.327, and 65.331, concerning commercial nongame permits. Collectively, the proposed amendments would revamp the department's regulations governing the collection, purchase, and sale of nongame wildlife.

The proposed amendment to §65.325, concerning Applicability, would conform internal references, eliminate provisions that are either unnecessary or would be irrelevant under the rules as amended, and add a reference to other rules affecting the take and possession of diamondback terrapin.

The proposed amendment would eliminate §65.325(b)(3), which provides an exception by allowing teachers to collect and possess nongame wildlife without a permit for educational purposes. If adopted as proposed, the rules would still allow teachers to possess fewer than 25 specimens of nongame wildlife listed in proposed §65.331 and six or fewer specimens of species not listed in §65.331, provided they do not engage in commercial activity.

The proposed amendment would eliminate §65.325(b)(5), which provides an exception to the provisions of the subchapter for persons 16 years of age and under. The current rule was intended to prevent the criminalization of the possession of turtles, frogs, lizards, snakes, and other nongame wildlife that children typically enjoy capturing and retaining as pets. Under the rules as proposed, anyone will be able to possess fewer than 25 specimens of nongame wildlife listed in proposed §65.331 or six or fewer specimens of species not listed in §65.331, provided they do not engage in commercial activity.

The proposed amendment would eliminate §65.325(b)(6), which provides an exception for aquatic products possessed under a bait dealer's license. The department has determined that any person possessing more than 25 specimens of the species listed in §65.331 must have a permit under the subchapter. The amendment is to prevent the unregulated passage of nongame species into commercial trade.

The proposed amendment to §65.325 would add new subsections (c) and (d) to provide for persons who are in lawful possession of specimens that would become unlawful to possess following the effective date of the rules, if adopted as proposed. Subsection (c) would allow dealers until August 31, 2007 to divest themselves of such specimens held as commercial inventory. The department believes that the time period proposed is an adequate amount of time for dealers to sell, give away, or otherwise terminate possession of nongame wildlife that would be unlawful under the rules, if adopted as proposed. New subsection (d) would allow persons not engaged in commercial activities until July 1, 2008 to identify themselves to the department and document the species and numbers of nongame wildlife that otherwise would be unlawful to possess. The department acknowledges that hobbyists and other persons not engaged in commercial activities are in possession of heretofore lawfully held specimens for personal use. By setting the proposed time period for persons to document non-commercial collections, the department seeks to provide an opportunity to "grandfather" specimens, provided the owner does not engage in commercial activities.

The proposed amendment would alter §65.325(b)(2) and (3) to clarify that the provisions of those paragraphs apply only to species listed in §65.331, and provide an exception for diamondback terrapin, which are regulated under the Statewide Hunting and Fishing Proclamation.

The proposed amendment to §65.327, concerning Permit Required, would restructure the current provisions for clarity's sake, implement a non-commercial possession limit for species prohibited for use in commercial activities, and alter internal references to make the section consistent with other provisions of the proposed rulemaking.

The proposed amendment to §65.327(a) would remove provisions regarding possession limits so the subsection would consist solely of a statement of applicability, clearly establishing the subchapter as applying to all nongame wildlife except as provided. The proposed amendment would create a new §65.323(b), which would clearly state the conditions under which a permit under the subchapter would have to be obtained. The proposed amendment would add references to proposed subsections (c) and (d) to clearly indicate that permit privileges apply only to the wildlife listed in proposed §65.331. The proposed amendment also would establish a possession limit for personal use of six specimens per species of nongame wildlife prohibited for commercial use. The department has determined that six specimens per species is adequate for personal use and that a larger possession limit might offer a method for clandestine collection efforts for commercial purposes. For species listed in §65.331, the proposed amendment would allow persons to possess up to 25 specimens of wildlife of species listed in §65.331 without a permit, provided the person does not engage in a commercial activity. The department believes that possession of nongame wildlife in excess of 25 specimens is evidence that a person may likely be involved in commercial activities.

The proposed amendment to §65.331, concerning Affected Species, would retitle the section, replace the current list of species with a larger list of species to which the permitting and reporting requirements of the subchapter apply, stipulate than any species not listed in the section may not be used in a commercial activity, and provide for periodic review to determine if species should be added to or deleted from the list.

Under Parks and Wildlife Code, Chapter 67, nongame wildlife is defined as those species of vertebrate and invertebrate wildlife indigenous to Texas that are not classified as game animals, game birds, game fish, fur-bearing animals, endangered species, alligators, marine penaeid shrimp, or oysters. Chapter 67 also authorizes the commission to "establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species," and authorizes the department to issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species, and to charge a fee for such permits.

Nongame species comprise over 90 percent of the wildlife species that occur in Texas. Although the department is unable to monitor, survey, or conduct research on every nongame species in Texas, ongoing research is both conducted and monitored by the department. In 1999, the Parks and Wildlife Commission adopted the first regulations expressly intended to manage nongame wildlife in the state. The purpose of the program is to function as a 'canary in the coal mine' by tracking collection and sales activities involving specific species of nongame wildlife to provide the department with an early warning of possible declines in species populations. Under the current rule, all persons engaging in commercial activities involving affected species listed in the rule are required to possess a nongame permit or nongame dealer permit. A person with a nongame permit is authorized to sell species to a person with a nongame dealer permit, but may not sell species to the general public. However, a person with a nongame dealer permit is authorized to sell species to other permitted dealers and to the general public. In addition, persons with a nongame dealer permit are currently required to report sales and purchases to the department. The department uses the reported data to gauge potential impacts to native ecosystems and assist in determining if further regulatory protection is warranted. Based on data reported to and the information collected by the department, the department has determined that additional protective measures are needed for nongame species. Under current rule, no person is required to furnish commercial collection information on any species that is not on the list of affected species. Therefore, if a commercial market were to develop around a species not on the list of affected species, the department would not necessarily be able to detect it and develop additional regulatory measures to manage populations.

Nongame wildlife populations are problematic by their very nature, due to their numbers, diversity, and relative obscurity compared to game species. Historically, the most intensive management and research activities in the United States and Texas have been focused on game species popular with sport hunters, such as deer, turkey, pronghorn antelope, and others. However, game species represent a small fraction of the overall number of species in any ecosystem; in Texas, eight species of wildlife are designated by statute as game animals, whereas there are approximately 1,100 species of nongame vertebrate wildlife. Because the number of nongame species dwarfs the number of game species, nongame species, therefore, present a much more problematic management target within the traditional contexts. Management of game species typically involves intensive population, habitat, and harvest investigations. However, this type of management regime is unrealistic for the many nongame species that occur in the state.

The genesis of modern game species management came about as a result of unregulated commercial exploitation of wildlife resources. By the middle of the 20th century, many species of wildlife were in serious decline or in danger of extirpation in many parts of the United States and Texas as a result of unregulated, large-scale, commercial harvest. However, as a result of regulatory and management efforts, most game species are now thriving. The proposed nongame rules are intended to prevent depletion of nongame species.

The proposed amendments would replace the current list of affected species with a list of species lawful for use in commercial activities. All other species of nongame would be unlawful for use in commercial activities. In determining the species for which commercial activities would be permitted, the department consulted the existing scientific literature and with members of the regulated community, herpetological societies, and academic specialists, soliciting input from approximately 300 people. The goal of the consultations was to develop a broad consensus concerning those species of nongame wildlife thought to be able to withstand some level of collection activity, based on distribution and abundance, and the understanding that there would be some type of mandatory reporting concerning commercial activity.

Among the nongame species of concern, scientists have especially expressed concern about Chelonian species (turtles). Because of factors such as delayed sexual maturity, long lifespans, and low reproductive and survival rates, turtles are highly sensitive to population alterations, especially in older age classes. The presence of turtles in some areas should not be taken as evidence that populations in those areas are necessarily viable. Long lifespans, long generation times, and relatively slow growth may give the appearance that populations are stable, even after recruitment has ceased or populations reach levels below which recovery is possible. Impacts to turtle populations, such as the loss of important nesting areas or unsustainable mortality of adults, may remain undetectable until populations reach critical levels or become extirpated. Known limiting factors such as water pollution, road mortality, and habitat loss are important components in turtle declines; but commercial collecting efforts in the wild intensify the impact of those threats by removing large numbers of adults and older juveniles from wild populations. The collection for food markets has devastated turtle populations in Asia, the destination of the bulk of turtles commercially collected in Texas. It is axiomatic that shifting the Asian demand for turtles to North American populations could result in similar impacts if commercial activity is not regulated. Therefore, the department is proposing to prohibit the commercial collection of all turtle species in the state.

Scientific evidence indicates that lakes that have been commercially harvested have a significantly lower catch-per-unit-effort than did lakes that had not been commercially harvested, which indicates that commercial collection is efficient in reducing turtle populations locally. In the literature examined by the department (cited later in this preamble), there is a consistent voice of concern about the sustainability of current harvest levels of turtles and agreement that stronger regulation is necessary, at least until more is known about the impacts of collection on wild populations. Much of the concern of the scientific community stems from the relationship of collection to the natural history of turtles, particularly their delayed maturation and resulting low recruitment into adult class animals. The youngest onset of maturity reflected in the literature is in painted turtles, at 6 - 8 years for females. Other species tended to mature much later, with onset ages reported as high as 20 years.

Analysis of turtle population demographics consistently showed skewing to the adult age categories--the mature specimens most sought by commercial collectors for use as food product. This characteristic reflects the natural history of turtle species, their strong dependency on adult survivors to offset high mortality rates in eggs and juvenile categories. This characteristic alone makes it unlikely that populations can remain stable when high numbers of adults and older juveniles are steadily removed from a population.

As mentioned, the preferred targets of collectors are the adult and older juvenile age classes. Studies cite this (and other factors) in asserting that collection from the wild is a factor contributing to the decline of particular species, noting that, as a result, some states have banned commercial collection of wild-caught herpetological species either entirely or in part. A review of turtle regulations in the rest of the United States reveals that 38 states prohibit the take of at least one species of turtle, 34 states limit the commercial/and or recreational take of turtles in some fashion, and at least eight states prohibit the sale of native wildlife altogether.

Turtle collection in the United States and in Texas in particular is significant. The literature indicates that nationwide, more than 26 million wild-caught reptiles were exported from the U.S. between 1998 and 2002. In Texas, turtle exports increased to more than 100,000 individuals annually between 1996 and 2000. Based on the literature, the department may conclude that actual collection effort is significantly underreported by the regulated community and/or the current system does not completely account for collection effort. Some of these animals may represent re-exports (turtles captured outside of Texas but bought and resold within Texas for export). Current reporting does not allow for tracking re-exports but several species reported as exported from the state do not occur naturally within our borders; however, these were very minor numbers.

At the current time, other nongame populations in Texas are not generally believed to be as susceptible to over-collection as turtles by the scale of current commercial exploitation for the food or pet markets. However, after surveying academic experts and herpetological hobbyists and collectors, the department has determined that species that are habitat limited; sensitive to water quality degradation; or known to occur only in specific, limited geographical areas should not be subjected to commercial collection. Although there is a brisk trade in many species by hobbyists, much of the trade by hobbyists appears to involve captive-bred progeny. Therefore the department is proposing to allow commercial activities only for those species of nongame wildlife that are thought to be able to withstand some level of collection, which will be monitored by means of mandatory reporting requirements.

Literature Reviewed. In developing these proposed rules, the department reviewed and considered the following scientific publications:

Barko, Valerie A. and Jeffrey T. Briggler. 2006. Midland smooth softshell (Apalone mutica) and spiny softshell (Apalone spinifera) turtles in the Mississippi River; habitat associations, population structure and implications for conservation. Chelonian Conservation and Biology 5(2). 225 - 231.

Ceballos, Claudia P. and Lee A. Fitzgerald. 2004. The trade in native and exotic turtles in Texas. Wildlife Society Bulletin 32 (3). 881 - 892.

Congdon, Justin D. and Richard C. van Loben Sels. 1993. Relationships of reproductive traits and body size with attainment of sexual maturity and age in Blanding's turtles (Emydoidea blandingi). Journal of Evolutionary Biology 6(4). 547 - 557.

Cooley, Christopher R., Aaron O. Floyd, Amy Dolinger, Paul Tucker. 2003. Demography and diet of the painted turtle (Chrysemys picta) at high elevation sites in southwest Colorado. The Southwestern Naturalist 48(1). 47 - 53.

Gamble, Tony and Andrew M. Simons. 2004. Comparison of harvested and nonharvested painted turtle populations. Wildlife Society Bulletin. 32(4). 1269-1277.

Lindeman, Peter V. 2005. Aspects of the life history of the Texas Map Turtle (Graptemys versa). The American Midland Naturalist 153(2). 378 - 388.

Schlaepfer, Martin A.; Craig Hoover and C. Kenneth Dodd Jr. 2005. Challenges in evaluating the impact of the trade in amphibians and reptiles on wild populations. Bioscience 55(3). 256-264.

Whitfield-Gibbon, J.; David E. Scott; Travis J. Ryan; Kurt A. Buhlmann; Tracey D. Turberville; Brian S. Metts; Judith L. Greene; Tony Mills; Yale Leiden; Sean Poppy; Christopher T. Winne. 2000. The global decline of reptiles, déjà vu amphibians. Bioscience 50(8). 653-666.

Mr. Robert Macdonald, Regulations Coordinator, has determined that, for each of the first five years that the rules as proposed are in effect, there may be fiscal implications to state government as a result of enforcing or administering the rules as proposed. The proposed rules replace the current list of affected species for which permitting and reporting is required with a list of species authorized for commercial collection. As a result, there will be a number of species that will no longer be lawful to collect for commercial purposes, which could lead to a decline in permit issuance. The department surveyed each of the 331 persons licensed to collect and/or sell nongame wildlife and analyzed mandatory annual reports from dealers from the 2004-05 permit year (the last year for which complete data is available) to determine the species most sought by the regulated community. The department has determined that the persons most likely to discontinue to purchase permits will be those engaged in the collection of turtles, since the list of authorized species in proposed §65.331 contains those species in commercial demand other than turtles and those species will remain lawful for commercial collection. Of the 44 permitted dealers, there are 26 who collect, buy, and sell turtles. If those persons choose to stop purchasing permits, the department will incur a revenue loss of $1,740 (25 resident dealer's permits at $60 and one nonresident dealer's permit at $240). The department cannot determine how many persons with nongame permits are engaged in the collection of turtles, as those persons are not required to file reports with the department. Although the department cannot accurately estimate the potential revenue loss if persons exclusively engaged in turtle collection choose to stop purchasing permits, the worst-case scenario would be a revenue loss of $5,148 (286 nongame dealer's permits at $18).

There will be no fiscal implications for other units of state or local government.

Mr. Macdonald also has determined that, for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the protection and conservation of publicly-owned nongame wildlife resources and the protection of native ecosystems from harmful alterations caused by overharvest of nongame species, which will be beneficial to all other organisms in the complex ecological systems associated with nongame wildlife.

There will be adverse economic effects on small businesses, microbusinesses, or persons required to comply with the amendments as proposed. The rules as proposed would prohibit commercial activities involving any species of nongame wildlife other than the 84 species listed in proposed §65.331.

Based on mandatory annual reports required from dealers under current rule, there is no commercial activity involving species that would be prohibited from commercial use, other than the plains garter snake, the prairie ringneck snake, and 20 species of turtles. Department records indicate that one plains garter snake was sold in 2005 and no sales of prairie ringneck snakes. Therefore, there will be minimal adverse economic effects on small businesses or microbusinesses as a result of the prohibition of commercial activities involving species other than turtles. However, there will be a greater adverse economic effect on small businesses and microbusinesses engaged in commercial activities involving the 20 species of turtles.

Analysis of Survey Responses. The department sent surveys to all 331 persons currently holding a nongame or nongame dealer permit to determine the approximate annual income realized as a result of permitted activities. Response to the survey was voluntary. A total of 64 persons responded to the survey. Twenty-one respondents identified themselves as hobbyists who do not collect for sale. The remaining 43 respondents reported one person, an average of employee average investment of 639 hours per year in regulated activities, and an average income of $257.41 for Fiscal Year 2006. The hours spent in regulated activities represents hours spent engaging in commercial activities for all nongame species. The actual amount of labor devoted to commercial activities involving species that would be prohibited from use in commercial activities is probably much lower; however, the department will use the larger value in this analysis to ensure that all labor is captured for the purposes of this analysis.

Since it appears that there is very minimal commercial activity involving species other than turtles, this analysis will focus on the economic impact of the proposed rules on small and micro-businesses engaged in the turtle trade. The largest reported annual income reported in survey responses from commercial activities involving turtles was $3,000. The smallest was $50. Based on this data, the economic cost of compliance to the largest business affected by the rule would be $3,000; and the economic cost to the smallest business would be $50. More specifically, if a business employed one employee, the cost of compliance would be between $50 and $3,000 per employee. If a business employed 20 employees, the cost of compliance would be between $2.50 and $150 per employee. If a business employed 100 employees, the cost of compliance would be between $0.05 and $1.50 per employee. The proposed rules would affect the smallest and largest businesses equally, since the rule would prohibit the commercial collection of turtles by anyone.

Analysis of Permittee Reports. The department also analyzed the annual reports submitted by holders of nongame dealer's permits. Nongame dealers are required to report all purchases

and sales of listed nongame wildlife. This report includes the purchase and sale of all species of turtles that the proposed rules would prohibit from use in commercial trade. The 26 nongame dealers who collected or purchased turtles reported an average of 731 turtles (all species) collected or purchased in the 2004-05 permit year. One dealer reported purchasing or collecting 18,716 turtles; one dealer reported purchasing or collecting 8,000 turtles; two dealers reported purchasing or collecting between 2,000 and 4,000 turtles; 12 dealers reported collecting or purchasing between 100 and 1,000 turtles; and nine dealers reported collecting or purchasing fewer than 100 turtles.

The permittees' annual reports do not include financial information from the sale of turtles. However, the largest reported commercial turtle dealer in Texas stated to the Regulations Committee of the Texas Parks and Wildlife Commission on April 4, 2007, that he paid $1 per pound for snapping turtles and softshell turtles and $0.20 per pound for all other species. Since a nongame permit holder dealer may only sell to a nongame dealer, the department can estimate the income received by nongame permit holders from the collection and sale of turtles to a nongame dealer.

The department does not require dealers to report the weight or approximate age of turtles collected or purchased by dealers. However, by assuming that most of the turtles collected and sold are mature individuals that are assumed to command higher prices, the department can use the average size of mature turtles to determine a rough approximation of the market value of turtles purchased for commercial trade and the profit realized from that commercial trade.

A mature common snapping turtle can weigh 30 pounds, making it worth $30. Mature softshell turtles and red-eared sliders can weigh 4 pounds, making them worth $4 per individual. Box turtle weights vary slightly by species, but are approximately one pound, making them worth $0.20 per individual.

Of the small or micro-businesses affected by the rule, the most significant impact would be felt by the largest nongame dealer. This largest nongame dealer reported collecting or purchasing 1,332 common snapping turtles; 994 western spiny softshell turtles; 16,331 red-eared sliders; and 59 box turtles in 2005. If these species were purchased at the prices stated above, the nongame permit holder would have earned $39,960 ($30 x 1,332) for common snapping turtles; $3,976 ($4 x 994) for western spiny softshell turtles; $65,324 ($4 x 16,331) for red-eared sliders; and $11.80 ($0.20 x 59) for box turtles in 2005, for a total cost of $109,271.80.

As previously noted, the department's rules do not require disclosure of financial information, so the actual sale price of the turtles purchased from the largest nongame dealer affected by the rule cannot be determined; but the department assumes that it must be larger than the price paid by the dealer to the nongame permit holder who collected turtles. Therefore, if the turtles were sold for double the amount paid by the dealer, the department estimates from dealer report that the dealer would have earned a profit of $109,271.80 in 2005 from the sale of these turtle species. Therefore, the economic cost of complying with the rules for largest dealer affected by the rule will be approximately $109,271.80. The cost of compliance for the smallest business affected by the rule will be less than $50, using the same method of estimation. More specifically, if a business employed 1 employee, the cost of compliance would be between $50 and $109,271.80 per employee. If a business employed 20 employees, the cost of compliance would be between $2.50 and $5,463.59 per employee. If a business employed 100 employees, the cost of compliance would be between $0.05 and $1,092.72 per employee. The proposed rules would affect the smallest and largest businesses equally, since the rule would prohibit the commercial collection of turtles by anyone.

This analysis also applies to the requirements of Government Code, §2001.022, with respect to impacts on local economies. The proposed rules, because they would apply statewide, would prohibit any person currently engaging in the commercial collection of turtles from continuing to do so.

Regulatory Impact Analysis

Although Government Code, §2001.0225, Regulatory Analysis of Major Environmental Rules, does not apply to the proposed rule, TPWD nonetheless provides the regulatory analysis, as follows. The benefit TPWD anticipates as a result of implementing the rule is protection of a valuable public resource.

Among the nongame species of concern, scientists have especially expressed concern about Chelonian species (turtles). Because of factors such as delayed sexual maturity, long lifespans, and low reproductive and survival rates, turtles are highly sensitive to population alterations, especially in older age classes. The presence of turtles in some areas should not be taken as evidence that populations in those areas are necessarily viable. Long lifespans, long generation times, and relatively slow growth may give the appearance that populations are stable, even after recruitment has ceased or populations reach levels below which recovery is possible. Impacts to turtle populations, such as the loss of important nesting areas or unsustainable mortality of adults, may remain undetectable until populations reach critical levels or become extirpated. Known limiting factors such as water pollution, road mortality, and habitat loss are important components in turtle declines; but commercial collecting efforts in the wild intensify the impact of those threats by removing large numbers of adults and older juveniles from wild populations. The collection for food markets has devastated turtle populations in Asia, the destination of the bulk of turtles commercially collected in Texas. It is axiomatic that shifting the Asian demand for turtles to North American populations result in similar impacts if commercial activity is not regulated. Therefore, the department is proposing to prohibit the commercial collection of all turtle species in the state.

Scientific evidence indicates that lakes that have been commercially harvested have a significantly lower catch-per-unit-effort than did lakes that had not been commercially harvested, which indicates that commercial collection is efficient in reducing turtle populations locally. In the literature examined by the department (cited earlier in this preamble), there is a consistent voice of concern about the sustainability of current harvest levels of turtles and agreement that stronger regulation are necessary, at least until more is known about the impacts of collection on wild populations. Much of the concern of the scientific community stems from the relationship of collection to the natural history of turtles, particularly their delayed maturation and resulting low recruitment into adult class animals. The youngest onset of maturity reflected in the literature is in painted turtles, at 6 - 8 years for females. Other species tended to mature much later, with onset ages reported as high as 20 years.

Analysis of turtle population demographics consistently showed skewing to the adult age categories--the mature specimens most sought by commercial collectors for use as food product. This characteristic reflects the natural history of turtle species and

their strong dependency on adult survivors to offset high mortality rates in eggs and juvenile categories. This characteristic alone makes it unlikely that populations can remain stable when high numbers of adults and older juveniles are steadily removed from a population.

As mentioned, the preferred targets of collectors are the adult and older juvenile age classes. Studies cite this (and other factors) in asserting that collection from the wild is a factor contributing to the decline of particular species, noting that, as a result, some states have banned commercial collection of wild caught nongame species either entirely or in part. A review of turtle regulations in the rest of the United States reveals that 38 states prohibit the take of at least one species of turtle, 34 states limit the commercial/and or recreational take of turtles in some fashion, and at least eight states prohibit the sale of native wildlife altogether.

Turtle collection in the United States and in Texas in particular is significant. The literature indicates that nationwide, more than 26 million wild-caught reptiles were exported from the U.S. between 1998 and 2002. In Texas, turtle exports increased to more than 100,000 individuals annually between 1996 and 2000. Based on the literature, the department may conclude that actual collection effort is significantly underreported by the regulated community and/or the current system does not completely account for collection effort. Some of these animals may represent re-exports (turtles captured outside of Texas but bought and resold within Texas for export). Current reporting does not allow for tracking re-exports but several species reported as exported from the state do not occur naturally within our borders; however, these were very minor numbers.

Since it appears that most of the commercial activity involving nongame species involves turtles, this analysis will focus on the economic impact of the proposed rules on small and micro-businesses engaged in the turtle trade. The largest reported annual income reported in survey responses from commercial activities involving turtles was $3,000. The smallest was $50. Based on this data, the economic cost of compliance to the largest business affected by the rule would be $3,000; and the economic cost to the smallest business would be $50. More specifically, if a business employed one employee, the cost of compliance would be between $50 and $3,000 per employee. If a business employed 20 employees, the cost of compliance would be between $2.50 and $150 per employee. If a business employed 100 employees, the cost of compliance would be between $0.05 and $1.50 per employee. The proposed rules would affect the smallest and largest businesses equally, since the rule would prohibit the commercial collection of turtles by anyone.

The department also analyzed the annual reports submitted by holders of nongame dealer's permits. Nongame dealers are required to report all purchases and sales of listed nongame wildlife. This report includes the purchase and sale of all species of turtles that the proposed rules would prohibit from use in commercial trade. The 26 nongame dealers who collected or purchased turtles reported an average of 731 turtles (all species) collected or purchased in the 2004-05 permit year. One dealer reported purchasing or collecting 18,716 turtles; one dealer reported purchasing or collecting 8,000 turtles; two dealers reported purchasing or collecting between 2,000 and 4,000 turtles; 12 dealers reported collecting or purchasing between 100 and 1,000 turtles; and nine dealers reported collecting or purchasing fewer than 100 turtles.

The permittees' annual reports do not include financial information from the sale of turtles. However, the largest reported commercial turtle dealer in Texas stated to the Regulations Committee of the Texas Parks and Wildlife Commission on April 4, 2007, that he paid $1 per pound for snapping turtles and softshell turtles and $0.20 per pound for all other species. Since a permitted nongame dealer may only purchase from a person holding a nongame permit, the department can estimate the income received by nongame permit holders from the collection and sale of turtles to a nongame dealer.

The department does not require dealers to report the weight or approximate age of turtles collected or purchased by dealers. However, by assuming that most of the turtles collected and sold are mature individuals that are assumed to command higher prices, the department can use the average size of mature turtles to determine a rough approximation of the market value of turtles purchased for commercial trade and the profit realized from that commercial trade.

A mature common snapping turtle can weigh 30 pounds, making it worth $30. Mature softshell turtles and red-eared sliders can weigh 4 pounds, making them worth $4 per individual. Box turtle weights vary slightly by species, but are approximately one pound, making them worth $0.20 per individual.

Of the small or micro-businesses affected by the rule, the most significant impact would be felt by the largest nongame dealer. This largest nongame dealer reported collecting or purchasing 1,332 common snapping turtles; 994 western spiny softshell turtles; 16,331 red-eared sliders; and 59 box turtles in 2005. If these species were purchased at the prices stated above, the nongame permit holder would have earned $39,960 ($30 x 1,332) for common snapping turtles; $3,976 ($4 x 994) for western spiny softshell turtles; $65,324 ($4 x 16,331) for red-eared sliders; and $11.80 ($0.20 x 59) for box turtles in 2005, for a total cost of $109,271.80.

As previously noted, the department's rules do not require disclosure of financial information, so the actual sale price of the turtles purchased from the largest nongame dealer affected by the rule cannot be determined; but the department assumes that it must be larger than the price paid by the dealer to the nongame permit holders who collected the turtles. Therefore, if the turtles were sold for double the amount paid by the dealer, the department estimates from dealer report data that the dealer would have earned a profit of $109,271.80 in 2005 from the sale of these turtle species. Therefore, the economic cost of complying with the rules for largest dealer affected by the rule will be approximately $109,271.80. The cost of compliance for the smallest business affected by the rule will be less than $50, using the same method of estimation. More specifically, if a business employed 1 employee, the cost of compliance would be between $50 and $109,271.80 per employee. If a business employed 20 employees, the cost of compliance would be between $2.50 and $5,463.59 per employee. If a business employed 100 employees, the cost of compliance would be between $0.05 and $1,092.72 per employee. The proposed rules would affect the smallest and largest businesses equally, since the rule would prohibit the commercial collection of turtles by anyone.

The department is considering regulatory options other than the prohibition of commercial take of all turtles, including the implementation of seasons and bag limits, means and methods requirements, the implementation of individual quotas for collection, the restriction of collection activities to private waters, and the creation of captive breeder regulations. The rules as pro-

posed may reflect one or more of these approaches as a method of reducing or eliminating impacts to small and microbusinesses while still accomplishing the department's goals of implementing regulations to manage nongame species, allow populations of nongame species to perpetuate themselves, and maintain the biological integrity of river system ecologies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rule may be submitted to Kristin Rathburn, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4505 (e-mail: Kristin.rathburn.wagner@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, §67.004, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species; and §67.0041, which authorizes the department to issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

The proposed amendments affect Parks and Wildlife Code, Chapter 67.

§65.325. Applicability.

(a) This [~~Except as provided in §65.330 of this title (relating to Record and Reporting Requirements) and subsection (b) of this section, this~~] subchapter applies to all [~~only to the~~] nongame wildlife in this state [~~listed in §65.331 of this title (relating to Affected Species)~~], living or dead, including parts of nongame wildlife and captive-bred nongame wildlife.

(b) This subchapter does not apply to:

(1) fish;

(2) the purchase, possession, or sale of processed products made from the nongame wildlife listed in §65.331 of this title (relating to Species Authorized for Commercial Activity, except as provided in §65.327(g) [~~§65.327(d)~~] of this title (relating to Permit Required);

[~~(3) teachers at accredited primary or secondary educational institutions, provided that the nongame wildlife is possessed solely for educational purposes and is not sold or transferred to another person for the purpose of sale;~~]

(3) [~~(4)~~] persons or establishments selling nongame wildlife listed in §65.331 of this title for and ready for immediate consumption in individual portion servings, and which are subject to limited sales or use tax; or

(4) diamondback terrapin (Malaclemys terrapin), which are addressed under the provisions of §65.82 of this title (relating to Other Aquatic Life).

[~~(5) any person 16 years of age or younger, provided the person is not engaged in a commercial activity involving nongame wildlife; or~~]

[~~(6) aquatic products possessed under a valid bait dealer's license.~~]

(c) A person in lawful possession of nongame wildlife prior to the effective date of this section who would be in violation of this subchapter after the effective date of this section by continuing to possess the nongame wildlife for commercial activity must sell, donate, or otherwise dispose of the nongame wildlife by no later than August 31, 2007.

(d) A person in lawful possession of nongame wildlife prior to the effective date of this section who would be in violation after the effective date of this section and who possesses the nongame wildlife for personal, noncommercial use may continue to possess the nongame wildlife, provided:

(1) the person contacts the department by no later than July 1, 2008 and reports the person's name and address, and the species and number of the nongame wildlife in possession; and

(2) the person does not engage in any commercial activity involving the nongame wildlife possessed under this section.

§65.327. Permit Required.

(a) Except as provided in this subchapter [~~section or in §65.325 of this title (relating to Applicability)~~], no person may[~~, for the purpose of commercial activity,~~] take, attempt to take, possess, import, export, or cause the export of nongame wildlife [~~or possess more than 25 specimens of nongame wildlife unless that person possesses a valid nongame permit or nongame dealer's nongame permit issued by the department~~].

(b) Except as provided in this subchapter, no person may take, attempt to take, possess, import, export, or cause the export of nongame wildlife listed in §65.331 of this title unless the person possesses a valid nongame permit or valid nongame dealer permit issued by the department.

(c) [~~(b)~~] A person possessing a valid nongame permit may sell nongame wildlife listed in §65.331 of this title only to a person in possession of a valid nongame dealer [~~dealer's nongame~~] permit.

(d) [~~(c)~~] A person possessing a valid nongame dealer [~~dealer's nongame~~] permit may sell nongame wildlife listed in §65.331 of this title to anyone.

(e) A person may take or possess six or fewer specimens of a species of nongame wildlife not listed in §65.331 of this title, provided the person does not engage in commercial activity involving the nongame wildlife taken or possessed.

(f) person may take or possess 25 or fewer specimens of a species of nongame wildlife listed in listed in §65.331 of this title, provided the person does not engage in commercial activity involving the nongame wildlife taken or possessed.

(g) [~~(d)~~] No person may collect nongame wildlife and subsequently treat it to create a processed product for sale, offer for sale, exchange, or barter unless that person possesses a valid dealer's nongame permit.

(h) [~~(e)~~] No person in this state may resell nongame wildlife unless that person possesses a valid dealer's nongame permit issued by the department.

(i) [~~(f)~~] A nongame dealer may, through commercial activity, acquire nongame wildlife only from a person permitted under this subchapter or a lawful out of state source.

(j) [~~(g)~~] Except as provided by subsection (h) of this section, a permit required by this subchapter shall be possessed on the person of the permittee during any activity governed by this subchapter. A separate permit is required for each permanent place of business. An employee of a nongame dealer may engage in commercial activity or the resale of nongame wildlife only at a permanent place of business operated by the permittee, provided that:

(1) the employer's permit or a legible photocopy of the permit is maintained at the place of business during all activities governed by this subchapter; and

(2) the place of business has been identified on the application required by §65.329 of this title (relating to Permit Application).

(k) [~~(h)~~] In the event that a nongame dealer conducts a commercial activity at a place in addition to the permittee's permanent place of business, that person shall possess on their person the original or a legible photocopy of a valid nongame dealer's permit.

(l) [~~(i)~~] This subchapter does not relieve any person of the obligation to possess an appropriate hunting license for any activity involving the take of nongame wildlife.

(m) [~~(j)~~] A permit issued under this subchapter is valid through the August 31 immediately following the date of issuance.

§65.331. Species Authorized for Commercial Activity [~~Affected Species~~].

(a) The department shall develop a policy for periodic evaluation of pertinent information or evidence to determine if a species should be added to or removed from the list of species in subsection (b) of this section. [~~The following species are subject to the provisions of this subchapter.~~]
[~~Figure: 31 TAC §65.331~~]

(b) Except as provided in this subchapter, no person may take, attempt to take, possess, import, export, or cause the export of any nongame wildlife not listed in this section.
Figure: 31 TAC §65.331(b)

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

Filed with the Office of the Secretary of State on April 9, 2007.

TRD-200701319
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 20, 2007
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 85. FLEXIBLE BENEFITS

34 TAC §85.7, §85.17

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code §85.7 (Enrollment) and §85.17 (Grievance Procedure). Amended rule §85.7 concerns the automatic re-enrollment in the flexible benefits plan (the plan) under the Group Benefits Program (GBP). The amended rule is needed to provide for the establishment of this service and to clarify how automatic re-enrollment is administered for those employees with reimbursement account arrangements under the plan. Amended rule §85.17 is proposed in order to make this rule consistent with recent amendments made to Chapter 67 concerning the appeals process.

Section 85.7(a) is amended to add new paragraph (6) that provides for automatic re-enrollment in a reimbursement account(s) with the same elections during the annual enrollment period, and specifies the timeframe and method to change or decline benefits during this period. Section 85.7(b)(1) is amended to add new subparagraph (A) and (B) to clarify that employees who are automatically re-enrolled in a reimbursement account(s) and fail to change or decline benefits within the annual enrollment period shall be deemed an express election and informed consent to continue with the same elections for the new plan year.

Amended §85.17 is changed to conform the rule to recent changes made in the appeal process under Chapter 67, delegating responsibility for final decision making from the Board of Trustees to the executive director. Section 85.17(a) and (c) are amended to make clear that appeals are made under Chapter 67 to the executive director. Section 85.17(d) is deleted because the Board of Trustees has delegated appeals to the executive director.

Paula A. Jones, General Counsel, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the rules; and small businesses will not be affected. The proposed amendment to §85.7 will affect a participant in the plan during the annual enrollment period by establishing an automatic re-enrollment with the same elections and is consistent with the automatic re-enrollment in other GBP programs administered by ERS.

Ms. Jones also determined that for each year of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of the rules as it applies to automatic re-enrollment in a reimbursement account(s) under the plan and the grievance procedure. There are no known anticipated economic costs to persons who are required to comply with these rules as proposed other than the monthly contributions to the health or dependent care plans.

Comments on the proposed rules may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mail Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is 10:00 a.m. on May 21, 2007.

The amendments to §85.5 are proposed under §§1551.051, 1551.052, 1551.055, and 1551.206, Texas Insurance Code, which authorizes the board of trustees to adopt rules and provide for the administration of the GBP. The amendments to §85.17 are proposed under Texas Government Code §815.511(d) and Insurance Code §1551.360 which provide the Board with authority to delegate its authority to decide contested case matters, and Insurance Code §1551.357(c) which authorizes the Board to adopt rules pertaining to the sanctions and adjudication process.

No other statutes are affected by these proposed rules.

§85.7. Enrollment.

(a) Election of benefits.

(1) An eligible employee may elect to participate in the health care and/or dependent care reimbursement accounts within the flexible benefits plan by making an election and executing an election form or enrolling electronically.

(2) An employee who becomes eligible after the beginning of a plan year has 30 days from the date of eligibility to elect or decline benefits by executing an election form.

(3) By enrolling in the plan, the employee agrees to a reduction in compensation or agrees to after-tax payments equal to the participant's share of the cost and any fees for each reimbursement account selected.

(4) An election to participate in a reimbursement plan must be for a specified dollar amount plus any administrative fee.

(5) An annual enrollment period will be designated by the Employees Retirement System of Texas and shall be prior to the beginning of a new plan year. The annual enrollment period shall provide an opportunity to change and to elect or decline benefit options.

(6) An active employee who is enrolled in reimbursement accounts immediately prior to the annual enrollment period will be automatically re-enrolled with the same elections and contribution amounts for the new plan year unless the active employee takes action during the annual enrollment period to change contribution amounts or to decline participation.

(b) Effects of failure to elect.

(1) If the Employees Retirement System of Texas does not receive an election form from an eligible employee to participate in the reimbursement accounts by the due date, it shall be deemed an express election and informed consent by the eligible employee to: [~~receive cash compensation as a benefit by reason of failure to purchase optional benefits in lieu of cash compensation.~~]

(A) receive cash compensation as a benefit by reason of failure to purchase optional benefits in lieu of cash compensation; or

(B) in the case of automatic re-enrollment during the annual enrollment period, to continue participation in the reimbursement accounts with the same contributions for the new plan year.

(2) To the extent an eligible employee does not elect the maximum permissible participation amounts hereunder, he shall be deemed to have elected cash compensation.

(c) Benefit election irrevocable except for qualifying life event.

(1) An election to participate shall be irrevocable for the plan year unless a qualifying life event occurs, and the change in election is consistent with the qualifying life event. The plan administrator may require documentation in support of the qualifying life event.

(2) A qualifying life event occurs when an employee experiences one of the following changes:

(A) change in marital status;

(B) change in dependent status;

(C) change in employment status;

(D) change of address that results in loss of benefits eligibility;

(E) change in Medicare or Medicaid status;

(F) significant cost of benefit or coverage change imposed by a third party provider other than a provider through the Texas Employees Group Benefits Program; or

(G) change in coverage ordered by a court.

(3) An election form requesting a change in election must be submitted on, or within 30 days after, the date of the qualifying life event.

(4) A change in election as provided in this subsection becomes effective on the first day of the month following the date of the qualifying life event.

(d) Payment of flexible benefit dollars.

(1) Flexible benefit dollars from an active duty employee shall be recovered through payroll withholding at least monthly during the plan year and remitted to the Employees Retirement System of Texas for the purpose of purchasing benefits. For the health care reimbursement account only, and except as otherwise provided in §85.3(b)(3)(D) of this title (relating to Eligibility and Participation), flexible benefit dollars from employees on leave without pay status or who have insufficient funds for any month shall be recovered through direct after-tax payment from the employee or upon the return of the employee to active duty status from payroll withholding, for the total amount due.

(2) An employee's flexible benefit dollars with respect to any month during the plan year shall be equal to the authorization on the employee's election form plus any administrative fees.

(3) Flexible benefit dollars received by the Employees Retirement System of Texas shall be credited to the participant's dependent care reimbursement account and/or health care reimbursement account, as appropriate.

(e) Forfeiture of account balances.

(1) The amount credited to a participant's reimbursement account for each benefit election for any plan year will be used to reimburse or pay qualified expenses incurred during the eligible employee's period of coverage in such plan year and the grace period, if the claim is electronically adjudicated or if the participant files a correctly completed claim for reimbursement on or before December 31 following the close of the plan year.

(2) Any balances remaining after payment of all timely and correctly filed claims postmarked no later than December 31 following the close of the plan year and the grace period, shall be forfeited by the participant and be available to pay administrative expenses of the flexible benefits program.

(f) Reimbursement report to participant. The plan administrator or its designee shall provide to the participant periodic reports on each reimbursement account, showing the account transactions (disbursements and balances) during the plan year and the grace period. These reports may be provided periodically through electronic means.

§85.17. Grievance Procedure.

(a) Any person participating in the flexible benefits program, who is denied reimbursement of eligible expenses, may request the plan administrator or its designee to reconsider the claim. Any additional documentation in support of the claim may be submitted with the request for reconsideration. If the claim is again denied, the claim, accompanied by all related documents and copies of correspondence with the plan administrator or its designee, may be appealed [~~submitted~~] by the person to the executive director of the Employees Retirement System of Texas [~~for review~~]. An appeal [~~A request for review~~] must be filed by the person in writing within 90 days from the date the plan administrator or its designee formally denies the claim and mails notice of this denial and right of appeal to the person.

(b) Any person with a grievance regarding eligibility or other matters involving the program may submit a written request to the executive director to make a determination on the matter in dispute.

(c) When the executive director reviews any matter arising under this section, all parties involved will be notified in writing of the executive director's determination [~~decision~~].

[~~(d) Any person that does not accept the executive director's decision may appeal the decision to the board. A notice of appeal must be filed in writing 30 days from the date the executive director's decision is mailed by certified mail.~~]

(d) [~~(e)~~] Appeals to the executive director [~~board~~] will be processed under the provisions of Chapter 67 of this title (relating to Hearings and Disputed Claims) and the Administrative Procedure Act, Chapter 2001, Government Code.

(e) [~~(f)~~] As used in this section, the term "person" includes any duly authorized representative of such person.

(f) [~~(g)~~] In computing time under this section, the day after any mailing by the plan administrator or its designee or the executive director shall be counted as the first day of the time period. A document is considered to be filed with the executive director when it is received by the executive director or when it is postmarked, whichever is earlier.

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

Filed with the Office of the Secretary of State on April 9, 2007.

TRD-200701311
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: May 20, 2007
For further information, please call: (512) 867-7421

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CHAPTER 87. DEFERRED COMPENSATION

34 TAC §§87.1, 87.3, 87.5, 87.7, 87.13, 87.17, 87.33

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code §§87.1, 87.3, 87.5, 87.7, 87.13, 87.17, and 87.33, concerning the Deferred Compensation 457 Plan found in Chapter 609, Subchapter C of the Texas Government Code.

These proposed amendments are needed in order to update the Plan rules due to the Pension Protection Act of 2006 (PPA), to clarify Plan requirements, and to comport with federal law, regulations, and administrative requirements.

Section 87.1, containing the Plan's Definitions, is amended to add certain definitions (qualified military service and public safety employee) due to changes in law and regulations.

Sections 87.3, 87.5 and 87.33, concerning Administrative and Miscellaneous Provisions, Participation by Employees, and The Economic Growth and Tax Relief and Reconciliation Act, are amended to adjust the annual deferral limit to $15,500 for 2007, per federal law.

Section 87.7 and §87.13, concerning Prior Plan Vendor Participation and Disclosure, modify certain requirements for prior plan vendors.

Section 87.17, concerning Distributions, includes changes due to PPA requirements on unforeseeable emergency provisions (payback option) for qualified military; rollovers by non-spouse beneficiaries to an inherited IRA; and, other emergency withdrawals by beneficiaries.

Paula A. Jones, General Counsel, Employees Retirement System of Texas, has determined that for the first five year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rules, and, to her knowledge, small businesses should not be affected.

Ms. Jones also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended rules would be added flexibility for and protection of Texa$aver Deferred Compensation Plan participants. There are no known anticipated economic costs to persons who are required to comply with the amendments as proposed.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may e-mail Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is 10:00 a.m. on May 21, 2007.

These amendments are proposed under Government Code, §609.508, which provides authorization for the ERS Board of Trustees to adopt rules necessary to administer the deferred compensation plan.

No other statutes are affected by these proposed amendments.

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

(1) - (17) (No change.)

(18) Emergency withdrawal application--A form completed by a participant requesting the full or partial distribution of the participant's deferrals and investment income because of an [~~a~~] unforeseeable emergency.

(19) - (29) (No change.)

(30) Qualified military service--a uniformed service while on active or inactive duty, including training periods. Uniformed services include the Army, Navy, Marine Corps, Air Force, Coast Guard, and Public Health Service Commission Corps, the reserve components of those services as well as training or service in the National Guard or Air National Guard and any other category of persons designated by the President in a time of war or emergency.

(31) [~~(30)~~] NCUA--National Credit Union Administration, a United States Government Agency, which regulates charters and insures deposits of the nation's federal credit unions. Shares and deposits in credit unions are insured by the NCUSIF as detailed in this section.

(32) [~~(31)~~] NCUSIF--National Credit Union Share Insurance Fund, is administered by the NCUA as detailed in this section and insures members' share and deposit accounts at federally insured credit unions.

(33) [~~(32)~~] Non-filer--A prior plan vendor which does not ensure that the plan administrator receives a quarterly report by the due date specified in §87.19(d)(1) of this title (relating to reporting and recordkeeping by prior plan vendors).

(34) [~~(33)~~] Non-spousal beneficiary--Any beneficiary other than a spouse or ex-spouse.

(35) [~~(34)~~] Normal retirement age--A range of ages beginning with the earliest age at which a person is eligible to retire under the participant's basic pension plan as referenced in §87.5(g) of this title (relating to participation by employees).

(36) [~~(35)~~] One-time election form--A form completed by a participant requesting the full distribution of deferred compensation

funds with a total balance that does not exceed the dollar limit under the Code §457(e)(9), EGTRRA, or the dollar limit under §411(a)(11) of the Code, if greater, as of the date that payments commence. Also known as the de minimis distribution election.

(37) [~~(36)~~] Participant--A current, retired, or former employee who either has elected to defer a portion of the employee's current compensation, previously deferred compensation or has a balance in the plan.

(38) [~~(37)~~] Participation agreement--A contract signed by an employee agreeing to defer the receipt of part of the employee's compensation in accordance with the plan and containing certain information regarding prior plan vendors, investment products, and other matters.

(39) [~~(38)~~] Plan--The deferred compensation program of the state of Texas that is governed by the Code §457 and authorized by Chapter 609, Government Code. This plan is a continuation of the plan previously administered by the Comptroller of Public Accounts.

(40) [~~(39)~~] Plan administrator--The Board of Trustees of the Employees Retirement System of Texas or its designee.

(41) [~~(40)~~] Prior plan--Refers to the State of Texas 457 Deferred Compensation Plan, the vendors and products approved by the Board of Trustees of the Employees Retirement System of Texas prior to September 1, 2000.

(42) [~~(41)~~] Prior plan vendor--A vendor in the prior plan with whom the plan administrator has signed a vendor contract. The term includes a prior plan vendor's officers and employees. The prior plan vendor may be an insurance company, bank, savings and loan, credit union, or mutual fund. The term applies only to vendors approved and implemented by the Board of Trustees before January 1, 2000.

(43) [~~(42)~~] Product approval notice--A written notice from the plan administrator to a prior plan vendor informing the vendor that a particular investment product has been approved for participation in the plan.

(44) [~~(43)~~] Product contract--A contract between an investment provider and the plan administrator concerning the participation of one of the vendor's investment products in the plan.

(45) [~~(44)~~] Product type--A categorization of an investment product according to its relevant characteristics. Examples of product types are life insurance products, mutual funds, certificates of deposit, savings accounts, share accounts, stable value account, self-directed brokerage account, and annuities.

(46) Public safety employee--Any employee of a state or political subdivision who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such state or political subdivision. It may also include a chaplain or a member of an ambulance or rescue crew. This does not include judges, Texas Department of Criminal Justice guards, probation, parole, juvenile delinquency or similar officers.

(47) [~~(45)~~] Qualified investment product--An investment product concerning which the plan administrator and the sponsoring prior plan or revised plan vendor have signed a product contract.

(48) [~~(46)~~] Revised plan--Refers to the State of Texas 457 Deferred Compensation Plan and the vendors and products approved by the Board of Trustees of the Employees Retirement System of Texas after August 31, 2000 for the Texa$aver program. The term "Texa$aver program" is used as it is defined in Texas Government Code Section 609.502.

(49) [~~(47)~~] Revised plan vendor--An insurance company, brokerage firm, or mutual fund distributor that sells investment products in the revised plan. The term includes a vendor's officers and/or employees. This applies only to vendors approved and implemented by the Board of Trustees subsequent to December 31, 1999.

(50) [~~(48)~~] Separation from service--A termination of the employment relationship between a participant and the participant's employing state agency, as determined in accordance with the agency's established practice. The term excludes a paid or unpaid leave of absence.

(51) [~~(49)~~] Spousal beneficiary--The current or ex-spouse of a participant who is designated to receive a participant's account balance.

(52) [~~(50)~~] State agency--A board, commission, office, department, or agency in the executive, judicial, or legislative branch of state government. The term includes an institution of higher education as defined by the Education Code, §61.003.

(53) [~~(51)~~] Third Party Administrator (TPA)--An entity under the direction of the plan administrator that operates independently of both the employer and investment providers to perform agreed upon administrative services to a tax-deferred defined contribution plan. These tasks may include recordkeeping, preparation of participant statements, monitoring deferral limits, and other specified services.

(54) [~~(52)~~] Transfer--The redemption of deferrals and investment income from a qualified investment product for investment in another qualified investment product.

(55) [~~(53)~~] Trust--The deferred compensation trust fund established to hold and invest deferrals and investment income under the plan for the exclusive benefit of participants and their beneficiaries.

(56) [~~(54)~~] Trustee--The Board of Trustees of the Employees Retirement System of Texas.

(57) [~~(55)~~] Unforeseeable emergency distribution--A severe financial hardship of the participant resulting from: an illness or accident, loss of property due to casualty, funeral expenses or other extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

(58) [~~(56)~~] Valuation date--A point in time in which an asset is assigned a dollar value. It may be the designated time of closing (daily, last day of the calendar month, the last day of the calendar quarter, each December 31) for determination of account balances in a defined contribution plan.

(59) [~~(57)~~] Vendor contract--A contract between the plan administrator and an investment provider concerning the vendor's participation in the plan.

(60) [~~(58)~~] Vendor representative--An agent, independent agent, independent contractor, or other representative of a prior plan who is not an employee or officer of the vendor.

(61) [~~(59)~~] 401(a)(9), §401(a)(9) and Section 401(a)(9)--These terms refer to Internal Revenue Code §401(a)(9).

(62) [~~(60)~~] 457, §457 and Section 457--These terms refer to Internal Revenue Code §457.

§87.3. Administrative and Miscellaneous Provisions.

(a) (No change.)

(b) Participation by state agencies in the plan.

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

(3) Agency coordinators. An agency coordinator's responsibilities may include:

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

(E) monitoring the annual deferral limits for each plan participant to ensure the maximum annual deferral limit of the lesser of $15,500 [~~$15,000~~] (as adjusted) or 100% of the participant's gross income is not exceeded;

(F) - (P) (No change.)

(c) (No change.)

§87.5. Participation by Employees.

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

(g) Normal maximum amount of deferrals.

(1) (No change.)

(2) The normal maximum amount of deferrals is equal to the lesser of $15,500 [~~$15,000~~] (as periodically adjusted for cost-of-living in accordance with Code §457(e)(15)), §415(d), [~~and~~] the Job Creation and Worker Assistance Act of 2002 and the Pension Protection Act of 2006, or 100% of a participant's includible compensation.

(3) The participant's employing agency will monitor the annual deferral limits for each plan participant to ensure the maximum annual deferral limit of the lesser of $15,500 [~~$15,000~~] (as adjusted) or 100% of a participant's gross income is not exceeded. Each participant enrolling in the plan must provide the employing state agency any information necessary to ensure compliance with plan requirements, including, without limitation, whether the employee is a participant in any other eligible plan. If a participant makes deferrals in excess of the normal maximum annual deferral limit and is not participating under the catch-up provision, the following actions will be taken:

(A) Upon notification by the participant's agency, the prior plan vendor or TPA will return to the participant's agency the amount of deferrals in excess of the normal plan limits, that is, the lesser of $15,500 [~~$15,000~~] (as adjusted) or 100% of the participant's gross income without any reduction for fees or other charges.

(B) (No change.)

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

(h) Three-year catch-up exception to the normal maximum amount of deferrals.

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

(8) If a participant makes deferrals in excess of the normal plan limits under the three-year catch-up provision during or after the calendar year in which the participant reaches normal retirement age, the following actions will be taken.

(A) Upon notification by the participant's state agency, the prior plan vendor or TPA will return to the participant's state agency, the amount of deferrals in excess of the normal plan limits, that is, the lesser of $15,500 [~~$15,000~~] (as adjusted in accordance with Code §457(e)(15) or 100% of a participant's includible compensation) without any reduction for fees or other charges.

(B) (No change.)

(9) (No change.)

(10) Special post severance compensation under Code §415 effective January 1, 2007. A participant may elect to defer compensation paid within 2 1/2 months following separation from service in accordance with Code §415. Types of compensation include:

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

(D) compensation relating to qualified military or other service (Reg. 1.457-4(d)(1), Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Code section 414(u) and the Pension Protection Act of 2006.

(i) - (l) (No change.)

(m) Unpaid leave of absence. If a participant separates from service or takes a leave of absence from the state because of service in the military and does not receive a distribution of his or her account balances, the Plans will allow suspension of loan repayments until after the conclusion of the period of military service. [~~Participants on a leave of absence due to qualified military service under Code §414(u) may elect to make additional annual deferrals upon resumption of employment with the state equal to the maximum annual deferrals that the participant could have elected during that period if employment had continued (at the same level of compensation) without the interruption or leave, reduced by the annual deferrals, if any. This right applies for five years following the resumption of employment (or if sooner, for a period equal to three times the period of the interruption or leave).~~]

(n) Military service. Participants on a leave of absence due to qualified military service under Code §414(u) may elect to make additional annual deferrals upon resumption of employment with the state equal to the maximum annual deferrals that the participant could have elected during that period if employment had continued (at the same level of compensation) without the interruption or leave, reduced by the annual deferrals, if any. This right applies for five years following the resumption of employment (or if sooner, for a period equal to three times the period of the interruption or leave). To qualify for USERRA, final USERRA regulations (January 18, 2006) benefits and the Pension Protection Act of 2006, the employee must return to employment with the original employer within certain specified timelines based on the length of his or her service. If less than 31 days, the employee must report to work no later than the beginning of the first full work period on the first full calendar day following discharge, allowing reasonable time required to return home safely and an eight (8) hour rest period. If more than 30 days but less than 181 days, the employee must return to employment no later than 14 days following discharge. If more than 180 days, the employee must return to employment no later than 90 days following discharge. A serviceman called up for action between September 11, 2001 and December 31, 2007 for more than 179 days may take the later of two years after the end of active service to make up annual contributions, distributions or payback loans. A tax refund or credit may be allowed if filed before the close of such period.

(o) [~~(n)~~] Disability. A disabled participant may elect to defer compensation during any portion of the period of his or her disability to the extent that he or she has actual compensation (not imputed compensation and not disability benefits) from which to make contributions to the plan and has not had a separation from employment.

(p) [~~(o)~~] Termination and resumption of deferrals.

(1) An employee may voluntarily terminate additional deferrals to the prior plan by completing a participation agreement or by contacting his or her agency coordinator.

(2) An employee who returns to active service after a separation from service must enroll in the revised plan before deferrals may resume.

(q) [~~(p)~~] Ownership of deferrals and investment income.

(1) Until December 31, 1998, a participant's deferrals and investment income are the property of the state of Texas until the deferrals and investment income are actually distributed to the employee.

(2) Effective January 1, 1999, in accordance with Chapter 609, Texas Government Code and Code §457(g), all amounts currently and hereafter held under the plan, including deferrals and investment income, shall be held in trust by the Board of Trustees for the exclusive benefit of participants and their beneficiaries and may not be used for or diverted to any other purpose, except to defray the reasonable expenses of administering the plan. In its sole discretion, the Board of Trustees may cause plan assets to be held in one or more custodial accounts or annuity contracts that meet the requirements of Code §457(g), and §401(f). In addition, effective January 1, 1999, the Board of Trustees does hereby irrevocably renounce, on behalf of the state of Texas and participating state agencies, any claim or right which it may have retained to use amounts held under the plan for its own benefit or for the benefit of its creditors and does hereby irrevocably transfer and assign all plan assets under its control to the Board of Trustees in its capacity as the trustee of the trust created hereunder. It shall be impossible, prior to the satisfaction of all liabilities with respect to participants and their beneficiaries, for any part of the assets and income of the trust fund to be used for, or diverted to, purposes other than for the exclusive benefit of participants and their beneficiaries. Adoption of this rule shall constitute notice to prior plan vendors holding assets under the plan to change their records effective January 1, 1999, to reflect that assets are held in trust by the Board of Trustees for the exclusive benefit of the participants and beneficiaries. Failure of a vendor to change its records on a timely basis may result in the expulsion of the vendor from the plan.

(r) [~~(q)~~] Market risk and related matters.

(1) The plan administrator, the trustee, an employing state agency, or an employee of the preceding are not liable to a participant if all or part of the participant's deferrals and investment income are diminished in value or lost because of:

(A) market conditions;

(B) the failure, insolvency, or bankruptcy of an investment provider; or

(C) the plan administrator's initiation of a transfer or investment of deferrals in accordance with the sections in this chapter.

(2) A participant is solely responsible for monitoring his or her own investments and being knowledgeable about:

(A) the financial status and stability of the investment provider in which the participant's deferrals and investment income are invested;

(B) market conditions;

(C) the resulting cost of making a transfer or distribution from a qualified investment product;

(D) the amount of the participant's deferrals and investment income that are invested in an investment provider's qualified investment products;

(E) the riskiness of a qualified investment product; and

(F) the federal tax advantages and consequences of participating in the plan and receiving distributions of deferrals and investment income.

(s) [~~(r)~~] Alienation of deferrals and investment income. A participant's deferrals and investment income may not be:

(1) assigned or conveyed;

(2) pledged as collateral or other security for a loan;

(3) attached, garnished, or subjected to execution; or

(4) conveyed by operation of law in the event of the participant's bankruptcy, or insolvency.

§87.7. Prior Plan Vendor Participation.

(a) (No change.)

(b) Eligibility requirements of a prior plan vendor.

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

(3) Insurance companies.

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

[~~(C) An insurance company shall report its A.M. Best, Standard & Poors, Moody's, and Duff & Phelps rating information to the plan administrator annually by January 1st and shall immediately report any change in its rating in the interim to the plan administrator.~~]

[~~(D) The plan administrator shall disapprove an insurance company's application to become a prior plan vendor if the company uses the sex of the person insured or of the recipient to calculate premiums, payments, or benefits for any of its investment products.~~]

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

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

§87.13. Disclosure.

(a) Approval of a disclosure form in prior plan.

(1) A prior plan vendor may [~~shall~~] complete an annual disclosure form for each investment product in which a plan participant has an account balance. If a variable annuity product has several investment choices, the plan administrator may require [~~must receive~~] all disclosures related to those investment choices. A prior plan vendor may be required by plan administrator to [~~shall~~] complete a disclosure on each investment product that has plan participant funds.

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

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

§87.17. Distributions.

(a) In general. Upon request, the plan administrator or TPA shall authorize the distribution of a participant's deferrals and investment income in accordance with the applicable distribution agreement so long as:

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

(6) the participant elects a transfer to be made if the transfer is either for the purchase of permissible service credit (as defined in §415(n)(3)[~~(A)~~] of the Code and as amended by the Pension Protection Act of 2006) under the receiving governmental defined benefit plan, or if the transfer is for a repayment to which §415 of the Code does not apply by reason of §415(k)(3) of the Code.

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

(e) Filing of distribution agreements by participants.

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

(6) A participant may request a trustee-to-trustee transfer of assets from the prior plan or the revised plan to a governmental defined benefit plan in the same state or another state for the purchase of permissible service credit (as defined in the Code §414(d) and (p) and Code §415(n)(3)(A), as amended by the Pension Protection Act of 2006) under such plan or a repayment to which Code §415 does not apply by reason of subsection (k)(3) thereof. The participant may elect to have any portion of the account balance transferred to a governmental defined benefit plan.

(7) (No change.)

(8) At a participant's [~~or~~] surviving spouse's request, the plan administrator may process a trustee-to-trustee transfer of an eligible rollover distribution upon receipt of appropriate instructions from the receiving plan. If a beneficiary is a non-spouse, the non-spouse may request a rollover to an inherited IRA.

(f) - (i) (No change.)

(j) Unforeseeable emergency distribution.

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

(4) The term "unforeseeable emergency" means a severe financial hardship to a participant or participant's beneficiary caused by:

(A) (No change.)

(B) the loss of the property of a participant or participant's beneficiary because of a casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, as a result of a natural disaster); or

(C) (No change.)

(5) - (8) (No change.)

(9) The plan administrator may [~~not~~] approve an emergency withdrawal request from a primary or secondary beneficiary.

(10) (No change.)

(k) - (s) (No change.)

(t) Federal withholding and reporting requirements.

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

(4) Federal tax withholding is mandatory for certain distributions to participants or beneficiaries. Distributions with a periodic payout of less than 10 years and lump sum distributions, other than required minimum distributions, are "eligible rollover distributions" subject to a mandatory 20 percent federal income tax withholding unless distributed in a direct rollover to an eligible retirement plan. Vendors who maintain participant account balances in the prior plan shall provide the required IRC §402(f) safe harbor notice to all 457 plan participants or their beneficiaries prior to the payment of an eligible rollover distribution. Tax notices may be provided electronically or in writing to the participant. For all distributions other than eligible rollover distributions, a prior plan vendor or TPA shall accurately determine any amounts to be withheld for federal taxes based on a Form W-4P submitted by the participant at the time of a distribution. If no Form W-4P is provided, the participant shall be taxed as "single with no dependents." The Tax Equity and Fiscal Responsibility Act does not apply to a deferred compensation plan governed by the Code §457.

(5) - (6) (No change.)

(u) (No change.)

§87.33. The Economic Growth and Tax Relief and Reconciliation Act.

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

(g) Distributions.

(1) (No change.)

(2) Purchase of Service

(A) A participant may request a trustee-to-trustee transfer of assets from the prior plan or the revised plan to a governmental defined benefit plan in the same state or another state for the purchase of permissible service credit (as defined in Code §414(d), §414(p), and §415(n)(3)(A) as amended by the Pension Protection Act of 2006) under such plan or a repayment to which Code §415 does not apply by reason of subsection (k)(3) thereof.

(B) Notwithstanding any other provision contained in this plan, the TPA, at the direction of the plan administrator, or as requested by a participant or beneficiaries, shall transfer part or all of the account of any non-terminated participant to the trust forming the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Judicial Retirement System of Texas Plan I or Plan II or any other eligible retirement plan for the purpose of purchasing service credit, provided that the recipient trust meets or purports to meet the requirements (as defined in Code §414(d), §414(p), [~~and~~] §415(n)(3)(A) and as amended by the Pension Protection Act of 2006) and expressly permits such transfers to be accepted. In no event may the transfer exceed the amount necessary to purchase the service credit.

(3) (No change.)

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

(j) The normal maximum amount of deferrals is increased to the lesser of $15,500 [~~$15,000~~] (as periodically adjusted in accordance with Code §457(e)(15)) or 100% of a participant's includible compensation.

(k) At a participant's or beneficiary's [~~surviving spouse's~~] request, the plan administrator shall process a trustee-to-trustee transfer of an eligible rollover distribution upon receipt of appropriate instructions from the receiving plan.

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

Filed with the Office of the Secretary of State on April 9, 2007.

TRD-200701313
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: May 20, 2007
For further information, please call: (512) 867-7421

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §402.204

The Texas Lottery Commission withdraws the proposed new §402.204 which appeared in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1178).

Filed with the Office of the Secretary of State on April 9, 2007.

TRD-200701308
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: April 9, 2007
For further information, please call: (512) 344-5113

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 87. NOTARY PUBLIC

SUBCHAPTER E. NOTARY RECORDS

1 TAC §87.60

The Office of the Secretary of State adopts a new rule prohibiting the recording of personal information in a notary public's record book. The amendment is adopted without changes to the proposed text as published in the February 23, 2007, issue of the *Texas Register* (32 TexReg 687). The purpose of the new rule is to prevent identity theft using information obtained from a notary's record book.

Section 406.014(a)(5) of the Texas Government Code requires a notary public other than a court clerk notarizing instruments for the court to keep in a book a record of whether the signer, grantor, or maker of a document is personally known by the notary public, was identified by an identification card issued by a governmental agency or a passport issued by the United States, or was introduced to the notary public and, if introduced, the name and residence or alleged residence of the individual introducing the signer, grantor, or maker.

Section 406.014(a)(5) does not require that the personal information on the identification card be recorded in the notary's book. However, notaries public have recorded information, such as the driver's license number, in their notary record books. Section §406.014(c) specifies that "a notary public shall, on payment of all fees, provide a certified copy of any record in the notary public's office to any person requesting the copy." If such copy contains personal identification information, that information could be used to facilitate the theft of a person's identity. The new rule will prohibit the recording of the personal identifying information contained on the identification card and would help thwart identity theft.

No comments were received regarding the proposed new rule.

The rule is adopted under the Texas Government Code, §406.023(a) and §2001.004(1), which provide the Secretary of State with the authority to prescribe and adopt rules. The rule affects §406.014 of the Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 2, 2007.

TRD-200701277

Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: April 22, 2007
Proposal publication date: February 23, 2007
For further information, please call: (512) 475-0775

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §353.5

The Health and Human Services Commission (HHSC) adopts §353.5, concerning Internet Posting of Sanctions Imposed for Contractual Violations, without changes to the proposed text as published in the January 5, 2007, issue of the *Texas Register* (32 TexReg 7) and will not be republished.

The new rule outlines HHSC's authority to impose sanctions when it is determined that a Medicaid managed care organization (MCO) has failed to comply with the terms of its contract with HHSC. The rule also explains when and how HHSC will post MCO sanction information on its Internet website.

HHSC received a comment regarding the proposed rule during the 30-day comment period, which included a public hearing on January 24, 2007, from the Department of State Health Services (DSHS). A summary of the comment and HHSC's response follows.

Comment:

HHSC received a comment from DSHS, in which the commenter suggested adding language to §353.5(a), General Provisions, indicating the rule only applies to managed care organizations that contract directly with HHSC.

HHSC Response:

HHSC acknowledges the comment and disagrees with the commenter. The rule was not revised to include the commenter's suggested language in §353.5(a), General Provisions. Section 353.5(a) establishes that HHSC determines noncompliance with the terms of a contract to provide health care services to clients through a managed care plan issued "by the MCO." Based on this language, the rule does not apply to the Medicaid managed care contract at DSHS.

The rule is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources

Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 3, 2007.

TRD-200701283
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 1, 2007
Proposal publication date: January 5, 2007
For further information, please call: (512) 424-6900

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 60. COMPLIANCE ADMINISTRATION

SUBCHAPTER A. COMPLIANCE MONITORING

10 TAC §§60.2 - 60.4, 60.6 - 60.13, 60.17, 60.18

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to §§60.2 - 60.4, 60.6 - 60.13, 60.17, and 60.18, concerning monitoring of compliance, with changes to the proposed text, as published in the January 5, 2007, issue of the *Texas Register* (32 TexReg 14). As a result of public comment and Board direction, changes were made in §§60.2, 60.3, 60.6, 60.7 and 60.13. The Department has also developed new procedures regarding monitoring of Housing Tax Credit developments after the extended use period which are added in §60.7. Provisions of 10 TAC §§1.11, 1.13, and 1.14, which are proposed for repeal, have been incorporated into the compliance rules. Requirements for physical inspection reporting are clarified in §60.12. Clarification of Utility Allowances is incorporated in §60.17. Minor changes have been made throughout to correct grammar, update formatting, and add clarifying language.

The purpose of these amendments is to provide updated policies and procedures for monitoring compliance regarding monitoring of Housing Tax Credit developments after the extended use period; requirements for physical inspection reporting are clarified; and minor changes have been made to correct grammar, update formatting, and add clarifying language. In January of 2007, the Internal Revenue Service released the 8823 Audit Guide. This guide is for use by State Housing Finance Agencies, IRS tax auditors and owners in implementation of the Housing Tax Credit program. Changes in several sections have been made to conform with new IRS requirements contained in the 8823 Audit Guide.

Reasoned Response to Public Comment on the Draft amendments to the Compliance Monitoring Rules, as follows:

Comment regarding §60.6 Section 8 Voucher Holders and Tenant Selection:

Comment was received suggesting that screening criteria relating to the minimum income for households receiving Section 8 assistance being limited to $2,500 annually regardless of the amount of rent paid by the household does not treat all applicants fairly. A minimum income, if utilized at all, must be applied equally.

Staff Response: Staff agrees with comment. To ensure equitable treatment in the screening criteria, §60.6(c)(2) will read that housing sponsors are prohibited from..."using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than 2.5 times the individual's or family's share of the total monthly rent payable to the owner of the Development. A household participating in the voucher program or receiving any other type of rental assistance may not be required to have a minimum income exceeding $2,500 per year".

Comment regarding §60.7 Monitoring for Compliance: Comment was received that the language prohibiting eviction or non renewal of a lease for other than good cause was too vague.

Staff Response: Staff concurs with this comment and recommends the following language:

§60.7(b)(14) The owner shall not terminate the lease or evict the resident or refuse to renew the lease except for material noncompliance with the lease or other good cause.

Comment:

Comment was received that the Department's policy regarding designation of households at recertification causes an undue hardship on very low income residents in tax credit properties beyond the requirements of §42. Under TDHCA policy, if a household at 30%, 40% or 50% recertifies with an income over the published limit, they must be re-designated according to their current income. Comment suggested that these households are being forced to move if a unit at the higher income limit is not available.

Staff Response: The Department does not intend for these households to have to vacate. Staff believes that as household income increases, their ability to pay increased rent should be recognized. A household that moved in at the 30% level and recertifies at the 50% level should pay the higher rent once another unit on the property is leased to a household with an income and rent under the 30% limit. Staff does not recommend any change to the rules.

Comment regarding §60.13 Inspection Standard:

Comment was received that management companies are experiencing difficulty in obtaining copies of TDHCA notices of upcoming inspections and in obtaining the results of physical inspections from owners. They requested that notices of inspections and copies of reports be provided, not only to the owner, but the property management company as well.

Staff Response: Treasury Regulations require the Department to send notices of upcoming reviews and results of inspections to owners, not management companies. Because of the cost of copying and mailing an additional report and because management companies frequently change, staff is not recommending that the Compliance Monitoring Rules be changed to require a courtesy copy be sent to the management company. It is incumbent on the owners to work closely with their managers.

Portfolio Management and Compliance will change our policy and send a copy of the cover letter that accompanies a final inspection report to the management company on record. A copy of the full report can be obtained either from the owner or from the Department through our open records process.

Commentator's: The Honorable Representative Jose Menendez, Mr. Dana Hoover, Vice President, Hamilton Valley Management, Inc., and Dan Allgeier, NuRock Development.

At the November 9, 2006 meeting, an issue regarding a non-compliance score was presented in relation to a development where the developer did not have a controlling interest in the property. The property received a material non-compliance score that jeopardized additional credits awarded for construction cost increases due to his relationship with the property. At that time, two Board members requested staff to reexamine the rules for this circumstance and postponed voting on the final rules until such a time as staff could address the issue.

Staff looked at the issue and developed modified rules based on the comments received from the Board. The draft Compliance Rules were approved for public comment at the December 2006 Board Meeting and were published in the *Texas Register* and available for public comment for a 30 day period. Substantial changes are explained below.

Summary explanation of proposed changes since December Board meeting:

§60.3 Development Inspections

Administrative Change: Administrative change based on Board member comment to develop a modification of the time frame for substantial construction.

Staff Response: The definition of commencement of substantial construction has been modified from expending 10% of the construction contract to include both expending 10% of the construction contract and completing 80% of the framing for new construction properties.

In the past, owners requested the initial construction inspection when they were 40% complete. At the Board's request, §60.3(1)(B) was added to require the initial inspection be completed between 45 to 90 days after the earlier of the submittal or the due date of commencement of substantial construction.

The deadline for 2005 HTC properties to meet commencement of substantial construction was December 1, 2006. Between December 2006 and February 2007, PMC conducted 21 construction inspections on properties that had commenced substantial construction, but had not yet requested an initial inspection. The results of those inspections were inconclusive because although they had spent 10% of the construction contract, they had not completed enough construction for a meaningful inspection.

A typical property will be about 60% complete when framing is 80% complete. This is the ideal time to complete this initial inspection. To achieve this goal and ensure that developments will be placed in service and inspected in a timely manner, the definition of commencement of substantial construction has been changed.

The amendments are adopted pursuant to the authority of the Texas Government Code, Chapter 2306 and in accordance with the Texas Government Code §2001.039.

§60.2. Definitions.

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

(1) Affordability Period--the affordability period commences as specified in the Land Use Restriction Agreement (LURA), or federal regulation or commences on the first day of the compliance period as defined by §42(i)(1) of the Internal Revenue Code (IRC) and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is later. The term of the affordability period shall be imposed by LURA or other deed restriction and may be terminated upon foreclosure. During this period the Department shall monitor to ensure compliance with programmatic rules, regulations, and application representations.

(2) Application--an application, in the form prescribed by the Department, filed with the Department by an Applicant, including any exhibits or other supporting material. (§2306.6702)

(3) Board--the governing board of the Texas Department of Housing and Community Affairs.

(4) Code--the U.S. Internal Revenue Code of 1986, as amended from time-to-time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued by the United States Department of the Treasury or the Internal Revenue Service.

(5) Department--the Texas Department of Housing and Community Affairs, an official and public agency of the State of Texas pursuant to Chapter 2306, Texas Government Code.

(6) Development--a property or work or a project, building, structure, facility, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, that meets or is designed to meet minimum property standards required by the Department and that is financed under the provisions of Chapter 2306, Texas Government Code.

(7) Housing sponsor--

(A) an individual, including an individual or family of low and very low income or family of moderate income, joint venture, partnership, limited partnership, trust, firm, corporation, or cooperative that is approved by the department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing Development, subject to the regulatory powers of the department and other laws; or

(B) in an economically depressed or blighted area, or in a federally assisted new community located within a home-rule municipality, the term may include an individual or family whose income exceeds the moderate income level if at least 90% of the total mortgage amount available under a mortgage revenue bond issue is designed for individuals and families of low income or families of moderate income.

(8) HTC Development--A Development using Housing Tax Credits allocated by the Department.

(9) Low Income Unit--a unit that is intended for occupancy by an income eligible household, as defined by the Department or the Code.

(10) Land Use Restriction Agreement (LURA)--an agreement between the Department and the Development Owner which is a binding covenant upon the Development Owner's successors in interest that encumbers the Development with respect to the requirements of this chapter, Chapter 2306, Texas Government Code; the Code; and the requirements of the various programs administered or funded by the Department.

(11) Material Noncompliance--

(A) A Housing Tax Credit Development located within the state of Texas will be classified by the Department as being in material noncompliance status if the noncompliance score for such Development is equal to or exceeds a threshold of 30 points in accordance with the material noncompliance provisions, methodology, and point system of this title.

(B) Non HTC Developments monitored by the Department with 1 to 50 low income units will be classified as being in material noncompliance status if the noncompliance score is equal to or exceeds a threshold of 30 points. Non HTC Developments monitored by the Department with 51 to 200 low income units will be classified as being in material noncompliance status if the noncompliance score is equal to or exceeds a threshold of 120 points. Non HTC Developments monitored by the Department with 201 or more low income units will be classified as being in material noncompliance status if the noncompliance score is equal to or exceeds a threshold of 150 points.

(C) For all programs, a Development will be in material noncompliance if the noncompliance is stated in §60.18 of this chapter to be material noncompliance.

(12) Non HTC--any Development not utilizing Housing Tax Credits.

(13) Unit--any residential rental unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation.

§60.3. Development Inspections.

The Department shall conduct or may contract for inspections during the construction and rehabilitation process and at final construction completion to monitor for compliance with all program requirements, including construction threshold criteria and application Development characteristics associated with any Development funded or administered by the Department. Development inspections will be conducted by the Department or by an independent third party inspector acceptable to the Department and will include a construction quality evaluation. (§2306.081, Texas Government Code)

(1) Inspection procedures for HTC Developments include:

(A) A review of the evidence of commencement of substantial construction. The minimum activity necessary to meet the requirement of commencement of substantial construction for new Developments will be defined as having 80% of framing completed and expended 10% of the construction contract amount for the Development, adjusted for any change orders, and as documented by both the most recent Application and Certification for Payment (or equivalent) and the inspecting architect. The minimum activity necessary to meet the requirement of commencement of substantial construction for rehabilitation Developments will be defined as having completed 50% of the proposed scope of work and expended 10% of the construction budget as documented by the inspecting architect. Evidence of such activity shall be provided in a format prescribed by the Department.

(B) An initial Development inspection to be conducted between 45 to 90 days after the earlier of the submittal or the due date of commencement of substantial construction.

(C) A final Development inspection performed at construction completion. Evidence of construction completion must be submitted within thirty days of completion and shall be provided in a format prescribed by the Department.

(2) Development inspection procedures for non-HTC multifamily Developments include:

(A) An initial Development inspection to be conducted between 45 to 90 days from issuance of notice to proceed.

(B) A final Development inspection performed at construction completion. Evidence of completion must be submitted within thirty days of completion and shall be provided in a format prescribed by the Department. The inspection is required by the Department in order to release retainage.

(3) The Department may require a copy of all reports from all construction inspections performed on behalf of the Applicant as needed. Those reports must indicate that the Department may rely on the information provided in the reports and the inspector is properly credentialed.

(4) Additional inspections may be conducted by the Department or by an independent third party Inspector acceptable to the Department during the construction process, if necessary, based on the level of risk associated with the Development, as determined by the Department. The Department identifies HTC Developments to be at high risk if inspections identify issues with construction threshold criteria, Development characteristics identified at application or past performance problems. The Department identifies non-HTC Developments to be at high risk if inspections conducted during the construction process identify issues with program requirements or Development characteristics identified at application.

(5) Applicable Laws. An applicant may not receive funds or other assistance from the Department until the Department receives a properly completed certification from the applicant that the housing development is, or will be upon completion of construction, in compliance with the following housing laws:

(A) state and federal fair housing laws, including Chapter 301, Property Code, the Texas Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601, et seq.), and the Fair Housing Amendments of 1988 (42 U.S.C. §3601, et seq.);

(B) the Civil Rights Act of 1964 (42 U.S.C. §2000a, et seq.);

(C) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.); and

(D) §504, Rehabilitation Act of 1973 (29 U.S.C. §701, et seq.). (§2306.257)

§60.4. Monitoring During the Affordability Period.

(a) The Department will monitor for compliance with representations made by the Development Owner in the Application and in the LURA, whether required by the applicable program rules, regulations, including HOME Final Rule, the Code, the U.S. Department of Housing and Urban Development (HUD) Community Planning and Development (CPD) Notices, the Texas Government Code §2306.001 et seq., or Chapters 51 and 53 of this title.

(b) The Department periodically monitors Developments for compliance with the fair housing requirements specified in §60.3(5) of this chapter. Monitoring may occur during construction or during the affordability period.

(1) The monitoring level for each housing Development is based on the amount of risk of noncompliance with the requirements specified in §60.3(5) of this chapter associated with the Development.

(2) The Department shall notify the recipient in writing of an apparent violation of fair housing laws and shall afford the recipient a reasonable amount of time, as determined by the Department, to correct the identified violation, if possible, prior to the imposition of any sanction.

(3) The Department shall notify the Texas Workforce Commission, Civil Rights Division as required in the Texas Government Code §2306.257(d), with a copy to the Development owner in the event:

(A) no response to the Department's notice of apparent violation is received during the response period;

(B) the owner concurs with the Department's assessment and indicates they are unable or unwilling to correct the violation(s); or

(C) the owner and the Department are unable to agree if the identified issue is a violation.

(4) If fair housing violations are identified prior to the issuance of forms 8609 (For HTC Developments) or release of final retainage, no forms 8609 will be issued or retainage will not be released until the violations are corrected to the Department's satisfaction.

(c) Sanctions. The Department may impose one or more of the following sanctions depending on the severity of the violation of a law specified in §60.3(5) of this chapter, and as further described in subsections (a) and (b) of this section, by a recipient of housing tax credits, housing funds or other assistance from the Department:

(1) termination of assistance,

(2) deobligation of funds, if available, and

(3) a bar on future eligibility for assistance through a housing program administered by the Department. A bar shall be in place for at least one calendar year from the date of imposition by the Department and may not last for more than three calendar years from the date of correction.

§60.6. Section 8 Voucher Holders and Tenant Selection.

(a) The Department will monitor to ensure Development owners comply with §2306.269 and §2306.6728, Texas Government Code regarding residents receiving rental assistance under Section 8, United States Housing Act of 1937 (42 U.S.C. §1437F).

(b) Applicability. The policies, standards, and sanctions established by this section apply only to:

(1) multifamily housing Developments that receive the following assistance from the Department on or after January 1, 2002: (§2306.185)

(A) a loan or grant in an amount greater than 33% of the market value of the Development on the date the recipient took legal possession of the Development; or

(B) a loan guarantee for a loan in an amount greater than 33% of the market value of the Development on the date the recipient took legal title to the Development;

(2) multifamily rental housing Developments that applied for and were awarded housing tax credits after 1992.

(3) housing Developments that benefit from the incentive program under §2306.805 of the Texas Government Code.

(c) Housing sponsors of multifamily rental housing Developments described in subsection (a) of this section are prohibited from:

(1) excluding an individual or family from admission to the Development because the individual or family participates in the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1437f); and

(2) using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than 2.5 times the individual's or family's share of the total monthly rent payable to the owner of the Development. A household participating in the voucher program or receiving any other type of rental assistance may not be required to have a minimum income exceeding $2,500 per year.

(d) To demonstrate compliance with this section housing sponsors shall:

(1) State in their leasing criteria that Section 8 voucher or certificate holders are welcome to apply and will be provided the same consideration for occupancy as any other prospective tenant;

(2) State in their leasing criteria that the Development will comply with state and federal fair housing and antidiscrimination laws;

(3) Apply all other screening criteria, including employment policies or procedures and other leasing criteria (such as rental history, credit history, criminal history, etc.) uniformly and in a manner consistent with the Texas and Federal Fair Housing Acts, program guidelines, and the Department's rules;

(4) Approve and distribute an Affirmative Marketing Plan. The Affirmative Marketing plan must be provided to the property management and onsite staff. Housing Sponsors are encouraged to use HUD form 935.2 or successors as applicable. The Affirmative Marketing Plan must identify methods to market the property to persons with disabilities. Additionally, the Affirmative Marketing plan must be displayed in the leasing office and available to the public on request.

§60.7. Monitoring for Compliance.

(a) Monitoring after the Compliance Period: Housing Tax Credit properties allocated credit in 1990 and after are required under the Code (§42(h)(6)) to record an Extended Use Agreement as part of the LURA restricting the property for 30 years. Section 42(i)(1) defines the Compliance Period as the first 15 years of the extended use period. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the first 15 years of the extended use period, the Department will continue to monitor Housing Tax Credit Developments using the rules detailed in paragraphs (1) - (15) of this subsection.

(1) On site monitoring visits will continue to be conducted approximately every three years, unless the Department determines that a more frequent schedule is necessary;

(2) In general, the Department will review 10% of the low income files. No less than 5 files and no more than 20 files will be reviewed;

(3) A minimum of five units will be inspected. Additional units may be inspected if warranted by conditions discovered in the initial units inspected;

(4) A physical inspection of each unit shall be conducted by the owner each year using criteria set forth in the Department of Housing and Urban Development's Housing Quality Standards (HQS). Any deficiencies must be corrected and copies of the inspections and verification of repairs shall be maintained in the unit file;

(5) An inspection of all common spaces, grounds, building exteriors and building systems will be performed annually using HUD's HQS. Deficiencies must be corrected and records of the corrections must be maintained for review by Department staff;

(6) Each Development shall submit an annual report in the format prescribed by the Department;

(7) Reports to the Department must be submitted electronically as required in §60.9 of this chapter;

(8) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;

(9) All households must be income qualified upon initial occupancy of any low income unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project based HUD program;

(10) Rents will remain restricted for all low income units. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit.

(11) Owners and managers must continue to screen households for income, assets, and household size on an annual basis. In addition, an Income Certification form must be completed on an annual basis;

(12) All additional income and rent restrictions defined in the LURA remain in effect.

(13) Other requirements defined in the LURA, such as the provision of social services or serving special needs households, will remain in effect unless specifically waived by the Department; and

(14) The owner shall not terminate the lease or evict the resident or refuse to renew the lease except for material noncompliance with the lease or other good cause.

(15) The total number of required low income units must be maintained Development wide.

(c) After the first 15 years of the extended use period, certain requirements will not be monitored as detailed in paragraphs (1) - (5) of this subsection.

(1) At recertification verification of income and assets will not be required.

(2) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a low income unit;

(3) The requirement to treat transfers from building to building as a new move in. Transfers within the Development will not require household requalification;

(4) The Available Unit Rule found in Treasury Regulation §1.42-15; and

(5) The building applicable fraction found in the Development's Cost Certification and/or the LURA. Low income occupancy requirements will be monitored Development wide, not building by building;

(d) Unless specifically noted in this section, all requirements of this chapter and §42 of the Internal Revenue Code remain in effect for the Extended Use Period. These Post Year 15 Monitoring Rules apply only to the Housing Tax Credit Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

(e) The Department may contract with an independent third party to monitor a Development during construction or rehabilitation and during operation for compliance with any conditions imposed by the Department in connection with funding or other Department oversight and appropriate state and federal laws, as required by other state law or by the Board. (§2306.6719, Texas Government Code).

§60.8. Recordkeeping.

All Development Owners must comply with program recordkeeping requirements. Records must include sufficient information to comply with the Reporting requirements of §60.9 of this chapter and any additional programmatic requirements. Records must be kept for each qualified low income rental unit and building in the Development, commencing with lease up activities and continuing on a monthly basis until the end of the affordability period. Housing Tax Credit owners should refer to Treasury Regulation §1.42-5 for more information about record keeping requirements.

§60.9. Reporting.

(a) Each Development shall submit reports as required by the Department. Each Development that receives financial assistance or is administered by the Department, including the FDIC's Affordable Housing Program (AHP), shall submit the information required under this section which describes the Annual Owner's Compliance Report (AOCR) required by §2306.0724, Texas Government Code. The Department requires this information be submitted electronically and in the format prescribed by the Department. Section 60.10 of this chapter contains rules regarding filing and penalties for failure to file reports. The first AOCR is due the year following award.

(b) Part A, the "Owner's Certification of Program Compliance"; Part B, the "Unit Status Report"; and Part C, "Tenant Services Provided Report" of the AOCR, must be provided to the Department no later than March 1st of each year, reporting data current as of December 31 of the previous year (the reporting year). Part D, "Owner's Financial Certification", which includes the current audited financial statements and income and expenses of the Development for the prior year, shall be delivered to the Department no later than the last day in April each year. A full description of the AOCR is contained in §60.10 of this chapter.

(c) The Department maintains the information reported by the AOCR pursuant to §2306.0724(c), Texas Government Code in electronic and hard-copy formats available at no charge to the public.

(d) Rental Developments funded or administered by the Department, including HOME, Housing Trust Fund (HTF), the FDIC's AHP, and any other rental programs funded or administered through the Department shall provide tenant information provided on Part B, "Unit Status Report," at least quarterly during lease up and until occupancy requirements are achieved. Once the Department has determined that all occupancy requirements are satisfied, the Development shall submit the Unit Status Report at least annually and as required by this section.

(e) Developments financed by tax exempt bonds issued by the Department shall report quarterly throughout the Qualified Project Period unless notified by the Department of a change in the reporting frequency.

(f) Information regarding housing for persons with disabilities: Owners of state or federally assisted housing Developments with 20 or more housing units must report information regarding housing units designed for persons with disabilities pursuant to §2306.078, Texas Government Code. This information will be reported on the Department's website and will include the following:

(1) the name, if any, of the Development;

(2) the street address of the Development;

(3) the number of housing units in the Development that are designed for persons with disabilities and that are available for lease;

(4) the number of bedrooms in each housing unit designed for a person with a disability;

(5) the special features that characterize each housing unit's suitability for a person with a disability;

(6) the rent for each housing unit designed for a person with a disability; and

(7) the telephone number and name of the Development manager or agent to whom inquiries by prospective tenants may be made.

(g) The Department requires all Owners of properties administered by the Department to submit the Unit Status Report in the electronic format developed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be filed no later than January 31st of the year following the award. The Department will provide general instruction regarding the electronic transfer of data. The Department may, at its discretion, waive the online reporting requirements. In the absence of a written waiver, all Developments are required to submit Reports online.

(h) Data submitted to the Department by the owner of a Development that contains relevant information pursuant to §2306.072(c)(6) and §2306.0724 of the Texas Government Code shall at a minimum include:

(1) the street address and municipality or county in which the property is located;

(2) the telephone number of the property management or leasing agent;

(3) the total number of units, reported by bedroom size;

(4) the move in and move out date for each residential rental unit in the Development;

(5) the number of occupants in each low income unit;

(6) the total number of units, reported by bedroom size, designed for individuals who are physically challenged or who have special needs and the number of these individuals served annually;

(7) the rent for each type of rental unit, reported by bedroom size;

(8) the race or ethnic makeup of the residents of each project;

(9) the number of units occupied by individuals receiving government-supported housing assistance and the type of assistance received;

(10) the number of units occupied by individuals and families of extremely low income, very low income, low income, moderate income, and other levels of income, reported as 30, 40, 50, 60 or 80% of the area median income;

(11) a statement as to whether the property has been notified of a violation of the fair housing law that has been filed with the United States Department of Housing and Urban Development, the Civil Rights Division of the Texas Workforce Commission, or the United States Department of Justice;

(12) a statement as to whether the Development has any instances of material noncompliance with bond indentures or deed restrictions discovered through the normal monitoring activities that include meeting occupancy requirements or rent restrictions imposed by deed restriction or finance agreements; and

(13) the annual number of low income unit vacancies and information that shows when and to whom available units were rented.

§60.10. Annual Owner's Compliance Report Certification and Review.

(a) On or before February 1st of each year of the Affordability Period, the Department will send a reminder that the Report required by §2306.0724 of the Texas Government Code (to be titled the Annual Owner's Compliance Report (AOCR)) must be completed by the Owner and submitted to the Department on or before the applicable deadline. This reminder may be sent via email or by posting on the Department's website. The AOCR shall consist of:

(1) Part A, "Owner's Certification of Program Compliance";

(2) Part B, "Unit Status Report";

(3) Part C, "Tenant Services Provided Report"; and

(4) Part D, "Owner's Financial Certification".

(b) Any Development for which the AOCR, Part A, "Owner Certification of Program Compliance," is not received or is received past the due date will be considered not in compliance with these rules. If Part A is incomplete, improperly completed or not signed by the Development Owner, it will be considered not received and not in compliance with these rules. The Department will report to the IRS via form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, any HTC Development that fails to comply with this section. The AOCR Part A shall include at a minimum the following statements by the Development Owner:

(1) the Development met the minimum set aside test which was applicable to the Development;

(2) there was no change in the Applicable Fraction or low income set aside of any building, or if there was such a change, the actual Applicable Fraction is reported to the Department (HTC only);

(3) the Development Owner has received an annual income certification from each low income resident and documentation to support that certification, in the manner and form required by the Department's Compliance Manual(s), as may be amended from time to time;

(4) documentation is maintained to support each low income tenant's income certification, consistent with the determination of annual income and verification procedures under Section 8 of the United States Housing Act of 1937 (Section 8), notwithstanding any rules to the contrary for the determination of gross income for federal income tax purposes. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the Development Owner declaring that the tenant's income does not exceed the applicable income limit under §42(g) of the IRC as described in the Compliance Manual(s);

(5) each low income unit in the Development was rent-restricted under the LURA and applicable program regulations, including §42(g)(2) of the IRC, or 24 CFR Part 92, and the owner maintained documentation to support the utility allowance applicable to such unit;

(6) all low income units in the Development are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under §42(i)(3)(B)(iii) of the IRC (HTC and BOND only);

(7) no finding of discrimination under the Fair Housing Act, 42 U.S.C. §§3601 - 3619, has occurred for this Development. A finding of discrimination includes an adverse final decision by the Secretary of HUD, 24 CFR §180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. §3616a(a)(1), or an adverse judgment from a federal court;

(8) each unit or building in the Development is, and has been, suitable for occupancy, taking into account Uniform Physical Condition Standards (UPCS) (24 CFR §5.703) or local health, safety, and building codes, and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the Development during this reporting period. If a violation report or notice was issued by the governmental unit during this reporting period, the Development Owner must provide the Department with a copy of the violation report or notice. In addition, the Development Owner must state whether the violation has been corrected;

(9) each unit has been inspected annually and each unit meets conditions set by HUD Housing Quality Standards (HOME only);

(10) there has been no change in the Eligible Basis (as defined by the Code for any building in the Development since the last certification or, if change(s), the nature of the change (HTC only);

(11) all tenant facilities included in the original application, such as swimming pools, other recreational facilities, washer/dryer hook ups, appliances and parking areas, were provided on a comparable basis to any tenants in the Development;

(12) Residents have not been charged for the use of any nonresidential portion of the building that was included in the building's Eligible Basis under the Code (HTC only);

(13) if a low income unit in the Development became vacant during the year, reasonable attempts were made, or are made, to rent that unit or the next available unit of comparable or smaller size to a qualifying low income household before any other units in the Development were, or will be, rented to non low income households (HTC and BOND only);

(14) if the income of tenants of a low income unit in the Development increased above the appropriate limit allowed, the next available unit of comparable or smaller size was, or will be, rented to residents having a qualifying income;

(15) a LURA including an Extended Low Income Housing Commitment as described in §42(h)(6) of the Code was in effect for buildings subject to §7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989, 103 Stat. 2106, 2308 - 2311, including the requirement under §42(h)(6)(B)(iv) of the Code, that a Development Owner cannot refuse to lease a unit in the Development to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. §1437f (for buildings subject to §1314c(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 312, 438 - 439) (HTC only);

(16) the Development Owner has not been notified by the IRS that the Development is no longer "a qualified low income housing Development" within the meaning of the Code (HTC only);

(17) if the Development Owner is required to be a Qualified Nonprofit Organization under §42(h)(5) of the Code, that a Qualified Nonprofit Organization owned an interest in and materially participated in the operation of the Development within the meaning under §469(h) of the Code (HTC only);

(18) no low income units in the Development were occupied by ineligible full time student households (HTC and BOND only);

(19) no change in the ownership of the Development has occurred during the reporting period or changes and transfers were or are reported;

(20) the Development met all representations of the Development Owner in the Application and complied with all terms and conditions which were recorded in the LURA;

(21) the Development has made all required lender deposits, including annual reserve deposits;

(22) the street address and municipality or county in which the Development is located;

(23) the name, address, contact person, and telephone number of the property management or leasing agent;

(24) that no tenants in low income units were evicted or had their tenancies terminated, including non-renewal of a lease, other than for good cause and that no tenants had an increase in the gross rent with respect to a low income unit not otherwise permitted under the Code (HTC and HOME only);

(25) The name and mailing address of the syndicator and lender (HTC only);

(26) any additional information as required by the Department.

(c) Review. Department staff will review Part A of the AOCR for compliance with the requirements of the appropriate program including the Code.

(d) Sanctions.

(1) If the report is not received on or before March 1, a notice of noncompliance will be sent to the owner specifying a reasonable amount of time, as determined by the Department, to submit the report prior to the imposition of any sanction.

(2) If the report is not received on or before the corrective action deadline the Department shall:

(A) For all HTC properties, issue form 8823 notifying the Internal Revenue Service of the violation.

(B) For all properties, score the noncompliance in accordance with §60.18 of this chapter.

(3) In addition, in accordance with the provisions of §2306.0724 of the Texas Government Code, the Executive Director of the Department may assess and enforce the following sanctions against a housing sponsor who fails to submit the AOCR on or before March 1 of each year. These sanctions will only be assessed for multiple, consistent and/or repeated violations of failure to submit the AOCR by March 1 of each year.

(A) Impose a late processing fee in an amount equal to $1,000;

(B) Subject the Housing Sponsor to §1.21 of this title, Action by the Department if Outstanding Balances Exist; or

(C) An HTC Development that three years in a row fails to submit required information to the Department may be reported to the Internal Revenue Service as no longer in compliance and never expected to comply.

§60.11. Record Retention Provisions.

(a) Each Development that is administered by the Department including the FDIC's AHP is required to retain the records as required by the specific funding program rules and regulations. In general, retention schedules include but are not limited to the provision of subsections (b) - (e) of this section.

(b) HTC records, as described in §60.8 of this chapter, must be retained for at least six years after the due date (with extensions) for fil-

ing the federal income tax return for that year; however, the records for the first year of the Credit Period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building.

(c) Retention of records for HOME rental Developments must comply with the provisions of 24 CFR §92.508(c) which generally requires retention of rental housing records for five years after the affordability period terminates.

(d) Housing Trust Fund (HTF) rental Developments must retain tenant files for at least three years beyond the date the tenant moves from the Development. Records pertinent to the funding of the award, including but not limited to the application, development costs and documentation, must be retained for at least five years after the affordability period terminates.

(e) Other rental Developments funded or administered in whole or in part by the Department must comply with record retention requirements as required by rule or deed restriction.

§60.12. Inspection Provision.

(a) The Department retains the right to perform an on-site inspection of any low income Development, and review and photocopy all documents and records supporting compliance with Departmental programs through the end of the Compliance Period or the end of the period covered by any Extended Low Income Housing Commitment, whichever is later.

(b) The Department will perform on-site inspections and file reviews of each low income Development. The Department will conduct the first review of HTC Developments by the end of the second calendar year following the year the last building in the Development is placed in service. The Department will schedule the first review of all other Developments as leasing commences. Subsequent reviews will occur at least once every three years during the Affordability Period. The Department will monitor a sampling of the low income resident files in each Development, and review the income certifications, the documentation the Development Owner has received to support the certifications, the rent records and any additional information that the Department deems necessary. The Department will also conduct a physical inspection of the Development including the exterior of the Development, development amenities, and an interior inspection of a sample of units.

(c) The Department may, at the time and in the form designated by the Department, require the Development Owners to submit information on tenant income and rent for each low income unit and may require a Development Owner to submit copies of the tenant files, including copies of the income certification, the documentation the Development Owner has received to support that certification, and the rent record for any low income tenant.

(d) The Department will select the low income units and tenant records that are to be inspected and reviewed. Original records are required for review. The Department will not give Development Owners advance notice that a particular unit, tenant records, or a particular year will be inspected or reviewed. However, the Department will give reasonable notice to the Development Owner that an on-site inspection or a tenant record review will occur so the Development Owner may notify tenants of the inspection or assemble original tenant records for review.

(e) The Department will conduct a limited inspection for compliance with accessibility requirements under the Fair Housing Act or §504 of the Rehabilitation Act of 1973. If determined necessary the Department may make referrals to appropriate federal and state agencies or order third-party inspections to be paid for by the Development owner.

(f) Exception: The Department may, at its discretion, enter into a Memorandum of Understanding with the TX-USDA-RHS, whereby the TX-USDA-RHS agrees to provide to the Department information concerning the income and rent of the tenants in buildings financed under its Section 515 program. Owners of such buildings may be exempted from the inspection provisions; however, if the information provided by TX-USDA-RHS is not sufficient for the Department to make a determination that the income limitation and rent restrictions are met, the Development Owner must provide the Department with additional information, or the Department will inspect according to the provisions contained herein. TX-USDA-RHS Developments satisfy the definition of Qualified Elderly Development if they meet the definition for elderly used by TX-USDA-RHS, which includes persons with disabilities.

§60.13. Inspection Standard.

(a) Developments must be maintained to be decent, safe, sanitary and in good repair throughout the affordability period. For all programs, the Department will use HUD's Uniform Physical Condition Standards (UPCS) to determine compliance with property condition. In addition, Developments must comply with all local heath, safety, and building codes. The Department may contract with a third party to complete UPCS inspections. HTC Developments that fail to comply with local codes or UPCS must be reported to the IRS.

(b) To determine compliance with property condition standards the Department will review any local health, safety, or building code violation reports, or notices in the absence of local health, safety and building code violation reports. If deemed necessary by the Department, inspections by third-party inspectors may be requested and will be relied upon to determine compliance with property condition standards. In addition to the review of any local health, safety or building code violation reports, the Department may conduct inspections of the units using HUD's Housing Quality Standards or UPCS and may use those standards to determine compliance with property condition standards. Developments must be maintained to be decent, safe, sanitary and in good repair throughout the affordability period. HTC Developments that fail to comply with local codes or UPCS must be reported to the IRS.

(c) The Department will evaluate UPCS reports in the following manner:

(1) A finding of Major Violations will be assessed if:

(A) Any life threatening health, safety, or fire safety hazards are reported on the Notification of Exigent and Fire Safety Hazards Observed form in any building exterior, building system, common area, site, or dwelling unit; or

(B) 25% or more of buildings or dwelling units inspected have the same reported health or safety deficiencies.

(2) A finding of Minor Violations will be assessed if:

(A) The same Level two or Level three deficiency (not a health or safety deficiency) is listed for 25% or more of the buildings or dwelling units inspected; or

(B) An overall UPCS score of less than 60% (59% or below) is reported.

(3) Findings of both Major and Minor Violations may be assessed if deficiencies reported meet the criteria for both.

(4) Pursuant to the 8823 Audit Guide, the Department must report if a property fails to comply with the requirements of the UPCS

or local codes at any time. Accordingly, the Department will submit forms 8823 for any UPCS violation. However, if the violation(s) do not meet the conditions described in paragraph (1) or (2) of this subsection, no points will be assigned in the Department's compliance status evaluation of the property.

(5) Property representatives will have an opportunity to correct deficiencies while the inspector is on site. Such corrected items will not be assessed a finding unless there is a pattern of the same violation (25% or more of dwelling units or buildings inspected with the same deficiency).

(6) Acceptable evidence of correction of deficiencies is a certification from an appropriate licensed professional that the item now complies with the inspection standard or other documentation that the violation has been corrected.

(7) For Developments with no findings of Major or Minor Violations, the review letter will state that the owner is responsible for correcting any items noted in the report. However, the letter will not require the owner to report back that the items have been cured.

(8) If there are findings of noncompliance, the Department will provide a standard 90 day corrective action period. The Department will grant up to an additional 90 day extension if there is good cause and the owner clearly requests an extension.

§60.17. Utility Allowances.

(a) The Department will monitor to determine if HTC and BOND properties comply with published rent limits, which include an allowance for utilities. If residents are responsible for some or all utilities, Development owners must use a Utility Allowance that complies with §1.42-10 of the IRC and/or the IRS 8823 Audit Guide.

(b) Until further guidance is provided by the IRS through administrative ruling or guidance, the election to use a local utility company estimate is permanent; i.e. owners cannot switch back and forth between the local PHA and utility company estimates unless written approval is given by the Department.

(c) Owners that want to switch from using a PHA allowance to a written estimate or vice versa must have written approval from TDHCA.

(d) If an owner or the Department believes that the published PHA allowance does not accurately reflect the costs of utilities, the owner may be required to calculate utility allowances for rent restricted units in the building based upon an average cost of the actual use of similarly constructed and sized units in the building using actual usage data and rates.

(e) If an owner computes the utility allowance estimate based on the expected or historical use by HTC buildings/units, the estimate must be calculated in a reasonable manner and contemporaneously documented to show how the estimate was determined.

(f) The Department will monitor to determine if HOME and HTF Developments comply with published rent limits, which include an allowance for utilities. Unless otherwise approved by the Department, HOME and HTF Developments must use the utility allowance established by the applicable housing authority. Changes in utility allowances must be implemented on the published effective date.

(g) If the applicable Public Housing Authority allowance lists flat fees for any utility, those flat fees must be included in the calculation of the utility allowance if the resident is responsible for that utility. This does not apply if the Development uses a written local estimate in accordance with Treasury Regulation §1.42.10.

§60.18. Material Noncompliance.

(a) For all programs, a Development will be in material noncompliance if the noncompliance is stated in this section to be material noncompliance. Developments with more than one program administered by the Department will be scored by program. The Development will be considered in material noncompliance if the score for any single program exceeds the noncompliance limit for that program. The Department may take into consideration the representations of the Applicant regarding compliance violations; however, the records of the Department are controlling.

(b) Each Development that is funded or administered by the Department will be scored according to the type and number of noncompliance events as it relates to the HTC program or other Department programs. All Developments, regardless of status, that are or have been administered, funded, or monitored by the Department are scored even if the Development no longer actively participates in the program. Unless otherwise specified below, under the HTC program, noncompliance events issued on Form 8823 are assigned point values. For other programs administered by the Department, unless otherwise specified below, noncompliance events identified during on-site monitoring reviews are assigned point values.

(c) Uncorrected noncompliance, if applicable to the Development, will carry the maximum number of points until the noncompliance event has been reported corrected by the Department. Once reported corrected by the Department, the score will be reduced to the "corrected value". Corrected noncompliance will no longer be included in the Development score three years after the date the noncompliance was reported corrected by the Department.

(1) Under the HTC program, noncompliance events that occurred and were identified by the Department through the issuance of the IRS Form 8823 prior to January 1, 1998, are assigned corrected point values to each noncompliance event. The score for these events will no longer be included in the Development's score.

(2) The score in effect on May 1st of the year the HTC program application is submitted, during final application for Developments applying for participation in the BOND program, HOME program or HTF program, or during application review of any other program funded or administered by the Department will determine if any Development disclosed on previous participation forms is in material noncompliance.

(3) The Department will not execute a Carryover Allocation Agreement with any Owner in Material Noncompliance on October 1, 2007.

(4) Any corrective action documentation affecting the compliance status score must be received by the Department thirty days prior to the application deadline for HTC applications, thirty days prior to the submission of Volume I of the application for a BOND Development, or thirty days before the submission of an application for any other program funded or administered by the Department.

(5) The Department will not approve the transfer of ownership of any property regulated by the Department to a party in Material Noncompliance.

(d) A Development's score will be reduced by the number of points needed to be one point under the Material Noncompliance threshold under the following circumstances:

(1) The Development has no uncorrected issues of noncompliance, and

(2) All issues of noncompliance were corrected during the corrective action period, and

(3) All corrective action documentation was provided to the Department during the corrective action period.

(e) Treatment of previously owned Developments during a Previous Participation review:

(1) The Department will not take into consideration the score of a Development transferred by the applicant over three years ago.

(2) The Department will not take into consideration the score of a Development whose affordability period ended over three years ago.

(3) If the property was transferred less than three years ago, the Department will determine the score for the noncompliance events with a date of noncompliance identified during the applicant's period of ownership. If the points associated with the noncompliance events identified during the applicant's period of ownership exceed the threshold for Material Noncompliance, the application will not be recommended.

(f) Events of noncompliance are categorized as either "development events" or "unit/building events". Development events of noncompliance affect some or all the buildings in the Development; however, the Development will receive only one score for the event rather than a score for each building. Other types of noncompliance are identified individually by unit. This type of noncompliance will receive the appropriate score for each unit cited with an event. The unit scores and the Development scores accumulate towards the total score of the Development. Violations under the HTC program are identified by unit; however, the building is scored rather than the unit and the building will receive the noncompliance score if one or more of the units are in noncompliance.

(g) Each type of noncompliance is assigned a point value. The point value for noncompliance is reduced upon correction of the noncompliance. The scoring point system and values are as described in subsections (f) and (g) of this section. The point system weighs certain types of noncompliance more heavily than others; therefore certain noncompliance events automatically place the Development in Material Noncompliance. However, other types of noncompliance, by themselves, do not warrant the classification of Material Noncompliance. Multiple occurrences of these types of noncompliance events may produce enough points to cause the Development to be in Material Noncompliance.

(h) Development Noncompliance items are identified in paragraphs (1) - (27) of this subsection .

(1) Major property condition violations. The property condition does not meet Uniform Physical Condition Standards as described in §60.13 of this chapter or displays major violations of health, safety and building codes. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in §60.2(11) of this chapter. Corrected is 10 points.

(2) Owner refused to lease to a holder of rental assistance certificate/voucher because of the status of the prospective tenant as such a holder. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in §60.2(11) of this chapter. Corrected is 10 points.

(3) Development is not available to general public. The IRS will be notified of HTC Developments reported to the Department, according to the Memorandum of Understanding among the U.S. Department of Treasury, the Department of Housing and Urban Development, and the Department of Justice, to be under investigation of possible violations of the Fair Housing Act. No points are imposed.

(4) Determination of a violation under the Fair Housing Act. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in §60.2(11) of this chapter. Corrected is 10 points.

(5) Development is out of compliance and never expected to comply. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in §60.2(11) of this chapter. No correction is possible; no corrected score assigned.

(6) Owner failed to pay fees or allow on-site monitoring review. Points will be assigned to this event after written notification to the Development owner. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in §60.2(11) of this chapter. Corrected is 5 points.

(7) LURA not in effect. The LURA was not executed within the required time period. Uncorrected, this is material noncompliance. This event will be assigned points upon written notification to the owner. Uncorrected is equal to the material noncompliance status threshold score as defined in §60.2(11) of this chapter. Corrected is 5 points.

(8) Developments awarded HTC January 1, 2004, or later, that are foreclosed by a lender, or the General Partner is removed by a syndicator due to reasons other than market conditions. Points associated with a foreclosure will be assigned at the time the 8823 is sent to the IRS. Points associated with the removal of the General Partner will be assigned upon written notification to the former General Partner. 25 points. No correction is possible; no corrected score assigned.

(9) Development failed to meet minimum low income occupancy levels. Development failed to meet required minimum low income occupancy levels of 20/50 (20% of the units occupied by tenants with household incomes of less than or equal to 50% of Area Median Gross Income) or 40/60. Uncorrected is 20 points. Corrected is 10 points. (HTC and BOND only)

(10) No evidence of, or failure to certify to, non-profit material participation for an Owner having received an allocation from the Nonprofit Set-Aside. Uncorrected is 10 points. Corrected is 3 points.

(11) The Development failed to meet additional State required rent and occupancy restrictions. The LURA requires the Development to lease units to low income households at multiple income and rent tiers. This event refers to the condition when the lower tiers are not satisfied. Uncorrected is 10 points. Corrected is 3 points.

(12) The Development failed to provide required supportive services as promised at Application. Uncorrected is 10 points. Corrected is 3 points.

(13) The Development failed to provide housing to the elderly as promised at Application. Uncorrected is 10 points. Corrected is 3 points.

(14) Failure to provide special needs housing. Development has failed to provide housing for tenants with special needs as promised at Application. Uncorrected is 10 points. Corrected is 3 points.

(15) Changes in Eligible Basis. Changes occur when common areas become commercial, fees are charged for facilities, etc. Uncorrected is 10 points. Corrected is 3 points. (HTC only)

(16) Failure to submit part or all of the AOCR or failure to submit any other annual, monthly, or quarterly report required by the Department. Uncorrected is 10 points. Corrected is 3 points.

(17) Owner failed to approve and distribute an Affirmative Marketing Plan as required under §60.6 of this chapter. Uncorrected is 3 points. Corrected is 1 point.

(18) Pattern of minor property condition violations. Development does not meet Uniform Physical Condition Standards as described in §60.13 of this chapter or displays a pattern of property violations; however, those violations do not impair essential services and safeguards for tenants. Uncorrected is 10 points. Corrected is 5 points.

(19) Development failed to comply with requirements limiting minimum income standards for Section 8 residents. Complaints verified by the Department regarding violations of the income standard which cause exclusion from admission of Section 8 resident(s) results in a violation. Uncorrected score 10 points. Corrected 3 points.

(20) Owner defaults on payments of Department loans for a period exceeding 90 days. Uncorrected, this is material noncompliance. Points will be assigned under this event after written notice to the Development Owner. Uncorrected is equal to the material noncompliance status threshold score as defined in §60.2(11) of this chapter. Corrected is 10 points.

(21) Utility Allowance not calculated properly. Uncorrected 3 points. Corrected 1 point.

(22) Failure to comply with the Next Available Qualifying Unit Rule. Uncorrected 3 points. Corrected 1 point.

(23) Owner failed to execute required lease provisions or exclude prohibited lease language. Uncorrected 3 points. Corrected 1 point (All programs except HTC)

(24) Failure to provide annual Housing Quality Standards inspection. Uncorrected 10 points. Corrected 3 points. (HOME and post compliance period HTC properties Only)

(25) Development has failed to establish and maintain a reserve account in accordance with §1.37 of this title. Points will be assigned under this event after written notice to the Development Owner. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in §60.2(11) of this chapter. Corrected is 10 points.

(26) Development substantially changed the scope of services as presented at initial application without prior department approval. Uncorrected 4 points. Corrected 0 points.

(27) Change in ownership or General Partner without proper notification to and approval of Department. Uncorrected 4 points. Corrected 0 points.

(28) Administrative reporting of property condition violations. 0 points.

(i) Unit Noncompliance items are identified in paragraphs (1) - (12) of this subsection.

(1) Unit not leased to Low Income Household. Development has units that are leased to households whose income was above the income limit upon initial occupancy. Uncorrected is 5 points. Corrected is 1 point.

(2) Low income units occupied by nonqualified full-time students. Uncorrected is 3 points. Corrected is 1 point. (HTC Developments during the Compliance Period and BOND only)

(3) Low income units used on transient basis. Uncorrected is 3 points. Corrected is 1 point. (HTC and BOND only)

(4) Household income increased above the re-certification limit and an available Unit was rented to a market tenant. (HTC Developments during the Compliance Period). Uncorrected is 3 points. Corrected is 1 point.

(5) Gross rent exceeds the highest rent allowed under the LURA or other deed restriction. Uncorrected is 5 points. Corrected is 1 point.

(6) Failure to maintain or provide tenant income certification and documentation. Uncorrected is 3 points. Corrected is 1 point.

(7) Casualty loss. Units not available for occupancy due to natural disaster or hazard due to no fault of the Owner. This carries no point value. Casualty losses are reported to the IRS on HTC Developments.

(8) When a low income Unit became vacant, owner failed to lease (or make reasonable efforts to lease) to a low income household before any units were rented to tenants not having a qualifying income. Uncorrected is 3 points. Corrected is 1 point.

(9) Unit not available for rent. Unit is used for nonresidential purposes excluding unavailable Units due to casualty and manager-occupied Units. Uncorrected is 3 points. Corrected is 1 point.

(10) Qualifying unit designation removed from household. Uncorrected is 3 points. Corrected is 1 point. (FDIC's AHP only)

(11) Development evicted or terminated the tenancy of a low income tenant for other than good cause. Uncorrected is 10 points. Corrected is 3 points. (HTC and HOME only)

(12) Household income increased above 80% at recertification and owner failed to properly determine rent. (HOME only) Uncorrected 3 points. Corrected 1 point.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2007.

TRD-200701312
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 29, 2007
Proposal publication date: January 5, 2007
For further information, please call: (512) 475-4595

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Texas Commission on Fire Protection

Title 37, Part 13

TRD-200701303
Filed: April 4, 2007

♦ ♦ ♦

Proposed Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 41 concerning Practice and Procedure, Subchapter A concerning Communications. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

§41.1. Name Change.

§41.5. Compliance and Suspension of Rules.

§41.8. Contents of Rule-making Petitions.

§41.10. Definitions.

§41.15. Social Security Number.

§41.20. Adjuster Identification.

§41.25. Attorney Identification.

§41.27. Employer's Identification.

§41.30. Self-insureds.

§41.35. Designation of Insurance Carriers' Austin Representative.

§41.40. General Policy Concerning Communications.

§41.45. Communication to Claimants.

§41.55. Communication to Employers.

§41.60. Communication to Insurance Carriers.

§41.65. Communication to Health Care Provider.

§41.70. Filing of Instruments.

§41.75. Timely Filing.

§41.80. Filing Subsequent to Final Order or Award.

§41.85. Translation of Documents.

§41.90. Responsibility of Translators.

§41.95. Wage Information.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on May 21, 2007, and submitted to Victoria Ortega, Legal & Compliance, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200701328
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: April 9, 2007

♦ ♦ ♦

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 42 concerning Medical Benefits. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt this chapter.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on May 21, 2007, and submitted to Victoria Ortega, Legal & Compliance, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200701329
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: April 9, 2007

♦ ♦ ♦

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 63 concerning Promptness of First Payment. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rule contained in this chapter continues to exist and it proposes to readopt the rule:

§63.10. Sanctions for Late Payment.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on May 21, 2007, and submitted to Victoria Ortega, Legal & Compliance, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200701330
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: April 9, 2007

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §19.300(a)

Common Name	**Botanical Name**
Noxious plants	
alligatorweed	*Alternanthera philoxeroides*
balloonvine	*Cardiospermum halicacabum*
Brazilian peppertree	*Schinus terebinthifolius*
broomrape	*Orobanche ramosa*
camelthorn	*Alhagi camelorum*
Chinese tallow tree	*Triadica sebifera*
Eurasian watermilfoil	*Myriophyllum spicatum*
giant duckweed	*Spirodela oligorrhiza*
giant reed	*Arundo donax*
hedge bindweed	*Calystegia sepium*
hydrilla	*Hydrilla verticillata*
itchgrass	*Rottboellia cochinchinensis*
Japanese dodder	*Cuscuta japonica*
kudzu	*Pueraria montana* var. *lobata*
lagarosiphon	*Lagarosiphon major*
paperbark	*Melaleuca quinquenervia*
purple loosestrife	*Lythrum salicaria*
rooted waterhyacinth	*Eichhornia azurea*
saltcedar	*Tamarix* spp.
salvinia	*Salvinia* spp.
serrated tussock	*Nassella trichotoma*
torpedograss	*Panicum repens*
tropical soda apple	*Solanum viarum*
water spinach	*Ipomoea aquatica*
waterhyacinth	*Eichhornia crassipes*
waterlettuce	*Pistia stratiotes*

Invasive plants	
Chinese tallow tree	*Triadica sebifera*
kudzu	*Pueraria montana var.* lobata
saltcedar	*Tamarix* spp.
tropical soda apple	*Solanum viarum*

Figure: 31 TAC §65.331(b)

Frogs and Toads

Great Plains toad (*Bufo cognatus*)
Green toad (*Bufo debilis*)
Red-spotted toad (*Bufo punctatus*)
Texas toad (*Bufo speciosus*)
Gulf Coast toad (*Bufo valliceps*)
Woodhouse's toad (*Bufo woodhousei*)
Green treefrog (*Hyla cinerea*)
Bull frog (*Rana catesbeiana*)
Couch's spadefoot (*Scaphiopus couchii*)
Plains spadefoot (*Spea bombifrons*)
New Mexico spadefoot (*Spea multiplicata*)

Salamanders

Tiger salamander (*Ambystoma tigrinum*)

Lizards

Green anole (*Anolis carolinensis*)
Chihuahuan spotted whiptail (*Aspidoscelis exsanguis*)
Texas spotted whiptail (*Aspidoscelis gularis*)
Marbled whiptail (*Aspidoscelis marmoratus*)
Six-lined racerunner (*Aspidoscelis sexlineatus*)
Checkered whiptail (*Aspidoscelis tesselatus*)
Texas banded gecko (*Coleonyx brevis*)
Greater earless lizard (*Cophosaurus texanus*)
Collared lizard (*Crotaphytus collaris*)
Five-lined skink (*Eumeces fasciatus*)
Great plains skink (*Eumeces obsoletus*)
Texas alligator lizard (*Gerrhonotus infernalis*)
Lesser earless lizard (*Holbrookia maculata*)
Crevice spiny lizard (*Sceloporus poinsettii*)
Prairie lizard (*Sceloporus undulatus*)
Ground skink (*Scincella lateralis*)
Tree lizard (*Urosaurus ornatus*)
Side-blotched lizard (*Uta stansburiana*)

Snakes

Copperhead (*Agkistrodon contortrix*)
Cottonmouth (*Agkistrodon piscivorus*)
Glossy snake (*Arizona elegans*)
Trans-Pecos rat snake (*Bogertophis subocularis*)
Racer (*Coluber constrictor*)
Western diamondback rattlesnake (*Crotalus atrox*)
Rock rattlesnake (*Crotalus lepidus*)
Blacktail rattlesnake (*Crotalus molossus*)

Mojave rattlesnake (*Crotalus scutulatus*)
Prairie rattlesnake (*Crotalus viridis*)
Baird's rat snake (*Elaphe bairdi*)
Great Plains rat snake (*Elaphe emoryi*)
Texas rat snake (*Elaphe obsoleta*)
Slowinski's cornsnake (*Elaphe slowinskii*)
Western hognose snake (*Heterodon nasicus*)
Eastern hognose snake (*Heterodon platirhinos*)
Texas night snake (*Hypsiglena torquata*)
Gray-banded kingsnake (*Lampropeltis alterna*)
Prairie kingsnake (*Lampropeltis calligaster*)
Speckled or desert kingsnake (*Lampropeltis getula*)
Milk snake (*Lampropeltis triangulum*)
Texas blind snake (*Leptotyphlops dulcis*)
Coachwhip (*Masticophis flagellum*)
Schott's whipsnake (*Masticophis schotti*)
Striped whipsnake (*Masticophis taeniatus*)
Texas coral snake (*Micrurus tener*)
Blotched or yellowbelly water snake (*Nerodia erythrogaster*)
Broad-banded water snake (*Nerodia fasciata*)
Diamondback water snake (*Nerodia rhombifer*)
Rough green snake (*Opheodrys aestivus*)
Bullsnake or gopher snake (*Pituophis catenifer*)
Texas longnose snake (*Rhinocheilus lecontei*)
Western blackneck garter snake (*Thamnophis cyrtopsis*)
Checkered garter snake (*Thamnophis marcianus*)
Western ribbon snake (*Thamnophis proximus*)
Big Bend patchnose snake (*Salvadora deserticola*)
Texas or mountain patchnose snake (*Salvadora grahamiae*)
Massasauga (*Sistrurus catenatus*)
Pygmy rattlesnake (*Sistrurus miliarius*)
Ground snake (*Sonora semiannulata*)
Brown snake (*Storeria dekayi*)
Flathead snake (*Tantilla gracilis*)
Southwestern blackhead snake (*Tantilla hobartsmithi*)
Plains blackhead snake (*Tantilla nigriceps*)
Lined snake (*Tropidoclonion lineatum*)
Rough earth snake (*Virginia striatula*)

Mammals

Texas Antelope Squirrel (*Ammospermophilus interpres*)
Black-tailed Prairie Dog (*Cynomys ludovicianus*)
Merriam's Kangaroo Rat (*Dipodomys merriami*)
Eastern Flying Squirrel (*Glaucomys volans*)
Black-tailed Jackrabbit (*Lepus californicus*)
Spotted Ground Squirrel (*Spermophilus spilosoma*)
Thirteen-lined Ground Squirrel (*Spermophilus tridecemlineatus*)
Rock Squirrel (*Spermophilus variegatus*)

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Request for Proposals

Notice is hereby given of a Request for Proposals (RFP) by the Texas State Affordable Housing Corporation (TSAHC or Corporation) to nonprofit and for-profit developers of affordable multifamily rental housing in Texas to be financed by private activity bonds. The Corporation is targeting four specific housing needs through this process; rehabilitation, senior, rural, and supportive housing. The RFP sets forth specific submission, development, and scoring criteria for all responses. The RFP can be viewed on TSAHC's web site (www.tsahc.org) in the Private Activity Bond Programs section.

All responses to the RFP must be submitted at least 14 days prior to the next available board meeting to be considered for a preliminary allocation. Questions or comments about the RFP should be e-mailed or faxed to David Danenfelzer at ddanenfelzer@tsahc.org or (512) 477-3557.

TRD-200701378
David Long
President
Texas State Affordable Housing Corporation
Filed: April 11, 2007

♦ ♦ ♦

Texas Department of Agriculture

Request for Proposals: Urban School Grant Program

Pursuant to the Texas Agriculture Code, §§48.001 - 48.005 and the Texas Administrative Code, Title 4, Part 1, Chapter 1, §§1.800 - 1.804, the Texas Department of Agriculture (TDA) hereby requests proposals for agricultural projects designed to foster an understanding and awareness of agriculture in elementary school students for the period of September 1, 2007, through August 31, 2008, from certain Texas urban school districts. A total amount of up to $2,500 may be awarded to an eligible elementary school in a single grant cycle.

Eligibility. Proposals must be submitted by a Texas public elementary school from an urban school district with an enrollment of at least 49,000 students. According to Texas Education Agency's (TEA) 2005-2006 records, the eligible school districts are:

Aldine Independent School District;

Arlington Independent School District;

Austin Independent School District;

Cypress-Fairbanks Independent School District;

Dallas Independent School District;

El Paso Independent School District;

Fort Bend Independent School District;

Fort Worth Independent School District;

Garland Independent School District;

Houston Independent School District;

North East Independent School District;

Northside Independent School District;

Pasadena Independent School District;

Plano Independent School District; and

San Antonio Independent School District.

If your school district is not listed above and you feel it meets the minimum student enrollment of 49,000, you will need to attach TEA verification of enrollment in addition to your application.

Proposal Requirements. Each proposal may not exceed six pages and must include the following:

1. A cover page with the project title, name of the school district and elementary school, both the principal's and project coordinator's names along with their contact information (school address, e-mail, telephone, and fax numbers);

2. A detailed project description, including the role of each grade level that will participate in the project;

3. A statement of the educational benefits of the project, including how the project will improve the students' understanding of agriculture;

4. A project budget, including a detailed schedule of anticipated costs for the project.

Deadline and Submission Information. Proposals should be submitted to Catherine Wright, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. The street address is 1700 N. Congress Ave., 11th Floor, Austin, Texas 78701.

Proposals must be received no later than 5:00 p.m. on June 15, 2007. One original and ten copies must be submitted. Fax copies will not be accepted.

Please contact Catherine Wright at (512) 463-7700 or by e-mail at Catherine Wright@tda.state.tx.state.us with any questions you may have.

Proposal Evaluations. Proposals will be evaluated based on the requirements set forth above by a panel appointed by the Commissioner of the Texas Department of Agriculture. The panel shall review the proposals and make funding recommendations to the Commissioner. The panel shall consist of representatives from the following: TDA, education, livestock industry, specialty crop industry, row crop industry, horticulture industry, and the Texas Cooperative Extension.

Approved Projects. The announcement of the grant awards will be made by August 2007. All approved projects will have a start date of September 1, 2007, and must be completed by August 31, 2008. Project Coordinators will be required to submit quarterly progress reports and budget reports. Upon completion of the project, a project summary of the educational results of the project and photographs to document such results will be due within six weeks. All awards will be subject to audit.

Reporting Requirements. Approved projects are required to submit the following reports:

1. Project Progress Reports due on a quarterly basis from one to three pages in length detailing accomplishment of project objectives for the time periods specified in the award document.

2. Final compliance project report due either upon completion of the project or thirty (30) days after the termination of the contract. The final report shall be submitted in a hard copy format and an electronic format should be e-mailed to the department. The final report shall contain:

a. A project summary-history of the project, its objectives, importance, effort, results, and commercial applications of the project;

b. A description of the successes, challenges, and any limitations of the program; and

c. A description of future plans, including how the project will continue after the grant is expended and how additional funding might address expansion efforts.

3. Project Budget Reports due on a quarterly basis for the time periods specified in the award document that details the grant award spent to date.

4. Final Budget report is due thirty (30) days after the completion of the project or the termination of the contract.

General Compliance Information.

All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

Any information or documentation submitted to TDA is subject to disclosure under the Texas Public Information Act.

Awarded grant projects must remain in full compliance with state and federal laws and regulations or be subject to termination at the discretion of TDA.

Upon grant award, TDA and the Texas State Auditor's Office shall have access to and the right to examine all books, accounts, records, files, and other papers or property belonging to or in use by the grantee and pertaining to the grant award. Additionally, these records must remain available and accessible no less than three (3) years after the termination of the grant project.

In any year in which a financial audit is conducted, a copy must be submitted to TDA, including the audit transmittal letter, management letter, and any schedules in which the grantee's funds are included.

Grant awards shall comply in all respects with the Uniform Grant Management Standards (UGMS), Texas Government Code, Ann., §783.007. Upon grant award, grantees can be provided a copy or it may be downloaded from http://www.governor.state.tx.us/divisions/stategrants/guidelines/ files/UGMS062004.doc.

Texas Public Information Act. All proposals shall be deemed, once submitted, to be the property of TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-200701366
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: April 11, 2007

♦ ♦ ♦

Office of the Attorney General

Notice of Settlement of a Texas Solid Waste Disposal and Clean Air Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal and Clean Air Acts. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: Settlement Agreement in Harris County, Texas and the State of Texas v. The Cook Family Trust and Wright Road Mulch, LLC; Cause No. 2005-03225, 281st Judicial District, Harris County, Texas.

Background: This suit alleges violations of the Texas Solid Waste Disposal Act and Texas Clean Air Act at a mulching and composting site in Harris County, Texas (the Site). The defendants are the Site's owner--the Cook Family Trust (the Trust)--and its operator, Wright Road Mulch, L.L.C. (Wright Road). The suit seeks injunctive relief, civil penalties, attorney's fees and court costs. The Solid Waste Disposal Act violations are for storage and disposal of waste without a permit and operation of a dangerous or nuisance mulching/composting site. The Clean Air Act violations are for illegal outdoor burning and air nuisance. Since filing the suit, the Trust has resolved all violations at the Site.

Nature of Settlement: The settlement awards $50,000.00 in civil penalties and $5,000.00 in attorney's fees to the State and Harris County.

For a complete description of the proposed settlement, the proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgments, and written comments on the proposed settlement should be directed to Mary Smith, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information about this publication, please contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200701320
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: April 9, 2007

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 303, 2007, through April 5, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site

on April 11, 2007. The public comment period for these projects will close at 5:00 p.m. on May 11, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: Anna Jaime; Location: The project is located in Corpus Christi Bay, in State Tract (ST) 49, approximately 6 miles southeast of downtown Corpus Christi, in Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Portland, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 668938; Northing: 3071562. Project Description: The applicant proposes to install a 3-foot by 60-foot bulkhead and place approximately 83 cubic yards of fill behind it in order to build up her yard and control erosion. Approximately 1,500 square feet of shallow water, unvegetated habitat and sand/shell beach is proposed to be filled. CCC Project No.: 07-0148-F1; Type of Application: U.S.A.C.E. permit application #SWG-2006-2533 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Chambers County Improvement District #1; Location: The project is located in the Cedar Bayou area on a 280-acre tract located southwest of the FM 1405 and Highway 99 intersection in western Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Morgans Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 313852; Northing: 3287985. Project Description: The applicant proposes to place fill (approximately 8,516 cubic yards) into 5.13 acres of jurisdictional headwater wetlands during the construction of a commercial warehouse development and associated railroad spur. To compensate for the 5.13 acres of impacts to jurisdictional waters of the U.S., including wetlands, the applicant proposes to preserve in perpetuity via a deed restriction a total of 36 acres (7:1 ratio) of tidally influenced wetlands adjacent to Cedar Bayou. The tidally influenced adjacent wetlands located within the preservation area are characterized by a plant community consisting of smooth cordgrass (Spartina alterniflora), American bulrush (Scirpus americanus), perennial glasswort (Salicornia virginica), and saltmeadow cordgrass (Spartina patens). The mitigation site would be located approximately 2,100 feet south of the proposed project area. CCC Project No.: 07-0149-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-30 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200701341
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: April 10, 2007

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Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective April 1, 2007

A 2 percent local sales and use tax will become effective April 1, 2007 in the city listed below.

CITY NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Escobares (Starr Co)	2214075	.020000	.082500

Note: The 2 percent local sales and use tax includes the 1 percent city sales tax, an additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A,** an additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B,** and an additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Section 327 of the Texas Tax Code.

The 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be **abolished**, effective March 31, 2007, in the city listed below.

CITY NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Deport (Lamar Co)	2139022	.010000	.077500
Deport (Red River Co)	2139022	.010000	.077500

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2007 in the city listed below.

CITY NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Forest Hill (Tarrant Co)	2220200	.017500	.082500

An additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective April 1, 2007 in the cities listed below.

CITY NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Bullard (Cherokee Co)	2212059	.015000	.082500
Bullard (Smith Co)	2212059	.015000	.082500
Grapevine (Dallas Co)	2220022	.015000	.082500
Grapevine (Denton Co)	2220022	.015000	.082500
Grapevine (Tarrant Co)	2220022	.015000	.082500
Industry (Austin Co)	2008066	.015000	.082500

An additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** plus an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2007 in the city listed below.

CITY NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Cibolo (Guadalupe Co)	2094034	.015000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** will be **abolished** effective March 31, 2007, and an additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective April 1, 2007 in the city listed below. There will be no change in the total rate.

CITY NAME	LOCAL CODE	NEW RATE	TOTAL RATE
West Tawakoni (Hunt Co)	2116074	.015000	.082500

The additional 3/8 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** will be **abolished** effective March 31, 2007**,** the additional 3/8 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will be **increased** to 1/2 percent, and a 1/4 percent special purpose district sales and use tax will become effective April 1, 2007 in the city listed below. There will be no change in the total rate.

CITY NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Prairie View (Waller Co)	2237041	.017500	.082500

A 1/4 percent special purpose district sales and use tax will become effective April 1, 2007 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
East Travis Gateway Library District	5227579	.002500	SEE NOTE 1
Prairie View Crime Control and Prevention District	5237504	.002500	SEE NOTE 2

A 1/2 percent special purpose district sales and use tax will become effective April 1, 2007 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Grapevine Crime Control and Prevention District	5220736	.005000	SEE NOTE 3
Jim Hogg County Assistance District	5124519	.005000	SEE NOTE 4
Penitas Crime Control and Prevention District	5108537	.005000	SEE NOTE 5

A 3/4 percent special purpose district sales and use tax will become effective April 1, 2007 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Travis County Emergency Services District No. 8	5227588	.007500	SEE NOTE 6

A 1 percent special purpose district sales and use tax will become effective April 1, 2007 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Town Center Economic Development Zone No. 4	5170601	.010000	SEE NOTE 7

NOTE 1: The East Travis Gateway Library District is located in the southeastern portion of Travis County. The district is located entirely within the Travis County Emergency Services District No. 11, **excluding** any area within the cities of Creedmoor and Mustang Ridge. The unincorporated areas of Travis County in ZIP Codes 78610, 78612, 78616, 78617, 78719, 78744 and 78747 are partially located in the East Travis Gateway Library District. Contact the district representative at (512) 243-9881 for additional boundary information.

NOTE 2: The boundaries for the Prairie View Crime Control and Prevention District are the same boundaries as the City of Prairie View. The total rate in the City of Prairie View will be 8 1/4%.

NOTE 3: The boundaries of the Grapevine Crime Control and Prevention District are the same as the boundaries for the City of Grapevine. The total rate in the City of Grapevine will be 8 1/4%.

NOTE 4: The boundaries of the Jim Hogg County Assistance District are the same boundaries as Jim Hogg County, which has a county-wide ½% special purpose district sales and use tax for county health services. The total rate in Jim Hogg County will be 7 1/4%.

NOTE 5: The boundaries for the Penitas Crime Control and Prevention District are the same boundaries as the City of Penitas. The total rate in the City of Penitas will be 8 1/4%.

NOTE 6: The Travis County Emergency Services District No. 8 is located in the southwestern portion of Travis County. The district does **not** include any area in the City of Austin or the Austin Metropolitan Transit Authority. The City of Briarcliff is located entirely within the district. Travis County Emergency Services District No. 8 overlaps and contains most of the same territory as the Lake Travis Community Library District, which has a special purpose district sales and use tax. The unincorporated area of Travis County in ZIP Code 78669 is partially located within the Travis County Emergency Services District No. 8. Contact the district representative at (512) 264-1476 for additional boundary information.

NOTE 7: The Town Center Economic Development Zone No. 4 is the College Park Shopping Center and two small tracts located east of Interstate 45 and north of State Highway 242. The district is located entirely within the Town Center Improvement District, which has a special purpose district sales and use tax. Both the district and the zone are located within the unincorporated area of Montgomery County known as The Woodlands, but neither includes all of The Woodlands. ZIP Code 77384 is partially located within the Town Center Economic Development Zone No. 4. Contact the district representative at (281) 363-2447 for additional boundary information.

TRD-200701369
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: April 11, 2007

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Concho Valley Workforce Development Board

Request for Qualifications

The Concho Valley Workforce Development Board will be releasing in May 2007 a Request for Proposal (RFP) for Workforce and Child

Care Services to include: WIA, TANF/Choices, Project Rio, FS E&T, Wagner Peyser, TAA, direct child care, and quality initiatives for a contract scheduled to begin October 1, 2007. The proposals will be due mid-June.

We are seeking an individual to write the scoring instrument to be used based on the RFP (with board approval), evaluate and score whatever proposals received, as well as conduct a pre-award survey to include program and financial performance and assist with contract negotiations. We would like to know if you are interested in providing all of these services, with provisions as follows:

a. The individual evaluation contractor must provide a minimum of three evaluators qualified by education and/or experience to independently review and score contract proposals to provide workforce and child care services for the Concho Valley.

b. The individual evaluation contractor must be able to assemble his or her evaluation team here in San Angelo in July to discuss proposals, finalize the scoring, and brief the board staff.

c. The individual evaluation contractor should respond with four individual quotes: (1) a quotation for total cost per RFP, to include any salaries, travel expenses, lodging, meals, and incidental expenses to be incurred. (We need only the total cost of the service per RFP, not a per-item breakdown), (2) a quotation for writing the scoring instrument; (3) a quotation for the pre-award survey, and (4) a quotation for the contract negotiations.

We will furnish sufficient copies of the RFP to the individual evaluation contractor at the same time it is released to the public to allow the evaluation team to become familiar with the proposal requirements and begin the process of writing the scoring instrument.

Once the proposals are determined to be responsive, the copies will be mailed to the evaluation team so that scoring may begin.

Selection of the individual evaluation contractor will be based upon professional experience. Interested parties should submit a resume with a letter of application and quotes to:

Concho Valley Workforce Development Board

ATTENTION: REQUEST FOR QUALIFICATIONS (WF/CC)

36 E. Twohig, Ste 805

San Angelo, TX 76903

Telephone: (325) 655-2005

Please respond by 5:00 p.m. CDST, April 30, 2007

TRD-200701362
Johnny Griffin
Executive Director
Concho Valley Workforce Development Board
Filed: April 11, 2007

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/16/07 - 04/22/07 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/16/07 - 04/22/07 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200701342
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 10, 2007

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Deep East Texas Council of Governments

Request for Proposal for Contractor Services

The Deep East Texas Council of Governments (DETCOG) is accepting bids to develop a pool of qualified contractors that would provide construction services for emergency repair, rehabilitation, reconstruction and/or replacement (including elevation, if necessary) of owner-occupied housing units in support of the Hurricane Rita Disaster Relief Program.

The full RFP Packet can be obtained at http://www.detcog.org or by contacting:

Holly Anderson, Project Manager

210 Premier Drive

Jasper, Texas 75951

(409) 384-5704, ext 231 or fax (409) 384-5390

handerson@detcog.org

Submission is due to DETCOG no later than 4:00 p.m. on July 31, 2007.

TRD-200701332
Walter G. Diggles, Sr.
Executive Director
Deep East Texas Council of Governments
Filed: April 9, 2007

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Request for Proposal for Manufactured Homes

The Deep East Texas Council of Governments (DETCOG) is accepting bids to develop a pool of qualified manufacturers who specialize in the replacement of damaged manufactured (mobile or modular) homes in support of its Hurricane Rita Disaster Recovery Program.

The full RFP Packet can be obtained at http://www.detcog.org or by contacting:

Holly Anderson, Project Manager

210 Premier Drive

Jasper, Texas 75951

(409) 384-5704, ext 231 or fax (409) 384-5390

handerson@detcog.org

Submission is due to DETCOG no later than 4:00 p.m. on May 4, 2007.

TRD-200701333

Walter G. Diggles, Sr.
Executive Director
Deep East Texas Council of Governments
Filed: April 9, 2007

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Deep East Texas Local Workforce Development Board

Request for Proposals #07-221 - Management and Operations of Deep East Texas Workforce Centers

Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions - Deep East Texas is seeking proposals for the management and operation of the workforce center system in the Deep East Texas region, effective October 1, 2007. The workforce centers use the One-Stop concept to bring together a variety of State programs. The Board's intent by this solicitation is to obtain a management entity that will provide on-site leadership of the workforce center system in a timely manner that will enhance the performance of the workforce center system as well as improve the quality of customer service. The types of management that will be considered include but may not be limited to the managing director/professional employer organization model; turnkey operations; management teams; joint ventures; and other alternative management models.

The Deep East Texas Local Workforce Development Board plans, oversees, and evaluates employment and training services to Angelina, Jasper, Newton, Nacogdoches, Houston, Trinity, Shelby, Polk, San Augustine, San Jacinto, Sabine, and Tyler Counties.

RFP Release Date: Wednesday, April 11, 2007

Bidder's Conference: 1:00 p.m., April 26, 2007 in the Board Conference Room at 539 S. Chestnut, Suite 300, Lufkin, Texas. Attendance at the Bidder's Conference is not mandatory but is highly recommended. This will be the only opportunity for bidders to ask questions concerning this procurement.

Deadline for submitting proposals: 3:00 p.m., May 30, 2007

Request for a copy of the RFP can be made to:

Chris Gaston

Procurement/Contract Manager

Workforce Solutions - Deep East Texas

539 S. Chestnut, Suite 300

Lufkin, TX 75901

Phone: 936-639-8898

Fax: 936-633-7491

Email: chris.gaston@twc.state.tx.us

OR

The RFP can be accessed at www.detwork.org.

TRD-200701365
Chris Gaston
Procurement/Contract Manager
Deep East Texas Local Workforce Development Board
Filed: April 11, 2007

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Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding TXG Properties of Texas, LLC, Docket No. 2001-0185-PST-E on March 30, 2007 assessing $16,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Aubrey, Docket No. 2004-0610-MWD-E on March 30, 2007 assessing $9,680 in administrative penalties with $1,936 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hall Grapevine Corporation dba Hall Johnson Chevron, Docket No. 2004-1181-PST-E on March 30, 2007 assessing $2,740 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shannon Strong, Staff Attorney at (512) 239-0972, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rama Rao Mugili dba Oak Island Ice House, Docket No. 2004-1284-PST-E on March 30, 2007 assessing $800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mohammad Salman dba Shop N Save, Docket No. 2004-1805-PST-E on March 30, 2007 assessing $4,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Classic Marble Company, Docket No. 2004-1862-WQ-E on March 30, 2007 assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Javed Iqbal dba Ledbetter Chevron, Docket No. 2005-0042-PST-E on March 30, 2007 assessing $3,270 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Shipyard, L.P., Docket No. 2005-0097-MLM-E on March 30, 2007 assessing $49,123 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sea Lion Technology, Inc., Docket No. 2005-0143-IWD-E on March 30, 2007 assessing $9,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mike's Groceries & Feed Inc, Docket No. 2005-0293-PST-E on March 30, 2007 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachael Gaines, Staff Attorney at (512) 239-0078, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Ector, Docket No. 2005-0482-MWD-E on March 30, 2007 assessing $4,680 in administrative penalties with $936 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Hardin Food Mart Inc. dba Short Stop, Docket No. 2005-0505-PST-E on March 30, 2007 assessing $9,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Pak Convenience Store, Inc. dba One Stop #15, Docket No. 2005-1154-PST-E on March 30, 2007 assessing $6,222 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding River Chase Subdivision II, Ltd., Docket No. 2005-1698-EAQ-E on March 30, 2007 assessing $5,250 in administrative penalties with $1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wayne Bagley, Docket No. 2005-1764-MSW-E on March 30, 2007 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bulk Services Transportation, Inc., Docket No. 2005-1886-IHW-E on March 30, 2007 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at (512) 239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ray Long dba Ray Long Washout and Truck Service, Docket No. 2005-1917-IWD-E on April 2, 2007 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Akram Rihani dba Oakland Shell, Docket No. 2005-1989-PST-E on March 30, 2007 assessing $1,090 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aliahsan Nadia Enterprises, Inc. dba Diadem Food Mart, Docket No. 2006-0061-PST-E on March 30, 2007 assessing $3,780 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SKA Ventures, Inc. dba Lucky Food Mart, Docket No. 2006-0543-PST-E on March 30, 2007 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Preston Club Utility Corporation and Robert J. Tate, Docket No. 2006-0594-MWD-E on March 30, 2007 assessing $40,204 in administrative penalties with $8,041 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amarillo Village Cleaners, Inc., Docket No. 2006-0653-DCL-E on March 30, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding All Seasons Dry Cleaning & Laundry, Inc., Docket No. 2006-0771-DCL-E on March 30, 2007 assessing $1,067 in administrative penalties with $213 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Kenneth Hart dba 1.99 Dry Cleaners, Docket No. 2006-0791-DCL-E on March 30, 2007 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachael Gaines, Staff Attorney at (512) 239-0078, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding W L & L, Inc. dba Capitol Cleaners, Docket No. 2006-0819-DCL-E on March 30, 2007 assessing $2,370 in administrative penalties with $474 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brenda A. Mann dba Mann Cleaners, Docket No. 2006-0821-DCL-E on March 30, 2007 assessing $889 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Texarkana, Docket No. 2006-0831-PWS-E on March 30, 2007 assessing $3,740 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chul Woong Lee dba Silver Dry Cleaners, Docket No. 2006-0850-DCL-E on March 30, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dinh Ly Chia and Sung Kung Chia dba Billy Mart, Docket No. 2006-0897-PST-E on March 30, 2007 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Hammer, Staff Attorney at (512) 239-2496, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sang Hill dba Chaus Drop Off & Dry Cleaners, Docket No. 2006-0933-DCL-E on March 30, 2007 assessing $378 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Hammer, Staff Attorney at (512) 239-2496, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Taekyu Kim dba Crescent Point Cleaner, Docket No. 2006-0935-DCL-E on March 30, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Elvi Lorena Hilton dba Mockingbird Cleaners, Docket No. 2006-0998-DCL-E on March 30, 2007 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deanna Sigman, Staff Attorney at (512) 239-0619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Citation Corporation, Docket No. 2006-1004-AIR-E on March 30, 2007 assessing $2,100 in administrative penalties with $420 deferred.

Information concerning any aspect of this order may be obtained by contacting Sherronda Martin, Enforcement Coordinator at (713) 767-3680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Meadow, Docket No. 2006-1024-PWS-E on March 30, 2007 assessing $1,563 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Felipe Avila, Samuel Avila, and Sandra E. Tamez dba 1.50 Cleaners, Docket No. 2006-1027-DCL-E on March 30, 2007 assessing $5,334 in administrative penalties with $1,068 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Q.R.N. Enterprises, Inc. dba Your Valet Cleaners and dba Liberty Cleaners, Docket No. 2006-1119-DCL-E on March 30, 2007 assessing $1,036 in administrative penalties with $206 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel La Caille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2006-1222-AIR-E on March 30, 2007 assessing $9,750 in administrative penalties with $1,950 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alberto Bello Sanchez, Docket No. 2006-1253-LII-E on March 30, 2007 assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Northeast Service, Inc. dba Horton Tree Service, Docket No. 2006-1305-MLM-E on March 30, 2007 assessing $5,500 in administrative penalties with $1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel La Caille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwestern Industrial Contractors and Riggers, Inc., Docket No. 2006-1311-AIR-E on March 30, 2007 assessing $1,200 in administrative penalties with $240 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-

3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jackie Rainey and Mark J. Rainey dba Classic Cleaners, Docket No. 2006-1336-DCL-E on March 30, 2007 assessing $2,370 in administrative penalties with $474 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B & D Kim Corporation dba Ace Cleaners, Docket No. 2006-1353-DCL-E on March 30, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Corporate Cleaners & Laundry, LLC and Gerald Grimes dba Corporate Cleaners & Laundry, Docket No. 2006-1356-DCL-E on March 30, 2007 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dry Clean Express, Inc. dba Cache Cleaners, dba One Hour Cleaners and dba Professional Cleaners, Docket No. 2006-1360-DCL-E on March 30, 2007 assessing $4,740 in administrative penalties with $948 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Methodist Hospital, Docket No. 2006-1372-AIR-E on March 30, 2007 assessing $32,000 in administrative penalties with $6,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chun H. Pae dba Ace Cleaners, Park Pavillion Cleaners, and Legacy Ranch Cleaners, Docket No. 2006-1418-DCL-E on March 30, 2007 assessing $3,555 in administrative penalties with $711 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert P. Checkeye dba Adrian's Cleaners 2 and Adrian's Cleaners 3, Docket No. 2006-1453-DCL-E on March 30, 2007 assessing $1,778 in administrative penalties with $356 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Criminal Justice, Docket No. 2006-1507-MWD-E on March 30, 2007 assessing $5,130 in administrative penalties with $1,026 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2006-1519-AIR-E on March 30, 2007 assessing $8,700 in administrative penalties with $1,740 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Crown Cork & Seal USA, Inc., Docket No. 2006-1522-AIR-E on March 30, 2007 assessing $3,875 in administrative penalties with $775 deferred.

Information concerning any aspect of this order may be obtained by contacting Sherronda Martin, Enforcement Coordinator at (713) 767-3680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ahad Business, Inc. dba 1.45 Cleaners and dba Budget Cleaners, Docket No. 2006-1523-DCL-E on March 30, 2007 assessing $2,370 in administrative penalties with $474 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Florence, Docket No. 2006-1545-MWD-E on March 30, 2007 assessing $8,700 in administrative penalties with $1,740 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Plains Pipeline, L.P., Docket No. 2006-1551-AIR-E on March 30, 2007 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Rhodes, Enforcement Coordinator at (512) 239-2879, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANJUL, Inc. dba Le Grand Cleaners, Docket No. 2006-1560-DCL-E on March 30, 2007 assessing $889 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nalika, Inc. dba Dry Clean Super Center, Docket No. 2006-1583-DCL-E on March 30, 2007 assessing $889 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel La Caille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ocean Mobile Home Park, LLC, Docket No. 2006-1592-PWS-E on March 30, 2007 assessing $315 in administrative penalties with $63 deferred.

Information concerning any aspect of this order may be obtained by contacting Amy Martin, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Azam Enterprises, Inc. dba Bluebonnet Cleaners, Docket No. 2006-1614-DCL-E on March 30, 2007 assessing $1,067 in administrative penalties with $214 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Good Mountain Inc. dba Dennis Mobil Service Center, Docket No. 2006-1653-PST-E on March 30, 2007 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Godeaux, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arkema Inc., Docket No. 2006-1655-AIR-E on March 30, 2007 assessing $2,575 in administrative penalties with $515 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Total Petrochemicals USA, Inc., Docket No. 2006-1656-AIR-E on March 30, 2007 assessing $12,699 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Danish Business, Inc. dba Power Fuel Express, Docket No. 2006-1684-PST-E on March 30, 2007 assessing $9,750 in administrative penalties with $1,950 deferred.

Information concerning any aspect of this order may be obtained by contacting Alison Echlin, Enforcement Coordinator at (512) 239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Travis County Water Control and Improvement District 20, Docket No. 2006-1687-PWS-E on March 30, 2007 assessing $1,208 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at 210-490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tony Lama Company, Docket No. 2006-1715-AIR-E on March 30, 2007 assessing $2,375 in administrative penalties with $475 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ponderosa Pine Energy Partners, Ltd., Docket No. 2006-1717-AIR-E on March 30, 2007 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mom Ratan Corporation, Inc. dba Plantation Food Store, Docket No. 2006-1742-PST-E on March 30, 2007 assessing $5,400 in administrative penalties with $1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Phillip DeFrancesco, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding K. Hovnanian of Houston II, L.P. dba Brighton Homes, Docket No. 2006-1838-WQ-E on March 30, 2007 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Romo dba Chevron USA 74340, Docket No. 2006-1968-AIR-E on March 30, 2007 assessing $800 in administrative penalties with $160 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Tom E. Miller, Sr. dba Millers Corner, Docket No. 2006-2185-PST-E on March 30, 2007 assessing $1,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding LB Foster Company, Docket No. 2007-0162-WQ-E on March 30, 2007 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200701375
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 11, 2007

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Notice of Comment Period and Announcement of Public Meeting on Proposed Air Quality Standard Permit for Thermoset Resin Facilities

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and will conduct a public meeting to receive testimony concerning the thermoset resin standard air permit proposed for issuance under the Texas Clean Air Act, Texas

Health and Safety Code, §382.05195, Standard Permit, and Title 30, Texas Administrative Code (30 TAC) Chapter 116, Subchapter F, Standard Permits.

PROPOSED STANDARD PERMIT

The proposed new air quality standard permit for thermoset resin facilities would replace the current permit by rule (PBR) for thermoset resin facilities available under 30 TAC §106.392, Thermoset Resin Facilities. The PBR was last amended in 1994 and its evaluation was based on emission factors which have changed and a short-term affects screening level (used to determine off-property impacts) which has been lowered. The underestimation of styrene emissions makes it inappropriate to allow new or modified thermoset resin facilities to be authorized under the conditions of 30 TAC §106.392. Owners or operators currently authorized under the PBR can continue to do so until the facilities are modified. The PBR currently authorizes thermoset resin facilities with a maximum resin and gelcoat usage of 75 tons per year (tpy) for spraying operations and 150 tpy for non-spraying operations. The proposed standard permit emission limits would vary depending on the building height, stack height, and flow rate. In a separate commission action, 30 TAC §106.392 will be repealed and will be unavailable for use upon issuance of this standard permit.

The New Source Review Program under 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, requires any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of the state to obtain a permit in accordance with 30 TAC §116.111, General Application, satisfy the *de minimis* criteria of 30 TAC §116.119, De Minimis Facilities or Sources, or satisfy the conditions of a standard permit, a flexible permit, or a permit by rule before any actual work is begun on the facility. A standard permit authorizes the construction of new facilities or modification of existing facilities that are similar in terms of operations, processes, and emissions.

A standard permit is subject to the procedural requirements of 30 TAC §116.603, Public Participation in Issuance of Standard Permits, which includes a 30-day public comment period and a public meeting to provide an additional opportunity for public comment. Any person who may be affected by the emission of air pollutants from facilities that may be registered under the standard permit is entitled to submit written or verbal comments regarding the proposed standard permit.

PUBLIC MEETING

A public meeting on the proposed standard permit for thermoset resin facilities will be held in Austin, Texas. The meeting will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the meeting; however, TCEQ staff will be available to discuss the standard permit for thermoset resin facilities 30 minutes prior to the meeting and staff will also answer questions after the meeting. The public meeting will be held on May 22, 2007 at 2:00, at the Texas Commission on Environmental Quality, Building C, Room 131E, 12100 Park 35 Circle, Austin.

PUBLIC COMMENT AND INFORMATION

Copies of the proposed standard permit for thermoset resin facilities may be obtained from the TCEQ Web site at *http://www.tceq.state.tx.us/permitting/air/nav/nsr_news.htm* or by contacting the Texas Commission on Environmental Quality, Office of Permitting, Remediation, and Registration, Air Permits Division, at (512) 239-1250. Comments may be mailed to Ms. Becky Southard, Texas Commission on Environmental Quality, Office of Permitting, Remediation, and Registration, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-5698. All comments should reference the standard permit for thermoset resin facilities. Comments must be received by 5:00 p.m. on May 28, 2007. To inquire about the submittal of comments or for further information, contact Ms. Southard at (512) 239-1638. Si desea información en Español, puede llamar al (800) 687-4040.

Persons who have special communication or other accommodation needs who are planning to attend the public meeting should contact the TCEQ at (512) 239-1250. Requests should be made as far in advance as possible.

TRD-200701363
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 11, 2007

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Notice of District Petition

Notices issued April 4, 2007 through April 5, 2007

TCEQ Internal Control No. 12132006-D09; Land Funds Two & Three, Joint Venture (the "Petitioner") filed a petition for creation of Galveston County Municipal Utility District No. 36 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owner of more than 50% of value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 370.46 acres located in Galveston County, Texas; and (4) the proposed District is within the corporate boundaries of the City of League City, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2006-33, effective July 11, 2006, the City of League City, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $18,900,000.

TCEQ Internal Control No. 01052007-D04; GGP-Bridgeland, L.P. (the "Petitioner") filed a petition for creation of Harris County Municipal Utility District No. 488 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Capital Farm Credit, FLCA, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with evidence of lien holder's consent to the creation of the proposed District; (3) the proposed District will contain approximately 1,225.21 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas. By Ordinance No. 2006-1127, effective November 14, 2006, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated

to be approximately $71,800,000 for water, wastewater and drainage facilities, and $7,490,000 for recreational facilities.

TCEQ Internal Control No. 01052007-D05; GGP-Bridgeland, L.P. (the "Petitioner") filed a petition for creation of Harris County Municipal Utility District No. 489 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Capital Farm Credit, FLCA, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with evidence of lien holder's consent to the creation of the proposed District; (3) the proposed District will contain approximately 1,202.14 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas. By Ordinance No. 2006-1128, effective November 14, 2006, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $66,980,000 for water, wastewater and drainage facilities, and $6,630,000 for recreational facilities.

TCEQ Internal Control No. 01052007-D06; GGP-Bridgeland, L.P. (the "Petitioner") filed a petition for creation of Harris County Municipal Utility District No. 490 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Capital Farm Credit, FLCA, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with evidence of lien holder's consent to the creation of the proposed District; (3) the proposed District will contain approximately 1,304.51 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas. By Ordinance No. 2006-1176, effective December 5, 2006, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $60,760,000 for water, wastewater and drainage facilities, and $6,280,000 for recreational facilities.

TCEQ Internal Control No. 01052007-D07; GGP-Bridgeland, L.P. (the "Petitioner") filed a petition for creation of Harris County Municipal Utility District No. 491 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Capital Farm Credit, FLCA, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with evidence of lien holder's consent to the creation of the proposed District; (3) the proposed District will contain approximately 1,451.15 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas. By Ordinance No. 2006-1177, effective December 5, 2006, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $81,690,000 for water, wastewater and drainage facilities, and $7,770,000 for recreational facilities.

TCEQ Internal Control No. 01052007-D08; GGP-Bridgeland, L.P. (the "Petitioner") filed a petition for creation of Harris County Municipal Utility District No. 492 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Capital Farm Credit, FLCA, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with evidence of lien holder's consent to the creation of the proposed District; (3) the proposed District will contain approximately 1,051.81 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas. By Ordinance No. 2006-1178, effective December 5, 2006, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $70,330,000 for water, wastewater and drainage facilities, and $6,570,000 for recreational facilities.

TCEQ Internal Control No. 12112006-D02; Headwaters Development Co. and E.E. Townes Family Trust (the "Petitioners") filed a petition for creation of Headwaters Municipal Utility District of Hays County (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owner of more than 50% of value of the land to be included in the proposed District; (2) there is one lienholder, Prosperity Bank, on the property to be included in the proposed District, and the Petitioner has provided a certificate of lien holders consent; (3) the proposed District will contain approximately 1,504 acres located in Hays County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Dripping Springs, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2005-4, effective January 11, 2005, the City of Dripping Springs, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $40,000,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested

case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200701374
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 11, 2007

♦ ♦ ♦

Notice of Request for Nominations for One Individual to Serve on the Municipal Solid Waste Management and Resource Recovery Advisory Council

The Texas Commission on Environmental Quality (TCEQ) is requesting nominations for one individual who is an elected county official in Texas to serve on the Municipal Solid Waste Management and Resource Recovery Advisory Council (Council).

The appointment will be made by the TCEQ commissioners. The position will expire on August 31, 2011.

The Council was created by the 69th Legislature in 1983. Members represent various interests; i.e., city and county solid waste agencies, public solid waste district or authority, commercial solid waste landfill operators, planning regions, an environmentalist, city and county officials, financial advisor, registered waste tire processor, professional engineer, solid waste professional, composting/recycling manager, and two general public representatives.

Upon request from the TCEQ commissioners, the Council reviews and evaluates the effect of state policies and programs on municipal solid waste management; makes recommendations on matters relating to municipal solid waste management; recommends legislation to encourage the efficient management of municipal solid waste; recommends policies for the use, allocation, or distribution of the planning fund; and recommends special studies and projects to further the effectiveness of municipal solid waste management and recovery for the state of Texas.

The Council members are required by law to hold at least one meeting every three months. The meetings usually last one full day and are held in Austin, Texas. Limited travel funds may be available.

To nominate an individual: 1) ensure the individual is qualified for the position; 2) submit a biographical summary which includes work experience; and 3) provide the nominee a copy of this request. The nominee needs to submit a letter indicating his/her agreement to serve, if appointed.

The deadline for written nominations and letters from nominees must be received by the TCEQ by 5:00 p.m., on May 18, 2007. The appointments will be considered at the commissioner's meeting in Austin, Texas.

Please submit all correspondence to: Steve Hutchinson, Waste Permits Division, Texas Commission on Environmental Quality, P.O. Box 13087, MC-126, Austin, Texas 78711-3087 or fax (512) 239-2007. Questions regarding the Council can be directed to Mr. Hutchinson at (512) 239-6716, or E-mail address: *shutchin@tceq.state.tx.us.*

TRD-200701344
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 10, 2007

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Notice of Water Rights Applications

Notice issued April 5, 2007

APPLICATION NO. 12132; Robert Johns and Jill Johns, 5160 FM 195, Paris, Texas 75462, Applicant, have applied for a Water Use Permit to divert 14 acre-feet of water per year from Sixmile Creek, Red River Basin, for storage in an existing, off-channel reservoir for subsequent agricultural (irrigation) purposes in Lamar County. The application was received on December 11, 2006. Additional information was received on February 16, 2007. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on February 23, 2007. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711 3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1 800 687 4040. General information regarding the TCEQ can

be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200701373
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 11, 2007

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 10, 2007, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Millenium Gasoline Corporation dba Amos Shell; SOAH Docket No. 582-07-0268; TCEQ Docket No. 2004-0085-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Millenium Gasoline Corporation dba Amos Shell on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200701376
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 11, 2007

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Golden Crescent Workforce Development Board

Request for Applications Package

INTRODUCTION

The Golden Crescent Workforce Development Board (Board) is seeking Providers of ancillary services, i.e., workshops, seminars, motivational activities, and continuing education classes for job seekers, currently employed workers, dislocated workers, youths, employers and Board/Center staff. Locations for workshops will be the responsibility of the Texas Workforce Solutions of the Golden Crescent (Center). Client workshops may be held at the Center or other designated facilities in Calhoun, DeWitt, Goliad, Gonzales, Jackson, Lavaca and Victoria Counties.

WHO CAN APPLY?

Bidders may be individuals, governmental units, public or private nonprofit entities, or private for-profit businesses.

All service providers will be required to authorize a criminal background check through the Texas Department of Public Safety to ensure the safety of our clients, staff, and facilities.

CONTACT PERSON

The Board is not responsible for the accuracy of information obtained from sources other than the authorized contact person for this procurement. Communication with any Board staff person or board member, other than the contact person for this procurement in reference to this Request for Applications (RFAs) **is prohibited** unless prior written approval is obtained from the contact person, **Laura G. Sanders**. Failure to follow this provision may be grounds for disqualification of the application, at the sole discretion of the Board.

Please direct all questions regarding this procurement no later than 5/4/2007 to:

Laura G. Sanders, Executive Director

Golden Crescent Workforce Development Board

Phone: (361) 576-5872

Fax: (361) 573-0225

e-mail: laura.sanders@twc.state.tx.us

P.O. Box 1936

Victoria, TX 77902

or

120 South Main #501

Victoria, TX 77901

TRD-200701372
Laura Sanders
Executive Director
Golden Crescent Workforce Development Board
Filed: April 11, 2007

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Office of the Governor

Request for Grant Applications (RFA) for the Drug Court Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that support eligible drug court programs during the state fiscal year 2008 grant cycle.

Purpose: The purpose of the Drug Court Program is to support drug courts as defined in Chapter 469 of the Texas Health and Safety Code, which incorporate the following ten essential characteristics:

(1) The integration of alcohol and other drug treatment services in the processing of cases in the judicial system;

(2) The use of a non-adversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;

(3) Early identification and prompt placement of eligible participants in the program;

(4) Access to a continuum of alcohol, drug, and other related treatment and rehabilitative services;

(5) Monitoring of abstinence through weekly alcohol and other drug testing;

(6) A coordinated strategy to govern program responses to participants' compliance;

(7) Ongoing judicial interaction with program participants;

(8) Monitoring and evaluation of program goals and effectiveness;

(9) Continuing interdisciplinary education to promote effective program planning, implementation, and operations; and

(10) Development of partnerships with public agencies and community organizations.

Funding Levels: None.

Required Match: None.

Available Funding: State funding is authorized for these projects from amounts appropriated from the State of Texas General Revenue Fund.

Standards: Grantees must comply with the standards applicable to this funding source cited in the Texas Administrative Code (1 TAC Chapter 3), and all statutes, requirements, and guidelines applicable to this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

(1) proselytizing or sectarian worship;

(2) lobbying;

(3) vehicles or equipment for government agencies that are for general agency use;

(4) weapons, ammunition, explosives or military vehicles;

(5) admission fees or tickets to any amusement park, recreational activity or sporting event;

(6) promotional gifts;

(7) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;

(8) membership dues for individuals;

(9) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (e.g., supplanting).

(10) fundraising;

(11) construction;

(12) medical services; and

(13) transportation, lodging, per diem or any related costs for participants, who attend training developed or coordinated using grant funds; and

Eligible Applicants: Counties.

Requirements:

(1) The presiding judge of a drug court funded under this RFA must be an active judge holding elective office or a master. Persons eligible for appointment may not be a former or retired judicial officer.

(2) Pursuant to Texas Health and Safety Code, §469.006, counties with populations of more than 550,000 are required to establish a drug court. Applicants from these counties must:

(a) apply to the federal government for any funds available to pay the costs of the program; and

(b) have at least 100 participants during the first four months of operation. Applicants who do not achieve required participation levels may have their CJD grants reduced or terminated. Failure to comply may also result in all grant payments for all CJD grant projects awarded to the county being placed on temporary hold.

(3) Applicants may apply to use state drug court funds to provide a portion of the required cash match for federal drug court grants.

Project Period: Grant-funded projects must begin on or after September 1, 2007, and expire on or before August 31, 2008.

Application Process: Applicants must access CJD's grant management website at https://cjdonline.governor.state.tx.us to register and apply for funding.

Preferences: Preference will be given to mandated drug courts under Texas Health and Safety Code, §469.006.

Closing Date for Receipt of Applications: All applications must be submitted via CJD's grant management website on or before May 15, 2007.

Selection Process: Applications will be reviewed by CJD staff members or a group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Whitney Stark at whitney.stark@governor.state.tx.us or at (512) 463-1919.

TRD-200701364
Christopher Burnett
Assistant General Counsel
Office of the Governor
Filed: April 11, 2007

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Texas Health and Human Services Commission

Public Notice - State Children's Health Insurance Program (CHIP)

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Amendment 17 to the Texas State Plan for the State Children's Health Insurance Program (CHIP) under Title XXI of the Social Security Act. The proposed effective date of this amendment is May 1, 2007.

The purpose of this amendment is to clarify the CHIP enrollment procedures as conducted by HHSC and its administrative services contractor. This amendment also transitions the responsibility for processing CHIP Requests for Review from the administrative services contractor to HHSC staff. In the current state plan, the administrative services contractor receives and processes requests for review of adverse determinations. Under the amended state plan, HHSC staff will receive and process requests for review. This amendment also updates statutory references based on recodification of Texas Insurance Code provisions effective April 1, 2007.

HHSC anticipates that the proposed amendment to the state plan will result in annual aggregate spending of approximately $340,314 for Federal fiscal year (FFY) 2007, with approximately $246,898, in federal funds and approximately $93,416, in state general revenue, and annual aggregate spending of approximately $702,787, for FFY 2008, with approximately $508,607, in federal funds and approximately $194,180, in state general revenue.

For additional information, please contact Kendra Sippel in the Acute Care Policy Development unit for the Medicaid and CHIP Division by telephone at (512) 491-5594 or by e-mail at kendra.sippel@hhsc.state.tx.us.

TRD-200701379
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: April 11, 2007

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Texas Higher Education Coordinating Board

Request for Proposals: Facilitation of Development and Implementation of College Readiness Standards

PURPOSE:

The Texas Higher Education Coordinating Board (hereinafter referred to as THECB or Coordinating Board) is requesting Proposals from Qualified Applicants (see subsection 5.3 of the RFP) to facilitate the process of developing College Readiness Standards (see Definition 2.1.3 of the RFP). Additionally, the Qualified Applicant will:

1. develop, implement, analyze, and report on a structured review process of Texas course syllabi of representative entry-level courses;

2. select best models from syllabi collected during Phase I to obtain additional material on classroom assignments and student responses to provide models for statewide dissemination and professional development; and

3. use materials collected as part of "2" and "3" above to facilitate a process by which college readiness standards can be used to develop high school senior assignments that can be used for diagnostic and other purposes.

AWARDING OF CONTRACT

Agreement/Contract will be negotiated with an entity that is selected from among the Applicants that are determined through the evaluation process to have a successful Proposal. Submission of a Proposal confers no rights of Applicant to an award or to a subsequent Contract/Agreement, if there is one. The issuance of this RFP does not guarantee that a Contract/Agreement will ever be awarded. THECB reserves the right to amend the terms and provisions of the RFP; negotiate with Applicant; add, delete, or modify the Contract/Agreement and/or the terms of Proposal submitted; extend the deadline for submission of Proposal; or withdraw the RFP entirely for any reason solely at THECB's discretion. An individual Proposal may be rejected if it fails to meet any requirement of this RFP. THECB may seek clarification from Applicant at any time, and failure to respond within a reasonable time frame is cause for rejection of a Proposal.

INQUIRIES

All inquiries shall be directed to Laurie Frederick, Program Specialist, at Laurie.Frederick@thecb.state.tx.us. Applicant must not discuss a Proposal(s) with any other state employee unless authorized by one of the Points of Contact. Questions must be submitted in writing and received no later than April 20, 2007 at 5:00 p.m. C.S.T. All responses by THECB must be in writing in order to be binding. Any information deemed by THECB to be important and of general interest or which modify requirements shall be sent to all recipients of the RFP in the form of an addendum. To review the entire RFP, please go to the following link, http://esbd.tbpc.state.tx.us.

CLOSING DATE: April 26, 2007.

TRD-200701304
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: April 5, 2007

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by MILWAUKEE CASUALTY INSURANCE CO., a foreign fire and/or casualty company. The home office is in Brookfield, Wisconsin.

Application for admission to the State of Texas by TEXAS FARM BUREAU CASUALTY INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Waco, Texas.

Application for admission to the State of Texas by MASON TITLE INSURANCE COMPANY, INC., a foreign title company. The home office is in Tampa, Florida.

Application for admission to the State of Texas by PMI GUARANTY CO., a foreign fire and/or casualty company. The home office is in Jersey City, New Jersey.

Application for admission to the State of Texas by ROCKWOOD CASUALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Rockwood, Pennsylvania.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the Texas Register publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200701368
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 11, 2007

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of REGIONAL INSURANCE SERVICE COMPANY, INC., a foreign third party administrator. The home office is WICHITA, KANSAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200701367
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 11, 2007

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Texas Lottery Commission

Instant Game Number 772 "Payday Bonus"

1.0 Name and Style of Game.

A. The name of Instant Game No. 772 is "PAYDAY BONUS". The play style is "Row/column/diagonal with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 772 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 772.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play

Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, STACK OF BILLS SYMBOL, 1 TIMES SYMBOL, 5 TIMES SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $500 and $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 772 - 1.2D

PLAY SYMBOL	CAPTION
1	
2	
3	
4	
5	
6	
7	
8	
9	
STACK OF BILLS SYMBOL	
1 TIMES	PRIZE
5 TIMES	PRIZE
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 772 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number

is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (772), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 772-0000001-001.

L. Pack - A pack of "PAYDAY BONUS" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "PAYDAY BONUS" Instant Game No. 772 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "PAYDAY BONUS" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) Play Symbols. If a player reveals 3 (three) stack of bills symbols in any one row, column or diagonal, the player wins the prize in the PRIZE BOX. The player scratches the BONUS BOX for a chance to win 5 (five) TIMES the prize won. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Only the STACK OF BILLS play symbol will appear 3 times in a row, column or diagonal.

C. There will be a minimum of 4 STACK OF BILLS play symbols on non-winners.

D. There will be no more than 2 identical play symbols other than the STACK OF BILLS play symbol on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "PAYDAY BONUS" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "PAYDAY BONUS" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "PAYDAY BONUS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "PAYDAY BONUS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "PAYDAY BONUS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 772. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 772 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,344,000	7.50
$2	470,400	21.43
$4	67,200	150.00
$5	134,400	75.00
$10	67,200	150.00
$20	67,200	150.00
$50	6,888	1,463.41
$100	1,260	8,000.00
$500	336	30,000.00
$1,000	168	60,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.67. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 772 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 772, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200701321
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 9, 2007

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Public Comment Hearing

A public hearing to receive public comments regarding proposed new 16 TAC §402.204, relating to Prohibited Price Fixing will be held on Wednesday, May 2, 2007, at 9:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200701309
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 9, 2007

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Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 5, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Northland Cable Television, Incorporated for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 34116 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34116.

TRD-200701338
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 10, 2007

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on April 5, 2007, with the Public Utility Commission of Texas (Commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on April 16, 2007.

Docket Title and Number: Application of CenturyTel of Lake Dallas, Incorporated for Approval of LRIC Study for 90-Day Promotion of Additional Lines, Custom Calling Features, Access Line Winback, Caller ID Plus, Caller ID Extra, Access Line Move, and 256K High Speed Internet Bundle Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 34112.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 34112. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 34112.

TRD-200701334
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 10, 2007

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on April 5, 2007, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on April 16, 2007.

Docket Title and Number: Application of CenturyTel of Northwest Louisiana, Incorporated for Approval of LRIC Study for 90-Day Promotion of Additional Lines, Custom Calling Features, Access Line Winback, and 256K High Speed Internet Bundle Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 34113.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 34113. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 34113.

TRD-200701335
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 10, 2007

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on April 5, 2007, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on April 16, 2007.

Docket Title and Number: Application of CenturyTel of Port Aransas, Incorporated for Approval of LRIC Study for 90-Day Promotion of Additional Lines, Custom Calling Features, Access Line Winback, Caller ID Plus, Caller ID Extra, Access Line Move, and 256K High Speed Internet Bundle Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 34114.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 34114. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 34114.

TRD-200701336
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 10, 2007

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on April 5, 2007, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on April 16, 2007.

Docket Title and Number: Application of CenturyTel of San Marcos, Incorporated for Approval of LRIC Study for 90-Day Promotion of Additional Lines, Custom Calling Features, Access Line Winback, Caller ID Plus, Caller ID Extra, Access Line Move, and 256K High Speed Internet Bundle Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 34115.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 34115. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 34115.

TRD-200701337
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 10, 2007

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Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, Section 6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Bell County Water Control and Improvement District No. 1, P.O. Box 43, Killeen, Texas 76540-0043, received March 12, 2007, application for financial assistance in the amount of $8,000,000 from the Texas Water Development Fund.

Tyler County Water Supply Corporation, P.O. Box 138, Spurger, Texas 77660, received December 13, 2006, application for financial assistance in the total amount of $2,426,000 from the Drinking Water State Revolving Fund and the Texas Water Development Fund.

City of Aledo, 200 Old Annetta Road, Aledo Texas 76008, received November 30, 2006, application for financial assistance in the amount of $5,765,000 from the Drinking Water State Revolving Fund.

City of Cleveland, 203 East Boothe Street, Cleveland, Texas 77327, received December 13, 2006, application for financial assistance in the amount of $5,270,000 from the Clean Water State Revolving Fund.

City of Taylor Landing, Texas, Rt. 2, Box K220, Beaumont, Texas 77705, received February 1, 2007, application for financial assistance in the amount of $710,000 from the Clean Water State Revolving Fund.

City of Roxton, P.O. Box 176, Roxton, Texas 75477, received November 30, 2006, application for financial assistance in the amount of $1,000,000 from the Clean Water State Revolving Fund - Disadvantaged Community Program.

City of San Juan, 709 S. South Nebraska, San Juan, Texas 78589, received December 4, 2006, application for financial assistance in the amount of $381,500 from the Colonia Plumbing Loan Program.

TRD-200701377

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Filed: April 11, 2007

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).