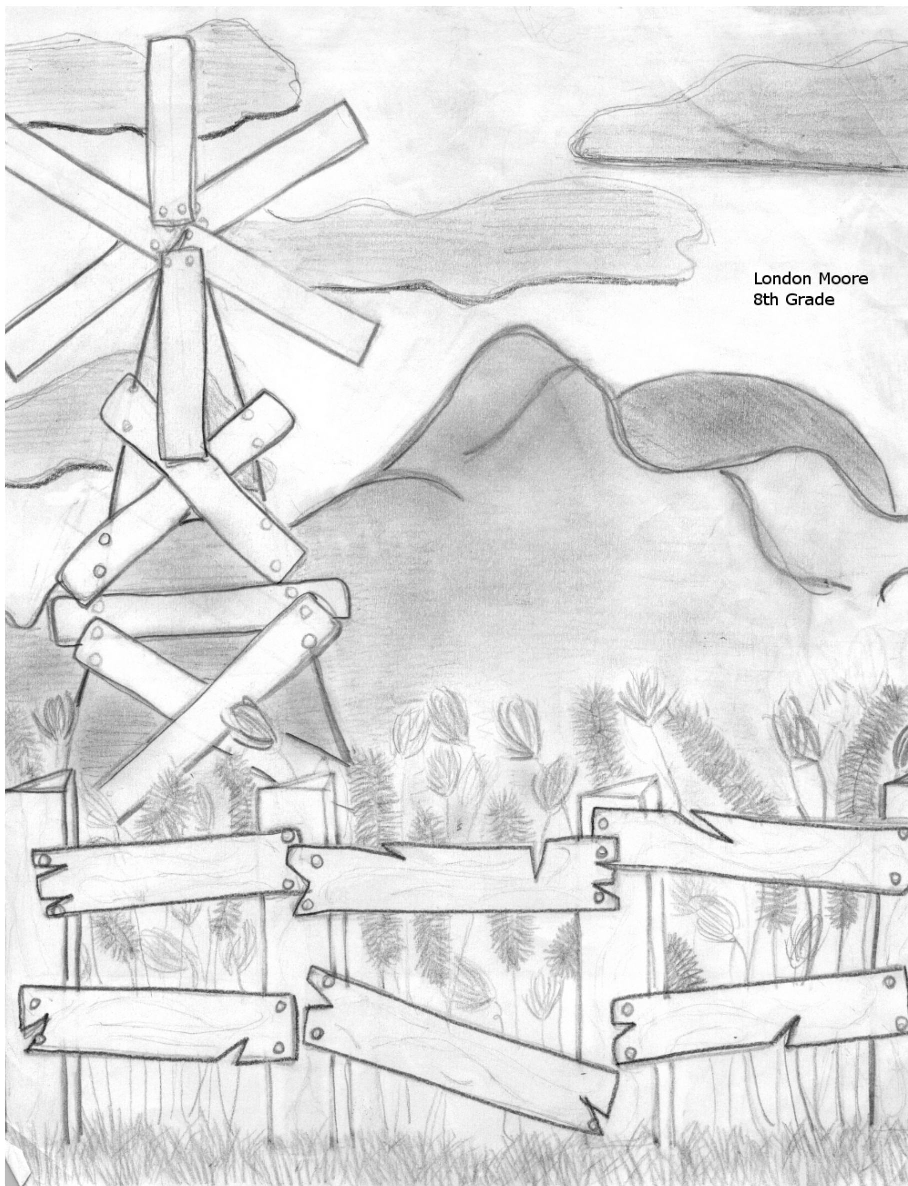
Texas Register

Volume 37 Number 16 *April 20, 2012* *Pages 2801 - 2908*



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.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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

Material in the ***Texas Register*** is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the ***Texas Register*** director, provided no such republication shall bear the legend ***Texas Register*** or "Official" without the written permission of the director.

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

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

TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.state.tx.us

Secretary of State –
Hope Andrade

Director –
Dan Procter

Staff
Leti Benavides
Dana Blanton
Elaine Crease
Kris Hogan
Belinda Kirk
Roberta Knight
Jill S. Ledbetter
S. Gail Woods
Mirand Zepeda-Jaramillo

IN THIS ISSUE

GOVERNOR

Appointments 2805

Executive Order 2806

Proclamation 41-3294 2807

Proclamation 41-3295 2807

Proclamation 41-3296 2808

Proclamation 41-3297 2808

Proclamation 41-3298 2809

ATTORNEY GENERAL

Requests for Opinions 2811

EMERGENCY RULES

TEXAS DEPARTMENT OF AGRICULTURE

QUARNTINES AND NOXIOUS AND INVASIVE PLANTS

4 TAC §§19.500 - 19.508 2813

PROPOSED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

MEDICAID HEALTH SERVICES

1 TAC §354.1143 2819

1 TAC §354.1451 2821

REIMBURSEMENT RATES

1 TAC §355.8065 2823

1 TAC §355.8066 2835

1 TAC §355.8201, §355.8202 2838

TEXAS DEPARTMENT OF AGRICULTURE

COMMUNITY DEVELOPMENT

4 TAC §30.4 2846

TEXAS ALCOHOLIC BEVERAGE COMMISSION

AUDITING

16 TAC §41.23 2847

MARKETING PRACTICES

16 TAC §45.71 2848

16 TAC §45.77 2849

16 TAC §45.79 2851

16 TAC §45.82 2852

16 TAC §45.90 2853

16 TAC §45.110 2855

TEXAS HIGHER EDUCATION COORDINATING BOARD

STUDENT SERVICES

19 TAC §21.2100, §21.2101 2856

19 TAC §21.2111 2857

TEXAS EDUCATION AGENCY

PLANNING AND ACCOUNTABILITY

19 TAC §97.1065, §97.1067 2858

DEPARTMENT OF STATE HEALTH SERVICES

MISCELLANEOUS PROVISIONS

25 TAC §§1.701 - 1.704 2862

TEXAS HIV MEDICATION PROGRAM

25 TAC §98.121 2865

25 TAC §98.121 2865

TEXAS DEPARTMENT OF INSURANCE

PROPERTY AND CASUALTY INSURANCE

28 TAC §5.9600 2866

TEXAS PARKS AND WILDLIFE DEPARTMENT

LAW ENFORCEMENT

31 TAC §55.202 2867

EMPLOYEES RETIREMENT SYSTEM OF TEXAS

INSURANCE

34 TAC §81.9 2869

WITHDRAWN RULES

TEXAS DEPARTMENT OF AGRICULTURE

QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

4 TAC §§19.500 - 19.508 2871

ADOPTED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS

1 TAC §372.107 2873

1 TAC §372.1402 2873

TEXAS DEPARTMENT OF AGRICULTURE

MARKETING AND PROMOTION

4 TAC §§17.300 - 17.305, 17.307 - 17.310 2874

4 TAC §17.306 2874

DEPARTMENT OF STATE HEALTH SERVICES

RADIATION CONTROL

25 TAC §289.230, §289.234 2874

PROVIDER CLINICAL RESPONSIBILITIES--MENTAL HEALTH SERVICES

25 TAC §§415.101 - 415.111 2877

25 TAC §§415.112 - 415.114 2877

TEXAS STATE SOIL AND WATER CONSERVATION BOARD

DISTRICT OPERATIONS

31 TAC §520.2 2877

31 TAC §520.3 2878

RULE REVIEW

Proposed Rule Reviews

General Land Office 2879

Adopted Rule Reviews

Texas Education Agency 2879

IN ADDITION

Ark-Tex Council of Governments

Public Notice - Request for Proposal 2881

Comptroller of Public Accounts

Notice of Contract Amendment 2881

Notice of Contract Award 2881

Office of Consumer Credit Commissioner

Notice of Rate Bracket Adjustment 2881

Notice of Rate Ceilings 2882

Texas Council for Developmental Disabilities

Request for Proposals 2882

Texas Education Agency

Requests for Applications Concerning the 2012-2013 Advanced Technical Credit Grant Program 2882

Texas Commission on Environmental Quality

Agreed Orders 2883

Enforcement Orders 2886

Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Limited Scope Major Permit Amendment Permit No. 2268 2889

Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Limited Scope Permit Minor Amendment Permit No. 2358 2890

Notice of Water Quality Applications 2890

Texas Facilities Commission

Request for Proposals #303-3-20331 2892

Request for Proposals #303-3-20332 2892

Department of State Health Services

Designation of Brazoria County Indigent Health Care Program as a Site Serving Medically Underserved Populations 2892

Department of State Health Services

Licensing Actions for Radioactive Materials 2893

Texas Department of Housing and Community Affairs

Announcement of the Opening of the Public Comment Period for the Draft Substantial Amendment 3 to the State of Texas FFY 2010 Action Plan 2896

Texas Department of Insurance

Company Licensing 2896

Texas Lottery Commission

Instant Game Number 1448 "VIP Club" 2896

Panhandle Regional Planning Commission

Request for Proposals 2901

Texas Parks and Wildlife Department

Notice of Availability and Opportunity for Comment 2902

Notice of Proposed Real Estate Transactions 2902

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority 2903

Notice of Application for Service Area Exception 2903

Notice of Application for Service Area Exception 2903

Notice of Application for Waiver from Requirements in Automatic Dial Announcing Devices (ADAD) Application Form 2904

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171 2904

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171 2904

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171 2905

Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services 2905

Aviation Division - Request for Proposal for Professional Engineering Services 2906

Texas Water Development Board

Applications for April, 2012 2906

Workforce Solutions Deep East Texas

Public Notice 2907

THE GOVERNOR

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

Appointments

Appointments for March 5, 2012

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77 for a term at the pleasure of the Governor, Joel Bennett of Austin.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77 for a term at the pleasure of the Governor, Robb Catalano of Fort Worth.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77 for a term at the pleasure of the Governor, A. Clay Childress of Leander.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77 for a term at the pleasure of the Governor, Mary Covington of Houston.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77 for a term at the pleasure of the Governor, Ann R. "Becca" Crowell of Dallas.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77 for a term at the pleasure of the Governor, Debra "Debbie" Fesperman of Sherman.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77 for a term at the pleasure of the Governor, Tara Lynn George of Houston.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77 for a term at the pleasure of the Governor, Ruben Reyes of Lubbock. Ruben Reyes will serve as presiding officer of the council.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77 for a term at the pleasure of the Governor, Dibrell "Dib" Waldrip of New Braunfels.

Appointed to the State Employee Charitable Campaign Policy Committee for a term to expire January 1, 2014, Trenton R. Marshall of Burleson (replacing Cecile Erwin Young of Austin whose term expired).

Appointed to the State Employee Charitable Campaign Policy Committee for a term to expire January 1, 2014, Cecile Erwin Young of Austin (replacing Monica Hearn of Austin whose term expired).

Appointments for March 14, 2012

Appointed to the Golden Crescent Regional Review Committee for a term at the pleasure of the Governor, Sereniah Breland of Goliad (replacing Richard Tinney, Jr. of Goliad).

Appointed to the East Texas Regional Review Committee for a term at the pleasure of the Governor, Bobby Hale of Kilgore (replacing Janice Hancock of Kilgore).

Appointed to the East Texas Regional Review Committee for a term at the pleasure of the Governor, Rhita A. Koches of Canton (replacing Billy Smith of Van).

Appointed to the Board of Pilot Commissioners for Galveston County Ports for a term to expire February 1, 2016, Vandy Anderson of Galveston (reappointed).

Appointed to the Board of Pilot Commissioners for Galveston County Ports for a term to expire February 1, 2016, Linda R. Rounds of Galveston (reappointed).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2015, Harold Jenkins of Irving (replacing Keith Kidd of Reno who resigned).

Appointed to the Texas Emergency Services Retirement System for a term to expire September 1, 2017, Francisco "Frank" Torres of Raymondville (Mr. Torres is being reappointed).

Appointed to the Coastal Bend Regional Review Committee for a term at the pleasure of the Governor, Annie Broadwater of Falfurrias (replacing Lawrence Cornelius of Alice).

Appointments for March 23, 2012

Appointed to the Texas Commission on Environmental Quality, effective April 16, 2012, for a term to expire August 31, 2017, C. Tobias "Toby" Baker of Austin (replacing Buddy Garcia of Austin whose term expired).

Appointed to the Specialty Courts Advisory Council, pursuant to HB 1771, 82nd Legislature, Regular Session, for a term to expire February 1, 2013, Keta R. Dickerson of Richardson.

Appointed to the Specialty Courts Advisory Council, pursuant to HB 1771, 82nd Legislature, Regular Session, for a term to expire February 1, 2013, Patrick F. McCann of Richmond.

Appointed to the Specialty Courts Advisory Council, pursuant to HB 1771, 82nd Legislature, Regular Session, for a term to expire February 1, 2015, Sabrina Bentley Benkendorfer of Georgetown.

Appointed to the Specialty Courts Advisory Council, pursuant to HB 1771, 82nd Legislature, Regular Session, for a term to expire February 1, 2015, Amy R. Granberry of Portland.

Appointed to the Specialty Courts Advisory Council, pursuant to HB 1771, 82nd Legislature, Regular Session, for a term to expire February 1, 2015, Leon F. Pesek, Jr. of Texarkana.

Appointed to the Specialty Courts Advisory Council, pursuant to HB 1771, 82nd Legislature, Regular Session, for a term to expire February 1, 2017, Denise Bradley of Cypress.

Appointed to the Specialty Courts Advisory Council, pursuant to HB 1771, 82nd Legislature, Regular Session, for a term to expire February 1, 2017, Raymond Wheless of Allen.

Appointments for March 27, 2012

Appointed as Judge of the El Paso Criminal Judicial District Court One for a term until the next General Election and until his successor shall be duly elected and qualified, Don W. Minton of El Paso (replacing Manuel Barraza of El Paso who vacated office).

Designating Billy Bradford, Jr. as presiding officer of the Texas Water Development Board, effective April 20, 2012, for a term at the pleasure of the Governor. Mr. Bradford is replacing Edward Vaughan of Bulverde as presiding officer.

Designating Andres Alcantar as presiding officer of the Texas Workforce Commission, effective May 1, 2012, for a term at the pleasure of the Governor. Mr. Alcantar is replacing Thomas Pauken of Dallas as presiding officer.

Appointed to the Correctional Managed Health Care Committee, pursuant to SB 1, 82nd Legislature, First Called Session, for a term to expire February 1, 2013, Harold Berenzweig of Fort Worth.

Designating Michael Waters as presiding officer of the Texas State Library and Archives Commission for a term at the pleasure of the Governor. Mr. Waters is replacing Sandra Pickett of Liberty as presiding officer.

Designating A. Cynthia Leon as presiding officer of the Public Safety Commission for a term at the pleasure of the Governor. Ms. Leon is replacing Allan Polunsky of San Antonio as presiding officer.

Designating Vincent J.M. Di Maio as presiding officer of the Texas Forensic Science Commission for a term at the pleasure of the Governor. Dr. Di Maio is replacing Nizam Peerwani of Fort Worth as presiding officer.

Appointments for April 4, 2012

Appointed to the Select Committee on Economic Development, pursuant to HB 2785, 82nd Legislature, Regular Session, for a term at the pleasure of the Governor, James Epperson, Jr. of Dallas. James Epperson, Jr. will serve as presiding officer of the Committee.

Appointed to the Select Committee on Economic Development, pursuant to HB 2785, 82nd Legislature, Regular Session, for a term at the pleasure of the Governor, Maher Maso of Frisco.

Appointed to the Select Committee on Economic Development, pursuant to HB 2785, 82nd Legislature, Regular Session, for a term at the pleasure of the Governor, Carlton R. Schwab of Austin.

Appointed to the Select Committee on Economic Development, pursuant to HB 2785, 82nd Legislature, Regular Session, for a term at the pleasure of the Governor, Laura "Stacey" Gillman Wimbish of Houston.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77, for a term at the pleasure of the Governor, Ex-Officio Member James Bethke of Austin.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77, for a term at the pleasure of the Governor, Ex-Officio Member Judge David L. Hodges of Austin.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77, for a term at the pleasure of the Governor, Ex-Officio Member Senator Joan Huffman of Houston.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77, for a term at the pleasure of the Governor, Ex-Officio Member Shannon Edmonds of Austin.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77, for a term at the pleasure of the Governor, Ex-Officio Member Judge Sharon Keller of Austin.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77, for a term at the pleasure of the Governor, Ex-Officio Member Robert J. Lerma of Brownsville.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77, for a term at the pleasure of the Governor, Ex-Officio Member Representative Tryon Lewis of Odessa.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77, for a term at the pleasure of the Governor, Ex-Officio Member Representative Jerry Madden of Richardson.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77, for a term at the pleasure of the Governor, Ex-Officio Member James McLaughlin, Jr. of Elgin.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77, for a term at the pleasure of the Governor, Ex-Officio Member Kyle V. Mitchell of Leander.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77, for a term at the pleasure of the Governor, Ex-Officio Member Penny Redington of Austin.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77, for a term at the pleasure of the Governor, Ex-Officio Member Senator John Whitmire of Houston.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP-77, for a term at the pleasure of the Governor, Ex-Officio Member Dee Wilson of Austin.

Rick Perry, Governor

TRD-201201810

Executive Order

RP 77

Relating to the operation of the Governor's Criminal Justice Advisory Council for the State of Texas

WHEREAS, the Governor's Criminal Justice Advisory Council was created by Executive Order RP 41 to advise the governor on matters related to the adequacy of criminal justice procedures and other matters designated by the governor; and

WHEREAS, judges, county commissioners, probation and parole officers, veterans' advocates, and substance abuse and mental health experts throughout the state have created more than 100 innovative and effective specialty court diversion programs in their local jurisdictions over the last decade; and

WHEREAS, specialty courts, such as drug courts, veterans' courts, DWI courts, mental health courts and family courts, are believed to be a humane and cost-effective method to prevent nonviolent offenders with substance abuse or mental health problems from unnecessarily entering the criminal justice system; and

WHEREAS, because of the growth of specialty courts throughout Texas, we have the opportunity to identify and replicate best practices by drawing upon the local knowledge and experience of the dedicated professionals who have created successful specialty court programs; and

WHEREAS, the public rightfully expects state and local government to spend public funds for criminal justice programs that are both cost-effective and successful in maintaining public safety;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of

the State of Texas as the Chief Executive Officer, do hereby order the following:

1. *Reauthorizing the Creation of Council.* The Governor's Criminal Justice Advisory Council (the "Council"), created by Executive Order RP 41, is hereby reauthorized with the mandate to advise the governor on matters related to the operation of specialty courts throughout Texas.

2. *Composition and Terms.* The Council shall consist of members appointed by the governor.

The governor will designate one member to serve as the chair.

The governor may fill any vacancy that may occur and may appoint other voting or *ex officio,* nonvoting members as needed.

Any state or local officers or employees appointed to serve on the Council shall do so in addition to the regular duties of their respective offices or positions.

All appointees serve at the pleasure of the governor.

3. *Duties.* The Council shall advise the governor on:

• Best practices relating to the creation, staffing and operation of specialty courts in Texas.

• Measures by which the effectiveness of individual specialty court programs can be evaluated.

• Methods of ensuring that the rights of participants in specialty courts are respected and protected.

• Any other matters the governor may designate.

4. *Coordination.* The Council, through its advisory efforts, shall coordinate with national, state and local entities when necessary.

5. *Report.* The Council shall report its findings in writing to the governor, the lieutenant governor, and the speaker of the House.

6. *Meetings.* Subject to the approval of the governor, the Council shall meet, in Austin or by electronic means, on such matters that the governor designates. The Council will not take testimony but shall receive input from the following:

• Judges and specialty court coordinators and program directors who have direct experience operating specialty courts.

• Prosecutors and attorneys representing defendants who have participated in specialty court programs.

• County judges and commissioners from counties that have currently operating specialty court programs.

• Substance abuse and mental health practitioners who have experience providing services in specialty court programs.

• Local law enforcement personnel who have experience with specialty court programs.

• Other interested parties.

7. *Administrative Support.* The Office of the Governor and other appropriate state agencies shall provide administrative support for the Council.

8. *Other Provisions.* The Council shall adhere to guidelines and procedures prescribed by the Office of the Governor. All members of the Council shall serve without compensation. Necessary expenses may be reimbursed when such expenses are incurred in the direct performance of official duties of the Council.

This executive order supersedes all previous orders on this matter that are in conflict or inconsistent with its terms, and this order shall remain in effect and in full force until modified, amended, rescinded or superseded by me or by a succeeding governor.

Given under my hand this the 28th day of February, 2012.

Rick Perry, Governor

TRD-201201821

Proclamation 41-3294

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, issued an Emergency Disaster Proclamation on December 21, 2010, as extreme fire hazard posed a threat of imminent disaster in specified counties in Texas.

WHEREAS, high frontal winds and dry conditions continue to fuel fire hazards that create a threat of disaster for the people of Texas; and

WHEREAS, the state of disaster includes the counties of Andrews, Armstrong, Bailey, Bandera, Baylor, Borden, Brewster, Briscoe, Brown, Callahan, Carson, Castro, Childress, Cochran, Coke, Coleman, Collingsworth, Concho, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, El Paso, Fisher, Floyd, Foard, Frio, Gaines, Garza, Gillespie, Glasscock, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hockley, Howard, Hudspeth, Hutchinson, Irion, Jeff Davis, Jones, Kent, Kerr, Kimble, King, Kinney, Knox, LaSalle, Lamb, Lipscomb, Loving, Lubbock, Lynn, Martin, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Real, Reeves, Roberts, Runnels, Schleicher, Scurry, Shackelford, Sherman, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Tom Green, Upton, Uvalde, Val Verde, Ward, Webb, Wheeler, Wilbarger, Winkler, Yoakum, and Zavala.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 24th day of February, 2012.

Rick Perry, Governor

TRD-201201816

Proclamation 41-3295

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

WHEREAS, record high temperatures, preceded by significantly low rainfall, have resulted in declining reservoir and aquifer levels, threat-

ening water supplies and delivery systems in many parts of the state; and

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

WHEREAS, this state of disaster includes the counties of Anderson, Andrews, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoia, Brazos, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Delta, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harris, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, LaSalle, Lamb, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Nueces, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Wood, Yoakum, Young, Zapata and Zavala.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 24th day of February, 2012.

Rick Perry, Governor

TRD-201201817

Proclamation 41-3296

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, issued an Emergency Disaster Proclamation on December 21, 2010, as extreme fire hazard posed a threat of imminent disaster in specified counties in Texas.

WHEREAS, high frontal winds and severe dry conditions continue to fuel fire hazards that create a threat of disaster for the people of Texas; and

WHEREAS, the state of disaster includes the counties of Andrews, Armstrong, Bailey, Borden, Brewster, Briscoe, Carson, Castro, Childress, Cochran, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Gaines, Garza, Glasscock, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hockley, Howard, Hudspeth, Hutchinson, Irion, Jeff Davis, Jones, Kent, King, Knox, Lamb, Lipscomb, Loving, Lubbock, Lynn, Martin, Midland, Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Runnels, Schleicher, Scurry, Sherman, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Terry, Tom Green, Upton, Val Verde, Ward, Wheeler, Winkler, and Yoakum.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 23rd day of March, 2012.

Rick Perry, Governor

TRD-201201818

Proclamation 41-3297

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

WHEREAS, this state of disaster includes the counties of Anderson, Andrews, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Concho, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, El Paso, Falls, Fayette, Fisher, Floyd, Foard, Fort

Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harris, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hopkins, Houston, Howard, Hudspeth, Hutchinson, Irion, Jackson, Jasper, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamb, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montgomery, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Nueces, Ochiltree, Oldham, Orange, Panola, Parmer, Pecos, Polk, Potter, Presidio, Rains, Randall, Reagan, Real, Reeves, Refugio, Roberts, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wood, Yoakum, Young, Zapata, and Zavala.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 23rd day of March, 2012.

Rick Perry, Governor

TRD-201201819

Proclamation 41-3298

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby certify that the severe storms and tornadoes that occurred April 3, 2012, have caused a disaster in Dallas, Kaufman and Tarrant counties in the State of Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the counties listed above based on the existence of such disaster and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that disaster.

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

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

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

Rick Perry, Governor

TRD-201201820

The Attorney General

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

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

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

Requests for Opinions

RQ-1051-GA

Requestor:

The Honorable Burt R. Solomons

Chair, Committee on Redistricting

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Transfer of a tax lien pursuant to section 32.06, Tax Code, and the items that may be included within that transfer (RQ-1051-GA)

Briefs requested by May 4, 2012

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

TRD-201201791
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: April 10, 2012

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).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARNTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER V. MEXICAN FRUIT FLY QUARANTINE

4 TAC §§19.500 - 19.508

The Texas Department of Agriculture (the department) adopts on an emergency basis new §§19.500 - 19.508, concerning a quarantine for the Mexican fruit fly (Mexfly) *Anastrepha ludens* (Loew). The new sections are adopted on an emergency basis to prevent the spread of Mexflies and to maintain the pest's eradicated status in Texas. The emergency new sections require application of treatments and prescribe specific restrictions on the handling and movement of quarantined articles.

Texas spent more than 80 years under permanent United States Department of Agriculture (USDA) quarantine for Mexfly before, on January 3, 2012, the state's Mexfly population was declared eradicated by USDA's Animal and Plant Health Inspection Service (APHIS) because no Mexflies had been trapped in Texas since May 8, 2009. An ongoing risk of reintroduction of the pest is mitigated by continued trapping to detect incipient re-infestations.

Consistent with this risk, one mated wild-type female Mexfly was found in a grapefruit grove south of San Benito, Cameron County, on March 1, 2012, in a McPhail trap baited with torula yeast; no sterile Mexflies were in that trap. That finding necessitated the March 8, 2012, filing of an emergency quarantine, which was published in the March 23, 2012, issue of the *Texas Register* (37 TexReg 1967), for the San Benito quarantine area, an 81 square mile area surrounding the capture site, in order to implement measures to maintain the state's eradicated status.

On March 14, 2012, one immature female and one mature unmated female Mexfly were detected in an orange grove east of McAllen, Hidalgo County, triggering the need for a second quarantine area. On March 16, 2012, the department withdrew the filing of March 8, 2012, and filed a new emergency quarantine, published in the March 30, 2012, issue of the *Texas Register* (37 TexReg 2125), that included the San Benito quarantined area and added the McAllen quarantined area (126 square miles) that includes nearly 2,727 acres of commercial citrus in or around McAllen.

The present emergency quarantine filing, based on new trapping information, quarantines four additional areas and enlarges both existing quarantined areas. The new Bayview quarantined area covers 108 square miles and includes 446 acres of commercial citrus groves in or near Bayview (Cameron County); it was triggered by the finding in a trap of one mated wild-type female and one sterile Mexfly. The new Brownsville quarantined area covers 42 square miles and includes 8.5 acres of commercial citrus groves in or near Brownsville (Cameron County); it was triggered by findings of Mexfly larvae. The new Raymondville quarantined area covers 69 square miles and includes 3.9 acres of commercial citrus groves in or near Raymondville (Willacy County); it was triggered by the finding in a trap of one mated wild-type female Mexfly. The new Weslaco quarantined area covers 79 square miles and includes 1,141 acres of commercial citrus groves in or near Weslaco (Hidalgo County); it was quarantined due to findings of Mexfly larvae. Other recent trap catches of wild-type Mexflies require: (1) expansion of the San Benito quarantined area (Cameron County) to a total of 177 square miles including 1,318 acres of commercial citrus groves in the Harlingen-San Benito area; and (2) expansion of the McAllen quarantined area (Hidalgo County) to cover 200 square miles including 9,268 acres of commercial citrus groves in or near McAllen.

Mexfly host plants include citrus, stone fruits, avocados, mangoes and apples.

The department believes that it is necessary to take this immediate action to maintain the fly-free status of Cameron and Hidalgo counties and to prevent the spread of the Mexican fruit fly into other commercial citrus growing areas of Texas and other states, and that adoption of this quarantine on an emergency basis is both necessary and appropriate. The citrus industry in particular is in peril because without this emergency quarantine and treatment of the infestation, a statewide quarantine implemented by the USDA could become necessary, with resultant losses of important export markets and requirements for regulatory treatments such as fumigation of all exported fruit. This emergency quarantine takes necessary steps to prevent the artificial spread of the quarantined pest and provides for its elimination, thus protecting Texas' important citrus industry.

New §19.500 states the basis for the quarantine and defines the quarantined pest. New §19.501 establishes the duration of the quarantine. New §19.502 designates the infested areas subject to quarantine. New §19.503 lists the articles subject to the quarantine. New §19.504 provides restrictions on the movement of articles subject to the quarantine. New §19.505 provides requirements for monitoring and handling and treatment of regulated articles located within the quarantined area. New §19.506 provides consequences for failure to comply with quarantine restrictions. New §19.507 provides for the appeal of action taken for failure to comply with the quarantine restrictions or requirements. New §19.508 provides procedures for handling of discrepancies or other inconsistencies in textual descriptions in this subchapter with graphic representations. The department may propose adoption of this updated quarantine on a permanent ba-

sis in a separate submission. This emergency quarantine replaces the emergency quarantine filed on March 16, 2012, by the department and published in the March 30, 2012, issue of the *Texas Register* (37 TexReg 2125).

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §71.004, which authorizes the department to establish emergency quarantines; §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; §12.020, which authorizes the department to assess administrative penalties for violations of Chapter 71 of the Texas Agriculture Code; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.500. Basis for Quarantine - Dangerous Insect Pest or Plant Disease (Proscribed Biological Entity).

(a) The department finds that *Anastrepha ludens* (Loew), also known as the Mexican fruit fly, is at any stage of development a dangerous insect pest or plant disease that is not widely distributed in this state.

(b) Description of dangerous insect pest or plant disease. The Mexican fruit fly, scientific name *Anastrepha ludens* (Loew), is a dangerous pest of the numerous host plants listed in §19.503 of this title (relating to Articles Subject to the Quarantine). The fly oviposits in the fruit where the larvae subsequently hatch and begin feeding. The larvae, feeding inside the fruit, cause damage to the flesh of the fruit, making it unmarketable. The United States Department of Agriculture (USDA), as well as many states, consider the Mexican fruit fly to be a serious plant pest whose control and eventual eradication from quarantined areas is imperative.

(c) Unless otherwise expressly stated, the term "Mexican fruit fly" when used in this subchapter refers to any or all developmental stages of the dangerous insect pest or a plant disease described in this section.

(d) The department is authorized by the Texas Agriculture Code, §71.002, to establish a quarantine against the dangerous insect pest or plant disease identified in this section.

§19.501. Duration of the Quarantine.

The quarantine established by this subchapter shall remain in effect until the dangerous insect pest or plant disease described in §19.500 of this title (relating to Basis for Quarantine - Dangerous Insect Pest or Plant Disease (Proscribed Biological Entity)) is eradicated. The Mexican fruit fly shall be considered eradicated from the quarantined area when no additional Mexican fruit flies are detected for a time period equal to three consecutive generations after the most recent detection. For the Mexican fruit fly, the number of days required to complete a reproductive cycle, one generation, is dependent upon temperature. Therefore, a day-degree model will be used to calculate the duration of each consecutive generation.

§19.502. Infested Geographical Areas Subject to the Quarantine.

(a) Quarantined infested areas.

(1) Quarantined infested areas (infested geographical areas subject to the quarantine) are those locations within this state in which the dangerous insect pest or plant disease is currently found, from which dissemination of the pest or disease is to be prevented, and in which the pest or disease is to be eradicated.

(2) The following areas are declared to be quarantined infested areas: each quarantined area is bounded on all sides by a line drawn using the World Geographic Coordinate System of 1984.

(A) The quarantine boundary of the "Bayview quarantined area" in Cameron County is described as: Starting at a point described as N26.216798 degrees and W97.434614 degrees, then East to a point described as N26.216293 degrees and W97.370199 degrees, then South to a point described as N26.201767 degrees and W97.370343 degrees, then East to a point described as N26.201503 degrees and W97.33814 degrees, then South to a point described as N26.186978 degrees and W97.338288 degrees, then East to a point described as N26.186843 degrees and W97.322189 degrees, then South to a point described as N26.172318 degrees and W97.322339 degrees, then East to a point described as N26.172181 degrees and W97.306242 degrees, then South to a point described as N26.085029 degrees and W97.307155 degrees, then West to a point described as N26.085166 degrees and W97.32324 degrees, then South to a point described as N26.070641 degrees and W97.32339 degrees, then West to a point described as N26.070775 degrees and W97.339473 degrees, then South to a point described as N26.05625 degrees and W97.339621 degrees, then West to a point described as N26.056513 degrees and W97.371783 degrees, then South to a point described as N26.041988 degrees and W97.371926 degrees, then West to a point described as N26.042493 degrees and W97.436243 degrees, then North to a point described as N26.057018 degrees and W97.436108 degrees, then West to a point described as N26.057259 degrees and W97.46827 degrees, then North to a point described as N26.08631 degrees and W97.468007 degrees, then West to a point described as N26.086428 degrees and W97.484093 degrees, then North to a point described as N26.173581 degrees and W97.483315 degrees, then East to a point described as N26.173463 degrees and W97.467217 degrees, then North to a point described as N26.202514 degrees and W97.466954 degrees, then East to a point described as N26.202272 degrees and W97.43475 degrees, then North to the starting point.

(B) The quarantine boundary of the "Brownsville quarantined area" in Cameron County is described as: Starting at a point described as N25.923442 degrees and W97.543262 degrees, then North to a point described as N25.932366 degrees and W97.543188, then East to a point described as N25.932255 degrees and W97.527124 degrees, then North to a point described as N25.94678 degrees and W97.527 degrees, then East to a point described as N25.945951 degrees and W97.41454 degrees, then South to a point described as N25.931426 degrees and W97.414678 degrees, then East to a point described as N25.9313 degrees and W97.398615 degrees, then South to a point described as N25.83838 degrees and W97.399505 degrees, then West along US/Mexico border boundary following the natural river shore on the US side of the Rio Grande River to the starting point.

(C) The quarantine boundary of the "McAllen quarantined area" in Hidalgo County is described as: Starting at a point described as N26.421596 degrees and W98.379156 degrees, then East to a point described as N26.421453 degrees and W98.266222 degrees, then South to a point described as N26.406927 degrees and W98.266252 degrees, then East to a point described as N26.406899 degrees and W98.250121 degrees, then South to a point described as N26.392373 degrees and W98.250153 degrees, then East to a point described as N26.392343 degrees and W98.234023 degrees, then South to a point described as N26.305186 degrees and W98.234227 degrees, then East to a point described as N26.305154 degrees and W98.21811 degrees, then South to a point described as N26.290628 degrees and W98.218146 degrees, then East to a point described as N26.290595 degrees and W98.202032 degrees, then South to a point described as N26.203438 degrees and W98.20226 degrees, then West to a point described as N26.203472 degrees and W98.218362 degrees, then

South to a point described as N26.174419 degrees and W98.218434 degrees, then West to a point described as N26.174481 degrees and W98.250631 degrees, then South to a point described as N26.159955 degrees and W98.250663 degrees, then West to a point described as N26.160055 degrees and W98.315048 degrees, then North to a point described as N26.174581 degrees and W98.315024 degrees, then West to a point described as N26.174651 degrees and W98.379418 degrees, then North to a point described as N26.189177 degrees and W98.379403 degrees, then West to a point described as N26.18919 degrees and W98.395503 degrees, then North to a point described as N26.203716 degrees and W98.39549 degrees, then West to a point described as N26.203727 degrees and W98.411593 degrees, then North to a point described as N26.319936 degrees and W98.411502 degrees, then West to a point described as N26.319946 degrees and W98.427621 degrees, then North to a point described as N26.363524 degrees and W98.427594 degrees, then East to a point described as N26.363515 degrees and W98.411468 degrees, then North to a point described as N26.392568 degrees and W98.411446 degrees, then East to a point described as N26.392557 degrees and W98.395316 degrees, then North to a point described as N26.407083 degrees and W98.395303 degrees, then East to a point described as N26.40707 degrees and W98.379172 degrees, then North to the starting point.

(D) The "Raymondville area" Quarantine Boundary in Willacy County is described as: Starting at a point described as N26.562386 degrees and W97.751958 degrees, then East to a point described as N26.561933 degrees and W97.671192 degrees, then South to a point described as N26.547407 degrees and W97.671299 degrees, then East to a point described as N26.54731 degrees and W97.655148 degrees, then South to a point described as N26.532784 degrees and W97.655256 degrees, then East to a point described as N26.532686 degrees and W97.639107 degrees, then South to a point described as N26.460056 degrees and W97.639657 degrees, then West to a point described as N26.460154 degrees and W97.655796 degrees, then South to a point described as N26.445628 degrees and W97.655904 degrees, then West to a point described as N26.445724 degrees and W97.67204 degrees, then South to a point described as N26.431198 degrees and W97.672146 degrees, then West to a point described as N26.431652 degrees and W97.752819 degrees, then North to a point described as N26.446178 degrees and W97.752723 degrees, then West to a point described as N26.446263 degrees and W97.76886 degrees, then North to a point described as N26.460789 degrees and W97.768766 degrees, then West to a point described as N26.460872 degrees and W97.784905 degrees, then North to a point described as N26.533503 degrees and W97.784448 degrees, then East to a point described as N26.533419 degrees and W97.768299 degrees, then North to a point described as N26.547945 degrees and W97.768205 degrees, then East to a point described as N26.54786 degrees and W97.752054 degrees, then North to the starting point.

(E) The "San Benito area" Quarantine Boundary in Cameron County is described as: Starting at a point described as N26.28736 degrees and W97.757125 degrees, then East to a point described as N26.286815 degrees and W97.660444 degrees, then South to a point described as N26.272248 degrees and W97.660552 degrees, then East to a point described as N26.272151 degrees and W97.64444 degrees, then South to a point described as N26.243099 degrees and W97.644658 degrees, then East to a point described as N26.243 degrees and W97.628551 degrees, then South to a point described as N26.184897 degrees and W97.628995 degrees, then West to a point described as N26.184996 degrees and W97.645095 degrees, then South to a point described as N26.17047 degrees and W97.645204 degrees, then West to a point described as N26.170568 degrees and W97.661301 degrees, then South to a point described as N26.156042 degrees and W97.661408 degrees, then East to a point described as N26.15543 degrees and W97.564836 degrees, then South to a point described as N26.0247 degrees and W97.565908 degrees, then West to a point described as N26.024936 degrees and W97.6379 degrees, then North to a point described as N26.029612 degrees and W97.637846 degrees, then West to a point described as N26.029802 degrees and W97.658129 degrees, then North to a point described as N26.039027 degrees and W97.658024 degrees, then West to a point described as N26.039378 degrees and W97.710348 degrees, then North to a point described as N26.127272 degrees and W97.709897 degrees, then West to a point described as N26.127621 degrees and W97.774262 degrees, then North to a point described as N26.142147 degrees and W97.77417 degrees, then West to a point described as N26.14231 degrees and W97.806357 degrees, then North to a point described as N26.171362 degrees and W97.80618 degrees, then West to a point described as N26.171441 degrees and W97.822278 degrees, then North to a point described as N26.229544 degrees and W97.821932 degrees, then East to a point described as N26.229465 degrees and W97.805826 degrees, then North to a point described as N26.243991 degrees and W97.805737 degrees, then East to a point described as N26.24391 degrees and W97.789629 degrees, then North to a point described as N26.258436 degrees and W97.789539 degrees, then East to a point described as N26.258353 degrees and W97.773429 degrees, then North to a point described as N26.272879 degrees and W97.773336 degrees, then East to a point described as N26.272795 degrees and W97.757224 degrees, then North to the starting point.

(F) The quarantine boundary of the "Weslaco quarantined area" in Hidalgo County is described as: Starting at a point described as N26.153206 degrees and W97.70417 degrees, then South to a point described as N26.022476 degrees and W97.705082 degrees, then East to a point described as N26.021577 degrees and W97.560393 degrees, then North to a point described as N26.152307 degrees and W97.559316 degrees, then return West to the starting point.

(3) A map of the quarantined areas may be obtained by contacting USDA, 4909 East Grimes Street, Suite 103, Harlingen, Texas 78550, (956) 421-4041 or the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866.

(b) Creating, modifying, or extending quarantined infested areas. When five or more males or unmated females of the Mexican fruit flies are trapped or otherwise discovered within a time period equal to one fly generation and within 3 miles of each other or a mated female or one larva or pupa is trapped or otherwise discovered, a quarantine area shall be established around the site where the fly was trapped or otherwise discovered. The area quarantined shall consist of an area of approximately 4.5-mile radius with the detection site at the center (roughly 81 square miles).

(c) Core areas. In addition to the quarantined area, one or more core areas may be established within each quarantined area around a detection site. Each core area shall consist of an approximately 1.0 square mile area with a detection site at or near the center. Each approximately square-shaped core area is defined by four GPS readings for each corner of the core area. In cases where two or more of the 1.0 square mile core areas touch or overlap, the areas are fused into a single core area, which may have more than four sides. Core areas are subject to more extensive monitoring and handling requirements and the Mexican fruit fly host plants within the core area shall be treated by ground or aerial sprays as prescribed by the department or the USDA. Additional areas, if any, shall be published in the In-Addition section of the *Texas Register* as they are established.

(1) The core areas in the "Bayview quarantined area" in Cameron County are defined as follows:

(A) Core Area 1: Starting at a point described as N26.148353 degrees and W97.411863 degrees, then East to a point described as N26.148353 degrees and W97.395769 degrees, then South to a point described as N26.133827 degrees and W97.395769 degrees, then West to a point described as N26.133827 degrees and W97.411863 degrees, then North to the starting point.

(B) Core Area 2: Starting at a point described as N26.137573 degrees and W97.391461 degrees, then East to a point described as N26.137573 degrees and W97.375369 degrees, then South to a point described as N26.123047 degrees and W97.375369 degrees, then West to a point described as N26.123047 degrees and W97.387226 degrees, then South to a point described as N26.114807 degrees and W97.387226 degrees, then West to a point described as N26.114807 degrees and W97.395954 degrees, then South to a point described as N26.109966 degrees and W97.395954 degrees, then West to a point described as N26.109966 degrees and W97.412045 degrees, then North to a point described as N26.124493 degrees and W97.412045 degrees, then East to a point described as N26.124493 degrees and W97.403317 degrees, then North to a point described as N26.129333 degrees and W97.403317 degrees, then East to a point described as N26.129333 degrees and W97.391461 degrees, then North to the starting point.

(2) The core areas in the "Brownsville quarantined area" in Cameron County are defined as follows:

(A) Core Area 1: Starting at a point described as N25.881337 degrees and W97.479385 degrees, then North to a point described as N25.888335 degrees and W97.479322 degrees, then East to a point described as N25.888237 degrees and W97.470831 degrees, then Southwest along US/Mexico border boundary following the natural river shore on the US side of the Rio Grande River to the starting point.

(B) Core Area 2: Starting at a point described as N25.88173 degrees and W97.468215, then East to a point described as N25.888217 and W97.463265 degrees, then South to a point described as N25.882258 degrees and W97.463312 degrees, then West along US/Mexico border boundary following the natural river shore on the US side of the Rio Grande River to the starting point.

(3) The core areas in the "McAllen quarantined area" in Hidalgo County are defined as follows:

(A) Core Area 1: Starting at a point described as N26.363315 degrees and W98.334596 degrees, then East to a point described as N26.363295 degrees and W98.318471 degrees, then South to a point described as N26.358009 degrees and W98.318479 degrees, then East to a point described as N26.357994 degrees and W98.317659 degrees, then East to a point described as N26.357972 degrees and W98.301534 degrees, then South to a point described as N26.343446 degrees and W98.301559 degrees, then West to a point described as N26.343468 degrees and W98.317682 degrees, then West to a point described as N26.343649 degrees and W98.319306 degrees, then South to a point described as N26.342134 degrees and W98.319309 degrees, then West to a point described as N26.342144 degrees and W98.327554 degrees, then South to a point described as N26.341124 degrees and W98.327555 degrees, then West to a point described as N26.341136 degrees and W98.337274 degrees, then South to a point described as N26.333827 degrees and W98.337285 degrees, then West to a point described as N26.333845 degrees and W98.353406 degrees, then North to a point described as N26.334176 degrees and W98.353161 degrees, then North to a point described as N26.348372 degrees and W98.353387 degrees, then East to a point described as N26.348361 degrees and W98.343542 degrees, then North to a point described as N26.35567 degrees and W98.343657 degrees, then East to a point described as N26.355662 degrees and W98.336716 degrees, then North to a point described as N26.358346 degrees and W98.336758 degrees, then East to a point described as N26.358343 degrees and W98.334518 degrees, then North to the starting point.

(B) Core Area 2: Starting from a point described as N26.2556 degrees and W98.3346 degrees, then South to a point described as N26.2519 degrees and W98.3346 degrees, then West to a point described as N26.2519 degrees and W98.3454 degrees, then South to a point described as N26.2374 degrees and W98.3455 degrees, then East to a point described as N26.2374 degrees and W98.3294 degrees, and then North to a point described as N26.241 and W98.3293, and then East to a point described as N26.241 degrees and W98.3185 degrees, and then North to a point described as N26.2429 degrees and W98.3185 degrees, and then East to a point described as N26.2429 degrees and W98.3036 degrees, and then North to a point described as N26.2515 degrees and W98.3036 degrees, and then East to a point described as N26.2515 degrees and W98.2918 degrees, and then South to a point described as N26.2509 degrees and W98.2918 degrees, and then East to a point described as N26.2509 degrees and W98.2817 degrees, and then South to a point described as N26.401 degrees and W98.2818 degrees, and then West to a point described as N26.2401 degrees and W98.2921 degrees, and then South to a point described as N26.2256 degrees and W98.2921 degrees, and then East to a point described as N26.2255 degrees and W98.276 degrees, and then North to a point described as N26.2379 degrees and W98.276 degrees, and then East to a point described as N26.2379 degrees and W98.2657 degrees, and then North to a point described as N26.2524 degrees and W98.2656 degrees, and then West to a point described as N26.2624 degrees and W98.2757 degrees, and then North to a point described as N26.2654 degrees and W98.2757 degrees, and then East to a point described as N26.2654 degrees and W98.2874 degrees, and then North to a point described as N26.266 degrees and W98.2874 degrees, and then West to a point described as N26.266 degrees and W98.3035 degrees, and then South to a point described as N26.2574 degrees and W98.3035 degrees, and then West to a point described as N26.2574 degrees and W98.3197 degrees, and then South to a point described as N26.2556 degrees and W98.3197 degrees, and then return to the starting point.

(4) The core areas in the "Raymondville quarantined area" in Willacy County are defined as follows: Core Area 1: Starting at a point described as N26.504105 degrees and W97.72005 degrees, then East to a point described as N26.504014 degrees and W97.703906 degrees, then South to a point described as N26.48949 degrees and W97.704008 degrees, then West to a point described as N26.48958 degrees and W97.72015 degrees, then North to the starting point.

(5) The core areas in the "San Benito quarantined area" in Cameron County are defined as follows:

(A) Core Area 1: Starting at a point described as N26.205024 degrees and W97.744776 degrees, then East to a point described as N26.204937 degrees and W97.728673 degrees, then South to a point described as N26.190411 degrees and W97.728771 degrees, then West to a point described as N26.190499 degrees and W97.744872 degrees, then North to the starting point.

(B) Core Area 2: Starting at a point described as N26.226067 degrees and W97.719124 degrees, then East to a point described as N26.225977 degrees and W97.703019 degrees, then South to a point described as N26.211451 degrees and W97.703121 degrees, then West to a point described as N26.211542 degrees and W97.719224 degrees, then North to the starting point.

(C) Core Area 3: Starting at a point described as N26.097842 degrees and W97.645749 degrees, then East to a point described as N26.097743 degrees and W97.629661 degrees, then South to a point described as N26.083217 degrees and W97.629772 degrees, then West to a point described as N26.083317 degrees and W97.645858 degrees, then North to the starting point.

(6) The core area in the "Weslaco area" in Hidalgo County is defined as follows: Core Area 1. Starting from a point described as N26.094722 degrees and W97.640228 degrees, then South to a point described as N26.080197 degrees and W97.640338 degrees, then East to a point described as N26.080097 degrees and W97.624253 degrees, then North to a point described as N26.094623 degrees and W97.624141 degrees, then return West to the starting point.

§19.503. Articles Subject to the Quarantine.

An article subject to the quarantine, or regulated article, is an item the handling of which is controlled, regulated, or restricted by Chapter 71 of the Texas Agriculture Code, this subchapter, and any department orders issued pursuant to this subchapter and Chapter 71 of the Texas Agriculture Code, in order to prevent dissemination of the dangerous insect pest or plant disease to areas located outside a quarantined infested area or into a quarantined non-infested area. The following articles are subject to the quarantine.

(1) The Mexican fruit fly;

(2) The fruit, at any stage of development, of all of the following plants, listed by common name with genus and species in parentheses, when grown, harvested, processed, or otherwise handled within or transported through the quarantined area:

(A) Apple *(Malus domestica);*

(B) Apricot *(Prunus armeniaca);*

(C) Avocado *(Persea americana);*

(D) Calamondin orange *(X citrofortunella mitis);*

(E) Cherimoya *(Annona cherimola);*

(F) Citrus citron *(Citrus medica);*

(G) Custard apple *(Annona reticulate);*

(H) Grapefruit *(Citrus paradise);*

(I) Guava *(Pisidium guajava);*

(J) Japanese plum *(Prunus salicina);*

(K) Lemon *(Citrus limon)* except Eureka, Lisbon, and Vila Franca cultivars (smooth skinned sour lemon);

(L) Lime *(Citrus aurantifolia);*

(M) Mammy-Apple *(Mammea americana);*

(N) Mandarin orange (tangerine) *(Citrus reticulate);*

(O) Mango *(Mangifera indica);*

(P) Nectarine *(Prunus persica);*

(Q) Peach *(Prunus persica);*

(R) Pear *(Pyrus communis);*

(S) Plum *(Prunus americana);*

(T) Pomegranate *(Punica granatum);*

(U) Prune, Plum *(Prunus domestica);*

(V) Pummelo (shaddock) *(Citrus maxima);*

(W) Quince *(Cydonia oblonga);*

(X) Rose apple *(Syzyglum jambos)* (Eugenia jambos);

(Y) Sour orange *(Citrus aurantium);*

(Z) Sapote *(Casimiroa* spp.);

(AA) Sapota, Sapodilla (Sapotaceae);

(BB) Sargentia, yellow chapote *(Sargentia greggi);*

(CC) Spanish Plum, purple mombin or Ciruela *(Spondias* spp.);

(DD) Sweet orange *(Citrus sinensis);*

(3) any other fruit capable of hosting, harboring, propagating, or disseminating the Mexican fruit fly;

(4) the producing plant if it has one or more fruits listed in paragraph (2) of this section attached to or growing from it; and

(5) any article, item, conveyance, or thing on or in which the Mexican fruit fly is actually found.

§19.504. Restrictions on Movement of Articles Subject to the Quarantine.

(a) In General.

(1) A regulated article originating within a quarantined infested area may not be moved outside the infested area except as otherwise provided by this subchapter.

(2) In order to prevent the movement of regulated articles, including the dangerous insect pest or plant disease, from a quarantined area into a non-quarantined area, as required by the Texas Agriculture Code, §71.005(a), a person that transports a regulated article through or within an infested area using a motor vehicle, railcar, or other conveyance capable of transporting the regulated article outside the infested area, is subject to the requirements of subsection (c) of this section.

(b) Conditions Under Which Regulated Articles May Be Moved Out of an Infested Area. Plants that are regulated articles shall not be moved outside the quarantined infested area with fruit attached. Detached fruit originating within a quarantined infested area may be moved outside the infested area if:

(1) the fruit is covered by a tarpaulin or other approved covering and taken directly to and segregated in an approved packing house or other approved treatment facility and fumigated as prescribed in the Texas Rio Grande Valley Mexican Fruit Fly Protocol 2010-2011 Harvest Season, a copy of which may be obtained at the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866, and the fruit is accompanied by a copy of all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA;

(2) the grower has entered into a compliance agreement with the department or the USDA, the fruit has been treated and is being handled in accordance with the requirements set forth in the compliance agreement (at the time this subchapter is published, a compliance agreement requires use of approved bait sprays at 10 to 12 day intervals, or a shorter or longer period upon receipt of written notice from the department or the USDA of the modified treatment interval, starting at least 30 days before harvest and continued through the harvest period), and the fruit is accompanied by all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA; or

(3) the fruit is to be moved outside the quarantined area for juicing and the fruit is covered by a tarpaulin or other approved covering and accompanied by all documentation of origin or treatment

required by this subchapter or a compliance agreement with the department or USDA.

(c) Requirements for Transporters of Regulated Articles Within or Through an Infested Area.

(1) A person who transports a regulated article within or through an infested area using a motor vehicle, railcar, other conveyance, or equipment capable of transporting the regulated article outside the infested area shall take the following precautions to ensure that the dangerous insect pest or plant disease is not disseminated outside the quarantined area and that non-infested regulated articles do not become infested by virtue of transport within or through the infested area: if carried in a part of the conveyance or equipment that is open to the outside environment, detached fruit must be covered by a tarpaulin, plastic sheet, or other covering sufficient to prevent the Mexican fruit fly from contacting the fruit; regulated articles other than detached fruit shall not be moved within or through the quarantined area unless handled in accordance with the provisions of a written notice issued by the department or the USDA or a written compliance agreement between the person and the department or the USDA.

(2) Regulated articles originating outside the quarantined area and transported through the quarantined area in an open part of a conveyance or piece of equipment and without an appropriate covering shall be treated the same under this subchapter as regulated articles originating in the quarantined area and shall be handled according to the procedures described in subsection (b) of this section and elsewhere in this subchapter.

§19.505. Monitoring and Eradication of the Dangerous Pest or Plant Disease.

(a) A regulated article located within a core area shall be monitored, handled, and treated by ground or aerial sprays, as prescribed in a written notice issued by the department or the USDA or as specified in a written compliance agreement between the owner or person in control of the regulated article or the property on which the regulated article is located.

(b) The owner or manager of an orchard, other commercial fruit operation, or nursery subject to quarantine requirements may be required to bear all treatment expenses.

(c) Homeowners located in the core areas who enter into a written compliance agreement with the department or the USDA shall not be required to pay treatment expenses for fruit or fruit trees grown, harvested, or found on their residential property, unless the fruit or fruit tree is transported to the residential property from an orchard, other commercial fruit operation, or nursery owned or operated by the homeowner or at which the homeowner is employed, at a time during which the quarantine is in effect.

(d) Unless otherwise specified in a written notice issued by the department or the USDA or in a written compliance agreement between the person and the department or the USDA, a wholesaler, fruit retailer, street fruit vendor, or flea market stall operator located within the quarantined area shall cover or enclose detached fruit with air curtains, screens of appropriate mesh, plastic sheets, boxes without holes or other openings, or tarpaulins.

(e) A person who within the quarantined area is holding or displaying for sale or distribution a plant that is a regulated article shall ensure that each such plant is free from fruit at all times prior to sale or distribution.

§19.506. Consequences for Failure to Comply with Quarantine Restrictions.

A person who fails to comply with quarantine restrictions or requirements or a department order relating to the quarantine may be subject to administrative penalties not to exceed $5,000 per occurrence, civil penalties not to exceed $10,000 per occurrence, or criminal prosecution. Each day a violation occurs or continues may be considered a separate occurrence. Additionally, the department is authorized to seize and treat or destroy, or order to be treated or destroyed, any quarantined article that is found to be infested with the quarantined pest or, regardless whether infested or not, transported out of or through the quarantined area in violation of this subchapter. Treatment, destruction, storage, or other charges, including those incurred by the department, are chargeable to the owner of the quarantined article to be treated or destroyed.

§19.507. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions.

An order under the quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, §71.010.

§19.508. Conflicts Between Graphical Representations and Textual Descriptions; Other Inconsistencies.

(a) In the event that discrepancies exist between graphical representations and textual descriptions in this subchapter, the representation or description creating the larger geographical area or more stringent requirements regarding the handling or movement of quarantined articles shall control.

(b) The textual description of the insect pest or plant disease shall control over any graphical representation of the same.

(c) Where otherwise clear as to intent, the mistyping of a scientific or common name in this subchapter shall not be grounds for avoiding the requirements of this subchapter.

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, 2012.

TRD-201201755
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: April 5, 2012
Expiration date: August 2, 2012
For further information, please call: (512) 463-4075

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 11. GENERAL ADMINISTRATION

1 TAC §354.1143

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1143, concerning Coordination of Medicaid with Medicare Parts A, B, and C.

Background and Justification

The Texas Medicaid program pays the coinsurance and deductibles for Medicare services provided to certain individuals, referred to as dual eligibles, who are eligible for both Medicare and Medicaid. Effective January 1, 2012, revisions to §354.1143 were made, along with conforming changes to other rules, to align Medicaid policies on payment of cost sharing for Medicare Parts A and B services provided to dual eligibles, pursuant to the 2012-2013 General Appropriations Act (Article II, House Bill (H.B.) 1, 82nd Legislature, Regular Session, 2011).

Those revisions limited payments for Medicare Part B services provided to dual eligibles to no more than the Medicaid payment amount for the same service, with the exception of renal dialysis services. This is now the policy for both Medicare Part A hospital services and for Medicare Part B physician and other outpatient services.

If the Medicare payment amount equals or exceeds the Medicaid payment rate for a Part B service, HHSC does not make a cost-sharing payment. If the Medicare payment amount is less than the Medicaid payment rate, HHSC pays the lesser of: (1) the Medicare deductible/coinsurance amount; or (2) the difference between the Medicaid and Medicare rates. For renal dialysis services, cost sharing payments are reduced by 5 percent pursuant to H.B. 1, which authorized a phased-in policy for renal dialysis services.

Since this policy change, known as Medicare Equalization, became effective on January 1, 2012, HHSC staff has received feedback from a number of stakeholder groups, including provider associations, individual providers, and advocates, that the new policy may impact client access to care because some providers may cease taking Medicare and Medicaid clients under the policy. Review of data has highlighted a differential impact by provider and specialty type. The policy may disproportionately affect a subset of providers that see a large number of dual eligibles.

This proposed amendment would authorize HHSC to make higher cost-sharing payments for dual eligibles for certain services, if HHSC determines that a higher payment amount is necessary to ensure adequate access to care or would be more cost-effective to the state.

HHSC is requesting an amendment to the Medicaid State Plan to reflect the changes in the proposed amendment. The changes will be implemented to coincide with the effective date of the State Plan amendment.

Section-by-Section Summary

HHSC proposes the following changes to §354.1143:

Revise subsection (b) to indicate that new subsection (d) outlines an additional method to pay cost-sharing on crossover claims when the criteria of subsection (d) are met.

Remove subsection (b)(3), which authorizes the phase-in of the Medicare Equalization policy for renal dialysis services, because higher payment for renal dialysis is permissible under the new subsection (d).

Add new subsection (d) to indicate that if HHSC has determined that higher payment for a Medicaid service is necessary to ensure adequate access to care or is more cost-effective to the state, HHSC may pay the Medicare deductible and coinsurance on a crossover claim at a higher amount than otherwise permitted, not to exceed the greater of the deductible and coinsurance or the amount remaining after the Medicare payment amount is subtracted from the Medicaid payment rate for services. HHSC may do so only where the higher payment has been approved by the Centers for Medicare and Medicaid Services, as specified in the Medicaid State Plan.

Make technical changes throughout the rule to replace references to the "Texas Medical Assistance Program" with "Medicaid."

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, during the first five-year period the rule is in effect, there will be a fiscal impact to state government. The effect on state government is an estimated cost to general revenue of $2,546,011 for state fiscal year (SFY) 2012, $8,275,807 for SFY 2013, $8,674,462 for SFY 2014, $8,945,464 for SFY 2015, and $9,231,215 for SFY 2016. The proposed amendment could result in positive fiscal implications for local health and human services agencies based on Medicaid paying at a higher rate for some services. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no negative effect on small businesses or micro-businesses to comply with the proposed amendment, as they will not be required to alter their business practices as a result of the amendments. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Billy Millwee, Deputy Executive Commissioner for Health Services Operations, has determined that for each year of the first five years the section is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit of the proposed amendment is that HHSC will be able to increase payment amounts for certain services and provider types, if it determines higher payment amounts are necessary to ensure adequate access to care for clients who are dually eligible for Medicaid and Medicare.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Carisa Magee, Policy Advisor, Medicaid/CHIP Policy Development, Mail Code H-310, Texas Health and Human Services Commission, P.O. Box 85200, Austin, TX 78708-5200; by fax to (512) 491-1978; or by e-mail at carisa.magee@hhsc.state.tx.us within 30 days of the publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for May 18, 2012, from 1:00 p.m. to 2:00 p.m. (central time) at the Health and Human Services Building H, Lone Star Conference Room, located at 11209 Metric Boulevard, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh Van Kirk at (512) 491-2813.

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32; and Texas Government Code §531.021(d), which authorizes HHSC to adopt rules that provide for payment of rates in accordance with available levels of appropriated state and federal funds.

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

§354.1143. Coordination of Medicaid with Medicare Parts A, B, and C.

(a) If a Medicaid recipient is eligible for Medicare coverage (a dual eligible), the Health and Human Services Commission (HHSC) or its designee pays the recipient's Medicare deductible and coinsurance as specified in this section. Payment of deductible and coinsurance is subject to the reimbursement limitations of the Texas Medical Assistance Program (Medicaid).

(1) For qualified Medicare beneficiaries as defined in the Social Security Act, §1905(p), HHSC or its designee pays on valid Medicare claims the recipient's Part A and Part B deductible and coinsurance as specified in this section. Payments for benefits for individuals eligible for Medicaid only as qualified Medicare beneficiaries are limited to payments for Medicare deductible and coinsurance as described in subsection (b) of this section. Physicians must accept Medicare assignment for Medicaid payment of Part B deductible and coinsurance.

(2) For Medicaid recipients who are not qualified Medicare beneficiaries, but for whom HHSC otherwise has Part A and Part B deductible or coinsurance liabilities, HHSC or its designee pays the recipient's Part B deductible on valid, assigned Medicare claims. Payment of the recipient's Part B coinsurance and Part A deductible and coinsurance on valid, assigned Medicare claims is limited to claims for services that:

(A) are within the amount, duration, and scope of Medicaid [~~the Texas Medical Assistance Program~~]; and

(B) would be covered by Medicaid [~~the Texas Medical Assistance Program~~], when the services are provided, if Medicare did not exist.

(b) Except as otherwise specified in subsections (c) and (d) [~~subsection (c)~~] of this section, the payment of the Medicare Part A, Part B, or Part C (for Medicare health plans not contracted with HHSC) deductible and coinsurance is based on the following.

(1) If the Medicare payment amount equals or exceeds the Medicaid payment rate, HHSC does not pay the Medicare deductible and coinsurance on a crossover claim.

(2) If the Medicare payment amount is less than the Medicaid payment rate, HHSC pays the Medicare deductible and coinsurance on a crossover claim, but the amount of payment is limited to the lesser of the deductible and coinsurance or the amount remaining after the Medicare payment amount is subtracted from the Medicaid payment rate.

[~~(3) HHSC may phase in the provisions of this section for renal dialysis services in order to maintain access.~~]

(c) HHSC enters into state agreements with Part C Medicare Advantage Plans whereby HHSC will pay the plans a monthly capitated payment. In exchange, the plans will pay health care providers the Medicare cost sharing obligations attributable to dual eligible members. A health care provider who provides services to a dual eligible member enrolled into a Medicare Advantage Plan with a state agreement must seek payment for the member's Medicare deductible and coinsurance from the participating plan. The health care provider must

not seek payment for the member's Medicare deductible and coinsurance from HHSC.

(d) If HHSC has determined that higher payment for a Medicaid service is necessary to ensure adequate access to care or is more cost-effective to the state, HHSC may pay the Medicare deductible and coinsurance on a crossover claim at a higher amount than specified in subsection (b) of this section, not to exceed the greater of the deductible and coinsurance or the amount remaining after the Medicare payment amount is subtracted from the Medicaid payment rate for services. HHSC may do so only where the higher payment has been approved by the Centers for Medicare and Medicaid Services, as specified in the Medicaid State Plan.

(e) [~~(d)~~] Coverage of a recipient's deductible and coinsurance as specified in this section satisfies HHSC's or its designee's obligation to provide coverage for services that would have been paid in the absence of Medicare coverage.

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, 2012.

TRD-201201760
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 424-6900

SUBCHAPTER B. GENERAL PROVISIONS

1 TAC §354.1451

The Texas Health and Human Services Commission (HHSC) proposes new §354.1451, concerning the Medicaid Recovery Audit Contractor Program.

Background and Justification

Section 7 of House Bill (H.B.) 1720, 82nd Legislature, Regular Session, 2011, amends Government Code, Chapter 531, Subchapter C, requiring HHSC to establish, to the extent required under §1902(a)(42) of the Social Security Act, a Medicaid Recovery Audit Contractor (RAC) Program.

The Medicaid RAC Program is being established to comply with §1902(a)(42) of the Social Security Act to promote the integrity of the Medicaid program. The rule will establish a program in which HHSC contracts with one or more recovery audit contractors who will identify underpayments and overpayments under the Medicaid program and recover the overpayments for services provided under the Medicaid State Plan or a waiver of the Medicaid State Plan.

Title 42 of the Code of Federal Regulations (CFR), Part 455, which implements §6411 of the federal Patient Protection and Affordable Care Act, also requires states to establish a RAC Program.

Section-by-Section Summary

Proposed §354.1451(a) states that the rule is established to comply with §1902(a)(42)(B) of the Social Security Act (42 U.S.C. §1396a(a)(42)(B)), to review and identify underpayments and overpayments, and to recoup overpayments for items or services defined under the Medicaid State Plan or a waiver of the Medicaid State Plan.

Proposed §354.1451(b) defines terminology used in the rule.

Proposed §354.1451(c) states the scope of the Medicaid RAC Program.

Proposed §354.1451(d) provides information related to audit procedures for the Medicaid RAC Program, such as the type of notifications that will be provided from the RAC to the provider, and the criteria that will be used by the RAC to conduct the audit reviews for determinations of improper payments.

Proposed §354.1451(e) requires a RAC to provide written notification to Medicaid providers during the course of the audit, such as identification of a potential improper payment, reason for the potential improper payment, and the right to appeal adverse determinations.

Proposed §354.1451(f) states that Medicaid providers have the right to appeal any adverse RAC determination under existing appeal processes for Medicaid items or services for which claims have been adjudicated and paid.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that the fiscal impact over the next five years to state government cannot be determined. H.B. 1720 requires HHSC to establish a recovery audit contractor program. This program will result in additional savings to the state once implemented, but those savings cannot be determined at this time. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there may be an impact on small businesses or micro businesses as Texas Medicaid-enrolled providers may incur additional costs in staff time needed in order to comply with requirements of the Medicaid RAC Program (i.e., provide copies of all medical record documentation requested for review of claims payments, submitting appeals for adverse RAC determinations, etc.). Any additional costs are unknown as costs will be dependent on the programs or services selected for audit, and then dependent on the pool of claims selected for review that may be potential overpayments or underpayments. However, providers are required, per their Medicaid enrollment agreement, to provide medical documentation for audit purposes. Therefore, providers will not be required to alter their business practices as a result of the proposed rule.

Public Benefit

Billy Millwee, Deputy Executive Commissioner for Health Services Operations, has determined that for each year of the first five years the proposed rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit of enforcing the proposed rule will be to allow the State to have a mechanism to continue to promote the integrity of the Medicaid program by identifying and correcting improper payments. By identifying and correcting improper payments, both the State and Medicaid providers will experience less administrative burden in future Medicaid program activities.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government

Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Deborah Keyser, Special Projects Lead, Medicaid/CHIP Division, Health and Human Services Commission at P.O. Box 85200, Mail Code: H-390, Austin, Texas 78708-5200; by fax to (512) 491-1957; or by e-mail to deborah.keyser@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for May 22, 2012, from 10:00 a.m. to 11:00 a.m. (central time) at the Health and Human Services Building H, Lone Star Conference Room, located at 11209 Metric Boulevard, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh Van Kirk at (512) 491-2813.

Statutory Authority

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.117, which requires HHSC to establish a Medicaid recovery audit contractor program.

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

§354.1451. Medicaid Recovery Audit Contractor Program.

(a) Purpose. The Medicaid Recovery Audit Contractor (RAC) Program is established under §1902(a)(42)(B) of the Social Security Act (42 U.S.C. §1396a (a)(42)(B)) to review and identify underpayments and overpayments, and to recoup overpayments for items or services defined under the Medicaid State Plan or a waiver of the Medicaid State Plan.

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

(1) HHSC--The Texas Health and Human Services Commission, the state Medicaid agency.

(2) HHS agency--One of the following health and human services agencies:

(A) Department of Aging and Disability Services (DADS).

(B) Department of Assistive and Rehabilitative Services (DARS).

(C) Department of Family and Protective Services (DFPS).

(D) Department of State Health Services (DSHS).

(3) Improper payment--An overpayment or an underpayment.

(4) Overpayment--An amount paid by HHSC or an HHS agency to a provider that is in excess of the amount that is allowable for services furnished under §1902 of the Social Security Act and its implementing regulations and policies, as defined by the Centers for Medicare & Medicaid Services (CMS), and that is required to be refunded under §1903 of the Social Security Act.

(5) Recovery audit contractor (RAC)--An eligible company or consultant contracted with HHSC to perform recovery audit services.

(6) Underpayment--An amount paid by HHSC or an HHS agency to a provider at a lesser amount due and payable for items or services furnished under §1902 of the Social Security Act and its implementing regulations and policies, as defined by CMS.

(c) Scope of audits.

(1) A RAC will review Medicaid claims submitted to HHSC by Medicaid providers for which payment has been made for any item or service defined under the Medicaid State Plan or a waiver of the Medicaid State Plan.

(2) The RAC will analyze Medicaid paid claims data to determine if services were provided based on federal and state policies and procedures in effect on the adjudication date for the claim date of service. The analysis includes review of medical documentation to determine if services were medically necessary.

(3) In conducting its audit review, the RAC will exclude claims reviewed or under review by the HHSC Office of Inspector General (OIG), or associated with any other audit already underway or completed, including other federal and state audits or reviews.

(4) The RAC will make referrals of suspected fraud and/or abuse, as defined in 42 CFR §455.2, to HHSC OIG. Any enforcement action by HHSC OIG will be conducted under Chapter 371, Subchapter G, of this title (relating to Legal Action Relating to Providers of Medical Assistance).

(d) Audit procedures.

(1) A RAC will provide notification in writing to providers of:

(A) audit policies and procedures;

(B) requests for medical documentation for selected claims;

(C) results of the audit review (underpayment, overpayment, or no findings), unless fraud is suspected; and

(D) the dispute resolution and appeals process.

(2) The RAC will accept medical documentation from providers via mail, electronic submission on CD or DVD, or by fax. All transmissions of documentation must be protected in such a manner to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and in a manner that is safe and secure.

(3) To identify improper payments, the RAC will review medical charts and documentation including:

(A) duplicate payments;

(B) pricing errors;

(C) payments for services not provided;

(D) payments for non-covered services; or

(E) any other errors resulting in improper payments.

(4) HHSC will recoup identified overpayments from providers and will refund identified underpayments to providers as a result of the audit review.

(e) Notice. A RAC will provide written notification to providers of the following during the course of the audit:

(1) audit review information (for example, audit name, audit description);

(2) potential improper payment;

(3) detailed reason for the potential improper payment; and

(4) appeal rights.

(f) Provider appeals. A provider has a right to appeal any adverse RAC determination using the following processes, as applicable:

(1) HHSC paid claims. For Medicaid claims processed and paid through the Texas Medicaid claims administrator on behalf of HHSC, the appeal will be processed through the Medicaid Program Appeals Procedures process under §354.2217 of this chapter (relating to Provider Appeals and Reviews).

(2) HHS agency paid claims. For Medicaid claims adjudicated by the Texas Medicaid claims administrator and paid by an HHS agency, or adjudicated and paid by an HHS agency, the appeals process for that HHS agency will be followed.

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, 2012.

TRD-201201761
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 424-6900

CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8065

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8065, concerning Disproportionate Share Hospital (DSH) Reimbursement Methodology.

Background and Justification

Section 355.8065 establishes the reimbursement methodology for the Disproportionate Share Hospital (DSH) program. HHSC, under its authority and responsibility to administer and implement rates, is amending this rule to: (1) update the methodology for calculation of DSH payments in response to a Petition for the Adoption of a Rule submitted under §351.2; (2) delete language pertaining to calculation of the hospital-specific limit (HSL); and (3) clarify current rule language and administrative processes.

Updating the DSH Payment Methodology in Response to a Petition for the Adoption of a Rule

Hospitals participating in the Texas Medicaid program that meet the DSH program conditions of participation and that serve a disproportionate share of low-income patients are eligible for additional reimbursement through the DSH program. HHSC, as the Medicaid single state agency, establishes each hospital's eligibility for DSH reimbursement and the amount of reimbursement as specified in §355.8065. However, funding for the non-federal share of payments to hospitals under the DSH program comes from transfers of public funds from transferring non-state governmental entities. The vast majority of non-federal funds under the DSH program originate in transfers from members of the Texas Coalition of Transferring Hospitals (TCTH), a coalition of hospital districts representing large-volume Medicaid hospitals in Bexar, Dallas, Ector, El Paso, Harris, Lubbock, Nueces, Tarrant, and Travis counties. Entities voluntarily transfer these funds and cannot be compelled to make such transfers under state law.

Section 351.2, relating to Petition for the Adoption of a Rule, under Title 1, Part 15, Chapter 351, provides procedures for any interested person to request HHSC to adopt a rule. Upon receipt of an acceptable petition, HHSC has 60 days to either deny or accept the petition in whole or in part.

On February 21, 2012, HHSC received a request for rule change from the chairman of TCTH. This petition complies with 1 Texas Administrative Code §351.2 and requested changes to §355.8065 (the DSH rule) to align Texas DSH policy with the §1115 Healthcare Transformation and Quality Improvement waiver (the Waiver) approved by the federal Centers for Medicare and Medicaid Services (CMS) on December 12, 2011.

Section 351.2 requires the petition to include a "plain and brief description about why a rule or change to an existing rule is needed, required or desirable". In response to this requirement, the petition from TCTH stated that change to the existing DSH rule is required to ensure adequate funding for the Waiver's Uncompensated-Care (UC) and Delivery System Reform Incentive Payment (DSRIP) pools. As well, the petition referenced the impact of the Affordable Care Act (ACA) on Medicaid eligibility and the redistributive effect this change will have on DSH funds through increasing the number of Texans eligible for Medicaid.

In addition to the reasoning cited in the petition, due to changing utilization patterns and economic factors, the proportion of the federal matching funds generated by the TCTH fund transfers that are returned to the transferring hospitals through DSH payments has been steadily declining over the past 16 years from approximately 50 percent in federal fiscal year 1996 to an estimated 14 percent for federal fiscal year 2012. Given these dynamics, unless the distribution of funds under the DSH program is modified through a rule amendment, transferring hospitals will have strong incentives to move their funds from the DSH program to the Waiver in order to ensure compliance with their fiduciary responsibilities, putting funding for the DSH program in serious jeopardy.

HHSC has determined that the petition from TCTH has merit and, consequently, proposes to amend the DSH rule based primarily on the methodology described in the Petition.

Proposed changes to the methodology for calculation of DSH payments in response to the TCTH petition and the factors detailed above are summarized below. Note that the proposed amendment differs in some aspects from the changes included in the petition; variations from the petition include: (1) non-substantive changes required to enable administrative feasibility and logical flow of rule language; and (2) requested fixed pools of funds for children's and rural hospitals have been modified to provide flexibility to HHSC in the determination of DSH payments to children's and rural hospitals.

- State teaching and chest hospitals will receive DSH reimbursement up to 100 percent of their interim HSLs.

- State institutions for mental diseases (IMDs) and non-state IMDs will receive DSH reimbursement up to 100 percent, subject to federally mandated reimbursement limits for IMDs and within their interim HSLs. Non-state IMDs will be proportionately reduced, if a governmental entity does not make a sufficient intergovernmental transfer (IGT).

- All DSH funds (other than funds allocated to children's hospitals and rural hospitals) will be distributed based upon hospitals' low-income days.

- A pool will be created for distribution to children's hospitals to be not less than the funding determined based upon the hospitals' low-income days, including the adjustment Federal Medical Assistance Percentage (FMAP) for the program year as determined for all non-state and non-IMD hospitals, and not to exceed $125 million per annum.

- A pool will be created for distribution to rural hospitals to be not less than the funding determined based upon the hospitals' low income-days, including the adjustment FMAP for the program year as determined for all non-state and non-IMD hospitals, and not to exceed $72 million per annum.

- From the amount of projected available DSH funds remaining, the proposed methodology first calculates an amount for each non-state hospital (excluding children's and rural hospitals) based on its low-income days relative to all such hospitals' low-income days. The resulting amount is multiplied by the FMAP for the program year. The non-federal share of the amount is then imputed to the transferring hospitals that will actually provide the intergovernmental transfer to HHSC for the DSH payments for all non-state hospitals. This formula is intended to create a more equitable allocation of DSH funds among hospitals owned by transferring entities and those owned by non-transferring entities than the previous methodology provided.

- If there are remaining or non-allocated funds available within the DSH available funds allocation *(e.g.,* when the payment amount exceeds the hospital-specific limit), the excess funds will be allocated to a hospital owned by a transferring governmental entity with room remaining under its hospital specific limit.

Deleting Language Pertaining to Calculation of the Hospital-Specific Limit

The Omnibus Budget and Reconciliation Act of 1993 requires states to calculate HSLs for their Medicaid DSH programs. Texas has calculated HSLs as part of the DSH program since 1995.

The DSH HSLs have also played an important role in calculating upper payment limit (UPL) caps for Texas hospitals that participated in both DSH and the former UPL supplemental payment program. As Texas transitions from UPL to the Waiver, HSLs will continue to be a factor in calculating caps for hospitals that choose to participate in the Waiver UC pool.

Because of this dual role in determining hospital reimbursement in both the DSH and Waiver programs, language pertaining to the calculation of HSLs is proposed to be removed from §355.8065 so that it can be incorporated into new §355.8066, proposed elsewhere in this issue of the *Texas Register.* The language in new §355.8066 will allow HHSC more flexibility in managing future changes to the HSL calculation as it applies to both the DSH program and the Waiver.

Clarifying Current Administrative Processes

Proposed changes to clarify current rule language and administrative processes include: (1) updates to various definitions; (2) clarification of the deadline for submission to HHSC of CMS tie-in notices for merged hospitals; and (3) updates to language related to the review hospitals can request related to their participation in the DSH program.

All of the changes discussed in this item are proposed to be effective as of July 1, 2012.

Section-by-Section Summary

The proposed amendment to §355.8065:

- Revises subsection (a) to clarify the intent of the section.

- Revises subsection (b) to delete extraneous text and to make conforming changes to the definitions proposed in new §355.8066.

- Revises subsection (b)(2) to indicate that available DSH funds are determined based on the federal DSH allotment for Texas and available non-federal funds.

- Adds new subsection (b)(12) to define governmental entity.

- Revises subsection (b)(13) to renumber, to indicate that the HSL is calculated in proposed new §355.8066 and to delete subparagraphs (A) and (B).

- Deletes subsection (b)(16) relating to inflation update factor.

- Deletes subsection (b)(27) relating to Medicaid shortfall.

- Deletes subsection (b)(30) relating to outpatient charges.

- Adds new subsection (b)(30) to define public funds.

- Revises subsection (b)(32) to renumber and delete the term "cost center" from the definition of ratio of cost-to-charges.

- Revises subsection (b)(33) to renumber and to indicate that the ratio of cost-to-charges (inpatient and outpatient) is used in calculating the HSL.

- Revises subsection (b)(34) to renumber and to change the term "rural area" to "rural hospital".

- Revises subsection (b)(38)(B)(i) to renumber the paragraph and to change the term "patients between the ages of 21 and 64" to "patients ages 21 through 64."

- Revises subsection (b)(38)(B)(iii) to renumber the paragraph and to indicate that the clause applies to calculations performed in subsections (d)(3) and (h)(2), (3) and (5).

- Revises subsection (b)(40) to renumber, replace a reference to "revenue" with a reference to "payments" and to delete a reference to "certain Children's Health Insurance Program (CHIP) payments."

- Adds new subsection (b)(40) to add a definition for "transferring governmental entity."

- Deletes subsection (b)(41) - (43).

- Revises subsection (b)(44) to renumber and to change the term "urban area" to "urban hospital".

- Deletes subsection (b)(45) and (46).

- Revises subsection (c)(3)(E) to change the due date for submission of a CMS tie-in notice after a merger of two or more hospitals from prior to the DSH program year to prior to the deadline for submission of the DSH application.

- Revises subsection (d)(2)(A)(i) to replace "revenue" with "payments".

- Revises subsection (e)(3)(A) and (B) to clarify the requirements for trauma facility designation.

- Revises subsection (e)(5) to indicate that records must be retained for the specified period or until an open audit is completed, whichever is later.

- Revises subsection (e)(7) to change the due date for submission of a CMS tie-in notice after a merger of two or more hospitals from prior to the DSH program year to prior to the deadline for submission of the DSH application.

- Revises subsection (f) to replace its contents with a statement indicating that the methodology for calculating the HSL is in §355.8066.

- Revises subsection (g) to delete language describing how available DSH funds are determined.

- Revises subsection (g)(2)(B) to indicate that for IMDs, if the federally mandated reimbursement limit for IMDs is not sufficient to fully fund all IMDs to their interim HSLs, HHSC will pay all IMDs proportionately, subject to the limitation described in subsection (g)(2)(C).

- Adds new subsection (g)(2)(C) to indicate that if a governmental entity does not transfer sufficient IGT for the non-state IMDs to receive the amount described in subsection (g)(2)(B), payment to each non-state IMD will be proportionately reduced.

- Revises subsection (g)(3) to change the term "available DSH funds for the remaining hospitals" to "remaining available DSH funds".

- Revises subsection (h) to eliminate the term "and frequency".

- Deletes subsection (h)(2) - (4).

- Adds new subsection (h)(2) to describe the children's hospitals distribution methodology.

- Adds new subsection (h)(3) to describe the rural hospitals distribution methodology.

- Adds new subsection (h)(4) to describe how amounts in excess of hospital-specific limits for children's hospitals are redistributed to other children's hospitals and amounts in excess of hospital-specific limits for rural hospitals are redistributed to other rural hospitals.

- Adds new subsection (h)(5) to describe the allocation methodology for all remaining DSH-eligible hospitals.

- Adds new subsection (h)(6) to describe how any remaining DSH funds are allocated.

- Revises old subsection (h)(5) to renumber and replace the term "providers" with "hospitals in the same category".

- Revises subsection (j)(1) to replace the term "payment amount" with the term "allocation, calculated as described in subsections (g)(1) - (2) and (h)(2) - (6) of this section".

- Adds new subsection (l)(1) to describe how overpayments that occurred prior to the effective date of the proposed rule are to be redistributed.

- Adds new subsection (l)(2) to describe how overpayments that occurred on or after the effective date of the proposed rule are to be redistributed.

- Revises subsection (n)(1) to describe how funds recouped from a hospital that voluntarily terminates its participation in the DSH program are to be redistributed.

- Revises subsection (o)(1)(E) to describe how funds recouped from a hospital as a result of the DSH audit process are to be redistributed.

The proposed rule includes other technical corrections and non-substantive changes throughout to make the rule more understandable.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for the first five years the proposed amendment is in effect, there are no fiscal implications for state government as a result of enforcing or administering the proposed amendment. The proposed rule is expected to increase the revenue for hospitals that currently transfer the non-federal share of the DSH funding. The rule will not result in additional costs for hospitals that currently transfer the non-federal share. The rule may have negative fiscal implications to the revenues of local governments that operate a DSH hospital but are not transferring governmental entities. HHSC has determined that it is not possible to project the impact on individual governmental entities because of the variability of DSH payments from year-to-year regardless of the DSH reimbursement methodology. This variability is due to changes in hospitals' HSLs, the federal DSH allocation and the amount of IGT available.

Small Business and Micro-Business Impact Analysis

Under §2006.002 of the Texas Government Code, a state agency proposing an administrative rule that may have an adverse economic effect on small or micro-businesses must prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement estimates the number of small businesses subject to the rule and projects the economic impact of the rule on small businesses. The regulatory flexibility analysis describes the alternative methods the agency considered to achieve the purpose of the proposed rule while minimizing adverse effects on small businesses.

HHSC has determined that the rule will not have an adverse economic effect on either small businesses or micro-businesses, or both, because no hospital meeting the definition of a small or micro-business applied to receive DSH funding in 2012.

There are no anticipated economic costs to persons who are required to comply with the proposed amendment.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that for each year of the first five years the amendment is in effect, the

public benefits expected as a result of enforcing the amendment will be to ensure continued funding of the DSH program through locally generated intergovernmental transfers and to ensure that the state will continue to conform to the federal requirements relating to the DSH program. In addition, the revisions included in the rule will assist interested parties in understanding the DSH reimbursement methodology by providing clearer language that is easier to understand.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

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

Public Hearing

The Medical Care Advisory Committee (MCAC) meeting on May 10, 2012, will function as a public hearing to receive public comment on this proposed amendment. The MCAC meeting will be held in the John H. Winters Public Hearing Room at 701 West 51st Street, Austin, Texas. Entry is through Security at the main entrance of the building, which faces 51st Street. Persons requiring American with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Carol Chavez by calling (512) 491-1763 at least 72 hours prior to the hearing so appropriate arrangements can be made.

Public Comment

Written comments on the proposal may be submitted to Diana Miller, DSH Team Lead in the Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, by fax to (512) 491-1436, or by e-mail to costinformation@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

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

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

§355.8065. Disproportionate Share Hospital (DSH) Reimbursement Methodology.

(a) Introduction. Hospitals participating in the Texas Medical Assistance (Medicaid) program that meet the conditions of participation and that serve a disproportionate share of low-income patients are eligible for [~~additional~~] reimbursement from the disproportionate share hospital (DSH) fund. The Texas Health and Human Services Commission (HHSC) will establish each hospital's eligibility for and amount of reimbursement using the methodology described in this section. [~~This section applies to all hospitals that participate in the DSH program.~~]

(b) Definitions. [~~For the purposes of this section, the following words and terms have the following meanings unless the context clearly indicates otherwise.~~]

(1) Adjudicated claim--A hospital claim for payment for a covered Medicaid service that is paid or adjusted by HHSC or another payer.

(2) Available DSH funds--The total amount of funds that may be distributed to eligible qualifying DSH hospitals during the DSH program year, based on the federal DSH allotment for Texas (as determined by the Centers for Medicare and Medicaid Services) and available non-federal funds. [~~The annual allotment of funds that may be reimbursed to all DSH-eligible providers.~~]

(3) Bad debt--A debt arising when there is nonpayment on behalf of an individual who has third-party coverage.

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

(5) Charity care--The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to indigent individuals, either directly or through other nonprofit or public outpatient clinics, hospitals, or health care organizations. A hospital must set the income level for eligibility for charity care consistent with the criteria established in §311.031, Texas Health and Safety Code.

(6) Charity charges--Total amount of hospital charges for inpatient and outpatient services attributed to charity care in a DSH data year. These charges do not include bad debt charges, contractual allowances, or discounts given to other legally liable third-party payers.

(7) Children's hospital--A hospital within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(8) Disproportionate share hospital (DSH)--A hospital identified by HHSC that meets the [~~Disproportionate Share Hospital (~~]DSH[~~)~~] program conditions of participation and that serves a disproportionate share of Medicaid or [~~and/or~~] indigent patients.

(9) DSH data year--A twelve-month period, two years before the DSH program year, from which HHSC will compile data to determine DSH program qualification and payment.

(10) DSH program year--The twelve-month period beginning October 1 and ending September 30.

(11) Dually eligible patient--A patient who is simultaneously eligible for Medicare and Medicaid.

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

(13) [(12)] HHSC--The Texas Health and Human Services Commission or its designee.

(14) [(13)] Hospital-specific limit--The maximum amount during a program year that a hospital may receive in reimbursement for the cost of providing services to individuals [a DSH program year, based on costs arising from individuals receiving hospital services] who are Medicaid eligible or uninsured[, not costs arising from individuals who have third-party coverage]. The hospital-specific limit is calculated using the methodology described in §355.8066 of this title (relating to Hospital-Specific Limit Methodology).

[(A) An interim hospital-specific limit will be trended forward to the DSH program year using an inflation update factor to account for inflation since the DSH data year.]

[(B) A final hospital-specific limit will be calculated using actual DSH program year cost and payment data.]

(15) [(14)] Independent certified audit--An audit that is conducted by an auditor that operates independently from the Medicaid agency and the audited hospitals and that is eligible to perform the DSH audit required by CMS.

(16) [(15)] Indigent individual--An individual classified by a hospital as eligible for charity care.

[(16) Inflation update factor--Cost of living index based on the annual CMS Prospective Payment System Hospital Market Basket Index.]

(17) Inpatient day--Each day that an individual is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere. The term includes observation days, rehabilitation days, psychiatric days, and newborn days. The term does not include swing bed days or skilled nursing facility days.

(18) Inpatient revenue--Amount of gross inpatient revenue derived from the most recent completed Medicaid cost report or reports related to the applicable DSH data year. Gross inpatient revenue excludes revenue related to the professional services of hospital-based physicians, swing bed facilities, skilled nursing facilities, intermediate care facilities, other nonhospital revenue, and revenue not identified by the hospital.

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

(20) Low-income days--Number of inpatient days attributed to indigent patients.

(21) Low-income utilization rate--A DSH qualification criterion calculated as described in subsection (d)(2) of this section.

(22) Mean Medicaid inpatient utilization rate--The average of Medicaid inpatient utilization rates for all hospitals that have received a Medicaid payment for an inpatient claim, other than a claim for a dually eligible patient, that was adjudicated during the relevant DSH data year.

(23) Medicaid contractor--Fiscal agents and managed care organizations with which HHSC contracts to process data related to the Medicaid program.

(24) Medicaid cost report--Hospital and Hospital Health Care Complex Cost Report (Form CMS 2552), also known as the Medicare cost report.

(25) Medicaid hospital--A hospital meeting the qualifications set forth in §354.1077 of this title (relating to Provider Participation Requirements) to participate in the Texas Medicaid [Medical Assistance] program.

(26) Medicaid inpatient utilization rate--A DSH qualification criterion calculated as described in subsection (d)(1) of this section.

[(27) Medicaid shortfall--The unreimbursed cost of Medicaid inpatient and outpatient hospital services furnished to Medicaid patients.]

(27) [(28)] MSA--Metropolitan Statistical Area as defined by the United States Office of Management and Budget. MSAs with populations greater than or equal to 137,000, according to the most recent decennial census, are considered "the largest MSAs."

(28) [(29)] Obstetrical services--The medical care of a woman during pregnancy, delivery, and the post-partum period provided at the hospital listed on the DSH application.

[(30) Outpatient charges--Amount of gross outpatient charges related to the applicable DSH data year and used in the calculation of the Medicaid shortfall.]

(29) [(31)] PMSA--Primary Metropolitan Statistical Area as defined by the United States Office of Management and Budget.

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

(31) [(32)] Ratio of cost-to-charges (inpatient only)--A [cost center] ratio that covers all applicable hospital costs and charges relating to inpatient care. This ratio does not distinguish between payer types such as Medicare, Medicaid, or private pay.

(32) [(33)] Ratio of cost-to-charges (inpatient and outpatient)--A Medicaid cost report-derived cost center ratio that covers all applicable hospital costs and charges relating to patient care, inpatient and outpatient. This ratio is used in calculating the hospital-specific limit and does not distinguish between payer types such as Medicare, Medicaid, or private pay.

(33) [(34)] Rural hospital [area]--A hospital located [Area] outside an MSA or a PMSA.

(34) [(35)] State chest hospital--A public health facility operated by the Department of State Health Services designated for the care and treatment of patients with tuberculosis.

(35) [(36)] State-owned teaching hospital--A hospital owned and operated by a state university or other state agency.

(36) [(37)] Third-party coverage--Creditable insurance coverage consistent with the definitions in 45 Code of Federal Regulations (CFR) Parts 144 and 146, or coverage based on a legally liable third-party payer.

(37) [(38)] Total Medicaid inpatient days--Total number of inpatient days based on adjudicated claims data for covered services for the relevant DSH data year.

(A) The term includes:

(i) Medicaid-eligible days of care adjudicated by managed care organizations;

(ii) days that were denied payment for spell-of-illness limitations;

(iii) days attributable to individuals eligible for Medicaid in other states, including dually eligible patients;

(iv) days with adjudicated dates during the period; and

(v) days for dually eligible patients for purposes of the calculation in subsection (d)(1) of this section.

(B) The term excludes:

(i) days attributable to Medicaid-eligible patients ages [between the ages of] 21 through [and] 64 in an IMD;

(ii) days denied for late filing and other reasons; and

(iii) days for dually eligible patients for purposes of the calculation in subsections (d)(3) and (h)(2), (3), and (5) of this section.

(38) [(39)] Total Medicaid inpatient hospital payments--Total amount of Medicaid funds that a hospital received for adjudicated claims for covered inpatient services during the DSH data year. The term includes payments that the hospital received:

(A) for covered inpatient services from managed care organizations; and

(B) for patients eligible for Medicaid in other states.

(39) [(40)] Total state and local payments [revenue]--Total amount of state and local payments that a hospital received for inpatient care during the DSH data year. The term includes payments under state and local programs that are funded entirely with state general revenue funds and state or local tax funds, such as County Indigent Health Care, Children with Special Health Care Needs, and Kidney Health Care[, and certain Children's Health Insurance Program (CHIP) payments]. The term excludes payment sources that contain federal dollars such as Medicaid payments, Children's Health Insurance Program (CHIP) payments funded under Title XXI of the Social Security Act, Substance Abuse and Mental Health Services Administration, Ryan White Title I, Ryan White Title II, Ryan White Title III, and contractual discounts and allowances related to TRICARE, Medicare, and Medicaid.

(40) Transferring governmental entity--A governmental entity that submits public funds to HHSC as the non-federal share of payments to hospitals under this section.

[(41) Uninsured cost--The cost to a hospital of providing inpatient and outpatient hospital services to uninsured patients as defined by the Centers for Medicare and Medicaid Services.]

[(42) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for services.]

[(43) Upper Payment Limit (UPL) program--Supplemental Medicaid payments made to certain eligible hospitals for inpatient and outpatient services based on State and Federal guidelines.]

(41) [(44)] Urban hospital [area]--A hospital located [Area] inside an MSA or PMSA.

[(45) Weighted low-income days--Low-income days that are adjusted based on the population of the MSA or PMSA in which a hospital is located.]

[(46) Weighted Medicaid days--Medicaid days that are adjusted based on the population of the MSA or PMSA in which a hospital is located.]

(c) Eligibility. To be eligible to participate in the DSH program, a hospital must:

(1) be enrolled as a Medicaid hospital in the State of Texas;

(2) have received a Medicaid payment for an inpatient claim, other than a claim for a dually eligible patient, that was adjudicated during the relevant DSH data year; and

(3) apply annually by completing the application packet received from HHSC by the deadline specified in the packet.

(A) Only a hospital that meets the condition specified in paragraph (2) of this subsection will receive an application packet from HHSC.

(B) The application may request self-reported data that HHSC deems necessary to determine each hospital's eligibility. HHSC may audit self-reported data.

(C) A hospital that fails to submit a completed application by the deadline specified by HHSC will not be eligible to participate in the DSH program in the year being applied for or to appeal HHSC's decision.

(D) For purposes of DSH eligibility, a multi-site hospital is considered one provider unless it submits separate Medicaid cost reports for each site. If a multi-site hospital submits separate Medicaid cost reports for each site, for purposes of DSH eligibility, it must submit a separate DSH application for each eligible site.

(E) HHSC will consider a merger of two or more hospitals for purposes of the DSH program for any hospital that submits a CMS tie-in notice prior to the deadline for submission of the DSH application [DSH program year]. Otherwise, HHSC will determine the merged entity's eligibility for the subsequent DSH program year. Until the time that the merged hospitals are determined eligible for payments as a merged hospital, each of the merging hospitals will continue to receive any DSH payments to which it was entitled prior to the merger.

(d) Qualification. For each DSH program year, in addition to meeting the eligibility requirements, applicants must meet at least one of the following qualification criteria, which are determined using information from a hospital's application or from HHSC's Medicaid contractors, as specified by HHSC:

(1) Medicaid inpatient utilization rate. A hospital's inpatient utilization rate is calculated by dividing the hospital's total Medicaid inpatient days by its total inpatient census days for the DSH data year.

(A) Rural hospital: A rural hospital must have a Medicaid inpatient utilization rate greater than the mean Medicaid inpatient utilization rate for all Medicaid hospitals.

(B) Urban hospital: An urban hospital must have a Medicaid inpatient utilization rate that is at least one standard deviation above the mean Medicaid inpatient utilization rate for all Medicaid hospitals.

(2) Low-income utilization rate. A hospital must have a low-income utilization rate greater than 25 percent.

(A) The low-income utilization rate is the sum (expressed as a percentage) of the fractions calculated in clauses (i) and (ii) of this subparagraph:

(i) The sum of the total Medicaid inpatient hospital payments and the total state and local payments [revenue] paid to the hospital for inpatient care in the DSH data year, divided by a hospital's gross inpatient revenue multiplied by the hospital's ratio of cost-to-charges (inpatient only) for the same period: (Total Medicaid Inpatient Hospital Payments + Total State and Local Payments [Revenue])/(Gross Inpatient Revenue x Ratio of Costs to Charges).

(ii) Inpatient charity charges in the DSH data year minus the amount of payments for inpatient hospital services received directly from state and local governments, excluding all Medicaid payments, in the DSH data year, divided by the gross inpatient revenue in the same period: (Total Inpatient Charity Charges - Total State and Local Payments)/Gross Inpatient Revenue.

(B) HHSC will determine the ratio of cost-to-charges (inpatient only) by using information from the appropriate worksheets of each hospital's Medicaid cost report or reports that correspond to the DSH data year. In the absence of a Medicaid cost report for that period, HHSC will use the latest available submitted Medicaid cost report or reports.

(3) Total Medicaid inpatient days.

(A) A hospital must have total Medicaid inpatient days at least one standard deviation above the mean total Medicaid inpatient days for all hospitals participating in the Medicaid program, except;

(B) A hospital in an urban county with a population of 290,000 persons or fewer, according to the most recent decennial census, must have total Medicaid inpatient days at least 70 percent of the sum of the mean total Medicaid inpatient days for all hospitals in this subset plus one standard deviation above that mean.

(C) Days for dually eligible patients are not included in the calculation of total Medicaid inpatient days under this paragraph.

(4) Children's hospitals, state-owned teaching hospitals, and state chest hospitals. Children's hospitals, state-owned teaching hospitals, and state chest hospitals that do not otherwise qualify as disproportionate share hospitals will be deemed disproportionate share hospitals.

(5) Merged hospitals. Merged hospitals are subject to subsection (c)(3)(E) of this section. HHSC will aggregate the data used to determine qualification under this subsection from the merged hospitals to determine whether the single Medicaid provider that results from the merger qualifies as a Medicaid disproportionate share hospital.

(e) Conditions of participation. HHSC will require each hospital to meet and continue to meet for each DSH program year the following conditions of participation:

(1) Two-physician requirement.

(A) In accordance with Social Security Act §1923(e)(2), a hospital must have at least two licensed physicians (doctor of medicine or osteopathy) who have hospital staff privileges and who have agreed to provide nonemergency obstetrical services to individuals who are entitled to medical assistance for such services.

(B) Subparagraph (A) of this paragraph does not apply if the hospital:

(i) serves inpatients who are predominantly under 18 years of age; or

(ii) was operating but did not offer nonemergency obstetrical services as of December 22, 1987.

(C) A hospital must certify on the DSH application that it meets the conditions of either subparagraph (A) or (B) of this paragraph, as applicable, at the time the DSH application is submitted.

(2) Medicaid inpatient utilization rate. At the time of qualification and during the DSH program year, a hospital must have a Medicaid inpatient utilization rate, as calculated in subsection (d)(1) of this section, of at least one percent.

(3) Trauma system.

(A) The hospital must be in active pursuit of designation or have obtained a trauma facility designation as defined in §780.004 and §§773.111 - 773.120, Texas Health and Safety Code, respectively, and consistent with 25 TAC §157.125 (relating to Requirements for Trauma Facility Designation) and §157.131 (relating to the Designated Trauma Facility and Emergency Medical Services Account). A hospital that has obtained its trauma facility designation must maintain that designation for the entire DSH program year.

(B) HHSC will receive an annual report from the Office of EMS/Trauma Systems Coordination regarding hospital participation in regional trauma system development, application for trauma facility designation, and trauma facility designation or active pursuit of designation status before final qualification determination for interim DSH payments. HHSC will use this report to confirm compliance with this condition of participation by a hospital applying for DSH funds.

(4) Maintenance of local funding effort. A hospital district in one of the state's largest MSAs or in a PMSA must not reduce local tax revenues to its associated hospitals as a result of disproportionate share funds received by the hospital. For this provision to apply, the hospital must have more than 250 licensed beds.

(5) Retention of and access to records. A hospital must retain and make available to HHSC and its designee records and accounting systems related to DSH data for at least five years from the start of each DSH program year in which the hospital qualifies, or until an open audit is completed, whichever is later.

(6) Compliance with audit requirements. A hospital must agree to comply with the audit requirements described in subsection (o) of this section.

(7) Merged hospitals. Merged hospitals are subject to subsection (c)(3)(E) of this section. If HHSC receives the CMS tie-in notice prior to the deadline for submission of the DSH application [~~DSH program year~~], the merged entity must meet all conditions of participation. If HHSC does not receive the CMS tie-in notice prior to the deadline for submission of the DSH application [~~DSH program year~~], any proposed merging hospitals that are receiving DSH payments must continue to meet all conditions of participation as individual hospitals to continue receiving DSH payments for the remainder of the DSH program year.

(f) Hospital-specific limit calculation. HHSC uses the methodology described in §355.8066 of this title to calculate an interim hospital-specific limit for each Medicaid hospital that applies to receive payments under this section, and a final hospital-specific limit for each hospital that receives payments under this section.

[~~(f) Calculating a hospital-specific limit. Using information from each hospital's DSH application and HHSC's Medicaid contractors, HHSC annually will determine the interim hospital-specific limit for each hospital applying for DSH funds in compliance with paragraphs (1) - (3) of this subsection. HHSC will also determine the final hospital-specific limit in compliance with paragraph (4) of this subsection.~~]

[~~(1) HHSC will calculate a hospital's interim hospital-specific limit by adding the hospital's net uninsured costs for the DSH data year and its Medicaid shortfall for the DSH data year, both adjusted for inflation.~~]

[~~(2) HHSC will determine the individual components of the hospital-specific limit as follows:~~]

[~~(A) Uninsured costs.~~]

[~~*(i)* Each hospital will report in its DSH application its inpatient and outpatient charges for services that would be covered~~

by Medicaid that were provided to uninsured patients discharged during the DSH data year. In addition to the charges in the previous sentence, an IMD may report charges for services that would be covered by Medicaid that were provided during the DSH data year to Medicaid eligible patients between the ages of 21 and 64.]

[(ii) Each hospital will report in its DSH application all payments received for services that would be covered by Medicaid that are provided to uninsured patients discharged during the DSH data year.]

[(I) For purposes of this rule, a payment received is any payment from an uninsured patient or from a third party (other than an insurer) on the patient's behalf, including payments received for emergency health services furnished to undocumented aliens under section 1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, except as described in subclause (II) of this clause.]

[(II) State and local payments to hospitals for indigent care are not included as payments made by or on behalf of uninsured patients.]

[(iii) HHSC will convert uninsured charges to uninsured costs using the ratio of cost-to-charges (inpatient and outpatient) as calculated under paragraph (3) of this subsection.]

[(iv) HHSC will subtract all payments received under clause (ii) of this subparagraph from the uninsured costs under clause (iii) of this subparagraph, resulting in net uninsured costs.]

[(B) Medicaid shortfall.]

[(i) HHSC will request from its Medicaid contractors the inpatient and outpatient Medicaid charge and payment data for claims adjudicated during the DSH data year for all active Medicaid participating hospitals. There are circumstances, including the following, in which HHSC will request modifications to the adjudicated data.]

[(I) HHSC will include as appropriate charges and payments for:]

[(-a-) claims associated with the care of dually eligible patients, including Medicare charges and payments;]

[(-b-) claims or portions of claims that were not paid because they exceeded the spell-of-illness limitation; and]

[(-c-) outpatient claims associated with the Women's Health Program.]

[(II) HHSC will exclude charges and payments for:]

[(-a-) claims for services not covered by Medicaid, including:]

[(-1-) claims for the Children's Health Insurance Program; and]

[(-2-) inpatient claims associated with the Women's Health Program; and]

[(-b-) claims submitted after the 95-day filing deadline.]

[(ii) Upon receipt of the requested data from the Medicaid contractors, HHSC will review the information for accuracy and make additional adjustments as necessary.]

[(iii) HHSC will convert the Medicaid charges to Medicaid costs using the ratio of cost-to-charges (inpatient and outpatient) as calculated under paragraph (3) of this subsection.]

[(iv) HHSC will subtract each hospital's Medicaid payments, including cost report settlements, supplemental payments (including upper payment limit payments) and graduate medical education payments, from its Medicaid costs.]

[(v) If a hospital's payments are less than its costs, the hospital has a positive Medicaid shortfall. If a hospital's payments are greater than its costs, the hospital has a negative Medicaid shortfall. A negative Medicaid shortfall will still be used in the calculation in paragraph (1) of this subsection.]

[(vi) HHSC may apply an adjustment factor to Medicaid payment data to more accurately approximate the Medicaid shortfall following a rebasing or other change in reimbursement rate under other sections of this division.]

[(C) Inflation adjustment.]

[(i) HHSC will trend each hospital's interim hospital-specific limit using the inflation update factor as defined in subsection (b) of this section.]

[(ii) HHSC will use the inflation update factors for the period beginning at the midpoint of each DSH data year to the midpoint of the DSH program year.]

[(iii) HHSC will multiply each hospital's sum of the net uninsured costs and Medicaid shortfall by the inflation update factor to obtain its interim hospital-specific limit.]

[(3) Ratio of cost-to-charges. HHSC will calculate the ratio of cost-to-charges used in setting hospital-specific limits in conformity with the following conditions and procedures:]

[(A) HHSC will convert to cost the portion of the total Medicaid charges related to adjudicated claims that are allocated to the various cost centers of the hospital. The ratio is derived by allocating allowable charges to each cost center.]

[(B) HHSC will calculate the ratio of cost-to-charges for the respective cost centers using information from the appropriate worksheets of the hospital's Medicaid cost report or reports corresponding to the DSH data year. In the absence of a Medicaid cost report for that period, the hospital will submit the necessary information from the latest available submitted Medicaid cost report or reports.]

[(C) The hospital must report in its DSH application those costs and charges for nonhospital services such as ambulance, rural health clinics, primary home care, home health agencies, hospice, and skilled nursing facilities. HHSC will exclude the nonhospital services from the calculation under this subparagraph.]

[(4) Final hospital-specific limit.]

[(A) HHSC will calculate the individual components of a hospital's final hospital-specific limit using the calculation set out in paragraphs (2) and (3) of this subsection, except that HHSC will use the hospital's actual costs incurred and payments received during the DSH program year.]

[(B) The final hospital-specific limit will be calculated at the time of the audit conducted under subsection (o) of this section.]

(g) Distribution of available DSH funds. [DSH payments are subject to the availability of appropriated state and federal funds. Before the start of each DSH program year, CMS publishes the federal DSH allotment for each state. Based on CMS's DSH allotment for Texas, and subject to appropriated state funds and other factors, HHSC will determine the total amount of DSH funds that will be available for distribution to eligible qualifying DSH hospitals during the DSH program year.] HHSC will distribute the available DSH funds among eligible, qualifying DSH [such] hospitals using the following priorities:

(1) State-owned teaching hospitals and state chest hospitals. HHSC may reimburse state-owned teaching hospitals and state chest hospitals an amount less than or equal to their interim hospital-specific limits.

(2) IMDs.

(A) Aggregate payments made to IMD facilities statewide are subject to federally mandated reimbursement limits for IMD facilities.

(B) An IMD that satisfies the DSH requirements will receive 100 percent of its interim hospital-specific limit within the limits described in subparagraph (A) of this paragraph. If the amount described in subparagraph (A) of this paragraph is not sufficient [~~DSH funds for IMDs are not available~~] to fully fund all IMDs to their interim hospital-specific limits, HHSC will pay all IMDs proportionately based on each IMD's percentage of the total interim hospital-specific limit for all IMDs, subject to the limitation described in subparagraph (C) of this paragraph.

(C) If a governmental entity does not transfer sufficient public funds for the non-state IMDs to receive the amount described in subparagraph (B) of this paragraph, payment to each non-state IMD will be proportionately reduced.

(3) Other non-state hospitals. HHSC distributes the remaining available DSH funds, if any, to other qualifying hospitals. The remaining available DSH funds [~~for the remaining hospitals~~] equal the lesser of the funds remaining in the state's annual disproportionate share allotment or the sum of qualifying hospitals' interim hospital-specific limits.

(h) DSH payment calculation [~~and frequency~~].

(1) Medicaid data verification.

(A) On or about April 15 of each year, HHSC will make available upon request for each Medicaid participating hospital a report of the hospital's adjudicated data received from Medicaid contractors reflecting the hospital's Medicaid days, Medicaid charges, and Medicaid payments during the DSH data year.

(B) A hospital must communicate directly with the appropriate Medicaid contractors to request correction of any data the hospital believes is inaccurate or incomplete.

(C) Each Medicaid contractor will submit a final report to HHSC by July 15 of each year or a date specified by HHSC, which will include all agreed-upon corrections resulting from requests submitted by hospitals. Unless a hospital contacts HHSC pursuant to subparagraph (D) of this paragraph, HHSC will use the corrected report for DSH calculations described in this section [~~rule~~].

(D) At a hospital's request, HHSC will review instances in which a hospital and a Medicaid contractor cannot resolve disputes concerning data included in or excluded from the final report. HHSC will make the final determination in such a case and notify the hospital of the final determination.

(E) A hospital's right to request a review of eligibility, qualification, and estimated payment amount is addressed in subsection (j) of this section.

(2) Children's hospitals distribution methodology.

(A) From the amount determined in subsection (g)(3) of this section, HHSC will set aside an amount for DSH payments to children's hospitals (the Children's Hospital Pool). The amount of the Children's Hospital Pool:

(i) will not be less than the sum of the amounts that would be calculated for each children's hospital using the methodology described in paragraph (5) of this subsection, if that methodology were applied to all non-state, non-IMD hospitals; and

(ii) will not be greater than $125 million.

(B) HHSC will calculate each children's hospital's total Medicaid inpatient days and total low-income days and sum these.

(C) Using the results in subparagraph (B) of this paragraph, HHSC will divide each hospital's total Medicaid and low-income days by the sum of all Medicaid and low-income days for all children's hospitals to obtain a percentage.

(D) HHSC will multiply each hospital's percentage calculated in subparagraph (C) of this paragraph by the amount of the Children's Hospital Pool to determine each children's hospital's DSH payment. The payment amount may not exceed a hospital's interim hospital-specific limit.

(3) Rural hospitals distribution methodology.

(A) From the amount determined in subsection (g)(3) of this section, HHSC will set aside an amount for DSH payments to rural hospitals (the Rural Hospital Pool). The amount of the Rural Hospital Pool:

(i) will not be less than the sum of the amounts that would be calculated for each rural hospital using the methodology described in paragraph (5) of this subsection, if that methodology were applied to all non-state, non-IMD hospitals; and

(ii) will not be greater than $72 million.

(B) HHSC will calculate each rural hospital's total Medicaid inpatient days and total low-income days and sum these.

(C) Using the results in subparagraph (B) of this paragraph, HHSC will divide each hospital's total Medicaid and low-income days by the sum of all Medicaid and low-income days for all rural hospitals to obtain a percentage.

(D) HHSC will multiply each hospital's percentage calculated in subparagraph (C) of this paragraph by the amount of the Rural Hospital Pool to determine each rural hospital's DSH payment. The payment amount may not exceed a hospital's interim hospital-specific limit.

(4) Redistribution of amounts in excess of hospital-specific limits. In the event that the payment amount calculated in paragraph (2) or (3) of this subsection exceeds a hospital's interim hospital-specific limit, the payment amount will be reduced to the interim hospital-specific limit. For each category of hospital described in paragraph (2) or (3) of this subsection, HHSC will separately sum all resulting excess funds and redistribute that amount to qualifying hospitals in that category that have projected payments below their interim hospital-specific limits. For each such hospital, HHSC will:

(A) subtract the hospital's projected DSH payment from its interim hospital-specific limit;

(B) sum the results of subparagraph (A) of this paragraph for all hospitals in the same category; and

(C) compare the sum from subparagraph (B) of this paragraph to the total excess funds calculated for the category of hospital.

(i) If the sum of subparagraph (B) of this paragraph is less than or equal to the total excess funds, HHSC will pay all such hospitals up to their interim hospital-specific limit and any remaining

excess funds will be allocated to the hospitals described in paragraph (5)(C) of this subsection.

(ii) If the sum of subparagraph (B) of this paragraph is greater than the total excess funds, HHSC will calculate payments to all such hospitals as follows:

(I) Divide the result of subparagraph (A) of this paragraph for each hospital by the sum from subparagraph (B) of this paragraph.

(II) Multiply the ratio from subclause (I) of this clause by the sum of the excess funds from all hospitals in the same category.

(III) Add the result of subclause (II) of this clause to the projected DSH payment for that hospital.

(5) Allocation methodology for all remaining DSH-eligible hospitals.

(A) For each DSH hospital not described in subsection (g)(1) - (2) of this section or paragraphs (2) - (3) of this subsection, HHSC will calculate a DSH allocation as follows.

(i) Sum the low-income days for all such hospitals.

(ii) Divide the hospital's low income days by the result in clause (i) of this subparagraph.

(iii) Multiply the result in clause (ii) of this subparagraph by the amount of the projected remaining available DSH funds.

(iv) Multiply the result in clause (iii) of this subparagraph by the Federal Medical Assistance Percentage (FMAP) for the program year.

(B) For a hospital not owned by a transferring governmental entity, the DSH allocation is the lesser of the hospital-specific limit or the result of subparagraph (A)(iv) of this paragraph.

(C) For a hospital owned by a transferring governmental entity, the DSH allocation is the lesser of the hospital-specific limit or the amount calculated as follows:

(i) Determine the amount calculated in subparagraph (A)(iv) of this paragraph for that hospital.

(ii) Calculate the total amount of all remaining projected available DSH funds after allocating the amounts in subsection (g)(1) - (2) of this section and paragraphs (2) - (5)(B) of this subsection.

(iii) Sum the low-income days for all hospitals owned by transferring governmental entities.

(iv) Divide the hospital's low-income days by the result in clause (iii) of this subparagraph.

(v) Multiply the result in clause (iv) of this subparagraph by the result of clause (ii) of this subparagraph.

(vi) Sum the results of clauses (i) and (v) of this subparagraph.

(6) If there are funds remaining out of the total available DSH funds because some hospitals described in paragraph (5)(C) of this subsection have had their DSH payments reduced to their interim hospital-specific limits, the excess funds will be allocated using the methodology described in paragraph (5)(C) of this subsection.

[(2) Payment calculation for non-state hospitals. HHSC will calculate payments for a non-state hospital in the following manner unless the hospital's proposed reimbursement would exceed its interim hospital-specific limit. Payments will be made based on total Medicaid inpatient days as defined in subsection (b) of this section and low-income days, both of which have been weighted by the factors described in subparagraph (C) of this paragraph.]

[(A) Total Medicaid inpatient days. HHSC will base each hospital's total Medicaid inpatient days on the data reported by HHSC's Medicaid contractors for the relevant DSH data year.]

[(B) Low-income days. HHSC will calculate low-income days by multiplying a hospital's total inpatient census days for the DSH data year by its low-income utilization rate.]

[(C) Weighting factors. All MSA population data which are used to determine the weighting factors are from the most recent decennial census.]

[(i) Children's hospitals are weighted at 2.50 because of the special nature of the services they provide.]

[(ii) Hospitals with more than 250 licensed beds, associated with hospital districts in the state's largest MSAs, will receive weights based proportionally on the MSA population. The specific weights for these hospitals are as follows:]

[(I) MSAs with populations greater than or equal to 137,000 and less than 300,000 are weighted at 2.5.]

[(II) MSAs with populations greater than or equal to 300,000 and less than 1,000,000 are weighted at 2.75.]

[(III) MSAs with populations greater than or equal to 1,000,000 and less than 3,000,000 are weighted at 3.0.]

[(IV) MSAs with populations greater than or equal to 3,000,000 are weighted at 3.5.]

[(iii) The weighting factor for all other hospitals is 1.0.]

[(iv) HHSC may change the weights as needed in the DSH program to address changes in program size.]

[(D) Allocation of DSH funds to non-state urban and rural hospitals.]

[(i) HHSC will divide the amount determined in subsection (g)(3) of this section into two parts:]

[(I) One-half of the funds will reimburse each qualifying hospital by its percent of the aggregate total Medicaid inpatient days.]

[(II) One-half of the funds will reimburse each qualifying hospital by its percent of low income days.]

[(ii) After applying clause (i) of this subparagraph, HHSC will test to determine whether qualifying hospitals in rural areas will receive 5.5 percent or more of the funds determined in subsection (g)(3) of this section.]

[(I) If hospitals in rural areas receive at least 5.5 percent of the funds, HHSC will reimburse them as calculated in clause (i) of this subparagraph.]

[(II) If hospitals in rural areas will not receive at least 5.5 percent of the funds, HHSC will allocate 5.5 percent of the funds in subsection (g)(3) of this section for reimbursement of such hospitals. After the reallocation of funds to meet the 5.5 percent test, HHSC will determine payment amounts to each urban and rural hospital, as described in clause (i) of this subparagraph.]

[(3) DSH distribution methodology for non-state hospitals.]

[~~(A) HHSC will calculate the number of weighted total Medicaid inpatient days and weighted low-income days for each qualifying hospital as described in paragraph (2) of this subsection.~~]

[~~(B) Using the results obtained under subparagraph (A) of this paragraph, HHSC will calculate each qualifying hospital's annual DSH payment based on the following formula: ((1/2 x Available DSH funds) x ((Hospital's Medicaid Days x Weight)/(Total Weighted Medicaid Days))) + ((1/2 x Available DSH funds) x ((Hospital's Low Income Days x Weight)/(Total Weighted Low Income Days)))~~]

[~~(C) HHSC will compare the projected payment for each qualifying hospital with its interim hospital-specific limit. If the hospital's projected payment is greater than its interim hospital-specific limit, HHSC will reduce the hospital's payment to its interim hospital-specific limit.~~]

[~~(D) If there are funds remaining out of the total available DSH funds because some hospitals have had their DSH payments reduced to their interim hospital-specific limits, HHSC will distribute the excess funds to qualifying hospitals that had projected payments below their interim hospital-specific limits as follows. HHSC will:~~]

[~~(i)~~ ~~Calculate the difference between a hospital's interim hospital-specific limit and its projected DSH payment;~~]

[~~(ii)~~ ~~Add all of the differences from clause (i) of this subparagraph;~~]

[~~(iii)~~ ~~Calculate a ratio for each hospital by dividing the difference from clause (i) of this subparagraph by the sum from clause (ii) of this subparagraph; and~~]

[~~(iv)~~ ~~Multiply the ratio from clause (iii) of this subparagraph by the remaining available DSH funds.~~]

[~~(E) Each hospital's total DSH payment (including the redistribution of excess funds) may not exceed its interim hospital-specific limit.~~]

[~~(4) Payment Frequency. HHSC may reimburse DSH qualifying hospitals on a monthly basis. Monthly payments equal one-twelfth of annual payments unless it is necessary to adjust the amount because payments are not made for a full 12-month period, to comply with the annual state disproportionate share hospital allotment, or to comply with other state or federal disproportionate share hospital program requirements.~~]

(7) [~~(5)~~] Reallocating funds if hospital closes, loses its license or eligibility. If a hospital that is receiving DSH funds closes, loses its license, or loses its Medicare or Medicaid eligibility during a DSH program year, HHSC will reallocate that hospital's disproportionate share funds going forward among all DSH hospitals in the same category [~~providers~~] that are eligible for additional payments.

(i) Hospital located in a federal natural disaster area. A hospital that is located in a county that is declared a federal natural disaster area and that was participating in the DSH program at the time of the natural disaster may request that HHSC determine its DSH qualification and interim reimbursement payment amount under this subsection for subsequent DSH program years. The following conditions and procedures will apply to all such requests received by HHSC:

(1) The hospital must submit its request in writing to HHSC with its annual DSH application.

(2) If HHSC approves the request, HHSC will determine the hospital's DSH qualification using the hospital's data from the DSH data year prior to the natural disaster. However, HHSC will calculate the one percent Medicaid minimum utilization rate, the interim hospital-specific limit, and the payment amount using data from the DSH data year. The final hospital-specific limit will be computed based on the actual data for the DSH program year.

(3) HHSC will notify the hospital of the qualification and interim reimbursement.

(j) Review of HHSC determination of eligibility, qualification, and estimated payment amount.

(1) Prior to the first payment of the DSH program year, HHSC will notify each hospital that applied to participate in the DSH program whether it is eligible and qualified to participate. An eligible hospital will be notified of its estimated annual DSH allocation, calculated as described in subsections (g)(1) - (2) and (h)(2) - (6) of this section [~~payment amount~~].

(2) A hospital that either does not qualify or disputes the payment amount may request a review by HHSC in accordance with paragraph (3) of this subsection. Initial qualification determinations and estimated payment amounts for all hospitals may change depending on the outcome of the review.

(3) Except as specified in paragraph (6) of this subsection, a request for review must be submitted in writing to HHSC within 15 calendar days of the date the hospital received the notification under this subsection.

(A) The written request for review and all supporting documentation must be sent to HHSC's Director of Hospital Reimbursement, Rate Analysis Department.

(B) The request must allege the specific factual or calculation errors the hospital contends HHSC made that, if corrected, would result in the hospital's qualifying for payments or receiving a more accurate payment amount.

(C) A hospital may not base a request for review on a claim that the data the hospital or a Medicaid contractor submitted to HHSC is incorrect or incomplete unless such incorrect or incomplete data would result in an inappropriate qualification or payment to the hospital.

(i) The hospital will have an opportunity to resolve disputed data with the Medicaid contractor under subsection (h)(1) of this section.

(ii) HHSC may require supporting documentation when a hospital requests a review based on data submitted with and certified in a hospital's original DSH application.

(iii) HHSC may require an independent third party audit of the revised data to be paid for by the hospital requesting the review. The audit must be performed within the time frame determined by HHSC.

(D) The request may not dispute HHSC's eligibility, qualification, or payment methodologies.

(E) Within 30 calendar days of the date of the notification, the hospital must submit documentation supporting its allegations.

(4) The review is:

(A) limited to the hospital's allegations of factual or calculation errors;

(B) supported by documentation submitted by the hospital or used by HHSC in making its original determination;

(C) solely a data review; and

(D) not an adversarial hearing.

(5) HHSC will notify the hospital of the results of the review.

(6) HHSC will not consider requests for review submitted after the deadline specified in paragraph (3) of this subsection unless HHSC subsequently notifies a hospital that it no longer qualifies for DSH funding. In that case, the hospital may request a review in accordance with paragraph (3) of this subsection.

(k) Disproportionate share funds held in reserve.

(1) If HHSC has reason to believe that a hospital is not in compliance with the conditions of participation listed in subsection (e) of this section, HHSC will notify the hospital of possible noncompliance. Upon receipt of such notice, the hospital will have 30 calendar days to demonstrate compliance.

(2) If the hospital demonstrates compliance within 30 calendar days, HHSC will not hold the hospital's DSH payments in reserve.

(3) If the hospital fails to demonstrate compliance within 30 calendar days, HHSC will notify the hospital that HHSC is holding the hospital's DSH payments in reserve. HHSC will release the funds corresponding to any period for which a hospital subsequently demonstrates that it was in compliance. HHSC will not make DSH payments for any period in which the hospital is out of compliance with the conditions of participation listed in subsection (e)(1) and (2) of this section. HHSC may choose not to make DSH payments for any period in which the hospital is out of compliance with the conditions of participation listed in subsection (e)(3) - (7) of this section.

(4) If a hospital's DSH payments are being held in reserve on the date of the last payment in the DSH program year, and no request for review is pending under paragraph (5) of this subsection, the amount of the payments is not restored to the hospital, but is divided proportionately among the hospitals receiving a last payment.

(5) Hospitals that have DSH payments held in reserve may request a review by HHSC.

(A) The hospital's written request for a review must:

(i) be sent to HHSC's Director of Hospital Reimbursement, Rate Analysis Department;

(ii) be received by HHSC within 15 calendar days after notification that the hospital's DSH payments are held in reserve; and

(iii) contain specific documentation supporting its contention that it is in compliance with the conditions of participation.

(B) The review is:

(i) limited to allegations of noncompliance with conditions of participation;

(ii) limited to a review of documentation submitted by the hospital or used by HHSC in making its original determination; and

(iii) not conducted as an adversarial hearing.

(C) HHSC will conduct the review and notify the hospital requesting the review of the results.

(l) Recovery of DSH funds. Notwithstanding any other provision of this section, HHSC will recoup any overpayment of DSH funds made to a hospital, including an overpayment that results from HHSC error or that is identified in an audit.

(1) If the overpayment occurred prior to the effective date of this section, recovered [~~Recovered~~] funds will be redistributed proportionately to DSH hospitals [~~providers~~] that are eligible for additional payments for the program year in which the overpayment occurred.

(2) If the overpayment occurred on or after the effective date of this section, recovered funds will be redistributed proportionately to DSH hospitals in the same category that are eligible for additional payments for the program year in which the overpayment occurred. If there are no hospitals in the same category eligible for additional payments for that program year, any remaining funds will be distributed proportionately among all hospitals eligible for additional payments.

(m) Failure to provide supporting documentation. HHSC will exclude data from DSH calculations under this section if a hospital fails to maintain and provide adequate documentation to support that data.

(n) Voluntary withdrawal from the DSH program.

(1) HHSC will recoup all DSH payments made during the same DSH program year to a hospital that voluntarily terminates its participation in the DSH program. HHSC will redistribute the recouped funds according to the distribution methodology described in subsection (l) of this section [~~to DSH providers eligible for additional payments~~].

(2) A hospital that voluntarily terminates from the DSH program will be ineligible to receive payments for the next DSH program year after the hospital's termination.

(3) If a hospital does not apply for DSH funding in the DSH program year following a DSH program year in which it received DSH funding, even though it would have qualified for DSH funding in that year, the hospital will be ineligible to receive payments for the next DSH program year after the year in which it did not apply.

(4) The hospital may reapply to receive DSH payments in the second DSH program year after the year in which it did not apply.

(o) Audit process.

(1) Independent certified audit. HHSC is required by the Social Security Act (Act) to annually complete an independent certified audit of each hospital participating in the DSH program in Texas. Audits will comply with all applicable federal law and directives, including the Act, the Omnibus Budget and Reconciliation Act of 1993 (OBRA '93), the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), pertinent federal rules, and any amendments to such provisions.

(A) Each audit report will contain the verifications set forth in 42 CFR §455.304(d).

(B) The sources of data utilized by HHSC, the hospitals, and the independent auditors to complete the DSH audit and report include:

(i) The Medicaid cost report;

(ii) Medicaid Management Information System data; and

(iii) Hospital financial statements and other auditable hospital accounting records.

(C) A hospital must provide HHSC or the independent auditor with the necessary information in the time specified by HHSC or the independent auditor. A complete, detailed listing of all information required by the independent auditor is available on HHSC's website.

(D) A hospital that fails to provide requested information or to otherwise comply with the independent certified audit requirements may be subject to a withholding of Medicaid disproportionate share payments or other appropriate sanctions.

(E) HHSC will recoup any overpayment of DSH funds made to a hospital that is identified in the independent certified audit and will redistribute the recouped funds [~~proportionately~~] to DSH providers that are eligible for additional payments subject to their final hospital-specific limits, as described in subsection (l) of this section.

(F) Review of preliminary audit finding of overpayment.

(i) Before finalizing the audit, HHSC will notify each hospital that has a preliminary audit finding of overpayment.

(ii) A hospital that disputes the finding or the amount of the overpayment may request a review in accordance with the following procedures.

(I) A request for review must be received by HHSC's Director of Hospital Reimbursement, Rate Analysis Department, in writing by regular mail, hand delivery or special mail delivery, from the hospital within 30 calendar days of the date the hospital receives the notification described in clause (i) of this subparagraph.

(II) The request must allege the specific factual or calculation errors the hospital contends the auditors made that, if corrected, would change the preliminary audit finding.

(III) All documentation supporting the request for review must accompany the written request for review or the request will be denied.

(IV) The request for review may not dispute the federal audit requirements or the audit methodologies.

(iii) The review is:

(I) limited to the hospital's allegations of factual or calculation errors;

(II) solely a data review based on documentation submitted by the hospital with its request for review or that was used by the auditors in making the preliminary finding; and

(III) not an adversarial hearing.

(iv) HHSC will submit to the auditors all requests for review that meet the procedural requirements described in clause (ii) of this subparagraph.

(I) If the auditors agree that a factual or calculation error occurred and change the preliminary audit finding, HHSC will notify the hospital of the revised finding.

(II) If the auditors do not agree that a factual or calculation error occurred and do not change the preliminary audit finding, HHSC will notify the hospital that the preliminary finding stands and will initiate recoupment proceedings as described in this section.

(2) Additional audits. HHSC may conduct or require additional audits.

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, 2012.

TRD-201201762

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 424-6900

1 TAC §355.8066

The Texas Health and Human Services Commission (HHSC) proposes new §355.8066, concerning Hospital-Specific Limit Methodology.

Background and Justification

The Omnibus Budget and Reconciliation Act of 1993 requires states to calculate hospital-specific limits (HSLs) for their Medicaid Disproportionate Share Hospital (DSH) programs. The state of Texas has calculated HSLs as part of the DSH program since 1995.

The DSH HSLs have also played an important role in calculating upper payment limit (UPL) caps for Texas hospitals that participated in both DSH and the former UPL supplemental payment program. As HHSC transitions from UPL to the §1115 Healthcare Transformation and Quality Improvement waiver (the Waiver), HSLs will continue to be a factor in calculating caps for hospitals that choose to participate in the Waiver uncompensated-care (UC) pool. The Waiver was approved by the federal Centers for Medicare and Medicaid Services (CMS) on December 12, 2011, and creates two funding pools: a UC pool and a Delivery System Reform Incentive Payment (DSRIP) pool.

There are three applications of the HSL in the DSH and Waiver programs:

(1) For DSH and the Waiver, an interim hospital-specific limit will be calculated during the program year.

(2) For DSH, a final hospital-specific limit will be calculated during the audit year that must occur within three years of the program year.

(3) For the Waiver, a reconciliation limit will be applied two years after the program year to determine final waiver payments.

Because of the dual role of the HSL in determining hospital reimbursement in both the DSH and Waiver programs, language pertaining to the calculation of HSLs is proposed to be removed from §355.8065 elsewhere in this issue of the *Texas Register,* so that it can be incorporated into this proposed new §355.8066. Proposed new §355.8066 will allow HHSC more flexibility in managing future changes to the HSL calculation as it applies to both the DSH program and the Waiver.

Significant differences between the language being deleted from §355.8065(f) and the language being proposed for §355.8066 are as follows:

- The term "DSH program year" is consistently replaced with the term "program year" and "program year" is defined as the 12-month period beginning October 1 and ending September 30.

- Costs associated with pharmacies, clinics, physicians, and DSRIP projects are explicitly excluded from the calculation of the HSL. Such costs were never included in the calculation of the HSL but since they are included in various calculations under the Waiver, they are now explicitly excluded from calculation of the HSL to avoid confusion.

- Calculation of the Medicaid shortfall is modified to include offsets for cost report settlement payments, rather than all cost report settlements, and for UC Waiver payments (excluding payments associated with pharmacies, clinics and physicians).

- Calculation of the final HSL is described in more detail and is modified to include charges and payments for claims submitted after the 95-day filing deadline for Medicaid-allowable services provided during the program year, unless such claims were submitted after the Medicare filing deadline.

Section-by-Section Summary

Subsection (a) introduces the rule.

Subsection (b) provides definitions used throughout the rule.

Subsection (c) clarifies elements used to calculate a hospital-specific limit.

Subsection (c)(1) defines how a hospital's interim hospital-specific limit is calculated.

Subsection (c)(2) defines components of the hospital-specific limit, including uninsured costs, Medicaid shortfall, and the inflation adjustment.

Subsection (c)(3) defines how HHSC will calculate the ratio of cost-to-charges used in setting the hospital-specific limits.

Subsection (c)(4) defines how HHSC will calculate the ratio of cost-to-charges used in setting the "final" hospital-specific limit.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for the first five years the proposed new section is in effect, there are no fiscal implications for state government as a result of enforcing or administering the proposed new section. Local governments will not incur additional costs.

Small Business and Micro-Business Impact Analysis

Pam McDonald, Director of Rate Analysis, has determined that there will be no effect on small businesses or micro-businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the new rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Pam McDonald has determined that for each year of the first five years the new section is in effect, the public benefit expected as a result of enforcing the new section is that the state will conform to the federal requirements relating to the DSH program and the Waiver program. In addition, the provisions incorporated into this proposed new rule that are taken from existing provisions in §355.8065 will assist interested parties in understanding the DSH and Waiver reimbursement methodologies by providing clearer language that is easier to understand.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

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

Public Hearing

The Medical Care Advisory Committee (MCAC) meeting on May 10, 2012, will function as a public hearing to receive public comment on this proposed new section. The MCAC meeting will be held in the John H. Winters Public Hearing Room at 701 West 51st Street, Austin, Texas. Entry is through Security at the main entrance of the building, which faces 51st Street. Persons requiring American with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Carol Chavez by calling (512) 491-1763 at least 72 hours prior to the hearing so appropriate arrangements can be made.

Public Comment

Written comments on the proposal may be submitted to Diana Miller in the Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, by fax to (512) 491-1436, or by e-mail to costinformation@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The new section is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

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

§355.8066. Hospital-Specific Limit Methodology.

(a) Introduction. The Texas Health and Human Services Commission (HHSC) uses the methodology described in this section to calculate a hospital-specific limit for each Medicaid hospital participating in either the Disproportionate Share Hospital (DSH) program, described in §355.8065 of this title (relating to Disproportionate Share Hospital (DSH) Reimbursement Methodology), or in the Texas Healthcare Transformation and Quality Improvement Program (the waiver), described in §355.8201 of this title (relating to Waiver Payments to Hospitals).

(b) Definitions.

(1) Adjudicated claim--A hospital claim for payment for a covered Medicaid service that is paid or adjusted by HHSC or another payer.

(2) Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and

Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(3) Data year--A 12-month period that is two years before the program year from which HHSC will compile data to determine DSH or uncompensated-care waiver program qualification and payment.

(4) Disproportionate share hospital (DSH)--A hospital identified by HHSC that meets the DSH program conditions of participation and that serves a disproportionate share of Medicaid or indigent patients.

(5) Dually eligible patient--A patient who is simultaneously eligible for Medicare and Medicaid.

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

(7) Hospital-specific limit--The maximum payment amount that a hospital may receive in reimbursement for the cost of providing Medicaid-allowable services to individuals who are Medicaid eligible or uninsured. The term does not apply to payment for costs of providing services to individuals who have third-party coverage; costs associated with pharmacies, clinics, and physicians; or costs associated with Delivery System Reform and Incentive Payment projects.

(A) Interim hospital-specific limit--Applies to payments that will be made during the program year and is calculated as described in subsection (c)(1) - (3) of this section using cost and payment data from the data year.

(B) Final hospital-specific limit--Applies to payments made during a prior program year and is calculated as described in subsection (c)(4) of this section using actual cost and payment data from that period.

(8) Inflation update factor--Cost of living index based on the annual CMS Prospective Payment System Hospital Market Basket Index.

(9) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness, defined in §1905(i) of the Social Security Act.

(10) Medicaid contractor--Fiscal agents and managed care organizations with which HHSC contracts to process data related to the Medicaid program.

(11) Medicaid cost report--Hospital and Hospital Health Care Complex Cost Report (Form CMS 2552), also known as the Medicare cost report.

(12) Medicaid hospital--A hospital meeting the qualifications set forth in §354.1077 of this title (relating to Provider Participation Requirements) to participate in the Texas Medicaid program.

(13) Medicaid shortfall--The unreimbursed cost of Medicaid inpatient and outpatient hospital services furnished to Medicaid patients.

(14) Outpatient charges--Amount of gross outpatient charges related to the applicable data year and used in the calculation of the Medicaid shortfall.

(15) Program year--The 12-month period beginning October 1 and ending September 30. The period corresponds to the waiver demonstration year.

(16) Ratio of cost-to-charges (inpatient and outpatient)--A Medicaid cost report-derived cost center ratio that covers all applicable hospital costs and charges relating to patient care, inpatient and outpatient. This ratio is used in calculating the hospital-specific limit and does not distinguish between payer types such as Medicare, Medicaid, or private pay.

(17) The waiver--The Texas Healthcare Transformation and Quality Improvement Program, a Medicaid demonstration waiver under §1115 of the Social Security Act that was approved by CMS on December 12, 2011. Pertinent to this section, the waiver establishes a funding pool to assist hospitals with uncompensated-care costs.

(18) Third-party coverage--Creditable insurance coverage consistent with the definitions in 45 Code of Federal Regulations (CFR) Parts 144 and 146, or coverage based on a legally liable third-party payer.

(19) Total state and local payments--Total amount of state and local payments that a hospital received for inpatient and outpatient care during the data year. The term includes payments under state and local programs that are funded entirely with state general revenue funds and state or local tax funds, such as County Indigent Health Care, Children with Special Health Care Needs, and Kidney Health Care. The term excludes payment sources that contain federal dollars such as Medicaid payments, Children's Health Insurance Program (CHIP) payments funded under Title XXI of the Social Security Act, Substance Abuse and Mental Health Services Administration, Ryan White Title I, Ryan White Title II, Ryan White Title III, and contractual discounts and allowances related to TRICARE, Medicare, and Medicaid.

(20) Uncompensated-care waiver payments--Payments to hospitals participating in the waiver that are intended to defray the uncompensated costs of eligible services provided to eligible individuals.

(21) Uninsured cost--The cost to a hospital of providing inpatient and outpatient hospital services to uninsured patients as defined by CMS.

(c) Calculating a hospital-specific limit. Using information from each hospital's DSH or uncompensated-care waiver application and from HHSC's Medicaid contractors, HHSC will determine the hospital's interim hospital-specific limit in compliance with paragraphs (1) - (3) of this subsection. Final hospital-specific limits will be determined for DSH hospitals only in compliance with paragraph (4) of this subsection.

(1) HHSC will calculate a hospital's interim hospital-specific limit by adding the hospital's net uninsured costs for the data year and its Medicaid shortfall for the data year, both adjusted for inflation.

(2) HHSC will determine the individual components of the hospital-specific limit as follows:

(A) Uninsured costs.

(i) Each hospital will report in its application its inpatient and outpatient charges for services that would be covered by Medicaid that were provided to uninsured patients discharged during the data year. In addition to the charges in the previous sentence, an IMD may report charges for Medicaid-allowable services that were provided during the data year to Medicaid-eligible and uninsured patients ages 21 through 64.

(ii) Each hospital will report in its application all payments received for services that would be covered by Medicaid that are provided to uninsured patients discharged during the data year.

(I) For purposes of this section, a payment received is any payment from an uninsured patient or from a third party

(other than an insurer) on the patient's behalf, including payments received for emergency health services furnished to undocumented aliens under §1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, except as described in subclause (II) of this clause.

(II) State and local payments to hospitals for indigent care are not included as payments made by or on behalf of uninsured patients.

(iii) HHSC will convert uninsured charges to uninsured costs using the ratio of cost-to-charges (inpatient and outpatient) as calculated under paragraph (3) of this subsection.

(iv) HHSC will subtract all payments received under clause (ii) of this subparagraph from the uninsured costs under clause (iii) of this subparagraph, resulting in net uninsured costs.

(B) Medicaid shortfall.

(i) HHSC will request from its Medicaid contractors the inpatient and outpatient Medicaid charge and payment data for claims adjudicated during the data year for all active Medicaid participating hospitals. There are circumstances, including the following, in which HHSC will request modifications to the adjudicated data.

(I) HHSC will include as appropriate charges and payments for:

(-a-) claims associated with the care of dually eligible patients, including Medicare charges and payments;

(-b-) claims or portions of claims that were not paid because they exceeded the spell-of-illness limitation; and

(-c-) outpatient claims associated with the Women's Health Program.

(II) HHSC will exclude charges and payments for:

(-a-) claims for services not covered by Medicaid, including:

(-1-) claims for the Children's Health Insurance Program; and

(-2-) inpatient claims associated with the Women's Health Program; and

(-b-) claims submitted after the 95-day filing deadline.

(ii) Upon receipt of the requested data from the Medicaid contractors, HHSC will review the information for accuracy and make additional adjustments as necessary.

(iii) HHSC will convert the Medicaid charges to Medicaid costs using the ratio of cost-to-charges (inpatient and outpatient) as calculated under paragraph (3) of this subsection.

(iv) HHSC will subtract each hospital's Medicaid payments, including cost report settlement payments, supplemental payments (including upper payment limit payments), uncompensated-care waiver payments (excluding payments associated with pharmacies, clinics, and physicians) and graduate medical education payments, from its Medicaid costs.

(v) If a hospital's payments are less than its costs, the hospital has a positive Medicaid shortfall. If a hospital's payments are greater than its costs, the hospital has a negative Medicaid shortfall. A negative Medicaid shortfall will still be used in the calculation in paragraph (1) of this subsection.

(vi) HHSC may apply an adjustment factor to Medicaid payment data to more accurately approximate the Medicaid shortfall following a rebasing or other change in reimbursement rate under other sections of this division.

(C) Inflation adjustment.

(i) HHSC will trend each hospital's interim hospital-specific limit using the inflation update factor as defined in subsection (b) of this section.

(ii) HHSC will use the inflation update factors for the period beginning at the midpoint of each data year to the midpoint of the program year.

(iii) HHSC will multiply each hospital's sum of the net uninsured costs and Medicaid shortfall by the inflation update factor to obtain its interim hospital-specific limit.

(3) Ratio of cost-to-charges. HHSC will calculate the ratio of cost-to-charges used in setting hospital-specific limits in conformity with the following conditions and procedures:

(A) HHSC will convert to cost the portion of the total Medicaid charges related to adjudicated claims that are allocated to the various cost centers of the hospital. The ratio is derived by allocating allowable charges to each cost center.

(B) HHSC will calculate the ratio of cost-to-charges for the respective cost centers using information from the appropriate worksheets from one or both of the hospital's Medicaid cost reports corresponding to the data year.

(4) Final hospital-specific limit.

(A) HHSC will calculate the individual components of a hospital's final hospital-specific limit using the calculation set out in paragraphs (2) and (3) of this subsection, except that HHSC will:

(i) use the hospital's actual charges and payments for services described in paragraph (2)(A) and (B) of this subsection provided to Medicaid-eligible and uninsured patients during the program year; and

(ii) include charges and payments for claims submitted after the 95-day filing deadline for Medicaid-allowable services provided during the program year unless such claims were submitted after the Medicare filing deadline.

(B) For payments to a hospital under the DSH program, the final hospital-specific limit will be calculated at the time of the independent audit conducted under §355.8065(o) of this title.

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

Filed with the Office of the Secretary of State on April 9, 2012.

TRD-201201763
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 424-6900

DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8201, §355.8202

The Texas Health and Human Services Commission (HHSC) proposes new §355.8201, concerning Waiver Payments to Hospitals, and §355.8202, concerning Waiver Payments for Physician Services. The amendments concern eligibility requirements for hospitals and physician group practices to receive payments in the Texas Healthcare Transformation and Quality Improvement Program and the methodologies for calculating the amount of such payments.

Background and Justification

The Texas Legislature, through the 2012-2013 General Appropriations Act (H.B. 1, 82nd Legislature, Regular Session, 2011) and Senate Bill (S.B.) 7, 82nd Legislature, First Called Session, 2011, instructed HHSC to expand its use of Medicaid managed care to achieve program savings, while also preserving locally matched supplemental payments to hospitals and physician practice groups.

Funding from local governmental entities has historically comprised the non-federal share of supplemental payments to hospitals and physician practice groups (often referred to as "upper payment limit" or "UPL" programs) under Texas' approved Medicaid state plan. In a managed care context, however, Centers for Medicare and Medicaid Services (CMS) has interpreted 42 CFR §438.60 to prohibit UPL payments to providers. CMS has instructed HHSC that a §1115 demonstration waiver is the mechanism the state must employ to continue the use of local funding to support supplemental payments to providers in a managed care environment.

HHSC is given broad authority by the Texas Legislature to seek waivers in the Medicaid program under Texas Human Resources Code §32.021(b). In addition, S.B. 7, 82nd Legislature, First Called Session, 2011, amended §531.502 of the Texas Government Code and authorized HHSC to implement a §1115 demonstration waiver that serves specific, important goals of the Medicaid program.

HHSC submitted a proposal for a §1115 waiver to CMS that is designed to build on existing Texas health care reforms and to redesign health care delivery in Texas consistent with CMS goals to improve the experience of care, improve the health of populations, and reduce the cost of health care without compromising quality. CMS approved the Texas Healthcare Transformation and Quality Improvement Program §1115 Demonstration on December 12, 2011.

Under the waiver, federal matching funds for traditional supplemental payments to hospitals and physician group practices under the Texas Medicaid State Plan are no longer available. The Disproportionate Share Hospital (DSH) program is not considered by CMS to be a supplemental payment program subject to this limitation. Some hospitals and physician groups that historically received supplemental payments, especially those that serve a large number of indigent patients, would have experienced a significant financial hardship if the supplemental payments were delayed while permanent administrative rules were proposed and adopted. To avoid such hardship, HHSC adopted rules in January 2012, on an emergency basis, governing payments to these providers while permanent rules are developed and adopted.

HHSC is now proposing new permanent payment rules that implement the provider eligibility requirements and payment methodologies approved by CMS under the waiver. Concurrently with the adoption of the permanent payment rules, the emergency rules will be withdrawn.

Section-by-Section Summary

Proposed §355.8201, Waiver Payments to Hospitals

Subsection (a) introduces the rule.

Subsection (b) defines terms used in the rule.

Subsection (c)(1) describes eligibility criteria for receiving any payment under this section.

Subsection (c)(2) describes additional eligibility criteria for receiving transition payments.

Subsection (c)(3) describes additional eligibility criteria for receiving uncompensated-care payments.

Subsection (c)(4) describes additional eligibility criteria for receiving delivery system reform incentive payments.

Subsection (d) limits the sources for funding the non-federal share of payment.

Subsection (e) describes payment frequency.

Subsection (f) describes limitations on payment amounts.

Subsection (g) describes the methodology for calculating transition maximum payment amounts.

Subsection (h) describes the methodology for calculating uncompensated-care maximum payment amounts.

Subsection (i) describes the methodology for calculating delivery system reform incentive maximum payment amounts.

Subsection (j) describes the process for notifying participating entities of payment amounts and deadlines for transferring the non-federal share to HHSC.

Subsection (k) describes a reconciliation process to the actual costs the hospital incurs for providing uncompensated care.

Subsection (l) describes the process HHSC will use to recoup any overpayments to the hospital.

Proposed §355.8202, Waiver Payments for Physician Services

Subsection (a) introduces the rule.

Subsection (b) defines terms used in the rule.

Subsection (c) describes eligibility criteria for receiving payment under this section.

Subsection (d) limits sources of funding the non-federal share of payment.

Subsection (e) describes payment frequency.

Subsection (f) describes limitations on payment amounts.

Subsection (g) describes the methodology for calculating transition maximum payment amounts.

Subsection (h) describes the methodology for calculating uncompensated-care maximum payment amounts.

Subsection (i) describes the process for notifying participating entities of payment amounts and deadlines for transferring the non-federal share to HHSC.

Subsection (j) describes a reconciliation process to the actual costs the hospital incurs for providing uncompensated care.

Subsection (k) describes the process HHSC will use to recoup any overpayments to the physician group practice.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the proposed new rules are in effect, there may be foreseeable fiscal implications to either cost or revenue of state government. The impact cannot be determined as the amount of the intergovernmental transfers determines the amount of the federal funds available. There is no fiscal impact to state governmental funds. The foreseeable implication of the proposed rules to local governments is the potential for additional revenue (relative to historical supplemental payment programs) to public hospitals and publicly owned physician group practices in the form of increased Medicaid reimbursement for uncompensated care and for improvements in their healthcare delivery systems. The potential for the increased revenue is dependent on a local governmental entity providing the non-federal share of the payments, so there may be additional costs. However, the level of funding, if any, of the non-federal share of payments under the proposed rules is within the discretion of the local governmental entity.

Small Business and Micro-business Impact Analysis

Pam McDonald, Director of Rate Analysis, has determined that there will be no adverse economic effect on small businesses or micro-businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the proposed new rules.

Public Benefit

Pam McDonald has also determined that for each of the first five years the new rules are in effect, the anticipated public benefit expected as a result of enforcing the rules will be the transformation of the current delivery of care and payment systems in Texas to one that is more coordinated, efficient, and delivers a higher quality of care. Further, the public will benefit from a plan for investments in system transformation that is driven by the needs of local hospitals, communities, and populations. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

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

Public Hearing

The Medical Care Advisory Committee (MCAC) meeting on May 10, 2012, will function as a public hearing to receive public comment on these proposed rules. The MCAC meeting will be held in the John H. Winters Public Hearing Room at 701 West 51st Street, Austin, Texas. Entry is through security at the main entrance of the building, which faces 51st Street. Persons requiring American with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Carol Chavez by calling (512) 491-1763 at least 72 hours prior to the meeting to make appropriate arrangements.

Public Comment

Written comments on the proposal may be submitted to Jill Seime, Hospital Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, by fax to (512) 491-1436, or by e-mail to costinformation@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The new rules are proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32. Additionally, HHSC is authorized and directed by Texas Government Code §531.502 to seek a waiver under §1115 of the Social Security Act.

The new rules affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.8201. Waiver Payments to Hospitals.

(a) Introduction. Subject to approval by the Centers for Medicare and Medicaid Services of all required protocols described in the Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver, payments are available under this section for eligible hospitals described in subsection (c) of this section.

(b) Definitions.

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

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

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

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

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

(6) DSH room--The difference between a hospital's interim hospital-specific limit, as calculated in §355.8066 of this title, and the total Medicaid payments paid to the hospital during the demonstration year.

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

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

(9) Indigent care affiliation agreement--An agreement, entered into between one or more private hospitals and a governmental entity, that does not conflict with federal or state law. HHSC does not prescribe the form of the agreement.

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

(11) Private hospital--A hospital that is not owned or operated by a governmental entity.

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

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

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

(15) Transition payment--Payments available only during the first demonstration year to hospitals that previously participated in a supplemental payment program under the Texas Medicaid State Plan and meet other eligibility requirements described in subsection (c)(2) of this section.

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

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

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

(c) Eligibility. A hospital that meets the requirements described in this subsection may receive payments under this section. A hospital must notify HHSC within 30 days of changes in ownership, operation, or affiliation that may affect the hospital's continued eligibility for payments under this section.

(1) Generally. To be eligible for any payment under this section, a hospital must:

(A) be enrolled as a Texas Medicaid provider;

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

(C) if a private hospital, have filed with HHSC an indigent care affiliation agreement and the documents described in clauses (i) and (ii) of this subparagraph.

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

(I) that it is a private hospital as defined in this section;

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

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

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

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

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

(III) that the governmental entity is authorized to participate in the waiver program pursuant to a vote of the governmental entity's governing body in a public meeting preceded by public notice published in accordance with the governmental entity's usual and customary practices or the Texas Open Meetings Act, as applicable; and

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

(2) Transition payments. For a hospital to be eligible to receive transition payments, in addition to the requirements in paragraph (1) of this subsection, the hospital:

(A) must have received supplemental payments under the Texas Medicaid State Plan for claims adjudicated in one or more months between October 1, 2010, and September 30, 2011; or

(B) for a hospital that received the supplemental payments described in subparagraph (A) of this paragraph through the private hospital supplemental payment program, must have filed the documents described in paragraph (1)(C) of this subsection before September 30, 2011.

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

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

(B) must submit to HHSC documentation of:

(i) its participation in an RHP; or

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

(C) if a private hospital, must submit to HHSC the documents described in paragraph (1)(C) of this subsection.

(4) Delivery system reform incentive payments. For a hospital to be eligible to receive delivery system reform incentive payments, in addition to the requirements in paragraph (1) of this subsection, the hospital must submit to HHSC documentation of completion of one or more of the defined objectives identified in the approved RHP plan.

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

(e) Payment frequency. HHSC will distribute waiver payments as follows and on a schedule to be determined by HHSC:

(1) Transition payments will be distributed at least quarterly during the first demonstration year.

(2) Uncompensated care payments will be distributed at least quarterly after the uncompensated care application is processed.

(3) DSRIP payments will be distributed at least annually, not to exceed two payments:

(A) during the first demonstration year, upon CMS and HHSC approval of the RHP plan; and

(B) during subsequent demonstration years, upon achievement of RHP plan metrics.

(f) Funding limitations. Payments made under this section are limited by:

(1) the maximum aggregate amount of federal funds approved by CMS for uncompensated care and DSRIP payments for each year that the waiver is in effect; and

(2) the availability of funds identified in subsection (d) of this section.

(g) Transition maximum payment amount.

(1) For a hospital participating in the 2012 DSH program, the maximum amount a hospital may receive in transition payments is the lesser of:

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

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

(2) For a hospital not participating in the 2012 DSH program, the hospital will receive the amount it received in supplemental payments under Texas Medicaid State Plan for claims adjudicated between October 1, 2010, and September 30, 2011.

(3) If a hospital had claims adjudicated in fewer than 12 months between October 1, 2010, and September 30, 2011, the payment amount will be annualized to cover the entire 12-month period.

(h) Uncompensated-care maximum payment amount.

(1) Application.

(A) Cost and payment data reported by the hospital in the uncompensated-care application is used to:

(i) calculate the annual maximum uncompensated-care payment amount for the applicable demonstration year, as described in paragraph (2) of this subsection;

(ii) determine the priority of reimbursement, as described in paragraph (6) of this subsection; and

(iii) reconcile the actual uncompensated-care costs reported by the hospital for the data year with uncompensated-care waiver payments, if any, made to the hospital for the same period. The reconciliation process is more fully described in subsection (k) of this section.

(B) Unless otherwise instructed in the application, the hospital must base the cost and payment data reported in the application on its applicable as-filed CMS 2552 Cost Report For Electronic Filing Of Hospitals or reports corresponding to the data year. When the application requests data or information outside of the as-filed cost report, the hospital must provide sufficient documentation to support the reported data or information.

(C) For the first demonstration year, HHSC will use the methodology described in this subsection to determine an uncompensated-care maximum payment amount for each hospital that submits an application. After submitting the application, the hospital may not request that the amount calculated in subsection (g) of this section be used instead.

(D) If a hospital withdraws from participation in an RHP, the hospital must submit an uncompensated-care application reporting its actual costs and payments for any period during which the hospital received uncompensated-care payments. The application will be used for the purpose described in paragraph (1)(A)(iii) of this subsection. If a hospital fails to submit the application reporting its actual costs, HHSC will recoup the full amount of uncompensated-care payments to the hospital for the period at issue.

(2) Calculation. A hospital's annual maximum uncompensated-care payment amount is the sum of the following components, except that the sum may be reduced as described in paragraph (5) of this subsection:

(A) The interim hospital specific limit, calculated as described in §355.8066 of this title;

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

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

(3) Other eligible costs.

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

(i) direct patient-care services of physicians and mid-level professionals, except that during the first demonstration year, costs of physician group practices that received transition payments may not be claimed by the hospital;

(ii) pharmacy services; and

(iii) clinics.

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

title (related to Disproportionate Share Hospital (DSH) Reimbursement Methodology).

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

(A) A hospital may request that:

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

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

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

(5) Reduction. In the first demonstration year, HHSC will reduce the amount calculated as described in paragraph (2) of this subsection by the amount of all transition payments to the hospital prior to the first uncompensated-care payment. This reduction will be applied in the same priority as that described in paragraph (6) of this subsection.

(6) Priority of reimbursement. Uncompensated-care payments to a hospital under this section, including payments described in subsection (j)(3) of this section, will first reimburse the hospital for those costs described in paragraph (3) of this subsection, including adjustments, if any, under paragraph (4) of this subsection. When all such costs have been reimbursed, uncompensated-care payments will reimburse the hospital for its remaining allowable uncompensated-care costs.

(i) Delivery System Reform Incentive Payment maximum payment amounts. The approved RHP plan establishes the payment amount associated with of a particular project or quality measure.

(j) Payment methodology.

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

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

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

(C) the deadline for completing the intergovernmental transfer.

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

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

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

(i) For payments described in subsections (g) and (h) of this section:

(I) At the time the transfer is made, the governmental entity may notify HHSC, on a form prescribed by HHSC, of the share of the intergovernmental transfer to be allocated to each hospital owned by or affiliated with that entity; or

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

(ii) For payments described in subsection (i) of this section, each hospital affiliated with the governmental entity that has completed a project or quality measure will receive a portion of the value associated with that measure (as specified in the RHP plan) that is proportionate to the total value of all projects or quality measures that are completed for that period by hospitals affiliated with that governmental entity.

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

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

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

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

(k) Reconciliation. Beginning in the third demonstration year, data on the uncompensated-care application will be used to reconcile actual costs incurred by the hospital for the data year with uncompensated-care payments, if any, made to the hospital during the same period:

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

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

(3) Transition payments are not subject to reconciliation under this subsection.

(l) Recoupment.

(1) In the event of an overpayment, as described in subsection (k)(1) of this section, or a disallowance by CMS of federal financial participation related to a hospital's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the overpayment or disallowance. The non-federal share of any funds re-

couped from the hospital will be returned to the entity that owns or is affiliated with the hospital.

(2) Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1703 of this title (relating to Recovery of Overpayments), 42 CFR Part 455, and Chapter 403, Texas Government Code. HHSC may recoup an amount equivalent to any such adjustment.

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

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

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

§355.8202. Waiver Payments for Physician Services.

(a) Introduction. Subject to approval by the Centers for Medicare and Medicaid Services of all required protocols described in the Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver, payments are available under this section for an eligible physician group practice described in subsection (c) of this section.

(b) Definitions.

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

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

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

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

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

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

(7) Transition payment--Payments available only during the first demonstration year and calculated as described in subsection (g) of this section.

(8) Uncompensated-care payments--Payments available after the first demonstration year and calculated as described in subsection (h) of this section. Uncompensated-care payments are intended to defray the uncompensated costs of services that meet the definition of "medical assistance" contained in §1905(a) of the Social Security Act that are provided by the physician group practice to Medicaid eligible or uninsured individuals.

(c) Eligibility. A physician group practice is eligible to receive payments under this section if:

(1) it is enrolled as a Texas Medicaid provider;

(2) costs associated with the practice are not included, in whole or in part, on any hospital's uncompensated-care application;

(3) it received a supplemental payment under the Texas Medicaid State Plan for claims adjudicated in one or more months between October 1, 2010, and September 30, 2011;

(4) it has a source of intergovernmental transfer (IGT) as the non-federal share of the payments; and

(5) for a private physician group practice only, it filed with HHSC before October 1, 2011, documents certifying that:

(A) all funds transferred to HHSC as the non-federal share of the waiver payments are public funds; and

(B) no part of any payment received by the physician group practice under this section will be returned to the governmental entity that transferred to HHSC the non-federal share of the waiver payments.

(d) Source of funding.

(1) The non-federal share of funding for payments under this section is limited to and obtained through an intergovernmental transfer from the governmental entity that owns or is affiliated with the physician group practice receiving the payment.

(2) An intergovernmental transfer that is not received by the date specified by HHSC may not be accepted.

(e) Payment frequency. HHSC will distribute payments quarterly during the demonstration year.

(f) Funding limitations. Payments made under this section are limited by:

(1) the maximum aggregate amount of federal funds approved by CMS for uncompensated-care payment to providers for each demonstration year; and

(2) the availability of funds identified in subsection (d) of this section.

(g) Transition payment amount. For each physician group practice eligible to receive a payment under this section, HHSC will determine a maximum transition payment amount that is equal to the amount of supplemental payments made to the physician group practice under the Texas Medicaid State Plan for claims adjudicated between October 1, 2010, and September 30, 2011. If the physician practice group had claims adjudicated in fewer than 12 months, the payment amount will be annualized to cover the entire 12-month period.

(h) Uncompensated-care maximum payment amount.

(1) Application. Payments to eligible physician group practices after the first demonstration year will be based on cost and payment data reported by the physician group practice on an application form prescribed by HHSC.

(A) Cost and payment data reported by the physician group practice in the uncompensated-care application is used to:

(i) calculate the annual maximum uncompensated-care payment amount for the applicable demonstration year, as described in paragraph (2) of this subsection; and

(ii) reconcile the actual uncompensated-care costs reported by the physician group practice for a prior period with uncompensated-care waiver payments, if any, made to the practice for

the same period. The reconciliation process is more fully described in subsection (k) of this section.

(B) Unless otherwise instructed in the application, the cost and payment data reported in the application must be consistent with Medicare cost-reporting principles and the physician group practice must maintain sufficient documentation to support the reported data or information.

(C) If a physician group practice withdraws from participation in the waiver, the practice must submit an uncompensated-care application reporting its actual costs and payments for any period during which the practice received uncompensated-care payments. The application will be used for the purpose described in subparagraph (A)(ii) of this paragraph. If a practice fails to submit the application reporting its actual costs, HHSC will recoup the full amount of uncompensated-care payments to the practice for the period at issue.

(2) Calculation. A physician group practice's annual maximum uncompensated-care payment amount is the sum of the following components:

(A) Its uninsured costs and Medicaid shortfall, as reported on the uncompensated-care application; and

(B) Cost and payment adjustments, if any, as described in paragraph (3) of this subsection.

(3) Adjustments. When submitting the uncompensated-care application, physician group practices may request that cost and payment data from the reporting period be adjusted to reflect increases or decreases in costs resulting from changes in operations or circumstances.

(A) A physician group practice may request that:

(i) Costs not reflected on the financial documents supporting the application, but which would be incurred for the demonstration year, be included when calculating payment amounts; or

(ii) Costs reflected on the financial documents supporting the application, but which would not be incurred for the demonstration year, be excluded when calculating payment amounts.

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

(i) Payment methodology.

(1) During each quarter of the demonstration year, HHSC will calculate for each physician group practice an amount that is one-fourth of the maximum payment amount determined in subsection (g) or (h) of this section.

(2) HHSC will give notice of the maximum intergovernmental transfer amount and the deadline for completing the transfer of funds.

(3) The amount of the payment to the physician group practice under paragraph (1) of this subsection will be determined based on the amount of funds transferred by the affiliated governmental entity or entities as described below:

(A) If a governmental entity transfers the maximum amount of funds described in paragraph (2) of this subsection, the physician group practice will receive the maximum allowable payment amount for that period.

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

(i) At the time the transfer is made, the governmental entity may notify HHSC, on a form prescribed by HHSC, of the share of the intergovernmental transfer to be allocated to each physician group practice owned by or affiliated with that entity; or

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

(j) Reconciliation. Beginning in the third year of the waiver, data on the uncompensated-care application will be used to reconcile actual costs incurred by the physician group practice for a prior period with uncompensated-care payments, if any, made to the hospital during the same period.

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

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

(3) Transition payments are not subject to reconciliation under this subsection.

(k) Recoupment.

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

(2) Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1703 of this title (relating to Recovery of Overpayments), 42 CFR Part 455, and Chapter 403, Texas Government Code. HHSC may recoup an amount equivalent to any such adjustment.

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

(A) HHSC will recoup from the physician group practice against which any disallowance was directed or to which an overpayment was made.

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

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, 2012.

TRD-201201764
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 424-6900

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 30. COMMUNITY DEVELOPMENT

SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT PROGRAM

DIVISION 1. ALLOCATION OF PROGRAM FUNDS

4 TAC §30.4

The Texas Department of Agriculture (the department) proposes an amendment to §30.4, concerning the disaster relief fund administered by the department's Office of Rural Affairs, in order to expand the allowable justifications for application for disaster relief funds by local units of government. The amendment is proposed to allow more applicants to qualify for and seek disaster relief funding for drought disasters that have been declared by the Governor. A similar amendment to §30.4(a) was adopted on an emergency basis, effective January 1, 2012, as published in the January 13, 2012, issue of the *Texas Register* (37 TexReg 93). That amendment was updated on an emergency basis to require that the local governing body of the applicant community, rather than the Texas Commission on Environmental Quality, make a resolution determining that the dwindling water supply may cause an immediate risk to the health and welfare of residents. The updated emergency amendment was effective March 16, 2012 and published in the March 23, 2012, issue of the *Texas Register* (37 TexReg 1970). This proposal is identical to the existing emergency amendment.

The department believes it is necessary to take action to address the extreme drought conditions that have affected the State of Texas and to better facilitate the application process for communities in need. Several rural Texas communities are within 180 days of being without a dependable water supply, and this list will continue to grow as drought conditions persist. By updating the disaster eligibility language, many communities that are faced with immediate threats to the health and welfare of the community as a result of inadequate and potentially unavailable water supplies will be eligible to apply for funding that will assist in addressing their water issues. The adoption of the new eligibility criteria on a permanent basis will allow more affected communities to apply for funding and be prepared to face their impending water supply shortage. While many of those communities have developed a plan to secure new water, they need funding to pursue their plans. The amendment allows communities to implement improvements immediately with the opportunity to make those changes permanent community improvements after the emergency need has ended.

Becky Dempsey, State Director, Community Development Block Grant Program, has determined that for the first five years the amended section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

The department also has determined that for each year of the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the amended section will be utilization of de-obligated program funds to provide a resource for communities whose infrastructure has been affected by drought. For the first five-year period the amended section is in effect, there will be no economic cost for micro-businesses, small businesses or individuals who are required to comply with the amended section as proposed.

Written comments on the proposal may be submitted to Becky Dempsey, State Director, Community Development Block Grant Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Written comments must be received no later than 30 days from the date of publication of the proposed amendment in the *Texas Register.*

The amendment is proposed under the Texas Government Code, §487.351, as amended by Senate Bill 1, First Called Special Legislative Session, 2011, which provides the department with the authority to administer the state's allocation of federal funds provided under the community development block grant nonentitlement program authorized by Title I of the Housing and Community Development Act of 1974 (42 U.S.C. §5301 et seq.) and to allocate such funds to eligible counties and municipalities under department rules.

The code affected by this proposal is Texas Government Code, Chapter 487.

§30.4. Disaster Relief Fund.

(a) General provisions. Assistance under this fund is available to units of general local government for eligible activities under the Housing and Community Development Act of 1974, Title I, as amended, for the alleviation of a disaster situation. To receive assistance under this program category, the situation to be addressed with TxCDBG funds must be both unanticipated and beyond the control of the local government. For example, the collapse of a municipal water distribution system due to lack of regular maintenance does not qualify. If the same situation was caused by a tornado or flood, the community could apply for disaster relief funds. An applicant may not apply for funding to construct public facilities that did not exist prior to the occurrence of the disaster, except in response to a governor's drought disaster declaration covering the area that would benefit from the project activities under the following conditions:[.]

(1) the new public water system facilities to be constructed must provide a new or improved source of water for the project beneficiaries;

(2) the new public water system facilities are not a redundant or backup water supply;

(3) the new public water system facilities are not temporary in nature; however, they may be initially temporary in nature if constructed to meet a disaster need if they will remain in place and become a permanent facility that is used for meeting demand under non-disaster conditions;

(4) as evidenced by a public declaration, the local governing body must have determined that an adequate water supply may not be available to the project beneficiaries within the next 180 days thereby creating a serious and immediate threat to the health or welfare of the community;

(5) the public water system providing water to the city or county residential users for the proposed project must have implemented either the first or second most restrictive response stage under its Drought Contingency Plan; and

(6) a professional engineer selected by the applicant must certify in the application that the proposed new facilities that would be funded with TxCDBG funds would meet the criteria specified in this rule.

(b) Other requirements. [~~Starting with the 2004 TxCDBG program year,~~] TxCDBG disaster relief funds will not be provided under the Federal Emergency Management Agency's Hazard Mitigation Grant Program unless the Office receives satisfactory evidence that any property to be purchased was not constructed or purchased by the current owner after the property site location was officially mapped and included in a designated flood plain area. Additionally, in disaster relief situations, the TxCDBG dollars are to be viewed as gap financing or funds of last resort. In other words, the community may only apply to the Office for funding of those activities for which local funds are not available, i.e., the entity has less than six months of unencumbered general operations funds available in its balance as evidenced by the last available audit as required by state statute, or assistance from other sources is not available. TxCDBG will consider whether funds under an existing TxCDBG contract are available to be reallocated to address the situation. TxCDBG may prioritize throughout the program year the use of Disaster Relief assistance funds based on the type of assistance or activity under considerations and may allocate funding throughout the program year based on assistance categories. Assistance under the disaster relief fund is provided only if one of the following has occurred:

(1) The President has issued a federal disaster declaration; or

(2) The governor has declared a state of disaster or emergency.

(c) [~~(b)~~] Funding cycle. Funds for disaster relief projects will be awarded throughout the program year in response to disaster situations. The application for assistance must be submitted no later than 12 months from the date of the presidential declaration of a major disaster or governor's declaration of a state of disaster or emergency.

(d) [~~(c)~~] Selection procedures. As soon as an area qualifies for disaster relief assistance, the Office works with the local government, the governor's office, and the Emergency Management Division of the Texas Department of Public Safety to determine where TxCDBG funds can best be utilized. The Office then works with the unit of local government selected for funding to negotiate a contract. A unit of general local government cannot receive a disaster relief grant and an urgent need grant to address problems caused by the same natural disaster situation. In no instance will a unit of general local government receive more than one disaster relief grant to address a single occurrence of a natural disaster.

(e) [~~(d)~~] Funding priority. The Texas CDBG program prioritizes the use of the Disaster Relief Fund for projects in which there are federal declarations that provide the federally required 25 percent match portion of the Federal Emergency Management Agency (FEMA) or Natural Resources Conservation Service (NRCS) approved budget covering approved repair and restoration activities. Priority is based on the date of the presidential declaration. For presidential declarations, Disaster Relief Funds are only used to assist eligible applicants in meeting the match requirements for FEMA Public Assistance categories A and C through G and NRCS Emergency Watershed Protection Program requiring a match for eligible costs associated with repairs and restoration of disaster-related infrastructure activities. The funding priority is the match requirements associated with FEMA Public Assistance categories A and C through G for repair or restoration rather than mitigation. Equal priority is given for the match requirements for projects in categories A and C through G addressing imminent threats to public safety. Federal hazard mitigation projects would be a lower funding priority and are not eligible under the provisions listed in this subsection. Applications must be submitted no later than 12 months from the presidential declaration. However, the Disaster Relief Fund will not necessarily retain the priority for the entire 12-month period. Disaster Relief Funds can only be used for repairs and restoration of damaged items in presidential declarations to pre-disaster conditions in design, function, and capacity.

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, 2012.

TRD-201201767
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 41. AUDITING

SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.23

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §41.23, Basic General Records Required.

In *Authentic Beverages Company, Inc v. Texas Alcoholic Beverage Commission,* No. A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex., Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the commission were found to be unconstitutional violations of the First Amendment. Although Rule §41.23 was not declared unconstitutional, the commission determines that it is appropriate to amend it to implement changes required by the *Authentic Beverages* Order.

Because the commission has determined that manufacturers and brewers should have options regarding the labeling of their products, it will no longer be possible to rely on use of the terms "beer," "ale" or "malt liquor" to determine how a product should be taxed and where it may be sold. It is necessary, therefore, to require that malt beverages be identified on invoices. Since the invoices must accompany the product throughout the chain of distribution from the producer to the retailer, this will allow everyone in the chain (as well as regulatory officials, including the agency) to identify the product and classify it appropriately. This will not require invoices be produced or carried that are not already required, but simply that a notation be made on those invoices that will allow the agency (and others) to properly classify the product. The proposed rule grants flexibility on

specifically how the product must be identified, as opposed to mandating use of a specific type of notation.

Section 41.23 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for readoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist, but that the rule should be amended.

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

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

Mr. Greinert has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because invoices can be used to track malt beverages for tax and regulatory purposes while allowing manufacturers and brewers options regarding the labeling of their products.

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

The staff of the commission will hold a public hearing to receive oral comments on May 2, 2012 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 9:30 a.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

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

The proposed amendment affects Alcoholic Beverage Code §1.04 and §5.31 and Government Code §2001.039.

§41.23. Basic General Records Required.

(a) It shall be unlawful for any brewer, distiller, [~~Class A or Class B~~] winery, rectifier, wholesaler, Class B wholesaler, package store, [~~medicinal permittee,~~] industrial permittee, wine bottler, beer manufacturer, or beer distributor to fail or refuse to keep at each place of business [~~in Texas~~], for a period of two years, for the inspection at all times of the commission or its authorized representatives, a complete record of all alcoholic beverages manufactured, distilled, sold, purchased, received, blended or bottled, including all invoices, bills of lading, way bills, freight bills, express receipts, and all other shipping records furnished by the carrier and the seller or shipper of said alcoholic beverages; and in addition thereto, a book record in a well bound book which will provide complete information of all alcoholic beverages manufactured, purchased, or received, the name and address of the person from who purchased and from who received, the point from which shipped or delivered, the point at which received, the quantity and kind of beverage received, and inventories on the last day of each month, showing the quantity and kind of beverage on hand. The inventories herein required shall not apply to package store permittees. Wine and beer retailers other than for railroad cars shall be required to keep the records only as to wine purchases.

(b) It shall be unlawful for any brewer, distiller, [~~Class A or Class B~~] winery, rectifier, wholesaler, Class B wholesaler, wine bottler, beer manufacturer, or beer distributor, to fail or refuse to keep at each place of business [~~in Texas~~], for a period of two years for the inspection at all times of the commission or its authorized representatives, a complete record of each and every sale or distribution of alcoholic beverages, upon an invoice to be furnished by said permittee or licensee, which invoice shall be issued [~~in duplicate and~~] in consecutive numbered order. Said invoice shall show the date of sale or distribution, the purchaser and his address, the means of delivery, the name of the carrier, if delivered by common carrier, the quantity, price, container size and brand name [~~kind~~] of alcoholic beverage sold and in addition thereto the said invoice shall be supported by the receipts or other records furnished by the carrier of such alcoholic beverage. Alcohol percentage by volume or an approved symbol or statement must be included in the product description for malt beverages containing more than four percent alcohol by weight. Such invoice or a copy thereof shall be delivered to the purchaser and a copy shall be kept by the permittee or licensee making the sale. Invoices must be printed and numbered and issued in consecutive numbered order, and the copies thereof shall be kept [~~in a well bound book~~] for a period of at least two years.

(c) Each purchaser of tax free alcohol shall keep for inspection of the commission or its authorized representatives all invoices of such purchases for a period of at least two years.

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, 2012.

TRD-201201768
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 206-3443

CHAPTER 45. MARKETING PRACTICES
SUBCHAPTER C. STANDARDS OF IDENTITY FOR MALT BEVERAGES

16 TAC §45.71

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.71, Definitions.

In *Authentic Beverages Company, Inc v. Texas Alcoholic Beverage Commission,* No. A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex., Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the commission were found to be unconstitutional violations of the First Amendment. Although Rule §45.71 was not declared unconstitutional, the commission determines that it is appropriate to amend it to clarify the use of terms in light of the *Authentic Beverages* Order.

Section 45.71 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for readoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist, but that the rule should be amended.

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

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

Mr. Greinert has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the section will reflect the distinctions between definitions used for regulatory purposes under the Alcoholic Beverage Code and the definitions used for labeling by the industry under the decision in the *Authentic Beverages Company* litigation.

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

The staff of the commission will hold a public hearing to receive oral comments on May 2, 2012 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 9:30 a.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

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

The proposed amendment affects Alcoholic Beverage Code §1.04 and §5.31 and Government Code §2001.039.

§45.71. Definitions.

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

(1) Beer--A malt beverage containing one half of one percent or more of alcohol by volume and not more than 4.0% of alcohol by weight[~~, and shall not be inclusive of any beverage designated by label or otherwise by any other name than beer~~].

(2) Bottler--Any person who places malt beverages in containers.

(3) Brand label--The label carrying, in the usual distinctive design, the brand names of the malt beverage.

(4) Container--Any can, bottle, barrel, keg, or other closed receptacle, irrespective of size or of the material from which made, for use for the sale of malt beverages at retail. This provision does not in any way relax or modify §1.04(18) of the Alcoholic Beverage Code.

(5) Domestic malt beverages--A malt beverage manufactured in the United States.

(6) Gallon--United States gallon of 231 cubic inches of malt beverages at 39.2 degrees Fahrenheit (4 degrees Celsius). All other liquid measures used are subdivisions or multiples of the gallon as so defined.

(7) Independent laboratory--A laboratory which has a good reputation in the industry and is not affiliated with the Texas Alcoholic Beverage Commission or with any entity regulated by the Texas Alcoholic Beverage Commission.

(8) Malt beverage--A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption.

(9) Malt liquor--Any malt beverage containing more than 4.0% of alcohol by weight. In this subchapter, "malt liquor" and "ale" have the same meaning.

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, 2012.

TRD-201201769
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 206-3443

16 TAC §45.77

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.77, Class and Type.

In *Authentic Beverages Company, Inc v. Texas Alcoholic Beverage Commission,* A-10-CA-710-SS, 2011 WL 6396530 (W.D.

Tex. Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the commission were found to be unconstitutional violations of the First Amendment. Rule §45.77 was declared unconstitutional and the commission was enjoined from enforcing it. The section is being amended to conform to the Court's decision.

Under the proposed amendment, manufacturers and brewers will have options for labeling their products. The first option is to continue to use the definitions of "beer," "ale" and "malt liquor" found in Alcoholic Beverage Code §1.04. If they elect to use this option, they *may* but are not required to include the product's percentage alcohol by volume on the label. See Rule §45.79, which is also being amended. The other option is to use any truthful description of the class and style of the malt beverage that is commonly recognized in the industry. If this description does not match the definitions of "beer," "ale" or "malt liquor" in Alcoholic Beverage Code §1.04, then the class or style description *must* be accompanied by the product's percentage alcohol by volume on the label.

Thus, manufacturers and brewers can continue using labels that accurately and truthfully reflect the product definitions used in the Alcoholic Beverage Code (and thereby incur no additional expense to change their current production). On the other hand, they can choose to use labels that they believe accurately and truthfully reflect the product definitions used in the industry.

Consumers can be educated to look for the "alcohol by volume" statement on the label. If it is not there, they can rely on a product that is labeled "beer" containing approximately 5.1 percent alcohol by volume or less and a product that is labeled "ale" or "malt liquor" containing more than that amount. Information about the alcohol content of a product, along with the product size, is necessary for consumers who wish to make informed judgments about consumption. Requiring this kind of information furthers the state's interest in protecting the welfare, health, peace, temperance and safety of the people of the state. Alcoholic Beverage Code §1.03.

In its opinion in *Authentic Beverages,* the Court concludes that allowing these two options would advance the state's interests in a less restrictive manner than the current rule. Indeed, allowing these two options was suggested by the plaintiffs in that litigation as a viable means of protecting both the state's interests and their free speech interests.

Section 45.77 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for readoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist, but that the rule should be amended.

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

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

Mr. Greinert has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the section will reflect the distinctions between terms used for regulatory purposes under the Alcoholic Beverage Code and terms used for labeling by the industry under the decision in the *Authentic Beverages Company* litigation.

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

The staff of the commission will hold a public hearing to receive oral comments on May 2, 2012 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 9:30 a.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

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

The proposed amendment affects Alcoholic Beverage Code §1.04 and §5.31 and Government Code §2001.039.

§45.77. Class and Type.

(a) Every malt beverage label shall bear, in legible and easily viewed writing:[~~, its correct classification as "beer" or "malt liquor." The word "ale" may be substituted for the words "malt liquor."~~]

(1) The word "beer," if the product contains one-half of one percent or more of alcohol by volume and not more than four percent of alcohol by weight, or the word "ale" or "malt liquor" if the product contains more than four percent of alcohol by weight; and/or

(2) A truthful statement of the appropriate class or style of the product using terms commonly recognized in the malt beverage industry, accompanied by the alcohol content of the product in percentage of alcohol by volume (expressed to the nearest one-tenth of a percent).

(b) No product containing less than 0.5% of alcohol by volume shall bear the class designation "beer," "lager," "lager beer," "ale," "porter," or "stout," or any other class or type designation commonly applied to malt beverages containing 0.5% or more of alcohol by volume.

(c) [~~No beer shall bear the class designation of ale or malt liquor, and no malt liquor shall bear the class designation of beer.~~] Nothing shall prevent a malt beverage labeled pursuant to subsection (a)(1) of this section [~~beer or malt liquor~~] from also bearing a class or style designation that is recognized in the brewing industry, such as, but not limited to, "porter," "stout," or "lager," provided such beer, ale, or malt liquor has the characteristics of such class or style.

(d) Geographical names for distinctive types of malt beverages (other than names found by the commission or administrator under subsection (e) of this section to have become generic) shall not be applied to malt beverages produced in any place other than the particular region indicated by the name unless: in direct conjunction with the name there appears the word "type" or the word "American," or some other statement indicating the true place of production in lettering substantially as conspicuous as such name; and the malt beverages to which the name is applied conform to the type so designated. The following are examples of distinctive types of beer with geographical names that have not become generic: Dortmund, Dortmunder, Vienna, Wien, Wiener, Bavarian, Munich, Munchner, Salvator, Kulmbacher, Wartzburger.

(e) Only such geographical names for distinctive types of malt beverage as the commission or administrator finds have by usage and common knowledge lost their geographical significance to such an extent that they have become generic shall be deemed to have become generic. Pilsen beer (Pilsenor, Pilsner) is a distinctive type of beer with a geographical name which has become generic.

(f) Except as provided in §45.75 of this title (relating to Mandatory Label Information for Malt Beverages), geographical names that are not names for distinctive types of malt beverages shall not be applied to malt beverages produced in any place other than the particular place or region indicated in the name.

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, 2012.

TRD-201201770
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 206-3443

16 TAC §45.79

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.79, Alcoholic Content.

In *Authentic Beverages Company, Inc v. Texas Alcoholic Beverage Commission,* A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex. Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the commission were found to be unconstitutional violations of the First Amendment. The section is being amended to conform to the court's decision.

Rule §45.79(f) was declared unconstitutional and the commission was enjoined from enforcing it. Accordingly, that subsection is being deleted.

Additionally, subsection (c)(3) and (4) need revision to address other requirements in the court's Order. Those paragraphs currently limit in some situations the level of tolerance otherwise allowed for products labeled "beer," "ale" or "malt liquor." These paragraphs are being amended in light of the commission's proposed changes to Rule §45.77, Class and Type, which would allow manufacturers and brewers a choice of options for labeling their products. The proposed amendment removes the limitation for tolerances as long as the alcoholic content is stated on the label.

Section 45.79 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for readoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist, but that the rule should be amended.

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

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

Mr. Greinert has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the section will reflect the distinctions between terms used for regulatory purposes under the Alcoholic Beverage Code and terms used for labeling by the industry under the decision in the *Authentic Beverages Company* litigation. Also, manufacturers' and brewers' free speech rights recognized by the court in that litigation will be honored.

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

The staff of the commission will hold a public hearing to receive oral comments on May 2, 2012 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 9:30 a.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

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

The proposed amendment affects Alcoholic Beverage Code §1.04 and §5.31 and Government Code §2001.039.

§45.79. Alcoholic Content.

(a) The alcoholic content and the percentage and quantity of the original extract may be stated.

(b) Form of statement.

(1) If the alcoholic content is stated, it shall be stated in percentage of alcohol by volume, and shall not be stated by percent by weight, proof, or by maximums or minimums.

(2) The statement of alcoholic content shall be expressed to the nearest one-tenth of a percent, subject to the tolerance permitted by subsection (c) of this section.

(c) Tolerances.

(1) For malt beverages containing 0.5% or more of alcohol by volume, a tolerance of 0.3% will be permitted, either above or below the stated percentage of alcohol.

(2) Any malt beverage labeled as having more than 0.5% or more alcohol by volume may not contain less than 0.5% alcohol by volume, regardless of any tolerance.

(3) Any malt beverage labeled as "beer" may not contain more than 4.0% alcohol by weight regardless of any tolerance permitted in paragraph (1) of this subsection, unless the alcoholic content is stated on the label.

(4) Any malt beverage labeled as "malt liquor," "ale," or other such similar designation may not contain 4.0% or less alcohol by weight regardless of any tolerance permitted in paragraph (1) of this subsection, unless the alcoholic content is stated on the label.

(5) For malt beverages which are labeled as "low alcohol" or "reduced alcohol" under subsection (d) of this section, the actual alcoholic content may not equal or exceed 2.5% alcohol by volume, regardless of any tolerance permitted in paragraph (1) of this subsection.

(d) Low alcohol or reduced alcohol. The terms "low alcohol" or "reduced alcohol" may only be used on malt beverages containing less than 2.5% alcohol by volume.

(e) Alcoholic content statement. All portions of any alcoholic content statement shall be of the same size and kind of lettering and of equally conspicuous color.

[~~(f) Advertising of alcoholic content. The alcoholic content shall not be used in any form of advertisement by means of comparison with other products, nor shall the terms, "strong," "full strength," "high proof," or any other reference to alcoholic content, or any statement of the percentage and quantity or the original extract, or any numerals, letters, characters, figures, or similar words or statements likely to be considered as statements of alcoholic content be used in any advertisements. This does not preclude the use of terms "low alcohol" or "reduced alcohol" as used on labels in accordance with subsection (d) of this section.~~]

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

Filed with the Office of the Secretary of State on April 10, 2012.

TRD-201201780
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 206-3443

16 TAC §45.82

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.82, Prohibited Practices.

In *Authentic Beverages Company, Inc v. Texas Alcoholic Beverage Commission,* A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex. Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the commission were found to be unconstitutional violations of the First Amendment. The section is being amended to conform to the court's decision.

Rule §45.82(f) was declared unconstitutional and the commission was enjoined from enforcing it. Accordingly, that subsection is being deleted.

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

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

Mr. Greinert has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because manufacturers' and brewers' free speech rights recognized by the court in the *Authentic Beverages* litigation will be honored by the commission.

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

The staff of the commission will hold a public hearing to receive oral comments on May 2, 2012 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 9:30 a.m. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

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

The proposed amendment affects Alcoholic Beverage Code §1.04 and §5.31 and Government Code §2001.039.

§45.82. Prohibited Practices.

(a) Statements on labels. Containers of malt beverages, or any labels on such containers, or any carton, case, or individual covering of such containers, used for sale at retail, or any written, printed, graphic or other matter accompanying such containers to the consumer shall not contain the following:

(1) any statement that is false or untrue in any particular, or that, irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter tends to create a misleading impression;

(2) any statement that is disparaging of a competitor's products;

(3) any statement, design, device, or representation which is obscene or indecent;

(4) any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;

(5) any statement, design, device or representation of or relating to any guaranty, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;

(6) a trade name or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely to falsely lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization; provided, that this subsection shall not apply to the use of the name of any person engaged in business as a producer, importer, bottler, wholesaler, distributor, retailer, or warehouseman, of malt beverages, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935;

(7) any statement, design, device, or representation that the malt beverage is a special or private brand brewed or bottled for, or that includes the name, tradename or trademark of any retail licensee or permittee or private club registration permittee.

(b) Simulation of government stamps. No label shall be of such design as to resemble or simulate a stamp of the United States government or of any state or foreign government. No label, other than stamps authorized or required by the United States government or any state or foreign government, shall state or indicate that the malt beverage contained in the labeled container is brewed, made, bottled, labeled, sold under, or in accordance with any municipal, state, federal, or foreign government authorization, law, or regulation, unless such statement is required or specifically authorized by federal or state law or regulations of the foreign country in which such malt beverages were produced. If the foreign municipal or state government permit number is stated upon a label, it shall not be accompanied by an additional statement relating thereto, unless required by the law of that state or foreign municipality.

(c) Use of word "bonded," etc. The words "bonded," "bottled in bond," "aged in bond," "bonded age," "bottled under customs supervision," or phrases containing these or synonymous terms which imply governmental supervision over production, bottling, or packaging, shall not be used on any label for malt beverages.

(d) Statements, seals, flags, coats of arms, crests, and other insignia. Statements, seals, flags, coats of arms, crests, or other insignia, or graphic, or pictorial or emblematic representations thereof, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, the government, organization, family, or individual with whom such statement, seal, flag, coat of arms, crest, or insignia is associated, are prohibited on any label of malt beverages.

(e) Curative and therapeutic effects. Labels shall not contain any statement, design, or device representing that the use of any malt beverage has curative or therapeutic effects, if such statement is untrue in any particular or tends to create a misleading impression.

~~[(f) Use of the words "strong," "full strength," and similar words. Labels shall not contain the words, "strong," "full strength," "extra strength," "high proof," "prewar strength," "full old-time alcoholic strength," or similar words or statements, likely to be considered as statements of alcoholic content.]~~

(f) [~~(g)~~] Coverings, cartons, cases. Individual coverings, cartons, cases, or other wrappers of containers of malt beverages, used for sale at retail, or any written, printed, graphic, or other matter accompanying the container shall not contain any statement, or any graphic, pictorial, or emblematic representation, or other matter, which is prohibited from appearing on any label or container of malt beverage. It shall be unlawful for any retailer to affix to any carton or case any paper or sticker bearing any painted, printed, or other graphic matter whatsoever; and it shall be unlawful for any retailer to paint, imprint, or otherwise impose any wording, lettering, picture, or design of any character whatsoever on any carton or case.

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 10, 2012.

TRD-201201781
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 206-3443

16 TAC §45.90

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.90, Advertising: Prohibited Statements.

In *Authentic Beverages Company, Inc v. Texas Alcoholic Beverage Commission,* A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex. Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the commission were found to be unconstitutional violations of the First Amendment. The commission proposes to amend Rule §45.90 to conform to the court's decision.

Rule §45.90 was declared unconstitutional and the commission was enjoined from enforcing it. However, the plaintiffs in the lawsuit did not complain about all of the provisions of §45.90. As cited by the court, Plaintiffs' First Amendment challenges to the Alcoholic Beverage Code and the commission's rules were to those provisions that: prohibited breweries and distributors from telling consumers where their products can be bought; mandated the use of inaccurate statutory definitions of "beer," "ale" and "malt liquor" to describe malt beverages; and prohibited ad-

vertising the alcoholic content of brewery products and using words in advertising and labeling that suggest alcoholic strength. Plaintiffs' Motion for Summary Judgment specifically references Rule §45.90(c).

In partially granting Plaintiffs' Motion for Summary Judgment, the court states that "Although the Code is free to define 'beer' and 'ale' as it sees fit, Texas may not compel malt beverage producers to use those terms, and only those terms, in advertising and labeling. Accordingly, *all statutes and regulations that compel such speech,* including [commission rule] §45.77 and §45.90 are declared unconstitutional." [Emphasis added.] Accordingly, the commission proposes to delete subsection (c) of Rule §45.90 in its entirety. In addition, the commission proposes to delete other provisions of the rule that seem to prohibit making truthful statements in advertising malt beverage products.

However, the commission believes that the court's blanket declaration regarding Rule §45.90 was not intended to, and does not, prevent the commission from affirming other provisions of the rule that were not litigated by the parties, that were not part of the Plaintiffs' request for summary judgment, that were not discussed by the court, and that have the effect of prohibiting false or misleading statements.

"Untruthful speech, commercial or otherwise, has never been protected for its own sake. [Citations omitted.] Obviously, much commercial speech is not provably false, or even wholly false, but only deceptive or misleading. We foresee no obstacle to a State's dealing effectively with this problem. The First Amendment as we construe it today does not prohibit the State from insuring that the stream of commercial information flow cleanly as well as freely." Virginia *State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 771 (1976).

"When a State regulates commercial messages to protect consumers from misleading, deceptive, or aggressive sales practices, or requires the disclosure of beneficial consumer information, the purpose of its regulation is consistent with the reasons for according constitutional protection to commercial speech and therefore justifies less than strict review." *44 Liquormart, Inc. v. Rhode Island,* 517 U.S. 484, 501 (1996).

Recognizing the District Court's reluctance, and indeed acknowledged lack of authority, to rewrite the law, and noting the Court's recognition of the Commission's authority to pass *appropriate* regulations even as to the matters that were litigated, the Commission proposes to extract the offending portions of Rule §45.90 but leave the remaining, appropriate regulations in place.

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

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

Mr. Greinert has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because manufacturers' and brewers' free speech rights recognized by the Court in the *Authentic Beverages* litigation will be honored by the commission, but consumers will continue to receive some protection from false and misleading advertising.

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

The staff of the commission will hold a public hearing to receive oral comments on May 2, 2012 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 9:30 a.m. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

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

The proposed amendment affects Alcoholic Beverage Code §1.04 and §5.31.

§45.90. Advertisement: Prohibited Statements.

(a) General. An advertisement of malt beverages shall not contain the following:

(1) any statement that is false or misleading in any material particular;

(2) any statement that is disparaging of a competitor or his products;

(3) any statement, design, device or representation which is obscene or indecent;

(4) any statement, design, device, or representation of or relating to analyses, standards, or tests irrespective of falsity, which the administrator finds to be likely to mislead the consumer; or

(5) any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the administrator finds to be likely to mislead the consumer.[~~;~~]

[~~(6) any statement that the malt beverages are brewed, made, bottled, labeled, or sold under, or in accordance with, any municipal, state, or federal authorization, law or regulation; and if a municipal or state permit number is stated, the permit number shall not be accompanied by any additional statement relating thereto;~~]

[~~(7) the words "bonded," "bottled in bond," "aged in bond," "bonded age," "bottled under customs supervision," or phrases containing these or synonymous terms which imply governmental supervision over production, or bottling.~~]

(b) Statements inconsistent with labeling. The advertisement shall not contain any statement concerning a brand or lot of malt beverages that is inconsistent with any statement on the labeling thereof.

[~~(c) Class.~~]

[~~(1) No product containing less than 0.5% of alcohol by volume shall be designated in any advertisement as "beer," or by any other class or type designation commonly applied to fermented malt beverages containing 0.5% or more of alcohol by volume.~~]

[~~(2) No malt beverage containing 4.0% of alcohol by weight or less shall be designated in any advertisement as an "ale" or "malt liquor."~~]

(c) [~~(d)~~] Curative and therapeutic effect. The advertisement shall not contain any statement, design, or device representing that the use of any malt beverage has curative or therapeutic effects if such statement is untrue in any particular, or tends to create a misleading impression.

(d) [~~(e)~~] Confusion of brands. Two or more different brands or lots of malt beverages shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper or in one piece of other written, printed, or graphic matter) if the advertisement is [~~tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations made as to one brand or lot applied to the other or others, and if as to such latter the representations contravene any provision of this subchapter or are~~] in any respect untrue.

(e) [~~(f)~~] Statements, seals, flags, coat of arms, crests, or other insignia, or graphic or pictorial or emblematic representations thereof, likely to mislead the consumer to believe that the product has been endorsed, made, or used by or produced for or under the supervision of or in accordance with, the specifications of the government, organization, family, or individual with whom such statement, seal, flag, coat of arms, crest, or insignia is associated, are prohibited.

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 10, 2012.

TRD-201201782
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 206-3443

SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.110

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.110, Inducements.

In *Authentic Beverages Company, Inc v. Texas Alcoholic Beverage Commission,* A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex. Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the Commission were found to be unconstitutional violations of the First Amendment. The section is being amended to conform to the court's decision. Rule §45.110(c)(3) was declared unconstitutional and the commission was enjoined from enforcing it. However, the court's Order affirms the commission's authority to prohibit undue collusion, financial or otherwise, among the tiers. Accordingly, the commission proposes amending that paragraph to eliminate the per se prohibition on advertising that benefits a specific retailer and replace it with a prohibition on such advertising that is a product of undue collusion among members of different tiers. The commission also proposes to amend subsection (a) to add a statutory reference.

Steve Greinert, Director of Tax and Marketing Practices, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

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

Mr. Greinert has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the section will not per se prohibit advertising by a member of the manufacturing or wholesale tiers that benefits a specific retailer, but will prohibit undue collusion among the tiers.

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

The staff of the commission will hold a public hearing to receive oral comments on May 2, 2012 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 9:30 a.m. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted rule, if the commission chooses to adopt a rule. Staff will not respond to comments at the public hearing. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

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

The proposed amendment affects Alcoholic Beverage Code §§5.31, 102.04, 102.07, 102.12, 102.15 and 108.06.

§45.110. Inducements.

(a) General. This rule is enacted pursuant to §§102.04, 102.07, 102.12, 102.15 and 108.06.

(b) This rule applies to members of the manufacturing and wholesale tiers for all alcoholic beverages.

(c) Inducements. Notwithstanding any other provision of these rules, practices and patterns of conduct that place retailer independence at risk constitute an illegal inducement as that term is used in the Alcoholic Beverage Code. Examples of unlawful inducements are:

(1) purchasing or renting shelf, floor or warehouse space from or for a retailer;

(2) requiring a retailer to purchase one product in order to be allowed to purchase another product at the same time;

(3) providing or purchasing, in whole or in part, any type of advertising benefitting any specific retailer, if the advertising is a result of undue collusion involving financial remuneration, incentive, inducement or compensation between the manufacturing or wholesale tier member and the retail tier member;

(4) furnishing food and beverages, entertainment or recreation to retailers or their agents or employees except under the following conditions:

(A) the value of food, beverages, entertainment and recreation shall not exceed $500 per person on any one occasion; [~~and~~]

(B) food, beverages, entertainment and recreation provided may only be consumed or enjoyed in the immediate presence of both the providing upper tier member and the receiving retail tier member; [~~and~~]

(C) in the course of providing food, beverages, entertainment or recreation under this rule, upper tier members may only furnish ground transportation;[~~.~~]

(D) food, beverages, recreation and entertainment may also be provided during attendance at a convention, conference, or similar event so long as the primary purpose for the attendance of the retailer at such event is not to receive benefits under this rule; and[~~.~~]

(E) each upper tier member shall keep complete and accurate records of all expenses incurred for retailer entertainment for two years.

(5) furnishing of service trailers with equipment to a retailer; or

(6) furnishing transportation or other things of value to organized groups of retailers. Members of the manufacturing and distribution tiers may advertise in convention programs, sponsor functions or meetings and other participate in meetings and conventions of trade associations of general membership.

(d) Criteria for determining retailer independence. The following criteria shall be used as a guideline in determining whether a practice or pattern of conduct places retailer independence at risk. The following criteria are not exclusive, nor does a practice need to meet all criteria in order to constitute an inducement.

(1) The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.

(2) The retailer is obligated to participate in a program offered by a member of the manufacturing or wholesale tier in order to obtain that member's product.

(3) The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.

(4) The retailer has a commitment not to terminate its relationship with a member of the manufacturing or wholesale tier with respect to purchase of that member's products.

(5) The practice involves a member of the manufacturing or wholesale tier in the day-to-day operations of the retailer. For example, the member controls the retailer's decisions on which brand of product to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.

(6) The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

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, 2012.

TRD-201201771
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 206-3443

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

19 TAC §21.2100, §21.2101

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §21.2100 and §21.2101, concerning the Exemption Program for Veterans and their Dependents (The Hazlewood Act).

Specifically, §21.2100(7) is deleted, as the term "Deployed" applies only to the tuition exemption for children of service members who are deployed, which was found in §21.2111 and which is proposed for repeal. The rules for this exemption were relocated to Chapter 21, new Subchapter SS, §§21.2270 - 21.2275, so it will be easier for people to locate the information. Section 21.2100(8) - (18) has been re-numbered as §21.2100(7) - (17). The amendments to new §21.2100(8) and (9) update the citation authorizing the Hazlewood exemption from Texas Education Code, §54.203 to §54.341. Amendments to §21.2101 identify the type of tuition and mandatory fee charges, including fees for correspondence courses, for which the Hazlewood Act exemption can be utilized.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the amendments as proposed.

Mr. Weaver has also determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the sections will be a clearer understanding of the requirements and restrictions of benefits

under the Exemption Program for Veterans and their Dependents. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

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

The amendments are proposed under the Texas Education Code, §54.341(i) and (k) (previously §54.203(i) and (k)), which provide the Coordinating Board with the authority to adopt rules to administer Texas Education Code, §54.341 (previously §54.203), including the Hazlewood Legacy Act.

The amendments affect Texas Education Code, §54.341 (previously §54.203).

§21.2100. Definitions.

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

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

[~~(7) Deployed--A person is deployed if he or she is assigned to active military duty performed in a combat zone outside the United States.~~]

(7) [~~(8)~~] Extraordinary costs--(for public junior colleges, public technical institutes, or public state colleges only) tuition and fee costs that exceed the average tuition and fee charges at the institution.

(8) [~~(9)~~] Hazlewood Act Exemption--The tuition and partial fee exemption authorized under Texas Education Code, §54.341 (previously §54.203).

(9) [~~(10)~~] Hazelwood Legacy Act--The tuition and partial fee exemption authorized under Texas Education Code, §54.341 (previously §54.203), as amended by Senate Bill 93, 81st Texas Legislature, June 1, 2009.

(10) [~~(11)~~] Honorably discharged--Released from active duty military service with an Honorable Discharge, General Discharge under Honorable Conditions, or Honorable Separation or Release from Active Duty, as documented by the Certificate of Release or Discharge from Active Duty (DD214) issued by the Department of Defense.

(11) [~~(12)~~] Identification number--An individual's social security number or school-assigned identification number.

(12) [~~(13)~~] Institution--A Texas public institution of higher education as defined in Texas Education Code, §61.003(8).

(13) [~~(14)~~] Deposit fees--Fees that an institution may collect under Texas Education Code, §54.502.

(14) [~~(15)~~] Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(15) [~~(16)~~] Student service fees--Fees that an institution may, under Texas Education Code, §§54.503, 54.5061 and 54.513, elect to charge to students to cover the cost of student services.

(16) [~~(17)~~] Training--Time spent as a member of the armed forces that is not included in the "Net Active Service" or the sum of "Net Active Service" indicated on the Certificate of Release or Discharge from Active Duty (DD214).

(17) [~~(18)~~] Tuition--All types of tuition that an institution may, under Texas Education Code, Chapter 54, collect from students attending the institution, including statutory tuition, [~~discretionary tuition,~~] designated tuition, and board-authorized tuition.

§21.2101. Hazlewood Act Exemption.

(a) Subject to the following provisions, an institution shall exempt an eligible veteran, spouse, or child from the payment of tuition, fees, dues, and other required charges, including fees for correspondence courses, but excluding general [~~other than~~] deposit and student service fees and any fees or charges for lodging, board, or clothing. [~~The exemption shall not apply to the payment of fees for services or items that are not required for enrollment in general or for items that are not required for the specific courses taken by the student.~~]

(b) - (h) (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, 2012.

TRD-201201774
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 26, 2012
For further information, please call: (512) 427-6114

19 TAC §21.2111

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

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §21.2111, concerning the Exemption Program for Veterans and their Dependents (The Hazlewood Act).

Specifically, §21.2111 is proposed for repeal because the rules governing the tuition exemption for the children of military service members who are deployed were relocated to Chapter 21, new Subchapter SS, §§21.2270 - 21. 2275, so it will be easier for people to locate the information.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal as proposed.

Mr. Weaver has also determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the section will be increased ease of locating rules governing the tuition exemption for the children of military service members who are deployed. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

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

The repeal is proposed under the Texas Education Code, §54.2031(i), which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §54.2031.

The repeal affects Texas Education Code, §54.2031.

§21.2111. Tuition Exemption for Children of Military Service Members Who Are Deployed.

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, 2012.

TRD-201201773
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 26, 2012
For further information, please call: (512) 427-6114

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

19 TAC §97.1065, §97.1067

The Texas Education Agency proposes amendments to §97.1065 and §97.1067, concerning accreditation status, standards, and sanctions. Section 97.1065 addresses provisions relating to repurposing, alternative management, or campus closure. Section 97.1067 addresses provisions relating to alternative management of campuses. The proposed amendments would implement the requirements of the Texas Education Code (TEC), §39.107, Reconstitution, Repurposing, Alternative Management, and Closure, as amended by Senate Bill (SB) 738, 82nd Texas Legislature, 2011, which establishes new requirements related to the implementation of campus sanctions under the TEC, §39.107(e). The proposed amendments would also establish processes by which the commissioner may defer a sanction action ordered for certain campuses that have unacceptable performance for multiple years.

SB 738, 82nd Texas Legislature, 2011, amended the TEC, §39.107. Specifically, SB 738 requires the commissioner to adopt rules to address statutory changes that: 1) allow the parents of a majority of the students enrolled at a campus subject to a sanction of repurposing, alternative management, or closure under the TEC, §39.107(e), to petition the commissioner requesting a specific sanction; 2) require the commissioner to order the sanction requested by the parents unless the board of trustees of the district presents to the commissioner a written request for a different action, along with a written explanation of the basis for the board's request; and 3) allow the commissioner to order the sanction action requested by the board of trustees if the request differs from that of the parents. The proposed amendments to 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, would ensure compliance with SB 738, as follows.

The proposed amendment to 19 TAC §97.1065, Repurposing, Alternative Management, or Campus Closure, would implement the provisions of SB 738 related to campus sanctions by adding language to address new parent petition provisions. The proposed amendment would establish timelines and procedures for parents of a majority of the students enrolled at a campus subject to a sanction of repurposing, alternative campus management, or closure under the TEC, §39.107(e), to present to the commissioner a written petition requesting a specific sanction action. The proposed amendment would establish timelines and procedures for a district to determine whether a petition presented by parents was valid and eligible for submission to the commissioner and for the board of trustees of the district to present to the commissioner a written request that the commissioner order a specific sanction action other than the action requested by parents in a valid petition. The proposed amendment would also specify procedures and timelines for the commissioner to order the sanction action requested by parents in a valid petition or, under circumstances in which the board of trustees of a district requests a different sanction action, the action requested by the district. In addition, the proposed amendment would specify the timeline for implementing a sanction action ordered by the commissioner and clarify the authority to be retained by the commissioner when a campus subject to a sanction under the TEC, §39.107(e), is an open-enrollment charter school campus.

The proposed amendment would also outline a process by which a district could request that the commissioner defer a sanction action ordered for certain campuses with multiple years of unacceptable performance to allow the commissioner an opportunity to review the academic progress of the campus during the school year subsequent to the lowered rating.

The proposed amendment to 19 TAC §97.1067, Alternative Management of Campuses, would update references to §97.1065 in alignment with the proposed amendment to that section.

The proposed amendments would have the following procedural and reporting implications. A campus subject to sanctions under the TEC, §39.107(e), would have the opportunity to petition the commissioner for a specific sanction action. The proposed amendments would establish procedures and timelines for parent petitions and for a district's review of such petitions to determine validity. If a petition is determined to be valid, the proposed amendments would establish procedures for district submission of the valid petition to the commissioner and for district submission of a board request for a sanction action other than the action requested by the parents. In addition, the proposed amendments would establish timelines for the submission of certain plans if repurposing of a campus is requested by either the parents or board of trustees and for the determination and implementation of the final sanction ordered by the commissioner.

The proposed amendments would have the following locally maintained paperwork requirements. Districts will be required to maintain documentation related to acceptance, validation, and submission to the commissioner of a parent petition and any related activities undertaken by the district or its board of trustees related to a requested sanction.

Laura Taylor, associate commissioner for accreditation and school improvement, has determined that for the first five-year period the amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendments. The proposed amendments would establish timelines and procedures to implement the requirements of SB 738, 82nd Texas Legislature, 2011, and would update other already-established processes related to campus sanctions and interventions. The rules would assign no additional fiscal burden beyond what already is imposed by law.

Ms. Taylor has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments would be to provide timelines and procedures to allow for parents of students on certain campuses subject to a required sanction under the TEC, §39.107(e), to petition the commissioner for a specific sanction action and to allow for the board of trustees of the district to request that the commissioner order a specific sanction action other than that requested by the parents. The public would be notified of the opportunity to petition the commissioner for a specific sanction to address the areas of deficiency identified for the campus. In addition, in the case of certain campuses ordered by the commissioner to be closed, repurposed, or alternatively managed, the proposed amendments would provide, upon district request, for the deferral of the sanction to allow an opportunity for the commissioner to review the subsequent academic progress of the campus. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins April 20, 2012, and ends May 21, 2012. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 20, 2012.

The amendments are proposed under the Texas Education Code (TEC), §39.107, which authorizes the commissioner to adopt rules necessary to implement campus reconstitution, repurposing, alternative management, and closure. TEC, §39.107(e-2), authorizes the commissioner to specify by rule the timelines and procedures to allow for parents of students on certain campuses subject to a required sanction under the TEC, §39.107(e), to petition the commissioner for a specific sanction action and to allow for the board of trustees of the district to request that the commissioner order a specific sanction action other than that requested by the parents.

The amendments implement the TEC, §39.107.

§97.1065. Repurposing, Alternative Management, or Campus Closure.

(a) Action required. The commissioner of education shall order repurposing, alternative management, or closure of a campus as provided in this section, if the campus is assigned an unacceptable performance rating under the state academic accountability system for the third consecutive school year after reconstitution is required to be implemented under §97.1064 of this title (relating to Reconstitution).

(b) Other actions permitted. In combination with action under this section, the commissioner may impose on the district or campus any other sanction under Texas Education Code (TEC), Chapter 39, or this subchapter, singly or in combination, to the extent the commissioner determines is reasonably required to achieve the purposes specified in §97.1053 of this title (relating to Purpose). In particular, the commissioner may impose sanctions as specified in §97.1064(d) of this title and/or may assign a monitor, conservator, management team, or board of managers in order to ensure and oversee district-level support to low-performing campuses and the implementation of the updated school improvement plan (SIP) and the reconstitution plan.

(c) Petition allowed. In accordance with TEC, §39.107(e-2), for a campus subject to an order of repurposing, alternative management, or closure under subsection (a) of this section, if a written petition, signed by the parents of a majority of the students enrolled at the campus and specifying the action requested under subsection (a) of this section, is presented to the commissioner in accordance with this section and related procedures adopted by the Texas Education Agency (TEA), the commissioner shall, except as otherwise authorized by this section, order the specific action requested. If the board of trustees of the school district in which the campus is located presents to the commissioner, in accordance with this section and related procedures adopted by the TEA, a written request that the commissioner order a specific action under subsection (a) of this section other than the action requested by the parents in a valid petition, along with a written explanation of the basis for the board's request, the commissioner may order the action requested by the board of trustees.

(1) A written petition under this subsection must be:

(A) finalized and submitted to the district superintendent no later than October 15 for purposes of validation;

(B) certified by the district as a valid petition in accordance with paragraph (2) of this subsection;

(C) adopted as a valid petition by the board of trustees in an action taken in a public meeting conducted in compliance with the Texas Open Meetings Act; and

(D) if determined to be a valid petition, submitted by the district superintendent to the commissioner no later than December 1.

(2) Only a written petition determined to be valid in accordance with this section and TEA procedures may be submitted to the commissioner. At a minimum, the following criteria must be met for a petition to be determined valid.

(A) The petition must include all information required by the TEA as reflected in TEA model forms and related procedures and must be submitted to the district superintendent in accordance with the deadline established in paragraph (1)(A) of this subsection.

(B) The petition must clearly state the sanction action under subsection (a) of this section being requested by the parents.

(C) In accordance with this subparagraph, the parent(s) of more than 50% of the students enrolled at the campus must provide the handwritten or typed name and an original signature on the petition.

(i) For the purposes of the petition, a parent means the parent who is indicated on the student registration form at the campus.

(ii) A student will be considered enrolled at the campus for the purposes of the petition if the student is enrolled and in membership at the campus on a TEA-determined enrollment snapshot date, as reflected in TEA procedures (generally the Public Education Information Management System (PEIMS) fall data submission for that school year).

(iii) For the purposes of determining whether parents of more than 50% of the students enrolled at the campus have signed the petition, only one parent signature per enrolled student can be counted by the district in its calculation assuring validity of the petition.

(3) If the board of trustees of the school district requests that the TEA consider a specific action under subsection (a) of this section other than the action requested by the parents in a valid petition and submitted to the TEA in accordance with this subsection, the board must submit a written request to the commissioner and include a written explanation of the basis for the board's request for an action other than the one reflected in a valid parent petition. Any written request must be:

(A) approved by a majority of the board members in an action taken in a public meeting conducted in compliance with the Texas Open Meetings Act; and

(B) submitted to the commissioner no later than December 15 in accordance with procedures established by the TEA.

(4) If a valid parent petition under paragraph (1) of this subsection or board of trustees submission under paragraph (3) of this subsection requests that the commissioner order campus repurposing, the district must submit, no later than January 30, a comprehensive plan for campus repurposing that meets the requirements of the TEC, §39.107, and subsection (d) of this section.

(5) Following the submission to the TEA of a valid petition and any subsequent board request under this section, the commissioner will order, no later than February 15, a sanction in compliance with the TEC, §39.107, and this section. The sanction shall be implemented for the subsequent school year regardless of the state academic accountability rating assigned to the campus in that school year. For example: A campus is assigned an unacceptable performance rating for the sixth consecutive year on or around June 15, 2013. In February 2014, the commissioner orders a sanction under this paragraph. The sanction must be implemented for the 2014-2015 school year.

(6) Notwithstanding this subsection, in the case of a charter school granted under the TEC, Chapter 12, Subchapter D or E, the commissioner shall retain authority under the TEC and Chapter 100, Subchapter AA, Division 2, of this title (relating to Commissioner Action and Intervention) to take any adverse action allowed by statute and rule and to approve or disapprove any proposed change in campus or charter structure resulting from a petition or board request under this subsection.

(d) [~~(c)~~] Campus repurposing.

(1) If the commissioner orders repurposing of a campus under this section, the school district shall develop a comprehensive plan for repurposing the campus and submit the plan to the board of trustees for approval and to the commissioner for approval, using the procedures described by §97.1063 of this title (relating to Campus Intervention Team) for SIP approvals. The plan must include a description of a rigorous and relevant academic program for the campus. The plan may include various instructional models.

(2) The commissioner may not approve the repurposing of a campus unless:

(A) all students in the assigned attendance zone of the campus in the school year immediately preceding the repurposing of the campus are provided with the opportunity to enroll in and are provided transportation on request to a campus approved by the commissioner, unless the commissioner grants an exception because there is no other campus in the district in which the students may enroll;

(B) the principal is not retained at the campus, unless the commissioner determines that students enrolled at the campus have demonstrated significant academic improvement; and

(C) teachers employed at the campus in the school year immediately preceding the repurposing of the campus are not retained at the campus, unless the commissioner or the commissioner's designee grants an exception, at the request of a school district, for:

(i) a teacher who provides instruction in a subject other than a subject for which an assessment instrument is administered under TEC, §39.023(a) or (c), who demonstrates to the commissioner satisfactory performance; or

(ii) a teacher who provides instruction in a subject for which an assessment instrument is administered under TEC, §39.023(a) or (c), if the district demonstrates that the students of the teacher demonstrated satisfactory performance or improved academic growth on that assessment instrument.

(3) If an educator is not retained under paragraph (2)(C) of this subsection, the educator may be assigned to another position in the district.

(e) [~~(d)~~] Alternative management. The commissioner may order alternative management of a campus under this section and may require the campus to remain open, when:

(1) the commissioner does not approve repurposing of the campus under subsection (d) [~~(c)~~] of this section and does not order the closure of the campus under §97.1051(3) of this title (relating to Definitions);

(2) the commissioner determines that alternative management has a reasonable expectation of producing an acceptable or higher campus performance rating in the state academic accountability system within three rating cycles of assignment of the alternative management service provider under §97.1067 of this title (relating to Alternative Management of Campuses);

(3) an alternative management service provider with the necessary skills and required expertise is available under §97.1069 of this title (relating to Providers of Alternative Campus Management); and

(4) such action is determined warranted under §97.1059 of this title (relating to Standards for All Accreditation Sanction Determinations) and other standards for accreditation sanction determinations.

(f) [~~(e)~~] Closure. The commissioner may order closure of the campus when action is required under this section and:

(1) the commissioner approves neither repurposing of the campus under subsection (d) [~~(c)~~] of this section nor alternative management under subsection (e) [~~(d)~~] of this section;

(2) the district fails to enter into a contract for alternative management under §97.1067 of this title as required by §97.1067 of this title; or

(3) the commissioner does not approve the contract for alternative management under §97.1067 of this title; and

(4) such action is determined warranted under §97.1059 of this title and other standards for accreditation sanction determinations.

(g) [~~(f)~~] Alternative management unsuccessful. The commissioner shall order closure of a campus when alternative management of the campus was ordered under this section and:

(1) the district resumed operation of the campus under TEC, §39.107(n); and

(2) for the school year immediately following resumption of operations, the campus is assigned an unacceptable performance rating under the state academic accountability system.

(h) [~~(g)~~] Appeal. An order proposing action under this section may be appealed only as provided by §97.1037 of this title (relating to Record Review of Certain Decisions).

(i) [~~(h)~~] Waiver. The commissioner may waive the requirement to enter an order under subsection (a) of this section for not more than one school year if the commissioner determines that, on the basis of significant improvement in student performance over the preceding two school years, the campus is likely to be assigned an acceptable performance rating under the state academic accountability system for the following school year.

(j) [~~(i)~~] Targeted technical assistance. In addition to the grounds specified in TEC, §39.109, if the commissioner determines that the basis for the unsatisfactory performance of a campus for more than two consecutive school years is limited to a specific condition that may be remedied with targeted technical assistance, the commissioner may require the district to contract for the appropriate technical assistance.

(k) [~~(j)~~] Lack of improvement. The commissioner shall order repurposing, alternative management, or campus closure under this section if the students enrolled at a campus assigned an unacceptable performance rating under the state academic accountability system for two or more consecutive school years fail to demonstrate substantial improvement in the areas targeted by the campus' updated SIP and such order is needed to achieve the purposes listed in §97.1053 of this title. If the commissioner orders repurposing, alternative management, or campus closure under this subsection, a district may submit a request to the TEA to defer the sanction action to provide the commissioner an opportunity to review the academic progress of the campus during the school year subsequent to the performance rating leading to the order. If the commissioner grants a district's deferral request under this subsection and subsequently determines that a sanction will be ordered, the district may not appeal under TEC, §39.152, the final sanction order of the commissioner.

§97.1067. Alternative Management of Campuses.

(a) By January 1 of the school year for [~~in~~] which alternative management of a campus is ordered under §97.1065 of this title (relating to Repurposing, Alternative Management, or Campus Closure), the school district shall:

(1) execute a contract in compliance with this section; and

(2) relinquish control over the campus to a service provider approved under §97.1069 of this title (relating to Providers of Alternative Campus Management).

(b) A contract under this section must be executed by the district and the service provider and must:

(1) relinquish all authority to perform the duties and responsibilities of a principal under Texas Education Code (TEC), §11.202(b)(1)-(6), with respect to the campus;

(2) comply with TEC, §39.107(m)-(o); this section; and the requirements and performance measures established by the Texas Education Agency (TEA) under §97.1069 of this title;

(3) provide for the creation, maintenance, retention, and transfer of all public records concerning the campus;

(4) include provisions governing liability for damages, costs, and other penalties for acts or omissions by the service provider, including failure to comply with federal or state laws;

(5) provide for termination of the contract if:

(A) the campus is assigned an acceptable or higher performance rating under the state academic accountability system for two consecutive school years; or

(B) the commissioner of education orders campus closure under §97.1065(f) or (g) [~~§97.1065(e) or (f)~~] of this title;

(6) specify additional roles or responsibilities assumed by the service provider, if any;

(7) be approved by written resolution of the district's board of trustees; and

(8) be approved in writing by the commissioner.

(c) The service provider may perform the duties and responsibilities of a principal, and in addition may make requests and recommendations to the district concerning all aspects of campus administration, including personnel and budget decisions.

(1) If a request is denied or a recommendation is not implemented by the district, the service provider shall report to the TEA both its request or recommendation and the district's action in response.

(2) The commissioner may implement additional sanctions under this subchapter and consider such reports under TEC, §39.108 and §39.107(n), as well as §97.1065(b) of this title.

(d) The funding for the campus must be not less than the funding of the other campuses operated by the district on a per-student basis so that the service provider receives at least as much funding as the campus would otherwise have received. The district must continue to support:

(1) campus maintenance and operations;

(2) transportation;

(3) food services;

(4) extracurricular activities;

(5) central office support services;

(6) state assessment administration; and

(7) similar operational expenses of the campus.

(e) A campus operated by a service provider under this section remains a campus of the district. Educators and staff assigned to work at the campus are district employees for all purposes. The campus is not subject to TEC, §11.253.

(f) A district subject to this section shall comply fully with TEA requests for information for the purpose of evaluating implementation of the contract, student performance, and management of the campus.

(g) A district that violates the terms of its contract under this section is subject to further sanctions under this subchapter.

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

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

TRD-201201730
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 475-1497

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS

SUBCHAPTER Z. VACCINE PREVENTABLE DISEASE POLICY

25 TAC §§1.701 - 1.704

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§1.701 - 1.704, concerning a Vaccine Preventable Disease Policy for health care facilities regulated and operated by the department.

BACKGROUND AND PURPOSE

This new subchapter will implement Senate Bill (SB) 7, Article 8, 82nd Legislature, First Called Session, 2011, which added new Health and Safety Code, Chapter 224 (regarding Policy on Vaccine Preventable Diseases). By their terms, these provisions require state hospitals and certain health care facilities licensed by the department to develop, implement, and enforce a Vaccine Preventable Disease Policy applicable to their employees and other individuals who are routinely and directly exposed to patients.

These new rules apply to seven regulatory programs administered by the department, as well as to hospitals the state maintains or operates. Programs of the department affected by the new law have unique rule sets and are codified in seven different chapters. Therefore, the most efficient way to implement SB 7 is to amend 25 Texas Administrative Code Chapter 1, the broad-scope rule set of the department which applies across programs and to state hospital operations as well, rather than amending seven individual rule sets. The new requirements are identical for the programs and state hospitals affected. Specifically, the programs affected are: Hospitals, Health and Safety Code, Chapter 241; Ambulatory Surgical Centers, Health and Safety Code, Chapter 243; Birthing Centers, Health and Safety Code, Chapter 244; Abortion Facilities, Health and Safety Code, Chapter 245; Special Care Facilities, Health and Safety Code, Chapter 248; End Stage Renal Disease Facilities, Health and Safety Code, Chapter 251; and Freestanding Emergency Medical Care Facilities, Health and Safety Code, Chapter 254; as well as state hospitals.

SECTION-BY-SECTION SUMMARY

New §§1.701 - 1.704 require that each health care facility develop, implement, and enforce a policy to protect patients from the vaccine preventable diseases that are included in the most current recommendations of the Advisory Committee on Immunization Practices of the federal Centers for Disease Control and Prevention (CDC).

The policy must require covered individuals to receive vaccines based on the level of risk the individuals present to patients by their routine and direct exposure to patients; include procedures for covered individuals to claim an exemption from the required vaccines for medical conditions the CDC identifies as contraindications or precautions; include procedures exempt individuals must follow to protect facility patients from exposure to disease; require the health care facility to maintain written or electronic records of covered individuals' compliance with or exemption from the policy; and include disciplinary actions the health care facility is authorized to take against covered individuals who fail to comply with the policy.

The new rules also include provisions for covered individuals to claim an exemption from the required vaccine policy based on reasons of conscience, including a religious belief; for prohibiting exempt individuals from having contact with facility patients during a public disaster; and for taking enforcement action, including assessing administrative penalties against facilities that violate these rules.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each year of the first five years that the sections will be in effect, there will not be fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Clack has also determined that there will not be an adverse economic impact on small businesses or micro-businesses required to comply with the sections as proposed because it was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated costs to facilities associated with implementing this law as most health care facilities already have vaccine policies in place and there is no mandate in the law that requires facilities to absorb the costs of vaccinating employees or other covered individuals. Any economic costs to persons who are required to comply with the sections as proposed will be determined by whether the health facility itself decides to bear the cost of the required vaccinations or requires covered individuals to pay for them, as well as staff training and reporting costs, all of which are expected to be minimal. There is no anticipated impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Clack also has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The rules help protect patients and those rendering care at health care facilities from vaccine preventable diseases.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the

environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Ellen Cooper, Manager, Facility Licensing Group, Regulatory Licensing Unit, Division of Regulatory Services, Department of State Health Services, P.O. Box 149347, Mail Code 2835, Austin, Texas 78714-9347, (512) 834-6639 or by email to ellen.cooper@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, §§241.026, 243.010, 244.010, 245.010, 248.026, 251.014, and 254.151; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new sections affect Health and Safety Code, Chapters 241, 243 - 245, 248, 251, 254 and 1001; and Government Code, Chapter 531.

§1.701. Definitions.

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

(1) Covered individual--

(A) an employee of the health care facility;

(B) an individual providing direct patient care under a contract with a health care facility; or

(C) an individual to whom a health care facility has granted privileges to provide direct patient care.

(2) Department--Department of State Health Services.

(3) Health care facility--

(A) a hospital licensed under the Health and Safety Code, Chapter 241;

(B) an ambulatory surgical center licensed under the Health and Safety Code, Chapter 243;

(C) a birthing center licensed under the Health and Safety Code, Chapter 244;

(D) an abortion facility licensed under the Health and Safety Code, Chapter 245;

(E) a special care facility licensed under the Health and Safety Code, Chapter 248;

(F) an end stage renal disease facility licensed under the Health and Safety Code, Chapter 251;

(G) a freestanding emergency medical care facility licensed under the Health and Safety Code, Chapter 254; or

(H) a hospital maintained or operated by this state.

(4) Regulatory authority--Department of State Health Services.

(5) Vaccine preventable diseases--Diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the federal Centers for Disease Control and Prevention.

§1.702. Vaccine Preventable Diseases Policy.

(a) Each health care facility shall develop, implement, and enforce a policy and procedures to protect its patients from vaccine preventable diseases.

(b) The policy must:

(1) require covered individuals to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(2) specify the vaccines a covered individual is required to receive based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(3) include procedures for verifying whether a covered individual has complied with the policy;

(4) include procedures for a covered individual to be exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the federal Centers for Disease Control and Prevention;

(5) for a covered individual who is exempt from the required vaccines, include procedures the individual must follow to protect facility patients from exposure to disease, such as the use of protective medical equipment, such as gloves and masks, based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(6) prohibit discrimination or retaliatory action against a covered individual who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the federal Centers for Disease Control and Prevention, except that required use of protective medical equipment, such as gloves and masks, may not be considered retaliatory action for purposes of this section;

(7) require the health care facility to maintain a written or electronic record of each covered individual's compliance with or exemption from the policy; and

(8) include disciplinary actions the health care facility is authorized to take against a covered individual who fails to comply with the policy.

(c) The policy may include procedures for a covered individual to be exempt from the required vaccines based on reasons of conscience, including a religious belief.

§1.703. Disaster Exemption.

(a) In this section, "public health disaster" has the meaning assigned by the Health and Safety Code, §81.003.

(b) During a public health disaster, a health care facility may prohibit a covered individual who is exempt from the vaccines required in the policy developed by the facility under §1.702 of this title (relating to Vaccine Preventable Diseases Policy) from having contact with facility patients.

§1.704. Disciplinary Action.

A health care facility that violates this subchapter is subject to enforcement action by the department, including but not limited to imposition of administrative penalties, in the same manner, to the same extent, and pursuant to the same procedures, as if the health care facility had violated a provision of the applicable chapter of the Health and Safety Code or department rules as follows:

(1) for hospitals, Health and Safety Code, Chapter 241, and 25 Texas Administrative Code (TAC), Chapter 133;

(2) for ambulatory surgical centers, Health and Safety Code, Chapter 243, and 25 TAC, Chapter 135;

(3) for birthing centers, Health and Safety Code, Chapter 244, and 25 TAC, Chapter 137;

(4) for abortion facilities, Health and Safety Code, Chapter 245, and 25 TAC, Chapter 139;

(5) for special care facilities, Health and Safety Code, Chapter 248, and 25 TAC, Chapter 125;

(6) for end stage renal disease facilities, Health and Safety Code, Chapter 251, and 25 TAC, Chapter 117; and

(7) for freestanding emergency medical care facilities, Health and Safety Code, Chapter 254, and 25 TAC, Chapter 131.

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, 2012.

TRD-201201776
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 776-6972

CHAPTER 98. TEXAS HIV MEDICATION PROGRAM
SUBCHAPTER C. TEXAS HIV MEDICATION PROGRAM
DIVISION 2. ADVISORY COMMITTEE

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §98.121 and new §98.121, concerning the Texas HIV Medication Advisory Committee (THMAC).

BACKGROUND AND PURPOSE

The THMAC advises the Texas HIV Medication Program, which helps provide medications for the treatment of HIV and its related complications for low-income Texans.

House Bill (HB) 2229, 82nd Texas Legislature, Regular Session, 2011, now mandates the existence of the THMAC in Health and Safety Code, Chapter 85. The statute largely mirrors the language in the existing rule and, therefore, much of the existing rule is duplicative and unnecessary. The department proposes to delete existing rule language in the section and replace it with much shorter language that reflects necessary content that is not contained in the statute itself. This new language would ensure compliance with requirements in the Government Code, §2110.005 and §2110.008, which require the department to publish rules that specify the THMAC's purpose and tasks, the manner in which the THMAC reports to the department, and the expiration date of the THMAC. The repeal and new rule language comply with the statutory requirements cited herein.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 98.121 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed to comply with statutory requirements.

SECTION-BY-SECTION SUMMARY

The department proposes the repeal of §98.121, since most of the existing language in this rule is duplicative of new legislation in HB 2229. The department proposes new language to replace §98.121 that is consistent with these new statutory requirements in Health and Safety Code, Chapter 85, and which will align with requirements in Government Code, §2110.005 and §2110.008. New proposed language for §98.121(a) identifies the committee and the enabling statutory provisions in the Health and Safety Code, Chapter 85, Subchapter K, and states the committee's purpose of advising the executive commissioner and the department in the development of procedures and guidelines for the Texas HIV Medication Program. New proposed language for §98.121(b) identifies the tasks the committee would carry out, consistent with the statutory provisions cited herein. The tasks described include reviewing the aims and goals of the program, evaluating program efforts, recommending goals and objectives for medication needs, recommending medications for addition or deletion from the program's formulary and any other tasks given to the committee by the executive commissioner. New proposed language for §98.121(c) establishes the committee abolishment date as August 1, 2016 (if not extended by a subsequent rule amendment), consistent with Government Code, §2110.008. New proposed language for §98.121(d) establishes the terms of office for members, as these were not fully specified in HB 2229. This section would also provide direction in the event of positions being left vacant before terms expire. New proposed language for §98.121(e) provides details about how the meetings must be held. New proposed language for §98.121(f) clarifies attendance requirements for members and spells out the grounds for removal of members for reasons of illness, disability or absence.

FISCAL NOTE

Janna Zumbrun, Director, Disease Intervention and Prevention Section, has determined that for each year of the first five years that the repeal and new section will be in effect, there will be no fiscal implications to state or local governments as a result

of enforcing and administering the repeal and new section as proposed.

SMALL AND MICRO-BUSINESSES IMPACT ANALYSIS

Ms. Zumbrun has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal and new section as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the proposed repeal and new section.

COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the repeal and new section as proposed. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeal and new rule do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC BENEFIT

In addition, Ms. Zumbrun has also determined that for each year of the first five years the repeal and new section are in effect, the public will benefit from adoption of the proposal. The public benefit anticipated will be continued expert advice from professionals and consumers to the department regarding the Texas HIV Medication Program goals and ongoing efforts to meet medication needs for the state, along with the improved efficiency that comes from improving the clarity and readability of these rules.

PUBLIC COMMENT

Comments on the proposal may be submitted to Juanita Salinas, TB/HIV/STD/Viral Hepatitis Unit, Department of State Health Services, Mail Code 7909, P.O. Box 149347, Austin, Texas 78714-9347, (512) 776-3439 or by email to juanita.salinas@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed repeal and new section have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

25 TAC §98.121

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

STATUTORY AUTHORITY

The repeal is authorized by Health and Safety Code, Chapters 81 and 85; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

The repeal affects Health and Safety Code, Chapters 81, 85, and 1001; and Government Code, Chapters 531 and 2001.

§98.121. Texas HIV Medication Advisory Committee.

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 5, 2012.

TRD-201201756

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 20, 2012

For further information, please call: (512) 776-6972

25 TAC §98.121

STATUTORY AUTHORITY

The new rule is authorized by Health and Safety Code, Chapters 81 and 85; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

The new rule affects Health and Safety Code, Chapters 81, 85, and 1001; and Government Code, Chapters 531 and 2001.

§98.121. Texas HIV Medication Advisory Committee.

(a) The committee. The Texas HIV Medication Advisory Committee is mandated under Texas Health and Safety Code Chapter 85, Subchapter K, and is governed under the terms of those statutory provisions and by this section. The purpose of the committee is to advise the executive commissioner and the Texas Department of State Health Services (department) in the development of procedures and guidelines for the Texas HIV Medication Program (program).

(b) Tasks. The committee shall:

(1) review the aims and the goals of the program;

(2) evaluate ongoing program efforts;

(3) recommend both short-range and long-range goals and objectives for medication needs;

(4) recommend medications for addition to or deletion from the program's formulary; and

(5) carry out any other tasks given to the committee by the executive commissioner.

(c) Committee abolished. By August 1, 2016, the executive commissioner will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(d) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire on December 31st of each even-numbered year.

(2) If a vacancy occurs, a person may be appointed to serve the unexpired portion of that term.

(e) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A quorum for the purpose of transacting official business is six members.

(2) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(f) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which they are assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

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

Filed with the Office of the Secretary of State on April 5, 2012.

TRD-201201757
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 776-6972

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER P. COMMERCIAL PROPERTY INSURANCE

28 TAC §5.9600

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

The Texas Department of Insurance (Department) proposes the repeal of §5.9600, concerning the conduct of commercial property inspections and rating functions by private entities and the Department's regulatory oversight of these functions. The repeal of this section is necessary to discontinue the oversight of commercial property inspections. Pursuant to 28 Texas Administrative Code §5.9600, the Department oversees the commercial property inspections and ratings services of private entities by providing oversight inspections. The Department has determined that this oversight function is no longer necessary to assure that the consumers of Texas are adequately and fairly served by private entities providing commercial property inspections and rating services. Private entities conducting commercial property inspections and rating services have been subject to oversight inspections since September 1994. Since November 1998, the Department had not found any significant defects in the commercial property inspections and rating services being provided to Texas consumers by private entities. Further, the oversight of private entities providing commercial property inspections and rating is not required by statute. Thus, the Department determines that the oversight of commercial property inspections and rating functions is an obsolete departmental function and is no longer required.

Alexis Dick-Paclik, Inspections Director, Property and Casualty, Regulatory Policy Division, has determined that during the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the section. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Dick-Paclik also has determined that for each year of the first five years the repeal of the section is in effect, the public benefit anticipated as a result of administration and enforcement of the repealed section will be an efficient reallocation of taxpayer resources, because the repeal of this section will allow the Department to reallocate resources currently being spent on the obsolete oversight inspection function. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses.

In accordance with the Government Code §2006.002(c), the Department has determined that this proposed repeal will not have an adverse economic effect on small or micro business carriers because it is simply a repeal of an obsolete rule. Therefore, in accordance with the Government Code §2006.002(c), the Department is not required to prepare a regulatory flexibility analysis.

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

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on May 21, 2012, to Sara Waitt, General Counsel, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An

additional copy of the comment must be simultaneously submitted to Alexis Dick-Paclik, Inspections Director, Property and Casualty, Regulatory Policy Division, 103-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing must be submitted separately to the Office of Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

Repeal of §5.9600 is proposed pursuant to the Insurance Code §2001.002(b) and §36.001. Section 2001.002(b) addresses the Department's conduct of commercial property inspections and prescription of rating schedules for commercial property under a law described by the Insurance Code §2001.001(a). Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The proposed repeal affects regulation pursuant to the following statutes: Insurance Code §2001.002.

§5.9600. Commercial Property Inspections and Rating.

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, 2012.

TRD-201201778
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 463-6327

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 55. LAW ENFORCEMENT

SUBCHAPTER F. FLOATING CABINS

31 TAC §55.202

The Texas Parks and Wildlife Department proposes an amendment to §55.202, concerning Period of Validity; Renewal and Transfer of Permits.

Under Parks and Wildlife Code, §32.051, a person may not own, maintain, or use a floating cabin in the public coastal water of this state unless a permit has been issued by the department under the provisions of Parks and Wildlife Code, Chapter 32. Under current rule, the department may renew a floating cabin permit if the permittee has met all statutory and regulatory requirements and has submitted an application for renewal prior to expiration date of the current permit. Permits that are not renewed within 90 days of expiration are not eligible for renewal and are subject to removal at the owner's expense.

Under the current rules, when there are multiple owners of a single floating cabin, the department issues a floating cabin permit to one of the owners as the primary permittee and lists other owners on the permit. Currently, renewal notices and other correspondence from the department are sent only to the primary permittee. As a result, there are instances in which an owner who is not the primary permittee may be unaware of the status of the permit and therefore unable to take steps to renew the permit and prevent the permit from becoming ineligible for renewal.

To address this situation, the department proposes to require all owners of a permitted floating cabin to be treated as permittees for purposes of the notification requirements of the section. In addition, the department proposes to create a process to allow any owner/permittee listed on a floating cabin permit to seek an informal internal review if he or she failed to submit a timely permit renewal application. If a review is requested, the decision would be reviewed by a panel of senior department managers. The process as proposed would allow the department to renew a permit in light of extenuating circumstances upon further review.

Specifically, the proposed amendment would replace the term "owner" with the term "permittee" throughout the rule and move the text of current subsection (a) into current subsection (c) so that all renewal provisions are in a single subsection. The proposed amendment also would remove the reference to February 1, 2002, as it was the original regulatory deadline for applications for floating cabin permits and is no longer necessary. Additionally, the deadline for submission of renewal materials would be set at 90 days after the date the permit expires, rather than before the expiration date. The department reasons that the current provision is confusing, since it stipulates that permits will be renewed only if renewal materials are submitted prior to the expiration date of the permit, yet provides another 90 days from the expiration date for renewal. The department believes it is less confusing to provide a single deadline.

The proposed amendment also alters current subsection (d) to provide that the department will notify each permittee by certified mail in the event a floating cabin permit expires and becomes ineligible for renewal. The proposed amendment to current subsection (d) also stipulates that a request for review of a late permit renewal must be received by the department within 10 working days after the mailing of the nonrenewal notification by the department. The proposal also adds new paragraphs (1) - (3) to subsection (d) to create a panel of senior managers to review late renewal applications for which a review is requested. The proposed amendment would allow a permittee whose permit has expired and become ineligible for renewal to have the permit expiration reviewed. The 10-day limit was chosen because by the time a floating cabin permit has become ineligible, at least 90 days have passed since the expiration of the permit, during which time the department has attempted several times to contact all of the permittees listed on a permit. The department believes that 10 days is sufficient as a last-chance opportunity for a permittee to reconcile the status of a permit with the department.

The proposed amendment also alters the title of the section to reference the fact that it stipulates the period of validity of a permit.

Lt. Cody Jones, Marine Enforcement, 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 and local governments as a result of enforcing or administering the rule.

Mr. Jones 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 additional provisions to allow floating cabins permit holders to have late renewal applications reviewed.

There will be no adverse economic effect on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. Since the proposed rules do not make substantive changes and are merely for the purpose of ensuring an accurate cross-reference, the department has determined that the proposed amendment will not impose any direct adverse economic effects on small businesses or microbusinesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure 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 Lt. Cody Jones, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4913 (e-mail: cody.jones@tpwd.state.tx.us).

The amendment is proposed under the authority of Parks and Wildlife Code, §32.005, which allows the commission to adopt rules to implement the provisions of the floating cabin statute.

The proposed amendment affects Parks and Wildlife Code Chapter 32.

§55.202. Period of Validity; [~~Issuance,~~] Renewal[~~,~~] and Transfer of Permits.

[~~(a) Permits will only be issued to floating cabins:~~]

[~~(1) meeting the eligibility requirements set forth in Parks and Wildlife Code, §32.052;~~]

[~~(2) and for which all applicable fees have been paid; and~~]

[~~(3) for which a completed application has been submitted to the department on or before February 1, 2002.~~]

(a) [~~(b)~~] Permits issued under authority of this subchapter are valid only during the yearly period for which they are issued without regard to the date on which the permits are acquired. Each yearly permit period begins on September 1 and ends on August 31.

(b) [~~(c)~~] A person possessing a permit issued under this subchapter may renew that permit by submitting a completed permit renewal form and renewal fee to the department prior to the expiration date of the current permit. The department may renew a floating cabin permit only if:

(1) the eligibility requirements set forth in Parks and Wildlife Code, §32.052, have been met; and

(2) a permit renewal form, accompanied by the permit renewal fee specified in Parks and Wildlife Code, §32.055, has been submitted to the department no later than 90 days after the expiration date of the current permit.

(c) [~~(d)~~] Permits that are not renewed within 90 days after expiration will become ineligible for renewal and the affected floating cabin will be subject to removal at the permittee's [~~owner's~~] expense according to the provisions of Parks and Wildlife Code, §32.154. The department shall notify each permittee by certified mail upon determining that a permit has expired and become ineligible for renewal.

(1) A permittee whose permit has expired and become ineligible for renewal may request a review of the ineligibility status to show why the permit should be renewed. A person seeking a review under this subsection must contact the department within 10 working days after the date that the department issues the notification required by this section.

(2) 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) the Director of Law Enforcement (or his or her designee); and

(C) the Director of the Coastal Fisheries Division (or his or her designee).

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

(d) [~~(e)~~] A person possessing a permit issued under this subchapter shall notify the department prior to the transfer of the permitted floating cabin to a new permittee [~~owner~~]. Notification shall be on a form provided by the department.

(e) [~~(f)~~] A person purchasing a permitted floating cabin may not renew the annual permit unless the person has submitted a completed transfer application.

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

Filed with the Office of the Secretary of State on April 5, 2012.

TRD-201201748
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 389-4775

TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 81. INSURANCE

34 TAC §81.9

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) §81.9 concerning Grievance Procedure.

Section 81.9, concerning Grievance Procedure, is being amended to clarify the grievance procedure for appeals from a Medicare Advantage Plan participant or others in programs that ERS determines are fully insured for appeal purposes.

Ms. Paula A. Jones, General Counsel and Chief Compliance Officer, ERS, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules. There are no known anticipated economic costs to persons who are required to comply with the rules as proposed, and, to her knowledge, small businesses should not be affected.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules would be to clarify the applicability of the appeal process for Group Benefits Program participants.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is May 21, 2012, at 8:00 a.m.

The amendments are proposed under the Texas Insurance Code, §1551.052 which provides authorization for the ERS Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities.

No other statutes are affected by the proposed amendments.

§81.9. Grievance Procedure.

(a) Except for persons enrolled in an HMO, a Medicare Advantage Plan or other fully insured plan as determined by ERS, any person participating in the Group Benefits Program [~~insurance program~~] who is denied payment of insurance benefits, or otherwise receives an adverse decision, may request the carrier or administering firm 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 insurance carrier or administering firm, may be submitted by the person to the executive director of the Employees Retirement System of Texas or the executive director's designee for review. A request for grievance must be filed by the person in writing within 90 days from the date the insurance carrier or administering firm formally denies the claim, or provides notice of other adverse decision, and mails notice of this denial and grievance right of appeal to the person.

(b) Any participant with a grievance regarding eligibility or other matters involving the Program may submit a written request to the executive director or the executive director's designee to make a determination on the matter in dispute.

(c) When the executive director or the executive director's designee reviews any matter arising under this section, information available to ERS will be considered. When the executive director or the executive director's designee completes the review and makes a decision, all parties involved will be notified in writing of the decision.

(d) Any participant aggrieved by the executive director's or the executive director's designee's decision may appeal the decision to the Board's designee provided the decision grants a right of appeal.

(e) Appeals of the Board's designee's decision will be conducted under the provisions of Chapter 67 of this title (relating to Hearings on Disputed Claims) and Chapter 1551, Insurance Code. A notice of appeal to the Board's designee must be in writing and filed with ERS within 30 days from the date the executive director's or the executive director's designee's decision is served on the participant in accordance with §67.7 of this title (relating to Filing and Service of Documents and Pleadings).

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 5, 2012.

TRD-201201745
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Earliest possible date of adoption: May 20, 2012
For further information, please call: (512) 867-7480

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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER V. MEXICAN FRUIT FLY QUARANTINE

4 TAC §§19.500 - 19.508

The Texas Department of Agriculture withdraws the emergency new §§19.500 - 19.508 which appeared in the March 30, 2012, issue of the *Texas Register* (37 TexReg 2125).

Filed with the Office of the Secretary of State on April 5, 2012.

TRD-201201754
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: April 5, 2012
For further information, please call: (512) 463-4075

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 372. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS

The Texas Health and Human Services Commission (HHSC) adopts the amendments to §372.107, concerning persons excluded from a Temporary Assistance for Needy Families (TANF) certified group, and §372.1402, concerning changes a Supplemental Nutrition Assistance Program (SNAP) household must report. The amendments are adopted without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 437) and will not be republished.

Background and Justification

The amendments are adopted to correct outdated rule references and to reflect current federal regulations and HHSC policy.

An amendment to §372.501, effective April 24, 2011, affected two cross-references in §372.107. The amendment to §372.107 is adopted to correct the two cross-references to §372.501, concerning disqualifications due to criminal activity.

The amendment to §372.1402 is adopted to be in compliance with federal regulations. Title 7, Code of Federal Regulations (CFR) §273.12 requires a household receiving SNAP food benefits to promptly report a change in residence and any change in the household's shelter costs resulting from the change in residence, if the household does not have simplified reporting status. Shelter costs include expenses such as rent, house payments, taxes, insurance, and utilities. "Simplified reporting status" means a household meets the criteria for reporting certain changes less frequently than a household that does not meet the criteria.

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), previously had given HHSC waivers from two reporting requirements in 7 CFR §273.12: (1) HHSC could require all households, even those with simplified reporting status, to promptly report a change in residence; and (2) HHSC could exempt all households, even those without simplified reporting status, from reporting shelter cost changes when they move. HHSC's current rule at §372.1402 reflects these FNS waivers.

FNS approved HHSC's request to continue requiring all households to promptly report a change in residence. However, FNS declined to renew HHSC's request to exempt all households from reporting shelter cost changes when they move. Therefore, HHSC has amended §372.1402 so that it no longer exempts SNAP households without simplified reporting status from reporting shelter cost changes. The adopted rule includes the remaining waiver provision, which requires all SNAP households, even those with simplified reporting status, to promptly report a change in their home address.

Comments

HHSC received no comments regarding adoption of the amendments.

SUBCHAPTER B. ELIGIBILITY

DIVISION 1. TANF CERTIFIED GROUPS

1 TAC §372.107

Legal Authority

The amendment is adopted under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §31.001, which authorizes HHSC to administer financial assistance programs (TANF).

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, 2012.

TRD-201201765
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: April 29, 2012
Proposal publication date: February 3, 2012
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER E. PARTICIPATION REQUIREMENTS

DIVISION 7. REPORTING CHANGES

1 TAC §372.1402

The amendment is adopted under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §33.0006, which authorizes HHSC to operate the food stamp program (SNAP).

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, 2012.

TRD-201201766

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: April 29, 2012

Proposal publication date: February 3, 2012

For further information, please call: (512) 424-6900

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER G. GO TEXAN PARTNER PROGRAM RULES

The Texas Department of Agriculture (the department) adopts amendments to §§17.300 - 17.305 and 17.307 - 17.310, and the repeal of §17.306, concerning the GO TEXAN Partner Program, without changes to the proposal published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1043). The amendments and repeal and are adopted to make these sections conform to new requirements established by the department for the administration of the GO TEXAN Partner Program, under the new, reduced funding structure appropriated by the Texas Legislature.

The amendment to §17.300 updates the statement of purpose of the program. The amendments to §17.301 update the reference to Subchapter C of Chapter 17 and add a definition for "qualified expenses". The amendments to §17.302 update the department's administration of the program. The amendments to §17.303 provide new requirements for retailers and distributors to apply to the program. The amendment to §17.304 provides a timeline for submission of expenditure invoices to the department. The amendments to §17.305 provide new filing requirements, award limits, and requirements for matching funds. The amendments to §17.307 provide that project requests will be scored by the Board using criteria determined by the department, and that the department may make final award decisions, and provide for the awarding of additional scoring points. The amendments to §17.308 provide that the department shall not be responsible for costs incurred by the applicant in the event a project is cancelled. The amendments to §17.309 correct the reference to Subchapter C of Chapter 17 and provide that selected applicants must receive department written approval to use the GO TEXAN mark in their project. The amendments to §17.310 clarify what is considered a violation of Subchapter G, correct the reference to Subchapter C of Chapter 17, and provide that a person who violates Subchapter G is ineligible for a future grant of funds.

Comments in support of the proposal, specifically amendments to §§17.304(5), 17.305(f), and 17.307(a) and (b), were submitted by an individual. The individual also submitted comments regarding the program that were not responsive to the proposal.

4 TAC §§17.300 - 17.305, 17.307 - 17.310

The amendments to §§17.300 - 17.305 and 17.307 - 17.310 are adopted under the Texas Agriculture Code (the Code), §46.012, which provides the department with the authority to adopt rules for administration of its duties under the Code, Chapter 46.

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 5, 2012.

TRD-201201750

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: April 25, 2012

Proposal publication date: February 24, 2012

For further information, please call: (512) 463-4075

4 TAC §17.306

The repeal of §17.306 is adopted under the Texas Agriculture Code (the Code), §46.012, which provides the department with the authority to adopt rules for administration of its duties under the Code, Chapter 46.

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 5, 2012.

TRD-201201751

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: April 25, 2012

Proposal publication date: February 24, 2012

For further information, please call: (512) 463-4075

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 289. RADIATION CONTROL

SUBCHAPTER E. REGISTRATION REGULATIONS

25 TAC §289.230, §289.234

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §289.230, concerning certification of mammography systems and machines used for interventional breast radiography, and §289.234, concerning mammography accreditations, without changes to the proposed text as published in the October 21, 2011, issue of the *Texas Register* (36 TexReg 7114) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments to §289.230 implement Senate Bill (SB) 527 and SB 1082, 81st Legislature, Regular Session, 2009, that add clarifying language to Health and Safety Code, Subchapter H, §401.305(c), (e), (f), and (g), relating to the radiation and perpetual care account and Subchapter L, §401.430(f), relating to inspections. In addition, §289.230 revises the manufacturer machine identification information required to be documented; required information from the patient to include the date of birth; and requirements for training received by personnel involved in any aspect of mammography. The amendments to §289.234 are necessary to comply with the four-year review and to correct minor grammatical and typographical errors.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 289.230 and 289.234 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The amendments to §289.230(b)(4) added language to clarify that a "covered entity" as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its rules at 45 Code of Federal Regulations (CFR), Parts 160 and 164, may be subject to privacy standards governing how information that identifies a patient can be used and disclosed and that failure to follow HIPAA requirements may result in the department making a referral of a potential violation to the United States Department of Health and Human Services.

Sections 289.230(f)(4), (5)(B), and (dd)(3) revised the manufacturer machine identification information required to be documented to ensure more detailed records are maintained.

In §289.230(r)(1)(E) and (2)(E), the current personnel qualifications were deleted and replaced with updated personnel training requirements to ensure that training has met the recommendations of the American College of Radiology and the United States Food and Drug Administration. In §289.230(r)(3)(E), the mandatory training requirement was deleted.

Section 289.230(t)(1)(A) and (5)(A) revised the required information regarding the patient identification to include the date of birth to ensure a more specific patient identifier.

As a result of Health and Safety Code, §401.305(c), (e), (f), and (g), requirements were added to §289.230(t)(4)(D) regarding retention of clinical images for bankrupt, current, closed or terminated facilities to ensure that patients are provided the opportunity to obtain their mammography film.

Section 289.230(v)(10)(B) regarding surveys deleted the current requirements for the information contained in the medical physicist's survey report and replaced it with revised clarifying requirements.

Section 289.230(bb) regarding requirements for machines used exclusively for interventional breast radiography is deleted and relocated to the new §289.230(gg) with revisions to clarify existing requirements. Subsequent subsections 289.230(cc) - (ff) are renumbered to reflect the change.

The record keeping table for the figure in §289.230(ff)(3) was deleted and replaced with a revised table in §289.230(ee)(3) to update the specific subsections listed.

As a result of Health and Safety Code, §401.430(f), §289.230(ff)(7) was revised to change the time frame in which facilities that receive a severity level I violation shall notify patients on whom the facility performed a mammogram during the period in which the system failed to meet the agency's certification requirements.

Amendments were also made due to Health and Safety Code, §401.430(f), that revise the language in §289.230(ff)(7)(B) to include that the patient consult with the physician regarding having another mammogram performed. These measures were taken to ensure that patients are adequately informed and knowledgeable of their options if the facility fails a certification standards inspection.

Throughout §289.230 and §289.234, minor grammatical and typographical errors were corrected and rule references were revised.

COMMENTS

A public hearing was held on November 15, 2011, and there were no attendees or comments received. The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized under the Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with the authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2012.

TRD-201201772
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: April 29, 2012
Proposal publication date: October 21, 2011
For further information, please call: (512) 776-6972

CHAPTER 415. PROVIDER CLINICAL RESPONSIBILITIES--MENTAL HEALTH SERVICES

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State

Health Services (DSHS), adopts amendments to §§415.101 - 415.111 and the repeal of §§415.112 - 415.114, concerning the Department of State Health Services/Department of Aging and Disability Services Drug Formulary, without changes to the proposed text as published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7758) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments and repeals conform the rules to statute and current DSHS operations. The amendments are also needed to reflect the elimination of the Texas Department of Mental Health and Mental Retardation and the creation of DSHS and the Department of Aging and Disability Services (DADS) pursuant to House Bill 2292 (78th Legislature, Regular Session, 2003).

The amendments include references to DADS in the title of the formulary and in the membership of the Executive Formulary Committee (committee) because the formulary is used and maintained by both DSHS and DADS, as individuals treated in DADS facilities, DSHS facilities, and by local authorities often have concomitant issues which transcend agency divisions. The amendments ensure that the appropriate DSHS and DADS members are included on the committee and expressly require that at least two psychiatrists be on the committee. The revisions also make the DADS state supported living center medical director a voting member of the committee; change the ex officio membership of the committee; and allow the DSHS Assistant Commissioner for Mental Health and Substance Abuse to appoint members to the committee.

The repeals delete sections of the rules addressing an exhibit, references, and distribution of the rules.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 415.101 - 415.111 have been reviewed and DSHS has determined that the reasons for adopting the sections continue to exist because rules on this subject are needed. Sections 415.112 - 415.114 have been reviewed and DSHS has determined that reasons for adopting the sections no longer exist.

SECTION-BY-SECTION SUMMARY

Throughout the amendments to §§415.101 - 415.111, references to "TDMHMR" are replaced with references to the "Department of State Health Services" or "DSHS," and references to the "TDMHMR Drug Formulary" are replaced with references to the "Department of State Health Services/Department of Aging and Disability Services Drug Formulary" or the "DSHS/DADS Drug Formulary."

Section 415.102(a) is amended to state that the formulary in its entirety is applicable to all DSHS facilities in all circumstances except when "DSHS transfers an individual to a general hospital to receive non-mental health acute care services." The amendment is a non-substantive revision to state more clearly that the formulary does not apply when an individual is transferred from a DSHS facility to a general hospital for the purpose of receiving non-mental health acute care services. Section 415.102(b) is amended to provide that the entities governed by the subchapter are responsible for drafting contracts with their contractors that provide DSHS-funded medications and medication-related services to ensure that contractors comply with the subchapter; as with the revision to subsection (a), the revisions are made for the purpose of stating the requirement more clearly.

Section 415.103 is amended by adding language to the definition of "local authority" to include a local behavioral health authority designated in accordance with Texas Health and Safety Code, §533.0356; by adding certain health care professionals to the definition of "practitioner," by amending the definition of the formulary to reflect that it is revised annually; and by adding the definition of "DSHS facility" to include the Texas Center for Infectious Disease and the Rio Grande State Center. Section 415.103 is also amended by adding definitions of "DADS," "DSHS," "Interim Formulary Update," and "Mental health services"; and deleting definitions of "State mental retardation facility," "TDMHMR," TDMHMR Drug Formulary," and "TDMHMR facility."

Section 415.104 is amended by revising subsection (e) to provide a more current citation to a rule located in Chapter 412, Subchapter G of this title (concerning Mental Health and Community Services Standards).

Section 415.105 is amended by designating the existing language as subsection (a) and revising that language to state more clearly that the use of proprietary names in the formulary is for information purposes only and is not meant to be an endorsement. The subsection is also amended by adding language stating that the formulary provides tables summarizing the recommended dosage ranges for the psychotropic drugs for clinician reference; that the tables are intended as guidelines and are not intended to replace other references or the clinician's clinical judgment; and that clinicians should consult the American Hospital Formulary Service Drug Information, the approved Food and Drug Administration product labeling, and other guidelines on the appropriate prescribing of psychoactive medications. Section 415.105 is also amended by the designation of a new subsection (b), which provides that interim formulary updates are incorporated into the annual formulary and that the interim formulary update conforms to the same format as the formulary.

Amendments to §415.106 update appropriate clinical members who serve on the executive committee, to reflect organizational changes that have occurred since the section was adopted; it is also revised to provide that the Assistant Commission for Mental Health and Substance Abuse Services is responsible for appointing the committee members.

Section 415.107 is amended by revising subsection (b) to replace a reference to the TDMHMR medical director with a reference to the DSHS behavioral health medical director, reflecting an organizational change that has occurred since the section was adopted.

Section 415.108 is amended by deleting rule reference to §415.112 (concerning Exhibit) from subsection (a) and adding a new subsection (d), which now includes the New Drug Application form, currently found in §415.112, which is herein repealed.

Section 415.109 is amended by adding a new subsection (b), which states the frequency of publication of the formulary, and provides that quarterly updates to the formulary, if any, will be published in an interim formulary update. In addition, the section is amended to replace references to the TDMHMR medical director with references to the DSHS behavioral health medical director, reflecting an organizational change that has occurred since the section was adopted.

Section 415.112 is repealed, as this section is not needed to exist as a separate section; instead, the New Drug Application form referenced in this section is included as new subsection (d) in §415.108 relating to Applying to Have a Drug Added to the Formulary. These changes eliminate unnecessary cross-referencing between rules and make the sections more readable and user-friendly.

The repeal of §415.113 removes a provision that restates the various rules, policies, and federal statutes referenced in this subchapter.

The repeal of §415.114 removes the requirement for distribution of these rules.

COMMENT

DSHS, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER C. USE AND MAINTENANCE OF DEPARTMENT OF STATE HEALTH SERVICES/DEPARTMENT OF AGING AND DISABILITY SERVICES DRUG FORMULARY

25 TAC §§415.101 - 415.111

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §571.006, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules as necessary for the proper and efficient treatment of persons with mental illness; Health and Safety Code, §534.052, which requires the adoption of rules necessary and appropriate to ensure the adequate provision of community-based mental health and mental retardation services through a local authority; and are also authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2012.

TRD-201201777
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: April 29, 2012
Proposal publication date: November 18, 2011
For further information, please call: (512) 776-6972

SUBCHAPTER C. USE AND MAINTENANCE OF TDMHMR DRUG FORMULARY

25 TAC §§415.112 - 415.114

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §571.006, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules as necessary for the proper and efficient treatment of persons with mental illness; Health and Safety Code, §534.052, which requires the adoption of rules necessary and appropriate to ensure the adequate provision of community-based mental health and mental retardation services through a local authority; and are also authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Health and Safety Code, Chapter 1001.The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2012.

TRD-201201775
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: April 29, 2012
Proposal publication date: November 18, 2011
For further information, please call: (512) 776-6972

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 520. DISTRICT OPERATIONS

SUBCHAPTER A. ELECTION PROCEDURES

31 TAC §520.2

The Texas State Soil and Water Conservation Board (State Board) adopts an amendment to §520.2, concerning the physical address of the Texas State Soil and Water Conservation Board state office, without changes to the proposed text as published in the January 6, 2012, issue of the *Texas Register* (37 TexReg 57). The text of the rule will not be republished.

The amendment to §520.2(5) changes the current state office physical address listing from 311 North 5th Street (in Temple, Texas) to 4311 South 31st Street (in Temple, Texas).

No comments were received regarding adoption of the amendment.

The amendment is adopted under Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the State Board

to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

No other statutes, articles, or codes are affected by this amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2012.

TRD-201201746

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Effective date: April 25, 2012

Proposal publication date: January 6, 2012

For further information, please call: (254) 773-2250 x252

31 TAC §520.3

The Texas State Soil and Water Conservation Board (State Board) adopts an amendment to §520.3, concerning District Conducted Elections; Notice, without changes to the proposed text as published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 476). The text of the rule will not be republished.

The amendment to §520.3(d) adds language to specify that in the event that no one files to run as a candidate as prescribed by §201.073(b), Agriculture Code, it is presumed that the incumbent in that position has resigned and vacated the position and a vacancy exists from the election date forward. The district board by majority vote may then appoint a director for the vacancy as prescribed by §201.076, Agriculture Code, provided the appointment is not an individual presumed to have resigned from that position.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

No other statutes, articles, or codes are affected by this amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2012.

TRD-201201747

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Effective date: April 25, 2012

Proposal publication date: February 3, 2012

For further information, please call: (254) 773-2250 x252

Review Of Agency Rules

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

General Land Office

Title 31, Part 1

Pursuant to the Texas Government Code §2001.039, the General Land Office (GLO) submits this notice of its intent to review and to consider for readoption, revision, or repeal of the following chapters:

Chapter 1. Executive Administration.

Chapter 2. Rules of Practice and Procedure.

Chapter 8. Gas Marketing Program.

Chapter 9. Exploration and Leasing of State Oil and Gas.

Chapter 10. Exploration and Development of State Minerals Other Than Oil and Gas.

Chapter 14. Relationship Between Agency and Private Organizations.

Chapter 16. Coastal Protection.

Chapter 19. Oil Spill Prevention and Response.

Chapter 20. Natural Resources Damage Assessment.

The rules to be reviewed are found in Title 31, Part 1 of the Texas Administrative Code.

During the review process, the GLO will determine whether the reasons for adoption of the rules continue to exist, whether amendments or changes are needed, or whether repeal of the chapter is appropriate. Existing rules may be amended for simplification or clarity.

This review of Chapters 1, 2, 8, 9, 10, 14, 16, 19 and 20 are filed in accordance with the GLO's rule review plan published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1365).

The GLO will consider comments related to whether the reasons for adoption of these rules continue to exist, whether amendments or changes are needed or whether repeal of the chapter is appropriate. Any changes to the rules will be proposed by the GLO after reviewing the rules and considering the comments received in response to this notice. Any proposed rule changes will then appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The GLO will accept written comments on this rule review for a thirty-day period beginning on the date of publication of this notice of intent to review in the *Texas Register.* Any comments or questions should be directed to Walter Talley, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311, email address walter.talley@glo.texas.gov. Comments received later than thirty days following the date of publication of this notice will not be considered.

TRD-201201806
Larry Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: April 11, 2012

♦ ♦ ♦

Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials, Subchapter AA, Commissioner's Rules Concerning the Commissioner's List of Electronic Textbooks and Instructional Materials; Subchapter BB, Commissioner's Rules Concerning State-Developed Open-Source Textbooks; and Subchapter CC, Commissioner's Rules Concerning Acceptable Condition of Public School Textbooks, Electronic Textbooks, and Technological Equipment, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 66, Subchapters AA-CC, in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8259).

Relating to the review of 19 TAC Chapter 66, Subchapters AA-CC, the TEA finds that the reasons for adopting Subchapters AA-CC continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapters AA-CC. At a later date, the TEA plans to propose amendments to align rules with Senate Bill 6, 82nd Texas Legislature, First Called Session, 2011. The amendments would include removing references to textbook credits and maximum costs and updating the term *textbook* to *instructional material.*

This concludes the review of 19 TAC Chapter 66.

TRD-201201759
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: April 9, 2012

♦ ♦ ♦

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Ark-Tex Council of Governments

Public Notice - Request for Proposal

The Ark-Tex Council of Governments (ATCOG) is currently accepting proposals for Employee Health Insurance Consulting Services. Proposals are being solicited and will be received until 2:00 p.m. on May 21, 2012, by the Ark-Tex Council of Governments, 4808 Elizabeth Street, Texarkana, Texas 75503 or by mail to P.O. Box 5307, Texarkana, Texas 75505. ATCOG reserves the right to reject any and all proposals, to waive informalities, to reject nonconforming or conditional proposals, and to proceed otherwise when in the best interest of ATCOG.

Information for the Request for Proposals is available on ATCOG's website at *www.atcog.org*. For information please contact Brenda Davis, Director of Finance and Administration, at (903) 832-8636.

TRD-201201783
Brenda Davis
Director, Finance and Administration
Ark-Tex Council of Governments
Filed: April 10, 2012

Comptroller of Public Accounts

Notice of Contract Amendment

Pursuant to Chapters 403, Texas Government Code, and Chapter 54, Education Code, the Comptroller of Public Accounts (Comptroller) announces the amendment of the following contract award:

The notice of request for proposals was published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1364).

The contractor provides outside counsel services to the Comptroller and the Texas Prepaid Higher Education Tuition Board.

The contract was awarded to Graves, Dougherty, Hearon & Moody, P.C., 401 Congress Avenue, Suite 2200, Austin, Texas 78701. The original term of the contract was June 6, 2011 through August 31, 2012. The amendment extends the term of the contract through August 31, 2013, replaces Addendum B, "Individual Hourly Rates," and revises Section 8.10, "Outside Counsel's Address." The total amount of the contract is not to exceed $150,000.00.

TRD-201201789
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 10, 2012

Notice of Contract Award

The Comptroller of Public Accounts (Comptroller) announces the following contract award:

The notice of request for proposals (RFP #202d) was published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8262).

The contractor will provide overpayment recovery audit services to Comptroller and Participating State Agencies.

The contract was awarded to Experis US, Inc., 100 ManPower Place, Milwaukee, WI 53212. The fee for the contract is a 14% flat-rate on all amounts recovered and reimbursed back to the State. The term of the contract is April 2, 2012 through August 31, 2013, with option to renew for up to two (2) years, one year at a time.

TRD-201201790
Jette B. Withers
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: April 10, 2012

Office of Consumer Credit Commissioner

Notice of Rate Bracket Adjustment

The Consumer Credit Commissioner of Texas has ascertained the following brackets and ceilings by use of the formula and method described in Texas Finance Code §341.203.[1]

The amounts of brackets in Texas Finance Code §342.201(a) are changed to $1,950.00 and $16,250.00, respectively.

The amounts of brackets in Texas Finance Code §342.201(e) are changed to $3,250.00, $6,825.00, and $16,250.00, respectively.

The ceiling amounts in Texas Finance Code §342.251 and §342.259 are changed to $650.00 and $1,300.00, respectively.

The amounts of the brackets in Texas Finance Code §345.055 are changed to $3,150.00 and $6,300.00, respectively.

The amount of the bracket in Texas Finance Code §345.103 is changed to $3,250.00.

The ceiling amount of Texas Finance Code §371.158 is changed to $16,250.00.

The amounts of the brackets in Texas Finance Code §371.159 are changed to $195.00, $1,300.00, and $1,950.00, respectively.

The above dollar amounts of the brackets and ceilings shall govern all applicable credit transactions and loans made on or after July 1, 2011, and extending through June 30, 2012.

[1] Computation method: The Reference Base Index (the Index for December 1967) = 101.6. The December 2010 Index = 641.200. The percentage of change is 631.10%. This equates to an increase of 630% after disregarding the percentage of change in excess of multiples of 10%.

TRD-201201788
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 10, 2012

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/16/12 - 04/22/12 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/16/12 - 04/22/12 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201201787
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 10, 2012

♦ ♦ ♦

Texas Council for Developmental Disabilities

Request for Proposals

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for one project that will provide support for school districts, businesses, and/or other entities that wish to contract with the Project SEARCH® national office to develop a Project SEARCH® site in Texas.

The Council has approved funds up to $175,000 per year, for up to five years, for the project funded under this Announcement. Funds available for this project are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of an independent review process established by the Council and the availability of funds. **Continuation funding for the subsequent years will not be automatic,** but will be based on a review of the project's accomplishments and other items. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

To be eligible to receive a grant under this Announcement, an organization must have at least one office located in Texas; demonstrate that it can successfully work with Texas state agencies and schools; agree to refer inquiries about becoming a Project SEARCH® site directly to the Project SEARCH® national office; agree to refer all requests for technical assistance from certified Project SEARCH® sites to the national office; and agree to the stipulation that the entity receiving this grant will not represent Project SEARCH® or use the Project SEARCH® brand without explicit written approval from the national office. Organizations that are, or that hope to become, an existing Project SEARCH® site, are **not** eligible to apply. In addition, state agencies that would be expected to work directly with Project SEARCH® participants, such as the Texas Department of Assistive and Rehabilitative Services and the Texas Department of Aging and Disability Services, are **not** eligible to apply.

Additional information concerning this RFP or more information about TCDD may be obtained through TCDD's website at **http://www.txddc.state.tx.us.** Application packets must be requested in writing or downloaded from the Internet.

Deadline: One hard copy, with original signatures, and one electronic copy must be submitted. All proposals must be received by TCDD, not later than 4:00 p.m. Central Time, Wednesday, June 20, 2012, or, if mailed, postmarked prior to midnight on the date specified above. Proposals may be delivered by hand or mailed to TCDD at 6201 East Oltorf, Suite 600, Austin, Texas 78741-7509 to the attention of Jeri Barnard. Faxed proposals cannot be accepted. Electronic copies should be addressed to **Jerianne.Barnard@tcdd.state.tx.us.**

Proposals will not be accepted after the due date.

Grant Proposers' Workshops: The Texas Council for Developmental Disabilities will conduct telephone conferences to help potential applicants understand the grant application process and this specific RFP. In addition, answers to frequently asked questions will be posted on the TCDD website. Please check the TCDD website at **http://txddc.state.tx.us/grants_projects/rfp_announcements.asp** for a schedule of conference calls for this RFP.

TRD-201201811
Roger Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: April 11, 2012

♦ ♦ ♦

Texas Education Agency

Requests for Applications Concerning the 2012-2013 Advanced Technical Credit Grant Program

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-12-104 from public community and technical colleges in Texas.

Description. The purpose of the 2012-2013 Advanced Technical Credit (ATC) Grant Program, also known as statewide articulation, is to support students interested in preparing for college and technical careers that require postsecondary education. The program provides students with opportunities to earn college credit while in high school by taking enhanced high school career and technical education (CTE) courses that have been aligned with postsecondary technical courses. The ATC statewide articulation program was initiated to reduce duplication of course work, provide a seamless transition from secondary to postsecondary education, overcome problems associated with the mobility of student populations, and reduce the paperwork for schools and colleges. When used with a program of study, the statewide articulation program enables students to complete an associate's degree in as few as three semesters; students who also take dual credit or Advanced Placement (AP) academic courses while in high school may finish an associate's degree sooner. As of 2012, Texas has identified nearly 65 statewide articulated technical courses. More than 8,000 teachers have received ATC training and have been certified to teach ATC courses.

The ATC program provides (1) the resources to support the statewide articulation process for CTE courses; (2) screening and documentation of secondary teachers to ensure that their credentials meet the requirements of the Southern Association of College Systems (SACS) accountability requirements; (3) a clearinghouse for secondary teacher credentials for the community college within the state of Texas for the SACS requirement; (4) professional development for all secondary CTE teachers teaching statewide articulated courses, moving from a face-to-face system of training to the use of technology in order to provide online training available 24 hours per day, 7 days per week; and (5) support for a statewide ATC Leadership Committee that facilitates review and revision of existing as well as new course alignments.

Carl D. Perkins Career and Technical Education Improvement Act of 2006, P.L. 109-270, requires a state to support eligible recipients in developing and implementing articulation agreements between secondary education and postsecondary education institutions. Texas Administrative Code, Title 19, §74.64, Distinguished Achievement High School Program--Advanced High School Program, allows students to use advanced technical credit courses with a grade of 3.0 or higher as an advanced measure for demonstrated student performance at the college or professional level.

Dates of Project. The 2012-2013 Advanced Technical Credit Grant Program grant will be implemented during the 2012-2013 school year. Applicants should plan for a starting date of no earlier than September 1, 2012, and an ending date of no later than August 31, 2013.

Project Amount. Funding for this program is contingent upon availability of federal appropriations for fiscal year 2013. Funding will be provided for one project. The selected project will receive a maximum of $450,000 for the 2012-2013 project period. This project is funded 100 percent with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Questions relevant to the RFA may be emailed to Diane Salazar at diane.salazar@tea.state.tx.us or faxed to (512) 463-8057 prior to Tuesday, May 29, 2012. The TEA contact person will answer all questions received by the deadline by publishing the questions and answers on the TEA Grant Opportunities website by the date given in the grant timeline. The questions and their answers, in the format of frequently asked questions (FAQs), will be available at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the grant program from the list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Requesting the Application. RFAs are no longer available in print. The announcement letter and complete RFA will be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Iris Adams, Division of Grants Administration, Texas Education Agency, (512) 463-8525. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in Part 2: Program Guidelines of the RFA. All questions and the written answers thereto will be posted on the TEA website in the format of FAQs at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, June 5, 2012, to be eligible to be considered for funding.

TRD-201201805
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: April 11, 2012

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is May 21, 2012. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545, and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on May 21, 2012. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Bayer Corporation; DOCKET NUMBER: 2011-1191-AIR-E; IDENTIFIER: RN100209931; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §§117.335(a)(1) and (e), 117.8000(a), and 117.9020(2)(c)(i), and Texas Health and Safety Code, §382.085(b), by failing to conduct a stack test on Hot Oil Heater (Emission Point Number FV13544900) prior to the March 31, 2007, deadline; PENALTY: $2,300; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Berry, Brandon J; DOCKET NUMBER: 2012-0581-WOC-E; IDENTIFIER: RN104377320; LOCATION: Hewitt, McLennan County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather

Podlipny, (512) 239-2603; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Bonham Independent School District; DOCKET NUMBER: 2011-2291-PST-E; IDENTIFIER: RN101775609; LOCATION: Bonham, Fannin County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,500; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Bush, Billy J; DOCKET NUMBER: 2012-0578-WOC-E; IDENTIFIER: RN103581070; LOCATION: Abilene, Eastland County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: Cantu, Longino J Jr; DOCKET NUMBER: 2012-0582-WOC-E; IDENTIFIER: RN103839817; LOCATION: Stamford, Jones County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: City of Dallas and Jet Center of Dallas, LLC; DOCKET NUMBER: 2011-2048-PST-E; IDENTIFIER: RN103017257; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: aircraft refueling; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Eagle Pass Water Works System; DOCKET NUMBER: 2011-1967-PWS-E; IDENTIFIER: RN101387710; LOCATION: Eagle Pass, Maverick County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(j)(1), by failing to have all customer service inspections conducted by an individual that is a Plumber Inspector or Water Supply Protection Specialist licensed by the State Board of Plumbing Examiners or by a customer service inspector who has completed a commission approved course, passed an examination administered by the executive director, and holds a current professional certification or endorsement as a customer service inspector; 30 TAC §290.43(c)(3) and (8), by failing to design the tank's overflow in strict accordance with American Water Works Association standards such that the overflow terminates with a gravity-hinged and weighted cover that does not have a gap of greater than 1/16th of an inch; 30 TAC §290.43(m)(4), by failing to maintain all treatment units, storage and pressure maintenance facilities, distribution system lines and related appurtenances in a watertight condition; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; PENALTY: $5,913; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(8) COMPANY: Clay Business Incorporated dba Power Mart 15; DOCKET NUMBER: 2011-2126-PST-E; IDENTIFIER: RN102372794; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $9,000; ENFORCEMENT COORDINATOR: Raymond Marlow, P.G., (409) 899-8785; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: COMMERCIAL METALS COMPANY dba CMC Recycling American; DOCKET NUMBER: 2011-2184-PST-E; IDENTIFIER: RN102433927; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $1,875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: CPS Energy; DOCKET NUMBER: 2012-0468-WQ-E; IDENTIFIER: RN106112956; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: commercial construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Eastman Chemical Company; DOCKET NUMBER: 2011-2228-AIR-E; IDENTIFIER: RN100219815; LOCATION: Longview, Harrison County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §101.201(a)(1)(A) and (B) and §122.143(4), Texas Health and Safety Code (THSC), §385.085(b), and Federal Operating Permit (FOP) Number O1973, Special Terms and Conditions (STC) Number 2.F., by failing to report an emissions event within 24 hours of discovery; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §385.085(b), FOP Number O1973, STC Number 11, and New Source Review Permit Numbers 8539/PSD-TX-332M3, Special Conditions Number 1, by failing to prevent unauthorized emissions during an event that occurred on October 2, 2011 - October 4, 2011; PENALTY: $7,975; Supplemental Environmental Project offset amount of $3,987 applied to Texas Parent Teacher Association Clean School Buses; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: Frank M. Martinez dba Martinez Auto Sales & Service; DOCKET NUMBER: 2011-2193-PST-E; IDENTIFIER: RN102719143; LOCATION: Eagle Pass, Maverick County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(13) COMPANY: Freeport LNG Development, L.P.; DOCKET NUMBER: 2011-1500-AIR-E; IDENTIFIER: RN103196689; LOCATION: Quintana, Brazoria County; TYPE OF FACILITY: import terminal; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), 40 Code of

Federal Regulations §60.4243(b)(2)(ii), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O2878, Special Terms and Conditions Numbers 1A and 8, and Air Permit Number 55464, Special Conditions Number 16E, by failing to conduct performance testing on three engines after 8,760 hours of operation; PENALTY: $2,430; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: FUEL DEPOT, LLC; DOCKET NUMBER: 2011-2243-PST-E; IDENTIFIER: RN101434868; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $3,342; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(15) COMPANY: Gilbert A. Daniel dba Sam's Drive In Shell; DOCKET NUMBER: 2011-2324-PST-E; IDENTIFIER: RN104400817; LOCATION: Fairfield, Freestone County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tanks; PENALTY: $2,004; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Gloria Martinez; DOCKET NUMBER: 2011-2145-MSW-E; IDENTIFIER: RN105954424; LOCATION: Roma, Starr County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(17) COMPANY: Hale, William A; DOCKET NUMBER: 2012-0579-WOC-E; IDENTIFIER: RN106322340; LOCATION: Kingsville, Kleberg County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(18) COMPANY: Kresta, Clyde R; DOCKET NUMBER: 2012-0577-WOC-E; IDENTIFIER: RN105227987; LOCATION: Ballinger, Runnels County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(19) COMPANY: Linnstaedter, Ronnie; DOCKET NUMBER: 2012-0580-WOC-E; IDENTIFIER: RN106279805; LOCATION: Rockdale, Milam County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(20) COMPANY: Lubbock Alternator & Supply, Incorporated; DOCKET NUMBER: 2011-1874-MSW-E; IDENTIFIER: RN106218662; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(21) COMPANY: M & S BROTHERS, INCORPORATED dba M & S Grocery; DOCKET NUMBER: 2011-2349-PST-E; IDENTIFIER: RN102230679; LOCATION: Orange, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; 30 TAC §115.245(6) and THSC, §382.085(b), by failing to submit the Stage II vapor recovery system test results to the appropriate regional office or the local air pollution control program with jurisdiction within ten working days of the completion of the tests; and 30 TAC §115.246(4) and THSC, §382.085(b), by failing to maintain Stage II records at the station and making them immediately available for review upon request by agency personnel; PENALTY: $7,426; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: M.A.A.R. ENTERPRISES LLC dba Cap City Corner; DOCKET NUMBER: 2011-2166-PST-E; IDENTIFIER: RN104529441; LOCATION: Seven Points, Henderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.8(c)(4)(C) and (5)(B)(i), by failing to renew a delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of ownership change; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: $6,219; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(23) COMPANY: Metro National Corporation; DOCKET NUMBER: 2012-0096-PST-E; IDENTIFIER: RN103764197; LOCATION: Houston, Harris County; TYPE OF FACILITY: office building with one underground storage tank (UST); RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: $3,733; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: NATHAN INVESTMENTS, LLC dba Tigerland Express Taco Casa; DOCKET NUMBER: 2011-2074-PST-E; IDENTIFIER: RN101675510; LOCATION: College Station, Brazos County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(25) COMPANY: Omar Avilez dba Omar Avilez Farm; DOCKET NUMBER: 2009-1441-AGR-E; IDENTIFIER: RN104208335; LOCATION: Dublin, Erath County; TYPE OF FACILITY: calf feedlot; RULE VIOLATED: 30 TAC §321.33(d), by failing to obtain authorization to expand an existing animal feeding operation prior to meeting the definition of a concentrated animal feeding operation (CAFO) through an individual water quality or CAFO general permit; PENALTY: $1,020; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Sang Thanh Diep dba Nice Food Market; DOCKET NUMBER: 2011-2303-PST-E; IDENTIFIER: RN102829272; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,350; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: SHREE-JI CORPORATION dba Scotties; DOCKET NUMBER: 2011-2279-PST-E; IDENTIFIER: RN102285459; LOCATION: Seven Points, Henderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $3,885; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3553; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(28) COMPANY: South Kirbyville Rural Water Supply Corporation; DOCKET NUMBER: 2012-0247-MLM-E; IDENTIFIER: RN101451961; LOCATION: Kirbyville, Jasper County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(iv) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.45(b)(1)(D)(ii) and THSC, §341.0315(c), by failing to provide a total storage tank capacity of 200 gallons per connection; 30 TAC §290.46(f)(3)(A)(i)(II), by failing to provide facility records to commission personnel at the time of the investigation; and 30 TAC §291.93(3) and TWC, §13.139(d), by failing to submit a planning report to the executive director that clearly explains how the retail public utility will provide the expected service demands to the remaining areas within the boundaries of its certificated area when the facility has reached 85% of its capacity; PENALTY: $402; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(29) COMPANY: Susser Petroleum Company LLC dba QS 332; DOCKET NUMBER: 2011-2108-PST-E; IDENTIFIER: RN103143376; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $5,000; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(30) COMPANY: TIM COOPER FARM ENTERPRISES, L.P. dba Cooper Farms Country Store; DOCKET NUMBER: 2012-0121-PST-E; IDENTIFIER: RN102278785; LOCATION: Fairfield, Freestone County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tanks; PENALTY: $2,008; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201201784
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 10, 2012

♦ ♦ ♦

Enforcement Orders

An agreed order was entered regarding ACI Partners, LLC, Docket No. 2010-0756-AIR-E on March 29, 2012 assessing $3,000 in administrative penalties with $4,886 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FVC Food Mart Inc., Docket No. 2010-1487-PST-E on March 29, 2012 assessing $8,486 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amirali Ladhani and Fatima Ladhani dba Rick's Drive Inn, Docket No. 2010-1576-PST-E on March 29, 2012 assessing $31,105 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Danny J. Dolen dba Green Lake Estates Water Supply, Docket No. 2010-1837-PWS-E on March 29, 2012 assessing $897 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KMTEX Properties, Inc., Docket No. 2010-1895-AIR-E on March 29, 2012 assessing $5,550 in administrative penalties with $1,110 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SIMONE STORES INC dba Millennium Grocery, Docket No. 2010-2032-PST-E on March 29, 2012 assessing $8,622 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NOORANI & BROTHERS, INC. dba Shop N Go, Docket No. 2011-0355-PST-E on March 29, 2012 assessing $19,820 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Victoria, Docket No. 2011-0626-MSW-E on March 29, 2012 assessing $47,700 in administrative penalties with $9,540 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ballard Exploration Company, Inc., Docket No. 2011-0714-AIR-E on March 29, 2012 assessing $42,500 in administrative penalties with $8,500 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.

A default order was entered regarding Chris G. Moreno dba Knights Irrigation, Docket No. 2011-0809-LII-E on March 29, 2012 assessing $262 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding David Fenoglio dba Sunset Water System, Docket No. 2011-0824-PWS-E on March 29, 2012 assessing $4,238 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical LLC, Docket No. 2011-0918-AIR-E on March 29, 2012 assessing $30,000 in administrative penalties with $6,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Abrams Business Inc. dba Power Mart 18, Docket No. 2011-0921-PST-E on March 29, 2012 assessing $10,013 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kevin Lokey dba Lokey Earth Moving, Docket No. 2011-0946-MSW-E on March 29, 2012 assessing $68,845 in administrative penalties with $13,769 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas 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 Sahil Management Ltd. dba Shady Acres Trailer Park, Docket No. 2011-1045-PWS-E on March 29, 2012 assessing $4,249 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enterprise Products Operating LLC, Docket No. 2011-1316-AIR-E on March 29, 2012 assessing $10,569 in administrative penalties with $2,113 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Curtis White dba El Pinon Estates Water System, Docket No. 2011-1333-PWS-E on March 29, 2012 assessing $2,077 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ace World Companies Ltd., Docket No. 2011-1351-AIR-E on March 29, 2012 assessing $18,900 in administrative penalties with $3,780 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jackie Wheeler and Becky Wheeler, Docket No. 2011-1357-PST-E on March 29, 2012 assessing $8,667 in administrative penalties with $1,733 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Total Petrochemicals USA, Inc., Docket No. 2011-1477-AIR-E on March 29, 2012 assessing $269,775 in administrative penalties with $53,955 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gerardo M. Romero and Marivel Romero dba Sol Y Mar, Docket No. 2011-1483-PWS-E on March 29, 2012 assessing $3,010 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Esther E. Boroff dba Williams Trailer Court, Docket No. 2011-1526-PWS-E on March 29, 2012 assessing $1,807 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS RENAISSANCE FESTIVALS, INC., Docket No. 2011-1590-PST-E on March 29, 2012 assessing $12,745 in administrative penalties with $2,549 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2011-1597-AIR-E on March 29, 2012 assessing $18,775 in administrative penalties with $3,755 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hudspeth County Water Control and Improvement District No. 1, Docket No. 2011-1628-MWD-E on March 29, 2012 assessing $13,500 in administrative penalties with $2,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Gerberding-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 NIXON PARTNERS LLC. dba Happy Sac, Docket No. 2011-1663-PST-E on March 29, 2012 assessing $30,780 in administrative penalties with $6,156 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kerrville, Docket No. 2011-1664-MWD-E on March 29, 2012 assessing $15,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2011-1683-AIR-E on March 29, 2012 assessing $18,876 in administrative penalties with $3,775 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Refugio, Docket No. 2011-1768-MWD-E on March 29, 2012 assessing $8,190 in administrative penalties with $1,638 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ghotra Ventures, Inc. dba Guilbeau Shell, Docket No. 2010-0056-PST-E on March 29, 2012 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 720 LAMAR PLACE, L.C. dba MS EXPRESS 901, Docket No. 2011-0133-PST-E on March 29, 2012 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered Dan Canaris, Docket No. 2011-0472-PST-E on March 29, 2012 assessing $6,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Crane Technologies, Inc., Docket No. 2011-0474-AIR-E on March 29, 2012 assessing $1,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Elsa, Docket No. 2011-0564-MWD-E on March 29, 2012 assessing $5,725 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chef Point, L.L.C., Docket No. 2011-1111-PST-E on March 29, 2012 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C K Group Enterprise, Inc. dba Four Seasons Mart, Docket No. 2011-1210-PST-E on March 29, 2012 assessing $2,629 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOTKAMAL, INC. dba J Mart, Docket No. 2011-1407-PST-E on March 29, 2012 assessing $3,277 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Joe Westmoreland dba Athens Radiator & Tire, Docket No. 2011-0025-PST-E on April 3, 2012 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Mohamed Basheer dba Exxon 45, Docket No. 2010-0503-PST-E on March 19, 2012 assessing $39,964 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Aqua Utilities, Inc. aka Aqua Texas, Inc., Docket No. 2008-0767-UTL-E on March 19, 2012 assessing no administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201201815
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 11, 2012

Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Limited Scope Major Permit Amendment Permit No. 2268

APPLICATION. City of Morton, 201 East Wilson Avenue, Morton, Cochran County, Texas 79346-2650, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type IV Arid Exempt MSW Limited Scope Major Permit Amendment to authorize the change of the facility's operating hours to 8:00 a.m. until 5:00 p.m. Monday through Friday. The facility is located 1000 feet East of 8th Street and 3121 feet North of FM 1780, 0.25 miles Northeast of the City of Morton, Cochran County, Texas 79346. The TCEQ received the application on February 13, 2012. The permit application is available for viewing and copying at the City of Morton, City Hall, 201 East Wilson Avenue, Cochran County, Texas 79346. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.73667&lng=-102.73583&zoom=13&type=r. For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. Further information may also be obtained from the Technical Consultant, Carthel Engineering Solutions, by calling Mr. Chester "Ches" Carthel, P.E., at (806) 687-8322.

TRD-201201813

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 11, 2012

Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Limited Scope Permit Minor Amendment Permit No. 2358

APPLICATION. Sanitation Solutions, Inc., (Blossom Prairie Landfill), 1802 S. Church Street, Paris, Lamar County, Texas 75460, a municipal solid waste disposal facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type I Municipal Solid Waste Limited Scope Permit Minor Amendment proposing to amend the stipulation in the permit requiring construction of the groundwater underdrain system below the cell liners throughout the landfill. The facility is located southeast of Blossom, Texas approximately one-mile southeast of the intersection of Farm-to-Market 194 and County Road 15100 in Lamar County, Texas 75416. The TCEQ received the application on March 1, 2012. The permit application is available for viewing and copying at the Paris Public Library, 326 South Main Street, Paris, Lamar County, Texas 75460. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.6233&lng=-95.3314&zoom=13&type=r For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. Further information may also be obtained from Sanitation Solutions, Inc. at the address stated above or by calling Mr. Josh Bray, Owner at (903) 784-0124.

TRD-201201814
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 11, 2012

Notice of Water Quality Applications

The following notices were issued on March 30, 2012 through April 6, 2012.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

LEON SPRINGS UTILITY COMPANY has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014376001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located in the southwest corner of the Dominion Subdivision, adjacent to Leon Creek and approximately 3.5 miles north of the intersection of Interstate Highway 10 and Loop 1604 in Bexar County, Texas 78257.

Walton Texas, LP has applied for a renewal of TPDES Permit No. WQ0014835001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,200,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility will be located 1.5 miles west of the intersection of Highway 289 and Marilee Road, approximately 0.75 mile north of Marilee Road in Grayson County, Texas 75058.

LUMINANT GENERATION COMPANY LLC which proposes to operate the Forest Grove Steam Electric Station, has applied for a renewal of TPDES Permit No. WQ0002032000, which authorizes the discharge of once-through cooling water and previously monitored effluent (low volume wastewater and treated sanitary sewage) at a daily average flow not to exceed 1,584,000,000 gallons per day via Outfall 001; low volume wastewater and storm water from yard drains and fuel oil areas on an intermittent and flow variable basis via Outfall 002; low volume wastewater and storm water from lignite/limestone areas on an intermittent and flow variable basis via Outfall 003; and ash transport water commingled with metal cleaning wastes on a flow variable basis via Outfall 004. The facility is located on the north shore of Forest Grove Reservoir, on Farm-to-Market Road 2329, and approximately seven miles northwest of the City of Athens, Henderson County, Texas 75751.

PUBLIC SERVICE COMPANY OF OKLAHOMA which operates Oklaunion Power Station, a coal-fired steam electric power generating facility, has applied for a renewal of TPDES Permit No. WQ0002574000, which authorizes the discharge of coal pile runoff; wash water from the reclaim sump, rotary car dumper, and service area; and plant area storm water runoff on an intermittent and flow variable basis via Outfall 001. The facility is located at 12567 Farm-to-Market Road 3430, approximately three miles south-southeast of the intersection of Farm-to-Market Road 433 and Farm-to-Market Road 3430 near the town of Oklaunion, Wilbarger County, Texas 76384.

THE CITY OF SEYMOUR which operates the City of Seymour Water Treatment Plant, a reverse osmosis (RO) drinking water plant, has applied for a renewal of TPDES Permit No. WQ0004004000, which authorizes the discharge of reverse osmosis reject water at a daily average flow not to exceed 200,000 gallons per day via Outfall 001. This application was submitted to the TCEQ on October 24, 2011. The facility is located on the west bank of Plants Creek, approximately 2,700 feet north of the intersection of West Custer Street and East California Street (U.S. Highway 82), northwest of the City of Seymour, Baylor County, Texas 76380.

ERVIN COBLENTZ consideration for a Major Amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004208000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing dairy calf replacement facility at a maximum capacity of 2500 head of which none are milking cows. The facility is located on the east side of Farm-to-Market Road 219, approximately 2.5 miles south of the community of Lingleville in Erath County, Texas.

SANDY CREEK ENERGY ASSOCIATES LP which proposes to operate Sandy Creek Energy Station, has applied for a renewal of TPDES Permit No. WQ0004755000 which authorizes the discharge of cooling tower blowdown and previously monitored effluents (chemical metal cleaning waste, low volume waste, and coal pile runoff) at a daily average flow not to exceed 2,600,000 gallons per day via Outfall 001. The facility is located on an approximately 700-acre parcel of land in and near the City of Riesel, bounded by Rattlesnake Road on the west, north, and east sides, and Farm-to-Market Road 1860 on the south side, McLennan County, Texas 76682. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

CITY OF OAKWOOD has applied for a renewal of TPDES Permit No. WQ0010586002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 176,000 gallons per day. The facility is located approximately 1,600 feet south-southeast of the intersection of Farm-to-Market Road 831 and Farm-to-Market Road 542, southeast of the City of Oakwood in Leon County, Texas 75855.

RIVER PLANTATION MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010978001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 135 acres of golf course. The facility is located at 632 River Plantation Drive, approximately 1.5 miles downstream from the Interstate Highway 45 bridge, on the north bank of the West Fork San Jacinto River in Montgomery County, Texas 77302.

TEXAS A&M UNIVERSITY has applied for a renewal of TPDES Permit No. WQ00112211001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located at 1509 Aggie Drive, approximately one mile north of the intersection of U.S. Highway 90 and Aggie Drive and approximately 2.5 miles east of the City of China in Jefferson County, Texas 77713.

CITY OF ANNA has applied for a renewal of TPDES Permit No. WQ0011283001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day at Outfall 001 and a daily average flow not to exceed 975,000 gallons per day at Outfall 002. The facility is located at 1400 Roadrunner Road, approximately 4,000 feet west of State Highway 5 and 4,600 feet south of Farm-to-Market Road 455 in Collin County, Texas 75904.

GULF COAST TRADES CENTER has applied for a renewal of TPDES Permit No. WQ0011829001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,500 gallons per day. The facility is located at 16673 Interstate Highway 45 North, approximately 0.4 mile north of the intersection of Interstate Highway 45 and Sheppard Hill Road and approximately 4.1 miles north of the City of Willis on the west side of Interstate Highway 45 in Montgomery County, Texas 77318.

US ARMY CORPS OF ENGINEERS has applied for a major amendment to TCEQ Permit No. WQ0012088001, to authorize an increase in the daily average flow from 2,000 gallons per day to 6,000 gallons per day via evaporation and when needed by irrigation; to increase the acreage irrigated from 0.5 acres to 1.5 acres; and to add or replace septic tanks. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 2,000 gallons per day via evaporation and when needed by surface irrigation of 0.5 acres of non-public access range land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately five miles west on

Farm-to-Market Road 1948 from the intersection of Highway 36 and Farm-to-Market Road 1948 in Washington County, Texas 77835.

NOTTINGHAM COUNTRY MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0012479001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The facility is located at 19800 Almond Park, No. 1, approximately 4,000 feet east of the intersection of South Fry Road and Stone Lodge, adjacent to Mason Creek in Harris County, Texas 77450.

AQUA UTILITIES INC has applied for a renewal of TPDES Permit No. WQ0012996001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per. The facility is located at 11400 Green River Drive on the northeast corner of the crossing of Greens Bayou by Green River Drive in Harris County, Texas 77044.

KINGS MANOR MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0013526001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located at 27000 Greenberry Drive, 0.6 mile northeast of the intersection of State Highway Loop 494 and Kingwood Drive in Harris County, Texas 77339.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO 133 has applied for a renewal of TPDES Permit No. WQ0014514001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,360,000 gallons per day. The facility is located at 23527 1/2 Bellaire Boulevard, approximately 3,300 feet southwest of the intersection of Canal Road and Bellaire Boulevard and approximately 6,000 feet southwest of the intersection of Farm-to-Market Road 1093 and Canal Road in Fort Bend County, Texas 77469.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO 50 has applied for a renewal of TPDES Permit No. WQ0014763001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility will be located at approximately 1,700 feet northeast of the intersection of the Grand Parkway (SH 99) and Bellaire Boulevard in Fort Bend County, Texas 77406.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201201812
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 11, 2012

♦ ♦ ♦

Texas Facilities Commission

Request for Proposals #303-3-20331

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-3-20331. TFC seeks a five (5) or ten (10) year lease of approximately 7,451 square feet of office space in Odessa, Ector County, Texas.

The deadline for questions is April 30, 2012 and the deadline for proposals is May 10, 2012 at 3:00 p.m. The award date is June 20, 2012. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=99734*.

TRD-201201804
Kay Molina
General Counsel
Texas Facilities Commission
Filed: April 11, 2012

♦ ♦ ♦

Request for Proposals #303-3-20332

The Texas Facilities Commission (TFC), on behalf of the Texas Parks and Wildlife Department (TPWD), announces the issuance of Request for Proposals (RFP) #303-3-20332. TFC seeks a five (5) or ten (10) year lease of approximately 4,139 square feet of office and warehouse space in San Antonio, Bexar County, Texas.

The deadline for questions is April 30, 2012 and the deadline for proposals is May 11, 2012 at 3:00 p.m. The award date is June 20, 2012. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=99743*.

TRD-201201822
Kay Molina
General Counsel
Texas Facilities Commission
Filed: April 11, 2012

♦ ♦ ♦

Department of State Health Services

Designation of Brazoria County Indigent Health Care Program as a Site Serving Medically Underserved Populations

The Department of State Health Services (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has proposed designating the following as a site serving medically underserved populations: Brazoria County Indigent Health Care Program, Alvin Clinic, 260 George Street, Suite 200, Alvin, Texas 77511. The designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Iris Rodriguez, Program Director, Health Professions Resource Center, Mail Code 1898, Center for Health Statistics, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; tele-

phone (512) 776-2775. Comments will be accepted for 30 days from the publication date of this notice.

TRD-201201803
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: April 11, 2012

♦ ♦ ♦

Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Lakeway	Lakeway Regional Medical Center, L.L.C.	L06461	Lakeway	00	03/20/12
Spring	2920 Open MRI & Digital Imaging, L.L.C.	L06460	Spring	00	03/16/12
Throughout TX	Desert NDT, L.L.C.	L06462	Odessa	00	03/29/12

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Arlington	Arlington Memorial Hospital dba Texas Health Arlington Memorial Hospital	L02217	Arlington	101	03/28/12
Austin	Seton Healthcare dba Seton Medical Center Austin	L02896	Austin	127	03/26/12
Austin	Seton Healthcare dba Seton Medical Center Williamson	L06128	Austin	18	03/16/12
Austin	Seton Healthcare dba Seton Medical Center Hays	L06254	Austin	11	03/14/12
Austin	TRI Environmental, Inc.	L06345	Austin	01	03/26/12
Baytown	Sarma Challa M.D., P.A.	L05040	Baytown	15	03/28/12
Cleburne	Texas Health Harris Methodist Hospital Cleburne	L02039	Cleburne	43	03/30/12
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	114	03/14/12
Corpus Christi	True Medical Imaging	L06191	Corpus Christi	06	03/15/12
Dallas	Methodist Hospitals of Dallas Radiology Svcs.	L00659	Dallas	90	03/16/12
Dallas	Heartmasters, P.A.	L05760	Dallas	07	03/26/12
Denton	Denton Heart Group, P.A.	L05381	Denton	06	03/21/12
El Paso	Carlos A. Velez, M.D., P.A. dba Heart and Vascular Partners	L06296	El Paso	02	03/16/12
Grand Prairie	Texas General Hospital, L.P.	L06440	Grand Prairie	01	03/22/12
Houston	Kelsey Seybold Clinic, P.A.	L00391	Houston	69	03/16/12
Houston	The University of Texas M.D. Anderson Cancer Center	L00466	Houston	136	03/20/12
Houston	The University of Texas M.D. Anderson Cancer Center	L00466	Houston	137	03/28/12
Houston	SJ Medical Center, L.L.C. dba St. Joseph Medical Center	L02279	Houston	74	03/15/12
Houston	Houston Medical Imaging	L05184	Houston	15	03/26/12
Houston	Cardinal Health	L05536	Houston	33	03/27/12
Houston	Cambridge Heart Center, P.A.	L05623	Houston	14	03/16/12
Houston	Trinity Physics Consulting, L.L.C.	L05639	Houston	03	03/30/12
Houston	NIS Holdings, Inc. dba Nuclear Imaging Services	L05775	Houston	78	03/23/12
Houston	Southampton Medical Imaging, L.L.C.	L06319	Houston	00	03/16/12
Houston	Memorial Hermann Hospital System dba Memorial Hermann Texas Medical Center	L06439	Houston	02	03/28/12
Houston	Multi Phase Meters, Inc.	L06458	Houston	01	03/20/12
Humble	Humble Surgical Hospital	L06357	Humble	05	03/16/12
Irving	Baylor Medical Center at Irving dba Irving Healthcare System	L02444	Irving	92	03/30/12

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Kingwood	KPH Consolidation, Inc. dba Kingwood Medical Center	L04482	Kingwood	28	03/28/12
Lewisville	Texas Oncology, P.A. dba Lake Vista Cancer Center	L05526	Lewisville	21	03/19/12
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	92	03/21/12
Lubbock	Isorx Texas, Ltd.	L05284	Lubbock	26	03/16/12
McKinney	Columbia Medical Center of McKinney Subsidiary, L.P. dba Medical Center of McKinney	L02415	McKinney	43	03/14/12
Mineral Wells	Palo Pinto General Hospital	L01732	Mineral Wells	36	03/29/12
Plano	Texas Heart Hospital of the Southwest, L.L.P. dba The Heart Hospital Baylor Plano	L06004	Plano	19	03/30/12
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	201	03/21/12
San Antonio	VHS San Antonio Partners, L.L.C. dba Baptist Health System	L00455	San Antonio	215	03/19/12
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	136	03/16/12
San Antonio	VHS San Antonio Imaging Partners, L.P. dba Baptist M&S Imaging Centers	L04506	San Antonio	80	03/26/12
San Antonio	Cardiology of San Antonio, P.A.	L05408	San Antonio	05	03/27/12
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital The Woodlands	L03772	The Woodlands	91	03/15/12
Throughout TX	Fox NDE, L.L.C.	L06411	Abilene	04	03/26/12
Throughout TX	NDE Solutions, L.L.C.	L05879	Bryan	30	03/26/12
Throughout TX	NQS Inspection, Ltd.	L06262	Corpus Christi	05	03/20/12
Throughout TX	Alpha Testing, Inc.	L03411	Dallas	19	03/26/12
Throughout TX	CMJ Engineering and Testing, Inc.	L05564	Fort Worth	09	03/20/12
Throughout TX	The Dow Chemical Company	L00451	Freeport	92	03/20/12
Throughout TX	Uranium Energy Corporation	L06127	Goliad	02	03/20/12
Throughout TX	Metco	L03018	Houston	213	03/26/12
Throughout TX	Enviroklean Product Development, Inc.	L06350	Houston	03	03/19/12
Throughout TX	Platinum Energy Solutions, Inc.	L06410	Houston	07	03/21/12
Throughout TX	City of Killeen	L04668	Killeen	10	03/19/12
Throughout TX	American X-Ray & Inspection Services, Inc.	L05974	Midland	29	03/27/12
Throughout TX	Desert Industrial X-Ray, L.P.	L04590	Odessa	120	03/20/12
Throughout TX	Desert Industrial X-Ray, L.P.	L04590	Odessa	121	03/22/12
Throughout TX	Quantum Technical Services, L.L.C.	L06406	Pasadena	05	03/26/12
Throughout TX	Schlumberger Technology Corporation	L01833	Sugar Land	167	03/19/12
Tyler	East Texas Medical Center	L00977	Tyler	152	03/16/12
Victoria	Citizens Medical Center	L00283	Victoria	86	03/16/12
Webster	CHCA Clear Lake, L.P. dba Clear Lake Regional Medical Center	L01680	Webster	81	03/19/12

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Baytown	Fayez Hadidi, M.D. dba Fayez Hadidi, M.D., P.A.	L05772	Baytown	07	03/21/12
McAllen	Rio Grande Heart Specialist of South Texas dba Rio Grande Heart Specialist	L05509	McAllen	05	03/26/12
Plano	Texas Health Presbyterian Hospital Plano	L04467	Plano	63	03/16/12
Texarkana	Alumax Mill Products, Inc.	L04663	Texarkana	18	03/19/12

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Bernardo Treistman, M.D., P.A. dba Cardiology Specialists of Houston	L05083	Houston	13	03/28/12
Throughout TX	PCI Services	L04596	Corpus Christi	11	03/14/12

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201201744
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: April 5, 2012

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Announcement of the Opening of the Public Comment Period for the Draft Substantial Amendment 3 to the State of Texas FFY 2010 Action Plan

The Texas Department of Housing and Community Affairs (the "Department") announces the opening of a 15-day public comment period for an amendment to the *State of Texas Federal Fiscal Year (FFY) 2010 Action Plan* as required by the U.S. Department of Housing and Urban Development (HUD). The Amendment is necessary as part of the overall requirements governing the State's consolidated planning process. The Amendment is submitted in compliance with 24 CFR §91.520, Consolidated Plan Submissions for Community Planning and Development Programs, as modified by the *Federal Register* Notice (Docket No.FR-5321-N-03). The 15-day public comment period begins April 20, 2012 and continues until 5:00 p.m. on May 5, 2012.

This amendment outlines the expected distribution and use of $7,284,978.00 through the Neighborhood Stabilization Program (NSP), which HUD is providing to the State of Texas. This allocation of funds is provided under §1497 of the Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, approved July 21, 2010) ("Dodd-Frank Act").

Beginning April 20, 2012, the Substantial Amendment will be available on the Department's website at www.tdhca.state.tx.us. A hard copy may be requested by contacting the Texas Neighborhood Stabilization Program at P.O. Box 13941, Austin, Texas 78711-3941 or by calling (512) 463-2179.

Written comment should be sent by mail to Marni Holloway, Texas Department of Housing and Community Affairs, Neighborhood Stabilization Program, P.O. Box 13941, Austin, Texas 78711-3941, by email to marni.holloway@tdhca.state.tx.us, or by fax to (512) 475-3746.

TRD-201201807
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 11, 2012

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to change the name of FORT DEARBORN LIFE INSURANCE COMPANY to DEARBORN NATIONAL INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Chicago, Illinois.

Application to change the name of DEARBORN NATIONAL INSURANCE COMPANY to DEARBORN NATIONAL LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Chicago, Illinois.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201201825
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: April 11, 2012

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 1448 "VIP Club"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1448 is "VIP CLUB". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1448 shall be $20.00 per ticket.

1.2 Definitions in Instant Game No. 1448.

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, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MONEY BAG SYMBOL, DOUBLE DOLLAR SIGN "$$" SYMBOL, $20.00, $25.00, $50.00, $100, $300, $500, $1,000, $10,000 and $1,000,000.

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. 1448 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
MONEY BAG SYMBOL	MONEYBAG
DOUBLE DOLLAR SIGN SYMBOL	DOUBLE
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND

$300	THR HUND
$500	FIV HUND
$1,000	ONE THOU
$10,000	TEN THOU
$1,000,000	1 MILLION

E. Serial Number - A unique 14 (fourteen) 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 ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $20.00.

G. Mid-Tier Prize - A prize of $25.00, $40.00, $50.00, $100, $300 or $500.

H. High-Tier Prize - A prize of $1,000, $10,000 or $1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1448), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 1448-0000001-001.

K. Pack - A pack of "VIP CLUB" Instant Game tickets contains 025 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

L. 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.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "VIP CLUB" Instant Game No. 1448 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 "VIP CLUB" Instant Game is determined once the latex on the ticket is scratched off to expose 59 (fifty-nine) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the prize for that number. If a player reveals a Money Bag play symbol, the player wins the prize for that symbol. If a player reveals a Double Dollar Sign "$$" play symbol, the player wins DOUBLE the prize for that symbol. VIP Club Bonus: If a player reveals 2 matching prize amounts, the player wins that amount. 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 59 (fifty-nine) 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 59 (fifty-nine) 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 59 (fifty-nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 59 (fifty-nine) 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. Players can win up to twenty-five (25) times on a ticket in accordance with the approved prize structure.

B. Adjacent non-winning tickets within a pack will not have identical play and prize symbol patterns. Two (2) tickets have identical play and prize symbol patterns if they have the same play and prize symbols in the same positions.

C. Each ticket will contain seven (7) different "WINNING NUMBERS" play symbols.

D. The "Money Bag" and the "$$" play symbols will never appear in the "WINNING NUMBERS" play symbol spots.

E. The "$$" play symbol will only appear as dictated by the prize structure.

F. Non-winning tickets will contain twenty five (25) different "YOUR NUMBERS" play symbols.

G. On winning tickets, non-winning "YOUR NUMBERS" play symbols will all be different.

H. No ticket will ever contain more than four (4) identical non-winning prize symbols, excluding the BONUS area.

I. Non-winning prize symbols will never be the same as the winning prize symbol(s), excluding the BONUS area.

J. The top prize symbol will appear on every ticket unless otherwise restricted.

K. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" play symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "VIP CLUB" Instant Game prize of $20.00, $25.00, $40.00, $50.00, $100, $300, 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, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $40.00, $50.00, $100, $300 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 "VIP CLUB" Instant Game prize of $1,000, $10,000 or $1,000,000, 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 "VIP CLUB" 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 Texas Lottery is not responsible for tickets lost in the mail. 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:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family 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 under $600 from the "VIP CLUB" 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 $600 or more from the "VIP CLUB" 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 §466.408. Any rights to a prize that is 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 3,000,000 tickets in the Instant Game No. 1448. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1448 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$20	300,000	10.00
$25	240,000	12.50
$40	120,000	25.00
$50	240,000	12.50
$100	72,000	41.67
$300	15,000	200.00
$500	2,350	1,276.60
$1,000	175	17,142.86
$10,000	15	200,000.00
$1,000,000	3	1,000,000.00

*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 3.03. 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. 1448 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

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. 1448, 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-201201758

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 9, 2012

♦ ♦ ♦

Panhandle Regional Planning Commission

Request for Proposals

Written proposals for Project Management Consultant Services will be received at the offices of the Panhandle Regional Planning Commission (PRPC), 415 West Eighth Avenue, Amarillo, Texas 79101 until 4:00 p.m. (CST), Friday, May 4, 2012. The services requested are related to the implementation of a regional project that will consider the safety/protection of the Panhandle's cattle-feeding industry.

Full information and a proposal package may be obtained from the PRPC Regional Services Director, 415 West Eighth Avenue, Amarillo, Texas 79101, by phoning (806) 372-3381 or by emailing: jkiehl@theprpc.org. Proposals must be submitted using the form provided in the request for proposals package. The PRPC reserves the right to negotiate an agreement for these services based on fair and reasonable compensation for the scope of work proposed, as well as the right to reject any and all responses deemed unqualified, unsatisfactory or inappropriate.

TRD-201201795
Gary Pitner
Executive Director
Panhandle Regional Planning Commission
Filed: April 10, 2012

♦ ♦ ♦

Texas Parks and Wildlife Department

Notice of Availability and Opportunity for Comment

Proposed Modifications to the State Aquatic Vegetation Management Document

Under the provisions of Parks and Wildlife Code §11.082, the Texas Parks and Wildlife Department (department) is required to develop and adopt by rule a state aquatic vegetation management plan. The rules to administer the state aquatic vegetation management plan are codified at 31 TAC Chapter 57, Subchapter L. Under the provisions of §57.932(a)(2) of those rules, the department must prepare a guidance document that describes measures to control nuisance aquatic vegetation and the minimum standards applicable to governing entities that regulate a public body of surface water and persons who propose to treat nuisance aquatic vegetation. Under §57.932(a)(3), the department is required to publish a notice of intent when it proposes to modify the guidance document. The notice must be published at least 60 days before the changes to the guidance document take effect. As required by §57.932, this notice describes the proposed modifications to the guidance document, the reasons for the modifications, and how comments on the proposed modifications may be made to the department.

As a result of the development of new treatment methods for management of aquatic and riparian vegetation, the guidance document is being updated to include color illustrations, additional information about available herbicides and how they are used, new information about biological control organisms, and more background information on Texas' most problematic aquatic plant species. Specifically, those changes are:

1) the replacement of line drawings with color photographs for each of the problematic plants discussed in the guidance document;

2) the addition of *Arundo donax* (giant reed) to the list of problematic plants, because it has developed into a major problem along the banks of the Rio Grande and is becoming more widely distributed in the state;

3) the addition of four herbicides (Bispyribac, Flumioxazin, Imazamox, and Penoxsulam), with usage information for each, that are now approved by the United States Environmental Protection Agency (EPA) for use in aquatic situations;

4) changes to the discussion of the strengths and drawbacks of six herbicides (Chelated copper, Diquat, Endothall, Fluridone, Imazapyr, and Triclopyr) to reflect changes in labeling information required by the EPA and additional information about the properties and recommended usage of each product;

5) addition of a biological control agent (the Salvinia weevil *(Cyrtobagous salviniae))* that was previously listed by the EPA as experimental but is now approved;

6) modifications to the "Choosing the Appropriate Management Options" section to include the appropriate management situations for the newly added herbicides and biological controls (and recommendations for their use); and

7) additional miscellaneous conforming changes and an update of contact information for department personnel and facilities.

The entire guidance document can be viewed by visiting the department's website at http://www.tpwd.state.tx.us/landwater/water/environconcerns/nuisance plants/.

Comments and/or questions concerning the proposed modifications will be accepted for 60 days following the publication of this notice and should be addressed to Earl Chilton, Texas Parks and Wildlife Department, 4200 Smith School Rd., Austin, Texas 78744, by phone at (512) 389-4652, or by e-mail at earl.chilton@tpwd.state.tx.us.

TRD-201201749
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: April 5, 2012

♦ ♦ ♦

Notice of Proposed Real Estate Transactions

Acceptance of Land Donation

Las Palomas Wildlife Management Area (WMA), Ebony Unit - Cameron County

In a meeting on May 24, 2012 the Texas Parks and Wildlife Commission (the Commission) will consider accepting the donation approximately 10 acres of land as an addition to the Ebony Unit WMA, Cameron, County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD website at tpwd.state.tx.us.

Land Sale

Brazoria County

In a meeting on May 24, 2012 the Texas Parks and Wildlife Commission (the Commission) will consider the sale of approximately 2.44 acres along the San Bernard River in Brazoria County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD website at tpwd.state.tx.us.

Land Acquisition

Mother Neff State Park - Coryell County

In a meeting on May 24, 2012 the Texas Parks and Wildlife Commission (the Commission) will consider the acquisition of approximately 142 acres of land as an addition to Mother Neff State Park, Coryell County. At this meeting, the public will have an opportunity to com-

ment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD website at tpwd.state.tx.us.

Acceptance of Land Donation

Goose Island State Park - Aransas County

In a meeting on May 24, 2012 the Texas Parks and Wildlife Commission (the Commission) will consider accepting the donation of approximately 80 acres of land as an addition to the Big Tree area of Goose Island State Park, Aransas County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD website at tpwd.state.tx.us.

Sale of Easement

San Jacinto Battleground State Historic Site - Harris County

In a meeting on May 24, 2012 the Texas Parks and Wildlife Commission (the Commission) will consider selling an easement for one (1) 10-inch and one (1) 12-inch hydrocarbon pipeline at the San Jacinto Battleground State Historic Site, Harris County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD website at tpwd.state.tx.us.

TRD-201201796
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: April 10, 2012

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 3, 2012, to amend 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 Cebridge Acquisition, L.P. d/b/a Suddenlink Communications to Amend its State-Issued Certificate of Franchise Authority; to add city limits of Lubbock, Texas, Project Number 40287.

The requested amendment is to expand the service area footprint to include the municipality of Lubbock, 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 (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 40287.

TRD-201201753
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2012

Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 3, 2012, for an amendment to a certificate of convenience and necessity for a service area exception within Smith County, Texas.

Docket Style and Number: Application of Upshur Rural Electric Cooperative Corporation to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Smith County. Docket Number 40294.

The Application: Upshur Rural Electric Cooperative Corporation (URECC) filed an application for a service area exception to allow URECC to provide service to a specific customer located within the certificated service area of Cherokee County Electric Cooperative Association (CCECA). CCECA has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than April 30, 2012 by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 40294.

TRD-201201752
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2012

Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 9, 2012, for an amendment to certificated service area for a service area exception within Atascosa County, Texas.

Docket Style and Number: Application of Medina Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Atascosa County. Docket Number 40310.

The Application: Medina Electric Cooperative, Inc. (MEC) filed an application for a service area exception to allow MEC to provide service to a specific customer located within the dually certificated service area of AEP Texas Central Company (AEP TCC) and Karnes Electric Cooperative, Inc. (KEC). AEP TCC and KEC have provided affidavits of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than April 30,

2012 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 40310.

TRD-201201798
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 10, 2012

Notice of Application for Waiver from Requirements in Automatic Dial Announcing Devices (ADAD) Application Form

Notice is given to the public of an application filed on April 9, 2012, with the Public Utility Commission of Texas (commission) for waiver from the requirements in the commission prescribed application for a permit to operate automatic dial announcing devices.

Docket Style and Number: Application of Victory Phones, LLC for a Waiver to the Federal Registration Number Requirement of the ADAD Application Form, Docket Number 40311.

The Application: Victory Phones, LLC (Victory) filed a request for a waiver of the registration number requirement in the Public Utility Commission of Texas prescribed application for a permit to operate automatic dial announcing devices (ADAD). Specifically, Question 11(e) of the application requires the Federal Registration Number (FRN) issued to the ADAD manufacturer or programmer either by the Federal Communications Commission (FCC) or Administrative Council Terminal Attachments (ACTA). Victory stated that it uses a web-based platform with calls made over a Voice over Internet Protocol (VoIP) platform and does not have an FRN, and therefore is requesting a waiver.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 40311.

TRD-201201797
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 10, 2012

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Industry Telephone Company's (Industry Telephone or the applicant) application filed with the Public Utility Commission of Texas (commission) on April 6, 2012, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Industry Telephone Company for Approval of a Minor Rate Change, Pursuant to P.U.C. Substantive Rule §26.171 and Public Utility Regulatory Act, Section 53, Subchapter G. Tariff Control Number 40304.

The Application: Industry Telephone filed an application to implement an increase to its rates associated with residential access lines in Industry Telephone's exchange. The proposed effective date for the proposed rate changes is May 1, 2012. The estimated annual revenue increase recognized by applicant is $42,888 or less than 2% of applicant's gross annual intrastate revenues. Applicant has 2,179 access lines in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 1, 2012, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 1, 2012. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 40304.

TRD-201201799
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 10, 2012

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Taylor Telephone Cooperative, Inc.'s (Taylor Telephone or the applicant) application filed with the Public Utility Commission of Texas (commission) on April 6, 2012, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Taylor Telephone Cooperative Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171 and Public Utility Regulatory Act §53, Subchapter G. Tariff Control Number 40303.

The Application: Taylor Telephone filed an application to implement an increase to the rates associated with business and residential access lines and key/PBX service. The proposed effective date for the proposed rate changes is May 1, 2012. The estimated annual revenue increase recognized by applicant is $6,480 or less than 5% of applicant's gross annual intrastate revenues. Applicant has 5,739 access lines in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 1, 2012, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 1, 2012. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 40303.

TRD-201201800
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 10, 2012

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Big Bend Telephone Company, Inc.'s (Big Bend or the applicant) application filed with the Public Utility Commission of Texas (commission) on April 5, 2012, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Big Bend Telephone Company, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171 and Public Utility Regulatory Act §53, Subchapter G. Tariff Control Number 40300.

The Application: Big Bend filed an application to implement an increase to its residential access line rates and incorporate the tone dialing service into the residential and business access line rates in Big Bend's exchange. The proposed effective date for the proposed rate changes is April 16, 2012 and applicant proposes to implement the higher rates in May 2012 billing. The estimated increase to applicant's intrastate gross annual revenues is $97,793. Applicant has 5,082 access lines in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 3, 2012, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 3, 2012. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 40300.

TRD-201201801
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 10, 2012

Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

Jasper County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Jasper County-Bell Field during the course of the next five years through multiple grants.

Current Project: Jasper County; TxDOT CSJ No.: 1220JASPR. Scope: Provide engineering/design services to rehabilitate and mark Runway 18-36; rehabilitate apron, parallel taxiway to runway 18-36 and cross taxiways; expand apron; install precision approach path indicator 2 Runway 18-36; drainage improvements for runway and taxiway system; install fencing and install stand-by generator for emergency operation of the following: Medium intensity runway lights, PAPI-2 Runway 18-36, automated weather observing system and fuel systems.

The HUB goal for the current project is 5%. TxDOT Project Manager is Clayton Bridwell.

Future scope work items for engineering/design services within the next five years may include the following:

1. Construct hangar access taxiways
2. Rehabilitate and mark apron
3. Rehabilitate and mark taxiways
4. Install fencing
5. Install REIL Runway 18-36
6. Rehab hangar access taxiways

Jasper County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Jasper County-Bell Field." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than May 22, 2012, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of one local government member and Aviation Division staff members. The final selection by the committee will generally be made following the com-

pletion of review of proposals. The committee will review all proposals and rate and rank each. The Evaluation Criteria for Engineering Proposals can be found at http://www.txdot.gov/business/projects/aviation.htm under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Clayton Bridwell, Project Manager.

TRD-201201823
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 11, 2012

Aviation Division - Request for Proposal for Professional Engineering Services

Montgomery County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: Montgomery County Lone Star Executive Airport, TxDOT CSJ No. 1212CNROE. Scope: Southside Development Plan; Prepare an Airport Development Plan which includes, but is not limited to information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to develop, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The Airport Development Plan should be tailored to the individual needs of the airport.

The HUB goal is set at 0%. TxDOT Project Manager is Molly Lamrouex.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-551 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than May 22, 2012, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The evaluation criteria for airport planning projects can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Molly Lamrouex, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-201201824
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 11, 2012

Texas Water Development Board

Applications for April, 2012

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73606, a request from the City of Houston (Harris County), 901 Bagby, Houston, Texas 77002, received December 2, 2011, for a loan in the amount of $48,750,000 from the Clean Water State Revolving Fund to finance the construction of wastewater system improvements.

Project ID #77241, a request from the Hidalgo County MUD No. 1 (Hidalgo County), 7400 W. Expressway 83, Mission, Texas 78572, received January 17, 2012, for financial assistance in the amount of $2,129,860, consisting of a $1,500,000 loan and $629,860 in loan forgiveness from the Clean Water State Revolving Fund to finance the construction of wastewater system improvements.

Project ID #10344, a request from the City of Brownsville (Cameron County), P.O. Box 3270, Brownsville, Texas 78523-3270, received November 30, 2011, for financial assistance in the amount of $25,345,000, consisting of a $24,505,000 grant and a loan of $840,000 from the Economically Distressed Areas Program to provide construction for first time wastewater service in the FM 511-802 area.

Project ID #73632, a request from the City of Alba (Wood County), P.O. Box 197, Alba, Texas 75410-0197, received November 28, 2011, for a loan in the amount of $105,000 and $45,000 in loan forgiveness from the Clean Water State Revolving Fund to finance planning and design costs relating to wastewater system improvements.

Project ID #62507, a request from the Town of Anthony (El Paso County), P.O. Box 1269, Anthony, Texas 79821-1269, received December 27, 2010, for financial assistance in the amount of $2,540,000 consisting of: (a) a loan in the amount of $762,000; and (b) $1,778,000 loan forgiveness, from the Drinking Water State Revolving Fund to finance the planning, acquisition and design relating to water system improvements.

Project ID #62515, a request from the City of Eldorado (Schleicher County), P.O. Box 713, Eldorado, Texas 76936-0713, received January 6, 2012, for a loan in the amount of $1,495,000 from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design funding option.

Project ID #73626, a request from the City of Laredo (Webb County), 1110 Houston Street, Laredo, Texas 78040, received November 21, 2011, for a loan in the amount of $48,750,000 from the Clean Water State Revolving Fund to finance wastewater system improvements, utilizing the pre-design funding option.

Project ID #73633, a request from the City of McAllen (Hidalgo County), P.O. Box 220, McAllen, Texas 78501, received November 28, 2011, for financial assistance in the amount of $1,700,000, consisting of a loan in the amount of $1,190,000 and $510,000 in loan forgiveness from the Clean Water State Revolving Fund to finance planning and design costs relating to wastewater system improvements.

Project ID #73629, a request from the City of Mount Vernon (Franklin County), P.O. Drawer 597, Mount Vernon, Texas 75457-0597, received November 23, 2011, for a loan in the amount of $3,820,000 from the Clean Water State Revolving Fund to finance wastewater system improvements, utilizing the pre-design funding option.

Project ID #73634, a request from the City of Ranger (Eastland County), 400 W. Main, Ranger, Texas 76470, received November 28, 2011, for financial assistance in the amount of $600,000, consisting of a loan in the amount of $300,000 and $300,000 in loan forgiveness from the Clean Water State Revolving Fund to finance planning and design costs relating to wastewater system improvements.

Project ID #73637, a request from the City of San Juan (Hidalgo County), 709 S. Nebraska, San Juan, Texas 78589, received January 17, 2012, for a loan in the amount of $445,000 from the Clean Water State Revolving Fund to finance planning and design costs relating to wastewater system improvements.

Project ID #73630, a request from the City of Springtown (Parker County), P.O. Box 444, Springtown, Texas 76082-0444, received November 22, 2011, for a loan in the amount of $3,930,000 from the Clean Water State Revolving Fund to provide financing to finance wastewater system improvements, utilizing the pre-design funding option.

TRD-201201792
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: April 10, 2012

Workforce Solutions Deep East Texas

Public Notice

The Deep East Texas Local Workforce Development Board dba Workforce Solutions Deep East Texas is seeking proposals for the Management and Operation of the Workforce Centersin the Deep East Texas region, effective October 1, 2012. 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 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.

Bidder's Conference: 1:00 p.m., May 2, 2012 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 last opportunity for bidders to ask questions concerning this procurement.

Deadline for submission of proposals: 3:00 p.m., May 23, 2012

Requests for copies of the RFP can be made to:

Darla Johnson, Procurement/Contract Manager

Workforce Solutions Deep East Texas

539 S. Chestnut, Suite 300

Lufkin, Texas 75901

Phone: (936) 639-8898

Fax: (936) 633-7491

Email: djohnson@detwork.org

OR the RFP can be accessed at:

www.detwork.org

TRD-201201802
Charlene Meadows
Executive Director
Workforce Solutions Deep East Texas
Filed: April 11, 2012

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704..950 *(P)*