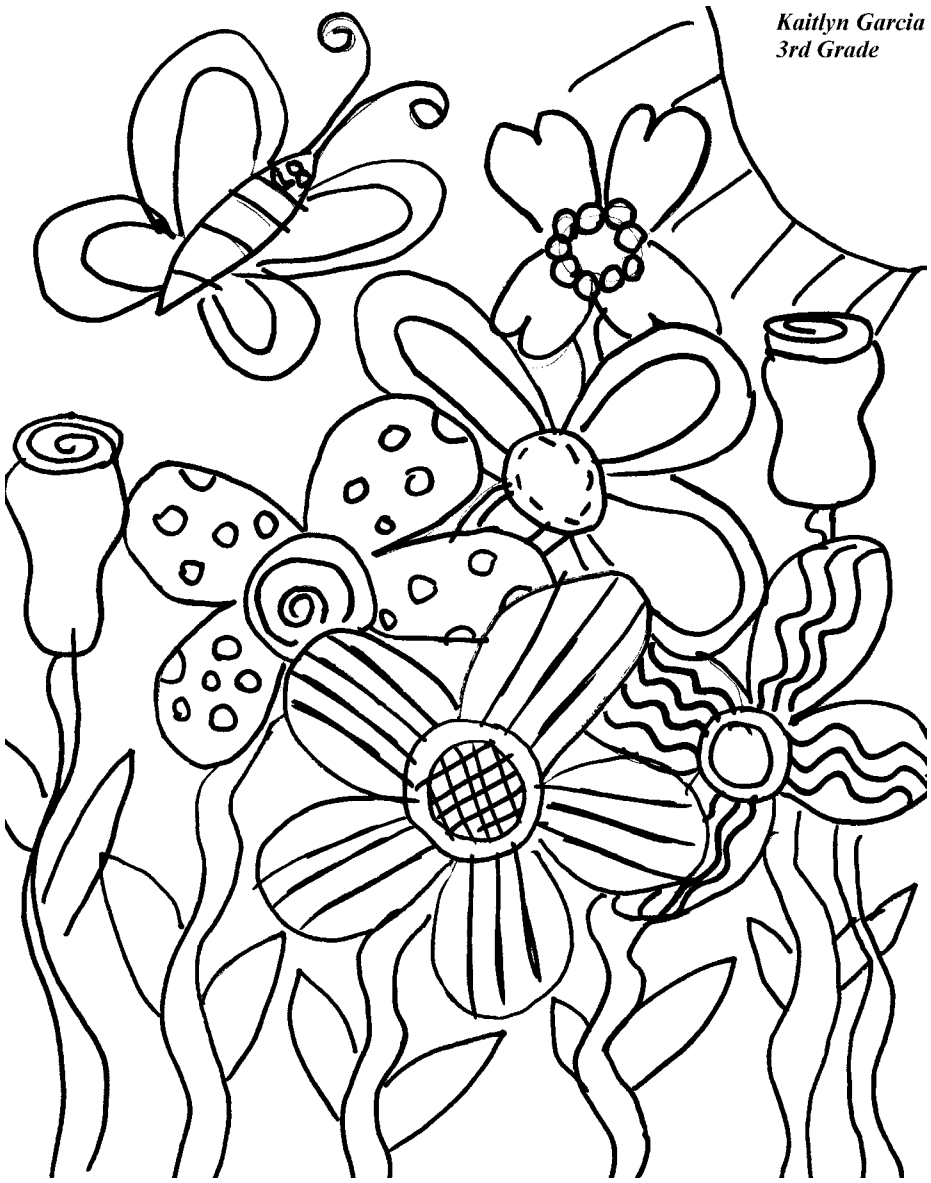
TEXAS REGISTER

Volume 37 Number 27 *July 6, 2012* *Pages 5035 - 5176*



Kaitlyn Garcia
3rd Grade

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.

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.

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

WITHDRAWN RULES

ADOPTED RULES

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

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.)

Opinions

Opinion No. GA-0951

The Honorable Jim Jackson

Chair, Committee on Judiciary and Civil Jurisprudence

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a private retail establishment may charge an itemized and disclosed "service fee" on a consumer transaction (RQ-1036-GA)

S U M M A R Y

No statute or constitutional provision prohibits a private retail establishment in Texas from charging an itemized and disclosed "service fee" on a consumer transaction, provided that the fee is not limited to the use of a credit card. If, however, the fee is not itemized and disclosed to the consumer in advance of the transaction, the consumer may not be contractually bound to pay it.

Opinion No. GA-0952

The Honorable Chris Martin

Van Zandt County Criminal District Attorney

400 South Buffalo

Canton, Texas 75103

Re: Final authority to set the salary of the official court reporter in the Van Zandt County Court at Law, and to determine whether the position is full-time or part-time (RQ-1039-GA)

S U M M A R Y

The judge of the Van Zandt County Court at Law is authorized to appoint an official court reporter and set the reporter's salary with approval of the Commissioners Court. The judge of the Van Zandt County Court of Law has exclusive authority to control the official court reporter's hours of work. Under section 25.2362(g) of the Government Code, neither the judge of the Van Zandt County Court at Law nor the Commissioners Court has exclusive authority to set the salary of the official court reporter. The Commissioners Court's authority to approve the salary of the County Court at Law court reporter does not include the authority to unilaterally set the reporter's salary. A reviewing court would likely conclude that Van Zandt County is required to provide the official court reporter for the County Court at Law a reasonable salary.

Opinion No. GA-0953

The Honorable Joseph C. Pickett

Chair, Committee on Defense and Veterans' Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a county to issue bonds pursuant to article VIII, section 1-g(b), Texas Constitution (RQ-1040-GA)

S U M M A R Y

The Legislature has not authorized a county to issue tax increment financing bonds as a city may under chapter 311 of the Tax Code.

A county qualifies as a "political subdivision" as that term is used in article VIII, section 1-g(b). A municipality has exclusive authority to pledge all or part of a tax increment fund, including any tax increments deposited by a county, for payment of tax increment bonds or notes. A county may not issue tax increment financing bonds or unilaterally pledge any part of the tax increment fund.

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

TRD-201203366
Katherine Cary
General Counsel
Office of the Attorney General
Filed: June 26, 2012

♦ ♦ ♦

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. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER X. CITRUS GREENING QUARANTINE

4 TAC §§19.615 - 19.622

The Texas Department of Agriculture is renewing the effectiveness of the emergency adoption of new §§19.615 - 19.622, for a 60-day period. The text of the new sections were originally published in the March 30, 2012, issue of the *Texas Register* (37 TexReg 2128).

Filed with the Office of the Secretary of State on June 21, 2012.

TRD-201203291
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Original effective date: March 14, 2012
Expiration date: September 9, 2012
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE

DIVISION 1. BEHAVIOR MANAGEMENT

37 TAC §380.9503

Pursuant to Texas Government Code §2001.034, the Texas Juvenile Justice Department (TJJD) adopts on an emergency basis an amendment to §380.9503, concerning Rules and Consequences for Residential Facilities.

The amended section now includes placement in the Phoenix program (as described in §380.9535, which is also adopted on an emergency basis in this issue of the *Texas Register)* as a major disciplinary consequence for certain serious and aggressive rule violations. The amended section also allows for demotion of a youth's stage in the agency's rehabilitation program as a major disciplinary consequence for a major rule violation resulting in admission to the Phoenix program.

The amended section is adopted on an emergency basis to address a recent increase in aggressive and assaultive incidents within TJJD's secure facilities that has created impediments to the agency's ability to provide effective rehabilitative services and poses imminent peril to the health, safety, and welfare of youth within TJJD facilities, staff employed within TJJD facilities, volunteers, and other visitors.

The amended section is adopted under Human Resources Code §244.005, which provides TJJD with the authority to order a committed child's confinement under conditions it believes best designed for the child's welfare and the interests of the public, and §244.006, which provides TJJD with the authority to require a committed child to participate in moral, academic, vocational, physical, and correctional training and activities, and to require the modes of life and conduct that seem best adapted to fit the child for return to full liberty without danger to the public.

§380.9503. Rules and Consequences for Residential Facilities.

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

(c) Definitions. The following terms, as used in this rule, have the following meanings.

(1) (No change.)

(2) Multi-Disciplinary Team--has the meaning assigned by §380.8501 [~~§85.1~~] of this title.

(3) - (5) (No change.)

(d) General Provisions.

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

(4) Youth may be issued more than one disciplinary consequence for a rule violation proven in a Level II or III due process hearing held in accordance with §380.9555 [~~§95.55~~] or §380.9557 [~~§95.57~~] of this title, respectively.

(5) (No change.)

(6) A youth's disciplinary record shall consist only of rule violations that are proven through a Level I or II due process hearing in accordance with §380.9551 [~~§95.51~~] or §380.9555 [~~§95.55~~] of this title, respectively.

(7) Within 24 hours after a report of a major rule violation or a minor rule violation resulting in a security referral, a case worker, program supervisor, or other appropriate non-involved staff member will review the incident and assess whether to request a Level II due process hearing in order to pursue major consequences and/or placement of the violation on the youth's disciplinary record. The facility

administrator or designee will determine whether or not to hold a Level II due process hearing. When a youth is found to be in possession of prohibited money as defined in this rule, a Level II due process hearing is required to seize the money. Seized money will be placed in the student benefit fund in accordance with §380.9555 [~~§95.55~~] of this title.

(8) - (12) (No change.)

(e) Consequences for High Restriction Facilities.

(1) Major Disciplinary Consequences.

(A) Placement in the Phoenix Program--in accordance with §380.9535 of this title, a youth may be placed in the Phoenix program when the youth has been found to have engaged in certain aggressive behavior.

(B) [~~(A)~~] Major Suspension of Privileges--a youth has all privileges suspended for 30 calendar days from the date of the hearing. This consequence may be issued only for minor rule violations resulting in a referral to the security unit or major rule violations, and only if the rule violation is proven through a Level II due process hearing in accordance with §380.9555 [~~§95.55~~] of this title.

(C) [~~(B)~~] Loss of Transition Eligibility--a youth who has not completed the minimum length of stay will serve an additional month in high restriction facilities prior to becoming eligible for transition to a medium restriction facility under §380.8545 [~~§85.45~~] of this title. This consequence may only be issued if it is proven through a Level II due process hearing that the youth committed:

(i) assault causing bodily injury to youth or staff, as defined in subsection (i)(3) - (4) of this section; or

(ii) sexual misconduct as defined in subsection (i)(21)(A) - (B) of this section.

(D) [~~(C)~~] Stage Demotion--a youth's assigned stage in the agency's rehabilitation program is lowered by one or more stages. This consequence may be issued only if it is proven through a Level II due process hearing that the youth committed:

(i) assault causing serious bodily injury to youth or staff, as defined in subsections (c)(5) and (i)(3) - (4) of this section; [~~or~~]

(ii) sexual misconduct, as defined in subsection (i)(21)(A) of this section; or[~~.~~]

(iii) any major rule violation resulting in admission to the Phoenix program.

(2) (No change.)

(f) Consequences for Medium Restriction Facilities.

(1) Major Consequences.

(A) Disciplinary Transfer--a youth assigned to a medium restriction facility is transferred to a high restriction facility. Disciplinary transfer may be issued only for major rule violations that are proven through a Level II due process hearing in accordance with §380.9555 [~~§95.55~~] of this title. This consequence does not apply to youth who are on parole status and who are currently assigned to a medium restriction facility.

(B) Placement in the Phoenix Program--in accordance with §380.9535 of this title, a youth on institutional status may be transferred to a high restriction facility and placed in the Phoenix program when the youth has been found to have engaged in certain aggressive behavior.

(C) [~~(B)~~] Major Suspension of Privileges--a youth has all privileges suspended for 30 calendar days from the date of the hearing. This consequence may be issued only for major rule violations that are proven through a Level II due process hearing.

(D) [~~(C)~~] Stage Demotion--a youth's assigned stage in the agency's rehabilitation program is lowered by one or more stages. This consequence may be issued only if it is proven through a Level II due process hearing that the youth committed:

(i) assault causing serious bodily injury to youth or staff, as defined in subsections (c)(5) and (i)(3) - (4) of this section; [~~or~~]

(ii) sexual misconduct, as defined in subsection (i)(21)(A) of this section; or[~~.~~]

(iii) any major rule violation resulting in admission to the Phoenix program.

(2) Minor Consequences. Minor disciplinary consequences include but are not limited to consequences described in this paragraph [~~herein~~]. Minor consequences may only be imposed following a Level III due process hearing held in accordance with §380.9557 [~~§95.57~~] of this title.

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

(D) Facility Restriction--youth is restricted for up to 48 hours from participating in any activity outside the assigned placement other than [~~the~~] approved constructive activities.

(g) Review and Appeal of Consequences.

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

(3) Youth may appeal major disciplinary consequences by filing an appeal in accordance with §380.9551 [~~§95.51~~] or §380.9555 [~~§95.55~~] of this title.

(h) Placement Disposition Options. In accordance with §380.9517 [~~§95.17~~] of this title, youth in high restriction facilities may be placed in the Redirect program when the youth is found to have engaged in certain major rule violations. Placement in the Redirect program is not a disciplinary consequence.

(i) Major Rule Violations. It is a violation to knowingly violate, attempt to violate, or help someone else violate any of the following:

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

(16) Possession of Prohibited Items--possessing the following prohibited items:

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

(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 [~~§95.55~~] of this title for procedures concerning seizure of such money);

(E) - (H) (No change.)

(17) - (27) (No change.)

(j) (No change.)

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 June 22, 2012.

TRD-201203321

Cheryln K. Townsend
Executive Director
Texas Juvenile Justice Department
Effective date: June 22, 2012
Expiration date: October 19, 2012
For further information, please call: (512) 424-6014

♦ ♦ ♦

37 TAC §380.9517

Pursuant to Texas Government Code §2001.034, the Texas Juvenile Justice Department (TJJD) adopts on an emergency basis an amendment to §380.9517, concerning Redirect Program.

Criteria for placement in the Redirect program have been expanded to include assignment to the Phoenix program (as described in §380.9535, which is adopted on an emergency basis in this issue of the *Texas Register)* and fighting without injury.

The 42-day maximum time limit for placement in the Redirect program has been removed. Requirements for periodic reviews and oversight at the facility level and Central Office level have been added. The requirement for doors to remain unlocked except during sleeping hours or emergencies has also been removed.

The requirement for at least 30 minutes of counseling per day with a case manager has been changed to a requirement for daily visits from a case manager and at least 30 minutes of counseling per week.

Several changes have been made to provisions for youth who receive special education services. When the behavior leading to a referral to the Redirect program occurs during school-related activities, the amended section now requires facility staff to recommend whether admission to the Redirect program should include a removal from the regular educational setting. Manifestation determination reviews will be required in cases where such a removal is recommended. If the finding of the manifestation determination review is that a youth's Redirect-eligible behavior is a result of the failure to implement a youth's Individualized Education Program (IEP) or that the conduct was caused by or had a direct relationship to his/her disability, the amended section now allows the youth to be placed in the Redirect program. However, the youth must continue to receive educational services in his/her regular educational setting, unless the youth's parent or surrogate parent agrees to a change in the educational setting as part of the youth's behavior intervention plan. In accordance with 34 Code of Federal Regulations §300.530(g), for a youth whose conduct was found to be a manifestation of his/her disability but was removed from the regular education setting due to possession of a weapon or the infliction of serious bodily injury, a limit of 45 days has been added for the amount of time the youth may be removed from the regular educational setting.

The amended section is adopted on an emergency basis to address a recent increase in aggressive and assaultive incidents within TJJD's secure facilities that has created impediments to the agency's ability to provide effective rehabilitative services and poses imminent peril to the health, safety, and welfare of youth within TJJD facilities, staff employed within TJJD facilities, volunteers, and other visitors.

The amended section is adopted under Human Resources Code §244.005, which provides TJJD with the authority to order a committed child's confinement under conditions it believes best designed for the child's welfare and the interests of the public, and §244.006, which provides TJJD with the authority to require a committed child to participate in moral, academic, vocational, physical, and correctional training and activities, and to require the modes of life and conduct that seem best adapted to fit the child for return to full liberty without danger to the public. The amended section is also adopted under 34 Code of Federal Regulations §300.530, which requires schools to conduct manifestation determination reviews when there is a decision to change the educational placement of a student with disabilities.

§380.9517. Redirect Program.

(a) Purpose. The Redirect program functions as a means for delivering intensive interventions in a structured environment for youth who have engaged in certain serious rule violations. The program is designed to promote violence reduction and skill building as a means of increasing safety on Texas Juvenile Justice Department (TJJD) campuses. This rule sets forth eligibility criteria, program completion requirements, and services to be provided to youth in the program.

(b) Applicability. This rule applies only to high restriction facilities operated by TJJD [~~the Texas Youth Commission~~].

(c) Definitions [~~Explanation of Terms Used~~].

(1) Admission, Review, and Dismissal (ARD) Committee--a committee that makes decisions on educational matters relating to special education-eligible youth.

(2) Behavior Intervention Plan--a written plan developed as a result of a functional behavioral assessment to address specific behavioral concerns that are impeding a youth's learning or the learning of others. The plan is part of a youth's individualized education program and includes positive behavioral interventions and supports and other strategies to address the behavior.

(3) Functional Behavioral Assessment--a process for observing and collecting data on specific behaviors that are impeding a youth's progress and determining the function the behavior plays for a youth (e.g., seeking attention, peer acceptance, avoidance, etc.).

(4) Individualized Education Program (IEP)--the program of special education and related services developed by a youth's ARD committee.

(5) Manifestation Determination Review--a review conducted by a youth's ARD committee when a decision has been made to change a special education-eligible youth's school placement due to a violation of the code of conduct. The committee determines whether a youth's conduct is a manifestation of the youth's disability and whether the youth's IEP was fully implemented.

(6) Multi-Disciplinary Team--a team which assesses youth progress through the [~~steps of the~~] Redirect program. At a minimum, the team must include representatives from the following departments: psychology, case management, education, and dorm supervision.

(d) Program Eligibility. A youth who is placed in the Phoenix program pursuant to §380.9535 of this title or engages in one or more of the following rule violations as defined in §380.9503 [~~§95.3~~] of this title meets criteria for placement in the Redirect program:

(1) assault or fighting [~~resulting in bodily injury~~];

[~~(2) assault - unauthorized physical contact with staff (no injury);~~]

(2) [~~(3)~~] escape or attempted escape;

(3) [~~(4)~~] vandalism (major rule violation only);

(4) [~~(5)~~] sexual misconduct (excluding kissing);

(5) [~~(6)~~] possessing or threatening others with a weapon or item which could be used as a weapon;

(6) [~~(7)~~] chunking bodily fluids; or

(7) [~~(8)~~] tampering with safety equipment.

(e) Request to Pursue Placement in Redirect Program. The facility administrator or designee may approve a request to pursue placement of a youth in the Redirect program only when it is determined that:

(1) the youth poses a continuing risk for the admitting behavior(s);

(2) less restrictive methods of documented intervention have been attempted when appropriate; and

(3) the mental status of the youth has been assessed by a psychologist and there are no therapeutic contraindications for admission to the Redirect program.

(f) Additional Considerations for Youth Receiving Special Education Services. When a youth who is receiving special education services engages in a rule violation during school-related activities and is recommended for placement in the Redirect program, the recommendation will include a determination of whether to request removal from the regular educational setting as part of the youth's placement in the Redirect program. The recommendation will take into consideration the youth's educational plan, behavior in school, safety issues, and any other relevant information. If a removal from the regular educational setting is recommended, the youth's ARD committee will determine the youth's educational placement.

(1) If a removal is not recommended, the youth may be placed in the Redirect program but will receive educational services in the youth's regular educational setting.

(2) If a removal is recommended, the youth's ARD committee will conduct a manifestation determination review as required by the Individuals with Disabilities Education Act (IDEA).

[~~(1) If the youth is receiving special education services, a manifestation determination review must be held to determine if the youth's conduct was a direct result of the failure to implement the youth's IEP, and if the conduct was caused by or had a direct and substantial relationship to the youth's disability. Except as noted in paragraph (2) of this subsection, the results of the manifestation determination review will have the following impact on admission to the Redirect program:~~]

[~~(A) if the determination is that there was a failure to implement the youth's IEP, the youth may not be placed in the Redirect program; and~~]

(A) [~~(B)~~] If the youth's ARD committee determines that the youth's conduct was a direct result of a failure to implement the youth's IEP or [~~if the determination is~~] that the conduct was caused by or had a direct and substantial relationship to the youth's disability:[~~; the youth may not be placed in the Redirect program unless the youth's parent/guardian consents to such placement as part of the youth's behavior intervention plan.~~]

(i) the ARD committee must conduct a functional behavior assessment and develop a behavior intervention plan or, if a behavior intervention plan already exists, modify the existing plan to address the youth's conduct;

(ii) the youth will not be removed from his/her regular educational setting unless the youth's parent or surrogate parent (as defined by 34 CFR §300.519) agrees to a change in the educational setting as part of the youth's behavior intervention plan; and

(iii) the youth may be admitted to the Redirect program.

(B) If the youth's ARD committee determines that the youth's conduct was not a result of a failure to implement the youth's IEP and was not caused by and did not have a direct and substantial relationship to the youth's disability, the ARD committee may determine that the youth may receive educational services in the Redirect housing area.

(C) [~~(2)~~] Regardless of the results of a manifestation determination review, a youth may be admitted to the Redirect program and may receive educational services in the Redirect housing area for up to 45 days if the rule violation includes possession of a weapon or the infliction of serious bodily injury upon another person.

(i) [~~(A)~~] For purposes of subparagraph (C) [~~paragraph (2)~~] of this paragraph [~~subsection~~] only, weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, not including a pocket knife with a blade of less than 2 1/2 inches in length.

(ii) [~~(B)~~] For purposes of subparagraph (C) [~~paragraph (2)~~] of this paragraph [~~subsection~~] only, serious bodily injury means bodily injury which involves:

(I) [~~(i)~~] a substantial risk of death;

(II) [~~(ii)~~] extreme physical pain;

(III) [~~(iii)~~] protracted and obvious disfigurement; or

(IV) [~~(iv)~~] protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(D) If a youth is removed from his/her regular educational setting, educational services must be provided so as to enable the youth to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the youth's IEP goals.

(g) Admission Process. A Level II due process hearing must be held in accordance with §380.9555 [~~§95.55~~] of this title. The [~~Unless there are considerations concerning special education services which would make the youth ineligible for placement in the Redirect program, as described in subsection (f) of this section, the~~] youth may be admitted to the Redirect program if there is a finding of true with no extenuating circumstances that the youth committed a rule violation listed in subsection (d) of this section. The parent/guardian will be provided prior notice of the hearing as required by §380.9555 of this title and will be given an opportunity to provide information to be considered in Redirect program placement decisions.

(h) Program Requirements.

(1) The Redirect program is administered in a special unit designated for such purpose. [~~If the Redirect program is administered in a designated location within the security unit, the doors will remain unlocked except during sleeping hours or emergencies.~~]

[~~(2) A youth's placement in the Redirect program shall not exceed 42 calendar days.~~]

(2) [~~(3)~~] On scheduled academic days, youth will be provided with the amount of education services established by the approved master schedule for the regular school program.

[(4) If a youth is currently receiving special education services, staff must ensure that the youth continues to receive educational services that will enable the youth to meet the goals of the youth's IEP.]

(3) [(5)] An individual plan must be developed for each youth. The plan must be written in a language clearly understood by the youth. The plan must:

(A) address the specific target behavior or cluster of behaviors that led to admission to the Redirect program, taking into consideration the psychologist's recommendations to address the motivation for the behavior;

(B) involve strategies for intervention and prevention of the target behavior through skills development;

(C) include a component which addresses transition to the general campus population; and

(D) provide clearly written objectives for release from the Redirect program.

(4) [(6)] Staff must explain the individual plan to the youth. Youth will be provided an opportunity to sign the plan in acknowledgment.

(5) [(7)] The individual plan and youth's progress with regard to target behaviors and skills development is reviewed and evaluated at least once every seven days by the multi-disciplinary team.

(6) [(8)] Youth shall be gradually reintegrated into campus programming as soon as he/she demonstrates comprehension of the goals established in the treatment plan.

(7) [(9)] Youth who are placed in the Redirect program are afforded living conditions and privileges approximating those available to the general campus population.

(8) [(10)] Youth will receive daily visits and a minimum of 30 minutes of counseling per week [day] with the assigned case manager or designee. The case manager or designee will immediately refer youth to a mental health professional if concerns exist as to the youth's mental health status.

(9) [(11)] Youth will receive weekly mental health status exams by a psychologist while youth movement and program activities are restricted to the Redirect unit. Youth will also receive weekly psychological counseling if deemed necessary by a psychologist.

(10) [(12)] Youth will be provided with at least one hour of large muscle exercise seven days per week.

(11) For youth who remain in the Redirect program more than 30 days, the facility administrator or designee will review the youth's progress, programming, and adequacy of interventions at least once every 30 days.

(12) For youth who remain in the Redirect program more than 60 days, the division director over residential facilities or designee will review the youth's progress, programming, and adequacy of interventions at least once every 30 days.

(i) Temporary Removal from the Redirect Program. Youth may be referred to the security program while currently assigned to the Redirect program if the youth meets criteria as set forth in §380.9740 [§97.40] of this title. [Any time spent in the security program is counted toward the 42-day maximum in the Redirect program.]

(j) Criteria for Release from Redirect Program. A youth shall be released from the Redirect program and returned to his/her assigned dorm upon the earliest of the following events:

(1) a determination by the multi-disciplinary team that the youth has:

(A) met goals set forth in his/her individual plan; and [or]

(B) demonstrated an ability to safely transition to campus programming; or

(2) a determination by the facility administrator [superintendent] or designee that the program has failed to be implemented as designed for reasons other than non-compliance of the youth; or

(3) a decision by the division director over residential facilities, the facility administrator, [superintendent] or their designees [designee] to return the youth to his/her assigned dorm or transfer to an alternative placement based on:

[(A) population concerns in the Redirect program; or]

(A) [(B)] a recommendation by a mental health professional due to the youth's mental health condition; or

(B) [(C)] other administrative concerns; or

(4) a decision by the receiving facility administrator [superintendent] or designee not to continue the Redirect program after an administrative transfer of the youth to another high restriction facility while assigned to the Redirect program.[; or]

[(5) the youth has completed 42 calendar days in the program.]

(k) Right to Appeal. The youth shall be notified in writing of his/her right to appeal placement in the Redirect program in accordance with §380.9353 [§93.53] of this title. The pendency of an appeal shall not preclude implementation of the decision.

(l) Family Notification. In accordance with §380.8705 [§87.5] of this title, a youth's parents or guardian shall be notified within 24 hours after the due process hearing of the youth's admission to the Redirect program.

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 June 22, 2012.

TRD-201203322
Cheryln K. Townsend
Executive Director
Texas Juvenile Justice Department
Effective date: June 22, 2012
Expiration date: October 19, 2012
For further information, please call: (512) 424-6014

♦ ♦ ♦

37 TAC §380.9535

Pursuant to Texas Government Code §2001.034, the Texas Juvenile Justice Department (TJJD) adopts on an emergency basis new §380.9535, concerning Phoenix Program.

The new section establishes the new Phoenix program within TJJD. The purpose of the program is to protect staff and youth in TJJD's state-operated facilities from highly aggressive youth while providing such youth a highly structured environment to reduce their aggression and to progress in treatment. The new section sets forth eligibility criteria, standards of treatment,

services to be provided, the process for reviewing progress in the program, program completion requirements, and oversight mechanisms.

The new section is adopted on an emergency basis to address a recent increase in aggressive and assaultive incidents within TJJD's secure facilities that has created impediments to the agency's ability to provide effective rehabilitative services and poses imminent peril to the health, safety, and welfare of youth within TJJD facilities, staff employed within TJJD facilities, volunteers, and other visitors.

The new section is adopted under Human Resources Code §244.005, which provides TJJD with the authority to order a committed child's confinement under conditions it believes best designed for the child's welfare and the interests of the public, and §244.006, which provides TJJD with the authority to require a committed child to participate in moral, academic, vocational, physical, and correctional training and activities, and to require the modes of life and conduct that seem best adapted to fit the child for return to full liberty without danger to the public. The new section is also adopted under 34 Code of Federal Regulations §300.530, which requires schools to conduct manifestation determination reviews when there is a decision to change the educational placement of a student with disabilities.

§380.9535. Phoenix Program.

(a) Purpose. The Phoenix program is designed to protect staff and youth in Texas Juvenile Justice Department (TJJD) state-operated facilities from highly aggressive youth while providing such youth a highly structured environment to reduce their aggression and to progress in treatment. This rule sets forth eligibility criteria, standards of treatment, and services to be provided to youth in the program.

(b) Applicability. This rule does not apply to:

(1) youth on parole status, unless parole status is revoked in conjunction with the criteria for admission;

(2) youth with determinate sentences who have been approved by the final TJJD authority for a court hearing to transfer the youth to the Institutions Division of the Texas Department of Criminal Justice;

(3) youth currently diagnosed with a major emotional disturbance and/or psychiatric disorder that contraindicates admission to the Phoenix program as determined by the manager of institutional clinical services at the youth's assigned facility; or

(4) youth with a current diagnosis of mental retardation that contraindicates admission to the Phoenix program as determined by the manager of institutional clinical services at the youth's assigned facility.

(c) Definitions. The following terms, as used in this rule, have the following meanings.

(1) Admission, Review, and Dismissal (ARD) Committee--a committee that makes decisions on educational matters relating to special education-eligible youth.

(2) Assault Causing Moderate or Serious Bodily Injury to Another Youth--intentionally and knowingly engaging in conduct that causes another youth to suffer moderate or serious injury as determined by medical staff.

(3) Assault Causing Substantial Bodily Injury to Staff--intentionally and knowingly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury that involves more than passing discomfort or fleeting pain.

(4) Chunking Bodily Fluids at Staff--intentionally and knowingly causing a person to contact the blood, seminal fluid, vaginal fluid, urine, and/or feces of another.

(5) Fighting Causing Moderate or Serious Bodily Injury to Another Youth--intentionally and knowingly engaging in a mutually instigated physical altercation that causes another youth to suffer moderate or serious injury as determined by medical staff.

(6) Isolation--the confinement of a youth in a locked room or cubicle as a tool to manage the behavior of a youth. Rules regarding isolation do not apply when doors are routinely locked during normal sleeping hours and isolation has not otherwise been imposed and do not apply to placement of a youth in the security program.

(7) Multi-Disciplinary Team (MDT)--a group of staff who are responsible for partnering with the youth and his/her parent/guardian to facilitate his/her progress in the rehabilitation program.

(d) General Provisions.

(1) The Phoenix program is administered in a location designated for such purpose. The location is self-contained and the youth do not leave the location except for healthcare appointments or by approval of the facility administrator for a specific programmatic purpose.

(2) Security program referral/admission and room isolation are used as necessary in accordance with §380.9739 and §380.9740 of this title. The security program location for youth in the Phoenix program shall be in the Phoenix program unit, utilizing individual youth rooms.

(3) A youth will be demoted to the lowest stage in the agency's rehabilitation program upon admission to the Phoenix program.

(e) Authorized Facilities. The Phoenix program shall be administered only at TJJD-operated high restriction facilities designated by the executive director.

(f) Program Eligibility. The following youth are eligible for placement in the Phoenix program:

(1) a youth who engages in one or more of the following rule violations as defined in subsection (c) of this section:

(A) assault causing moderate or serious bodily injury to another youth;

(B) assault causing substantial bodily injury to staff;

(C) fighting causing moderate or serious bodily injury to another youth;

(D) chunking bodily fluids at staff; or

(2) a youth who engages in any other major rule violation when the totality of circumstances justifies the placement in the program and the placement is directed by the executive director or designee; or

(3) a youth who, on three separate occasions within a 90-day period, committed an assault causing bodily injury as defined in §380.9503 of this title and the second and third assaults were committed after a Level II due process hearing finding of true with no extenuating circumstances had been made for the previous assault.

(g) Additional Considerations for Youth Receiving Special Education Services. When a youth who is receiving special education services is recommended for placement in the Phoenix program due to a rule violation that occurred during school-related activities, the youth's ARD committee will conduct a manifestation determination review.

(1) If the ARD committee determines that the youth's conduct was a direct result of a failure to implement the youth's individualized education program (IEP) or that the conduct was caused by or had a direct and substantial relationship to the youth's disability:

(A) the ARD committee must conduct a functional behavior assessment and develop a behavior intervention plan or, if a behavior intervention plan already exists, modify the existing plan to address the youth's conduct; and

(B) the youth may only be removed from his/her regular educational setting and placed in the Phoenix program if the youth's parent or surrogate parent (as defined by 34 CFR §300.519) agrees to a change in the educational setting as part of the youth's behavior intervention plan.

(2) If the ARD committee determines that the youth's conduct was not a result of a failure to implement the youth's IEP and was not caused by and did not have a direct and substantial relationship to the youth's disability, the youth may be removed from his/her regular educational setting and placed in the Phoenix program. The ARD committee will determine the youth's IEP while the youth is in the Phoenix program.

(3) Regardless of the results of a manifestation determination review, a youth may be admitted to the Phoenix program and may receive educational services in the Phoenix housing area for up to 45 days if the rule violation includes possession of a weapon or the infliction of serious bodily injury upon another person.

(A) For purposes of paragraph (3) of this subsection only, weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, not including a pocket knife with a blade of less than 2 1/2 inches in length.

(B) For purposes of paragraph (3) of this subsection only, serious bodily injury means bodily injury which involves:

(i) a substantial risk of death;

(ii) extreme physical pain;

(iii) protracted and obvious disfigurement; or

(iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(4) Educational services in the Phoenix program must be provided so as to meet the youth's IEP goals set by the youth's ARD committee.

(h) Admission Decision Process.

(1) A Level II due process hearing must be held in accordance with §380.9555 of this title. Unless there are considerations concerning special education services which would make the youth ineligible for placement in the Phoenix program as described in subsection (f) of this section, the youth may be referred to the Phoenix program if there is a finding of true with no extenuating circumstances that the youth committed a rule violation listed in subsection (e) of this section.

(2) A committee composed of, at a minimum, the dorm supervisor, psychologist, and case manager assigned to the Phoenix program will review all youth referred to the program.

(3) The committee shall not approve a youth's admission to the program unless:

(A) a current mental health assessment indicates there is no therapeutic contraindication to placement in the Phoenix program; and

(B) the committee determines that the Phoenix program represents the most appropriate intervention given the circumstances.

(4) If the number of referrals exceeds the number of available beds, priority for admission is given to:

(A) youth with the most dangerous behavior;

(B) youth with chronic aggressive behavior;

(C) youth with greater frequency of weapon use; or

(D) a directive from the executive director or designee.

(i) Placement in the Redirect Program Pending Admission to the Phoenix Program. If after a Level II hearing there is a disposition for referral to the Phoenix program, the youth may be placed in the Redirect program pursuant to §380.9517 of this title at the youth's current placement pending admission and transfer of the youth to the Phoenix program. The facility may cancel the referral at any time.

(j) Program Components. The program's structure is designed to maximize the safety and security of youth and staff.

(1) Physical Structure and Safety Precautions.

(A) Youth are assigned to single housing units in accordance with §380.8524 of this title.

(B) Mechanical restraints may be used in a manner consistent with the use of such restraints in a security unit as provided by §380.9723 of this title.

(C) A structured daily schedule is maintained and posted to provide a predictable and safe environment.

(2) Case Planning.

(A) An individual plan must be developed for each youth. The plan must be written in a language clearly understood by the youth. The plan must:

(i) be based on a comprehensive assessment conducted by members of the MDT;

(ii) address the specific target behavior or cluster of behaviors that led to admission to the Phoenix program, taking into consideration the psychologist's recommendations to address the motivation for the behavior;

(iii) involve strategies for intervention and prevention of the target behavior through skills development;

(iv) include a component which addresses transition to the general campus population following graduation from the Phoenix program; and

(v) provide clearly written objectives for promotion through levels of the Phoenix program and graduation from the Phoenix program.

(B) Staff must explain the individual plan to the youth. Youth will be provided an opportunity to sign the plan in acknowledgment.

(C) The individual plan and youth's progress with regard to target behaviors and skills development are reviewed and evaluated at least once every seven days by the MDT.

(3) Academics.

(A) All youth are expected to participate in an educational program for a minimum of four hours per day with an additional two hours of individualized schoolwork which may be completed in their rooms.

(B) All special education services are provided in accordance with ARD committee decisions. For youth who are eligible to participate in special education services, an ARD meeting is held within ten days after admission to the Phoenix program to review the IEP. Subsequent ARD meetings and evaluations are completed in compliance with state and federal regulations.

(C) Youth with limited English Proficiency are provided with appropriate adaptations to the Educational Program as recommended by the Language Proficiency Assessment Committee (LPAC).

(4) Individual Counseling. Youth will have daily contact and weekly counseling with the assigned case manager or designee. The case manager or designee will immediately refer youth to a mental health professional if concerns exist as to the youth's mental health status.

(5) Skills Development Groups.

(A) In accordance with the daily schedule, the case manager assigned to the Phoenix program conducts groups on topics such as:

(i) aggression control;

(ii) emotional and behavior regulation;

(iii) skills development and demonstration;

(iv) identifying and modifying cognitive distortions;

(v) risk and protective factors; and

(vi) transition issues.

(B) Scheduled behavior groups are provided to all youth and are conducted daily by the assigned juvenile correctional officer (JCO).

(6) Medical and Psychological Services.

(A) Youth will receive weekly mental health status exams by the designated psychologist while assigned to the Phoenix program. Youth will also receive weekly psychological counseling if deemed necessary by a psychologist.

(B) Youth are seen by medical and/or psychiatric staff, as needed, and treatment is provided as ordered. The Phoenix program psychologist continually assesses the youth's mental status, provides individual counseling, and provides consultation with the MDT.

(7) Behavior Management.

(A) Youth are expected to follow a prescribed schedule and commit no rule violations as defined in §380.9503 of this title.

(B) Youth earn privileges in the Phoenix program based on progress through the Phoenix program levels and weekly performance ratings in accordance with §380.9502 of this title.

(8) Physical Exercise. Youth will be provided with at least one hour of large muscle exercise seven days per week in an exercise yard if safety and weather permit.

(9) Family Involvement.

(A) Youths' families will be encouraged to be involved in the youths' treatment while considerations are made for the safety and security of the program.

(B) Youth in the Phoenix program will be allowed phone calls to approved family members and visitation with immediate family members according to program visitation procedures.

(10) Youth Rights. Basic rights are recognized for each youth in TJJD pursuant to §380.9301 of this title.

(k) Progress in the Phoenix Program. The Phoenix program includes three levels. The MDT reviews each youth's progress weekly.

(1) Level I.

(A) This level is completed when the MDT determines that the youth has:

(i) demonstrated basic knowledge of the level objectives as defined in the youth's individual case plan (ICP); and

(ii) participated with the MDT in targeting specific skills for development.

(B) The youth:

(i) attends foundational skills development groups;

(ii) participates in individual sessions with his/her case manager; and

(iii) demonstrates consistent participation in other areas of programming.

(2) Level II.

(A) This level is completed when the MDT determines that the youth has:

(i) identified patterns in his/her thoughts, feelings, attitudes, values, and beliefs that relate to ongoing behaviors;

(ii) demonstrated sufficient competency in the targeted skills to address those behaviors; and

(iii) completed the level objectives as defined in the youth's ICP.

(B) The youth:

(i) attends intermediate skills development groups;

(ii) participates in individual sessions with his/her case manager; and

(iii) demonstrates consistent participation in other areas of programming.

(3) Level III.

(A) This level is completed when the MDT determines that the youth demonstrates and practices skills learned in skills development groups through daily application in situations that present increased risk for the youth. Youth are expected to engage in responsible behaviors and provide leadership in the program. Additional skills are learned as assigned and the plan for reintegration to general campus programming is completed.

(B) The youth:

(i) attends advanced skills development groups;

(ii) participates in individual sessions with his/her case manager; and

(iii) demonstrates consistent participation in other areas of programming.

(l) Progress Reviews.

(1) Multi-Disciplinary Team.

(A) The MDT reviews the youth's ICP, evaluates progress through program requirements, and reviews the effectiveness of treatment strategies on a weekly basis. The MDT may not promote

youth in the stages of the agency's rehabilitation program while the youth is in the Phoenix program.

(B) The MDT makes decisions regarding promotion within Phoenix program levels based on achievement of established criteria.

(i) Level Promotion. Youth meeting the established criteria must be promoted to the next level.

(ii) Level Demotion. The MDT may assign the youth to a lower level when the youth's behavior demonstrates low use of pro-social skills as reflected in the youth's weekly performance ratings. The MDT may demote one or two levels depending upon the severity of the behavior and/or lack of consistency in the use of pro-social skills.

(2) Individual Case Plan Review. Case plan reviews and updates will be conducted in accordance with §380.8701 of this title.

(3) Mental Health Review.

(A) Youth will be evaluated on a regular basis by the Phoenix program psychologist for the presence of a mental health disorder that contraindicates continued placement in the Phoenix program.

(B) Youth will be released from the Phoenix program at any time for mental health reasons based on the recommendation of the psychologist or psychiatrist and the approval of the director of specialized treatment in Central Office.

(C) Youth with neurological and/or mental health disorders may be temporarily admitted to a TJJD-operated crisis stabilization unit pursuant to §380.8767 of this title for diagnostic purposes to determine the most appropriate placement.

(m) Graduation from the Phoenix Program.

(1) Youth shall graduate from the Phoenix program upon completion of Level III as described in subsection (k) of this section.

(2) Youth released from the Phoenix program will be assigned to the Redirect program at the receiving facility and will be provided support to reintegrate into the general campus population at the receiving facility.

(n) Program Monitoring and Youth Rights.

(1) To ensure the Phoenix program is being implemented according to provisions of this rule, staff from facility administration will visit the program daily and staff from psychology administration will visit the program weekly.

(2) Youth rights staff shall visit the Phoenix program daily to ensure that the youth have access to the youth grievance system.

(o) Appeal of Level Assessment in the Phoenix Program. A youth in the Phoenix program may appeal the results of a level assessment or of the lack of opportunity to demonstrate completion of requirements by filing a grievance in accordance with §380.9331 of this title. The person assigned to respond to the youth's grievance must not be a member of the youth's MDT or a staff member who has been involved in the youth's current assessment.

(p) Independent Review Team Oversight.

(1) A program supervisor not assigned to the Phoenix program will monitor the Phoenix MDT monthly.

(2) The director of facility operations will review compliance with Phoenix program policy and procedure requirements as part of routine facility assessment processes.

(3) A cross-divisional team in Central Office will review youth who remain on Level I or II after 120 days in the program until the youth progresses to the next level. The team will conduct quarterly reviews thereafter until the youth graduates from the program.

(4) The TJJD division responsible for quality and risk management will conduct random reviews of Phoenix program files and coordinate with other departments as appropriate for reviews of certain components of Phoenix program files such as psychological assessments, ICP's, and education service delivery.

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 June 22, 2012.

TRD-201203320
Cheryln K. Townsend
Executive Director
Texas Juvenile Justice Department
Effective date: June 22, 2012
Expiration date: October 19, 2012
For further information, please call: (512) 424-6014

♦ ♦ ♦

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 8. TEXAS JUDICIAL COUNCIL

CHAPTER 173. INDIGENT DEFENSE GRANTS

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission proposes the repeal of §§173.101 - 173.109, 173.201 - 173.205, 173.301 - 173.310, 173.401, and 173.402, concerning rules for grant administration. The Commission simultaneously proposes new §§173.101 - 173.109, 173.201 - 173.205, 173.301 - 173.311, 173.401, and 173.402, concerning rules for grant administration. The new rules are proposed to establish the guidelines for the administration of the Commission's grant program, which is designed to promote compliance by counties with the requirements of state law relating to indigent defense.

Glenna Rhea Bowman, Chief Financial Officer of the Office of Court Administration, has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal will have no fiscal impact on state or local governments.

Jim Bethke, Executive Director, has determined that for each year of the first five-year period the repeal is in effect the public benefit will be an improvement in the indigent defense services provided by counties because of the grants awarded under the proposed new rules.

Ms. Bowman has determined that there will be no material economic costs to persons who are required to comply with the repeal, nor does the proposed repeal have any anticipated adverse effect on small or micro-businesses.

Comments on the repeal may be submitted in writing to Wesley Shackelford, Deputy Director/Special Counsel, Texas Indigent Defense Commission, 209 West 14th Street, Austin, Texas 78701, or by fax to (512) 463-5724 no later than 30 days from the date that this proposed repeal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL FUNDING PROGRAM PROVISIONS

1 TAC §§173.101 - 173.109

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

The repeal is proposed under the Texas Government Code §79.037. The Commission is authorized to direct the Comptroller to distribute Fair Defense Account funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets Texas Government Code §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds.

No other statutes, articles, or codes are affected by the proposed repeal.

§173.101. Applicability.

§173.102. Definitions.

§173.103. Process for Submitting Applications for Grants and Other Funds.

§173.104. Grant Resolutions.

§173.105. Selection Process.

§173.106. Grant Funding Decisions.

§173.107. Grant Acceptance.

§173.108. Adoptions by Reference.

§173.109. Use of the Internet.

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 June 22, 2012.

TRD-201203300
James Bethke
Executive Director
Texas Judicial Council
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 463-8015

♦ ♦ ♦

SUBCHAPTER B. ELIGIBILITY AND FUNDING REQUIREMENTS

1 TAC §§173.201 - 173.205

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of

the Texas Judicial Council or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the Texas Government Code §79.037. The Commission is authorized to direct the Comptroller to distribute Fair Defense Account funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets Texas Government Code §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds.

No other statutes, articles, or codes are affected by the proposed repeal.

§173.201. Eligibility.
§173.202. Use of Funds.
§173.203. Expenditure Categories.
§173.204. Program Income.
§173.205. Equipment.

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 June 22, 2012.

TRD-201203301
James Bethke
Executive Director
Texas Judicial Council
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 463-8015

♦ ♦ ♦

SUBCHAPTER C. ADMINISTERING GRANTS

1 TAC §§173.301 - 173.310

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

The repeal is proposed under the Texas Government Code §79.037. The Commission is authorized to direct the Comptroller to distribute Fair Defense Account funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets Texas Government Code §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds.

No other statutes, articles, or codes are affected by the proposed repeal.

§173.301. Grant Officials.
§173.302. Obligating Funds.
§173.303. Retention of Records.
§173.304. Expenditure Reports.
§173.305. Provision of Funds.
§173.306. Discretionary Grant Adjustments.
§173.307. Remedies for Noncompliance.
§173.308. Term of Grant or Other Funds.
§173.309. Violations of Laws.
§173.310. Progress Reports for Discretionary Grants and Other Funds.

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 June 22, 2012.

TRD-201203302
James Bethke
Executive Director
Texas Judicial Council
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 463-8015

♦ ♦ ♦

SUBCHAPTER D. FISCAL MONITORING AND AUDITS

1 TAC §173.401, §173.402

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

The repeal is proposed under the Texas Government Code §79.037. The Commission is authorized to direct the Comptroller to distribute Fair Defense Account funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets Texas Government Code §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds.

No other statutes, articles, or codes are affected by the proposed repeal.

§173.401. Fiscal Monitoring.
§173.402. Audits Not Performed by the Task Force on Indigent Defense.

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 June 22, 2012.

TRD-201203303
James Bethke
Executive Director
Texas Judicial Council
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 463-8015

♦ ♦ ♦

CHAPTER 173. INDIGENT DEFENSE GRANTS

The Texas Indigent Defense Commission (Commission) is a permanent Standing Committee of the Texas Judicial Council. The Commission proposes new §§173.101 - 173.109, 173.201 - 173.205, 173.301 - 173.311, 173.401, and 173.402, concerning rules for grant administration. The Commission simultaneously proposes repealing §§173.101 - 173.109, 173.201 - 173.205, 173.301 - 173.310, 173.401, and 173.402, concerning rules for grant administration. The new rules are proposed to establish the guidelines for the administration of the Commission's grant program, which is designed to promote compliance by counties with the requirements of state law relating to indigent defense.

Glenna Rhea Bowman, Chief Financial Officer of the Office of Court Administration, has determined that for each year of the first five years the proposed new sections are in effect, enforcing or administering the sections will have no fiscal impact on state or local governments.

Jim Bethke, Director, has determined that for each year of the first five-year period the new sections are in effect the public benefit will be an improvement in the indigent defense services provided by counties because of the grants awarded under the proposed new sections.

Ms. Bowman has determined that there will be no material economic costs to persons who are required to comply with the new sections, nor do the proposed new sections have any anticipated adverse effect on small or micro-businesses.

Comments on the proposed new sections may be submitted in writing to Wesley Shackelford, Deputy Director/Special Counsel, Texas Indigent Defense Commission, 209 West 14th Street, Austin, Texas 78701, or by fax to (512) 463-5724 no later than 30 days from the date that this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL FUNDING PROGRAM PROVISIONS

1 TAC §§173.101 - 173.109

The new sections are proposed under the Texas Government Code §79.037. The Commission is authorized to direct the Comptroller to distribute Fair Defense Account funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets Texas Government Code §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds.

No other statutes, articles, or codes are affected by the proposed new sections.

§173.101. Applicability.

(a) The Texas Legislature authorized the Texas Indigent Defense Commission (Commission) to assist counties in providing indigent defense services in the county and distribute in the form of grants any funds appropriated for this purpose. It further authorized the Commission to monitor grants and enforce compliance by counties with grant terms. Subchapters A - D of this chapter apply to all indigent defense grants awarded to counties by the Commission. Subchapter A of this chapter covers the general provisions for funding. Subchapter B of this chapter addresses funding types, eligibility, and general provisions of grant funding. Subchapter C of this chapter sets out the rules related to administering grants. Subchapter D of this chapter specifies rules regarding fiscal and program monitoring and audits.

(b) Only counties in Texas are eligible to receive grants from the Commission.

(c) The Commission may distribute grants in accordance with its policies and based on official submissions and reports provided by the counties. These funds must be used to improve indigent defense systems in the county and are subject to all applicable conditions contained in this chapter.

§173.102. Definitions.

The following words and terms, when used in this chapter, will have the following meanings, unless otherwise indicated:

(1) "Applicant" is a county that has submitted a grant application, grant renewal documentation, or other request for funding from the Commission.

(2) "Application" is any formal request for funding submitted by a county to the Commission.

(3) "Crime" means:

(A) a misdemeanor punishable by confinement; or

(B) a felony.

(4) "Defendant" means a person accused of a crime or a juvenile offense.

(5) "Direct Disbursement Grant" means formula-based grants available for reimbursement of indigent defense expenses to small counties that do not apply for the formula grant.

(6) "Discretionary Grant" means discretionary-based funding awarded on a competitive basis to assist counties in developing new, innovative programs or processes designed to improve the quality of indigent defense services.

(7) "Equalization Disbursement Grant" means formula-based funding awarded to counties through a formula based on the percentage of reimbursement counties receive for increased indigent defense expenses or other criteria approved by the Commission.

(8) "Extraordinary Disbursement Grant" means discretionary-based funding to reimburse a county for actual extraordinary expenses for providing indigent defense services in a case or series of cases causing a financial hardship for the county.

(9) "Fair Defense Account" is an account in the general revenue fund that may be appropriated to the Commission for the purpose of implementing the Texas Fair Defense Act.

(10) "Fiscal Monitor" is an employee of the Commission who monitors counties fiscal processes to ensure that grant funds are spent appropriately in accordance with the Fair Defense Act.

(11) "Formula Grant" means formula-based funding awarded to counties through a formula based upon population figures or other criteria approved by the Commission.

(12) "Grant" is a funding award made by the Commission to a Texas county.

(13) "Grantee" means a county that is the recipient of a grant or other funds from the Commission.

(14) "Juvenile offense" means conduct committed by a person while younger than 17 years of age that constitutes:

(A) a misdemeanor punishable by confinement; or

(B) a felony.

(15) "Special condition" means a requirement placed on a county by the Commission that must be satisfied as condition of funding.

(16) "Targeted Specific Grants" means discretionary-based funding awarded to counties by the Commission for a specific program designed to promote and assist counties' compliance with the requirements of state law relating to indigent defense.

(17) "Technical Support Grants" means discretionary-based funding awarded to counties to improve the quality of indigent defense services, raise the knowledge base about indigent defense, and establish processes that can be generalized to similar situations in other counties.

(18) "Texas Indigent Defense Commission" (Commission) is the governmental entity established and governed by §79.002 of the Texas Government Code.

(19) "UGMS" means the Uniform Grant Management Standards promulgated by the Office of the Comptroller.

§173.103. Process for Submitting Applications for Grants.

(a) The Commission shall provide notice of availability of grants on the Internet, and will publish on its website the related methods and policies.

(b) Grant applications. The Commission will provide notice to each county judge of the availability of indigent defense grants. Applicants applying pursuant to a Request for Applications (RFA) must submit their applications according to the requirements provided in the RFA. The RFA will provide the following:

(1) information regarding deadlines for the submission of applications;

(2) the amounts of funding available for a grant, if applicable;

(3) the starting and ending dates for grants;

(4) information regarding how applicants may access applications;

(5) information regarding where applicants must submit applications;

(6) submission and program requirements; and

(7) the priorities for funding as established by the Commission.

§173.104. Grant Resolutions.

Each grant application must include a resolution from the county commissioners' court that contains the following:

(1) authorization for the submission of the application to the Commission;

(2) provision giving the authorized official the power to apply for, accept, decline, modify, or cancel the grant; and

(3) written assurance that, in the event of loss or misuse of Fair Defense Account funds, the governing body will return all funds as required by the Commission.

§173.105. Selection Process.

(a) The Commission or its designees will review all applications and shall award from the Fair Defense Account formula-based grants and discretionary-based grants.

(b) Upon reviewing an application, staff may require an applicant to submit, within a specified time, additional information to complete the review or to clarify or justify the application. Neither a request for additional information nor the issuance of a preliminary review report means that the Commission will fund an application.

(c) The Commission will inform applicants in writing or by electronic means of decisions to grant or deny applications for funding.

(d) If the Commission determines that an applicant has failed to submit the necessary information or has failed to comply with any Commission rule or other relevant statute, rule, or requirement, the Commission may hold a grantee's funds until the grantee has satisfied the requirements of a special condition imposed by the Commission. The Commission may reject the application and deny the grant for failure to satisfy the requirements.

§173.106. Grant Funding Decisions.

(a) The Commission or its designees will make decisions on applications for funding through the use of objective tools and comparative analysis. The Commission or its designees will first determine whether the grantee is eligible for funds in accordance with §173.101 of this chapter (relating to Applicability) and §173.201 of this chapter (relating to Eligibility).

(b) All funding decisions rest completely within the discretionary authority of the Commission or its designees and are not subject to appeal. The receipt of an application for funding does not obligate the Commission to award funding, and the Commission may partially fund budget items in grant applications.

(c) Granting an application does not require the Commission to give a subsequent application priority consideration.

(d) Commission decisions regarding funding are subject to the availability of funds.

§173.107. Discretionary Grant Acceptance.

Each applicant must accept or reject a discretionary grant award within 30 days of the date upon which the Commission issues a Statement of Grant Award. The executive director of the Commission may alter this deadline upon request from the applicant. The authorized official designated under §173.301 of this chapter (relating to Grant Officials) must formally accept the grant in writing before the grantee may receive any discretionary grant funds.

§173.108. Adoptions by Reference.

(a) Grantees must comply with all applicable state statutes, rules, regulations, and guidelines.

(b) The Commission adopts by reference the rules, documents, and forms listed in this subsection that relate to the administration of grants:

(1) Uniform Grant Management Standards (UGMS) adopted pursuant to the Uniform Grant and Contract Management Act, Chapter 783, Texas Government Code.

(2) The Commission forms, including the statement of grant award, grant adjustment notice, grantee's progress report, financial expenditure report, and property inventory report.

§173.109. Use of the Internet.

The Commission may require submission of applications for grants, progress reports, financial reports, and other information via the Internet. Completion and submission of a progress report or financial report via the Internet meets the relevant requirements contained within this chapter for submitting reports in writing.

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 June 22, 2012.

TRD-201203304
James Bethke
Executive Director
Texas Judicial Council
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 463-8015

♦ ♦ ♦

SUBCHAPTER B. ELIGIBILITY AND FUNDING REQUIREMENTS

1 TAC §§173.201 - 173.205

The new sections are proposed under the Texas Government Code §79.037. The Commission is authorized to direct the Comptroller to distribute Fair Defense Account funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets Texas Government Code §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds.

No other statutes, articles, or codes are affected by the proposed new sections.

§173.201. Eligibility.

(a) The Commission may provide grants from the Fair Defense Account, to counties that have complied with standards developed by the Commission and that have demonstrated commitment to compliance with the requirements of state law relating to indigent defense.

(b) A county may not reduce the amount of funds expended for indigent defense services in the county because of funds provided by the Commission. Because discretionary grants and targeted specific funds are awarded to enable a county to establish a new system or program for providing indigent defense services, such grants may or may not enter into a calculation of whether the county has or will reduce its funding because of Commission funding. Other types of funding, including formula grants, direct disbursement grants, equalization disbursement grants, extraordinary disbursement grants, or technical support grants, shall be considered in determining compliance with this requirement.

§173.202. Use of Funds.

Grants provided under this chapter may be used by counties for:

(1) Attorney fees for indigent defendants accused of crimes or juvenile offenses;

(2) Expenses for licensed investigators, experts, forensic specialists, or mental health experts related to the criminal defense of indigent defendants;

(3) Other direct litigation costs related to the criminal defense of indigent defendants; and

(4) Other approved expenses allowed by the Request for Applications or necessary for the operation of a funded program.

§173.203. Expenditure Categories.

(a) Allowable expenditure categories and any necessary definitions will be provided to the applicant as part of the application process.

(b) Expenditures may be allocated to the grant in accordance with the Uniform Grant Management Standards.

§173.204. Program Income.

(a) Rules governing the use of program income are included in the provisions of the Uniform Grant Management Standards adopted by reference in §173.108 of this chapter (relating to Adoptions by Reference).

(b) Grantees must use program income to supplement program costs or reduce program costs. Program income may only be used for allowable program costs.

§173.205. Equipment.

(a) Decisions by the Commission or its designees regarding requests to purchase equipment using Commission funds will be made based on the availability of funds, whether the grantee has demonstrated that the requested equipment is necessary and essential to the successful operation of the funded program, and whether the equipment is reasonable in cost.

(b) For counties that receive a multi-year grant, the Commission will only fund equipment and other one-time costs during the first year unless permission is granted in writing. Otherwise, equipment and other one-time costs will not factor in to the overall project costs after the first year of the grant.

(c) The Commission requires each grantee to maintain an inventory report of all equipment purchased with Commission funds. This report must comport with the final financial expenditure report. At least once each year during the award period, each grantee must complete a physical inventory of all property purchased with Commission funds and the grantee must reconcile the results with the purchased property records. For single-year awards, the inventory and reconciliation must be made at the end of the award period and submitted with the final report.

(d) Equipment purchased with Commission funds must be labeled and handled in accordance with the grantee's property management policies and procedures.

(e) Unless otherwise provided, equipment purchased is the property of the grantee after the end of the award period or termination of the operation of the funded program, whichever occurs last.

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 June 22, 2012.

TRD-201203305
James Bethke
Executive Director
Texas Judicial Council
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 463-8015

♦ ♦ ♦

SUBCHAPTER C. ADMINISTERING GRANTS

1 TAC §§173.301 - 173.311

The new sections are proposed under the Texas Government Code §79.037. The Commission is authorized to direct the Comptroller to distribute Fair Defense Account funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The

Commission interprets Texas Government Code §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds.

No other statutes, articles, or codes are affected by the proposed new sections.

§173.301. Grant Officials.

(a) Each grant must have the following designated to serve as grant officials:

(1) Financial officer. This person must be the county auditor or county treasurer if the county does not have a county auditor.

(2) Authorized official. This person must be authorized to apply for, accept, decline, modify, or cancel the grant for the applicant county. A county judge or a designee authorized by the governing body in its resolution may serve as the authorized official.

(b) The Commission may require a county to designate a program director. This person must be the officer or employee responsible for program operation and who will serve as the point-of-contact regarding the program's day-to-day operations.

(c) The program director and the authorized official may be the same person. The financial officer may not serve as the program director or the authorized official.

§173.302. Obligating Funds.

The grantee may not obligate grant funds before the beginning or after the end of the grant period.

§173.303. Retention of Records.

(a) Grantees must maintain all financial records, supporting documents, statistical records, and all other records pertinent to the award for at least three years following the closure of the most recent audit report or submission of the final expenditure report. Records retention is required for the purposes of state examination and audit. Grantees may retain records in an electronic format. All records are subject to audit or monitoring during the entire retention period.

(b) Grantees must retain records for equipment, non-expendable personal property, and real property for a period of three years from the date of the item's disposition, replacement, or transfer.

(c) If any litigation, claim, or audit is started before the expiration of the three-year records retention period, the grantee must retain the records under review until the resolution of all litigation, claims, or audit findings.

§173.304. Expenditure Reports.

(a) Recipients of grants may be required to submit expenditure reports to the Commission in addition to the annual expenditure report required for all counties under Texas Government Code §79.036(e).

(b) The Commission will provide the appropriate forms and instructions for the reports along with deadlines for their submission. The financial officer shall be responsible for submitting the expenditure reports.

(c) Grantees must ensure that actual expenditures are adequately documented. Documentation may include, but is not limited to, ledgers, purchase orders, travel records, time sheets or other payroll documentation, invoices, contracts, mileage records, telephone bills and other documentation that verifies the expenditure amount and appropriateness to the funded program.

§173.305. Provision of Funds.

(a) After a grant has been awarded and if there are no outstanding special conditions or other deficiencies, the Commission may forward funds to the grantee. Funds will be disbursed to the grantee no more often than quarterly unless specific permission is granted in writing from the executive director.

(b) Disbursement of funds is always subject to the availability of funds.

(c) Discretionary grant funds will be paid only after the expenditure report has been submitted. Funds must be expended, not obligated, before being included in the funding expenditure report.

§173.306. Discretionary Grant Adjustments.

(a) The authorized official must sign all requests for grant adjustments.

(b) Budget Adjustments. Grant adjustments consisting of reallocations of funds among or within budget categories in excess of $10,000 or ten percent of the original grant award, whichever is less, are considered budget adjustments, and are allowable only with prior approval of the executive director of the Commission.

(c) Non-Budget Grant Adjustments. The following paragraphs apply to non-budget grant adjustments:

(1) Requests to revise the scope, target, or focus of the project, or alter project activities require advance written approval from the Commission or its designees, as determined by the executive director of the Commission.

(2) The grantee will notify the Commission or its designees in writing of any change in the designated program director, financial officer, or authorized official within ten days following the change.

§173.307. Remedies for Noncompliance.

(a) If a grantee fails to comply with any term or condition of a grant or rule, the Commission may take one or more of the following actions:

(1) disallow all or part of the cost of the activity or action that is not in compliance and seek a return of the cost;

(2) impose administrative sanctions, other than fines, on the grantee;

(3) temporarily withhold all payments pending correction of the deficiency by the grantee;

(4) withhold future grants from the program or grantee; or

(5) terminate the grant in whole or in part.

(b) The Commission shall provide reasonable notice prior to imposing a remedy under subsection (a) of this section. If a grantee disputes the finding, the authorized official may request that one or more representatives of the grantee appear before the Commission. If the Commission receives a request it will consider the grantee's presentation at its next scheduled meeting. The administrative determination rendered by the Commission is final.

§173.308. Term of Grant.

(a) The term of a grant shall be specified in the award statement or other funding document.

(b) If a grantee wishes to terminate a grant in whole or in part before the end of the award period, the grantee must notify the Commission in writing. The Commission or its designee will make arrangements with the grantee for the early termination of the award, which may include transfer or disposal of property and return of unused funds.

(c) The Commission may terminate any grant, in whole or in part, when:

(1) the grantee and the executive director of the Commission agree to do so;

(2) indigent defense funds are no longer available; or

(3) conditions exist that make it unlikely that grant or program objectives will be accomplished.

(d) A grantee may submit a written request for an extension of the funding period. The Commission must receive requests for funding extensions at least 30 days prior to the end of the funding period.

§173.309. Violations of Laws.

If the grantee has a reasonable belief that a criminal violation may have occurred in connection with Fair Defense Account funds, including the misappropriation of funds, fraud, theft, embezzlement, forgery, or any other serious irregularities indicating noncompliance with the requirements of a grant, the grantee must immediately notify the Commission in writing of the suspected violation or irregularity. The grantee may also notify the local prosecutor's office of any possible criminal violations. Grantees whose programs or personnel become involved in any litigation arising from the grant, whether civil or criminal, must immediately notify the Commission and forward a copy of any demand notices, lawsuits, or indictments to the Commission.

§173.310. Progress Reports for Discretionary Grants.

Each grantee must submit reports regarding performance and progress towards goals and objectives in accordance with the instructions provided by the Commission or its designee. To remain eligible for funding, the grantee must be able to show the scope of services provided and the impact and quality of those services.

§173.311. Contract Monitoring.

Grantees that use grant funds to contract for services must develop and include in the contract provisions to monitor each contract that is for more than $10,000 per year. These provisions must include specific actions to be taken if the grantee discovers that the contractor's performance does not meet the operational or performance terms of the contract. In the case of contracts for public defender offices and managed assigned counsel programs, these provisions must include a review of utilization and activity, reporting of financial data to evaluate the contractor's performance within the budget required by statute for such programs. Commission staff must review each contract at least once every two years and notify the grantee if it is not sufficient.

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 June 22, 2012.

TRD-201203306
James Bethke
Executive Director
Texas Judicial Council
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 463-8015

♦ ♦ ♦

SUBCHAPTER D. MONITORING AND AUDITS

1 TAC §173.401, §173.402

The new sections are proposed under the Texas Government Code §79.037. The Commission is authorized to direct the Comptroller to distribute Fair Defense Account funds, including grants, to counties for indigent defense services under the Texas Government Code §79.037. This section further authorizes the Commission to monitor grants and enforce compliance with grant terms and to develop policies to ensure funds are allocated and distributed to counties in a fair manner. The Commission interprets Texas Government Code §79.037(c) to require the Commission to adopt rules governing the process for distributing grant funds.

No other statutes, articles, or codes are affected by the proposed new sections.

§173.401. Fiscal Monitoring.

(a) The Commission or its designees will monitor the activities of grantees as necessary to ensure that Commission grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of grant agreements.

(b) The monitoring program may consist of formal audits, monitoring reviews, and technical assistance. The Commission or its designees may implement monitoring through on-site review at the grantee location or through a desk review based on grantee reports. In addition, the Commission or its designees may require grantees to submit relevant information to the Commission to support any monitoring review. The Commission may contract with an outside provider to conduct the monitoring.

(c) Grantees must make available to the Commission or its designees all requested records relevant to a monitoring review. The Commission or its designees may make unannounced monitoring visits at any time. Failure to provide adequate documentation upon request may result in disallowed costs or other remedies for noncompliance as detailed under §173.307 of this chapter (relating to Remedies for Noncompliance).

(d) After a monitoring review, the fiscal monitor shall issue a report to the authorized official and financial officer within 45 days of the on-site monitoring visit to a county, unless a documented exception is provided by the executive director, with an alternative deadline provided, not later than 90 days from the on-site monitoring visit. The report shall contain each finding of noncompliance.

(e) Within 60 days of the date the report is issued, the authorized official or financial officer shall respond in writing to each finding of noncompliance, and shall describe the proposed corrective action to be taken by the county. The county may request the executive director to grant an extension of up to 60 days.

(f) The corrective action plan will include the:

(1) titles of the persons responsible for implementing the corrective action plan;

(2) corrective action to be taken; and

(3) anticipated completion date.

(g) If the grantee believes corrective action is not required for a noted deficiency, the response will include an explanation, specific reasons, and supporting documentation.

(h) The Commission or its designees will approve the corrective action plan and may require modifications prior to approval. The grantee's replies and the approved corrective action plan, if any, will become part of the final report.

(i) The grantee will correct deficiencies identified in the final report within the time frame specified in the corrective action plan.

(j) The fiscal monitor shall conduct an additional on-site visit to counties where the report included significant noncompliance findings. The follow-up visit shall occur within 12 months following receipt of a county's response to the report. The fiscal monitor shall review a county's implementation of corrective actions and shall report to

the county and Commission any remaining issues not corrected. Within 30 days of the date the follow-up report is issued by the fiscal monitor, the authorized director or financial officer shall respond in writing to each finding of noncompliance, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 30 days.

(k) If a county fails to respond to a monitoring report or follow-up report within the required time, then a certified letter will be sent to the authorized official, financial officer, county judge, local administrative district court judge, local administrative statutory county court judge, and chair of the juvenile board notifying them that all further payments will be withheld if no response to the report is received by the Commission within ten days of receipt of the letter. If funds are withheld under this section, then the funds will not be reinstated until the Commission or the Grants and Reporting Committee approves the release of the funds.

(l) If a county fails to correct any noncompliance findings, the Commission may impose a remedy under §173.307 of this chapter.

§173.402. Audits Not Performed by the Texas Indigent Defense Commission.

(a) Grantees must submit to the Commission copies of the results of any single audit conducted in accordance with the State Single Audit Circular issued under the Uniform Grant Management Standards. Grantees must ensure that single audit results, including the grantee's response and corrective action plan, if applicable, are submitted to the Commission within 30 days after grantee receipt of the audit results or nine months after the end of the audit period, whichever is earlier.

(b) All other audits performed by auditors independent of the Commission must be maintained at the grantee's administrative offices pursuant to §173.303 of this chapter (relating to Retention of Records) and be made available upon request by the Commission or its representatives. Grantees must notify the Commission of any audit results that may adversely impact the Commission grant funds.

(c) Nothing in this section should be construed so as to require a special or program-specific audit of a grantee's Indigent Defense grant program.

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 June 22, 2012.

TRD-201203307
James Bethke
Executive Director
Texas Judicial Council
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 463-8015

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS
SUBCHAPTER T. NOXIOUS AND INVASIVE PLANTS

4 TAC §19.300

The Texas Department of Agriculture (the department) proposes an amendment to §19.300, concerning the list of noxious and invasive plants. The amendment to §19.300(a) is necessary to add a species to the list of noxious and invasive plant species that have serious potential to cause economic or ecological harm to the state. The department has consulted with representatives from the agricultural industry, the horticulture industry, the Texas Cooperative Extension, the Texas Department of Transportation, the Texas State Soil and Water Conservation Board, and the Texas Parks and Wildlife Department for the addition of the *Lygodium japonicum* (Japanese Climbing Fern).

The department has considered scientific data and the economic impact submitted by the Texas Invasive Plant and Pest Council, affiliated with the National Association of Exotic Pest Plant Councils. By law, the noxious and invasive plants listed may not be sold, distributed or imported in Texas. The amendment adds the *Lygodium japonicum* (Japanese Climbing Fern) to the list of noxious and invasive plants.

Dr. David T. Villarreal, Natural Resource Specialist, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the amended section.

Dr. Villarreal has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amended section will be an updated list of noxious and invasive plants. There will be no economic cost for micro-businesses, small businesses or individuals who are required to comply with the amended section.

Comments on the proposal may be submitted to Dr. David T. Villarreal, Natural Resource Specialist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.* Comments can be submitted via regular mail or via email to *david.villarreal@texasagriculture.gov.*

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

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

§19.300. Noxious and Invasive Plant List.

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

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

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

Filed with the Office of the Secretary of State on June 22, 2012.

TRD-201203327
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 463-4075

♦ ♦ ♦

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.6

The Texas Animal Health Commission (Commission) proposes new §40.6, CWD Movement Restriction Zone, in Chapter 40, which is entitled "Chronic Wasting Disease". The new section will create Chronic Wasting Disease (CWD) movement restriction zone(s) in the Trans Pecos Region.

There is a task force comprised of members of affected deer and exotic livestock associations, private veterinary practitioners, and wildlife biologists who assist the Texas Parks and Wildlife Department (TPWD) and Commission staff in developing a response plan for CWD detected in mule deer harvested in New Mexico within 1-2 miles of the Texas border. They recently met and provided both agencies with recommendations on a strategy to address the risk of exposure of CWD to susceptible species in Texas. The recommendations follow the creation of CWD Movement Restriction Zone(s) for the area with restrictions put in place to protect against the exposure and spread of CWD from New Mexico. These recommendations are being taken in a coordinated effort by both TPWD and the Commission.

It was recently disclosed that through CWD sampling efforts of New Mexico Game and Fish personnel that CWD has been detected in mule deer in the southern Sacramento Mountains and northern Hueco Mountains, in southern New Mexico. While sample sizes are very small, it seems that the CWD prevalence may be quite high in that location. Several of the animals sampled were located in close proximity to the Texas border. This is significant for the state of Texas, considering basic biology and movement patterns of susceptible species located there such as mule deer and elk indicate that the animals may be moving back and forth between Texas and New Mexico.

Prions are found ubiquitously throughout the body of an infected animal and can be shed onto soil, where they may remain viable and able to infect other susceptible animals for many years. Suspected additional susceptible species besides mule deer, white tail deer and elk, include red deer and sika deer. There is still no evidence that humans or domestic livestock can be infected with CWD.

Deer populations in other states where CWD prevalence exceeds 40% have experienced significant (>45%) population declines. As the prevalence rates increase and geographic distribution has expanded in other states, hunters are more likely to alter hunting behaviors which may include avoiding areas with high CWD prevalence. This could have an adverse economic impact on local communities dependent on hunting revenue and could affect TPWD efforts to manage cervid populations through hunter harvest.

Considering the seemingly high CWD prevalence rate in the Sacramento and Hueco Mountains of New Mexico, CWD may be well-established in the population and in the environment in Texas at this time. The current area of concern was delineated as all land west of the Pecos River and IH 20, and north of IH 10 to Ft. Hancock, and all land west and north of Ft. Hancock and the Containment Zone (CZ) was delineated as all land west of HWY 62-180 and HWY 54, and north of IH 10 to Ft. Hancock, and all land west and north of Ft. Hancock. Data regarding mule deer population parameters and mule deer movements, knowledge on elk movements, and the geography and habitat types of the area were considered in the delineation of these zones.

FISCAL NOTE

Ms. Debbie Metzler, Director of Financial Services, has determined for the first five-year period the rule is in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rule. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact. For that reason the Commission has determined that there is not an adverse impact and therefore there is no need to do an EIS. Implementation of this rule poses no significant fiscal impact on small or micro-businesses.

PUBLIC BENEFIT NOTE

Ms. Metzler has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule would be the Commission's ability to quickly respond and control CWD disease issues related to elk and other susceptible species regulated by the Commission.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rule will not impact local economies and therefore did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action can affect private real property but does not constitute takings. The proposed rule is an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7. The rule is for the purpose of protecting the overall Texas native cervid and exotic livestock industries from exposure to CWD. Based on the disclosure of positive animals immediately adjacent to the area defined as a CWD high risk zone, the Commission believes that the creation of this zone, with associated requirements, will protect these susceptible species of the state. The rule would require a private property landowner to adhere to the stated requirements if they were using a location within the zone to raise one of the species susceptible to CWD and then transporting the animals.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us".

STATUTORY AUTHORITY

The new section is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent

of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

Section 161.054 provides that as a control measure, the Commission by rule may regulate the movement of animals, including feral swine. The commission may restrict the intrastate movement of animals, including feral swine, even though the movement of the animals is unrestricted in interstate or international commerce. The Commission by rule may prohibit or regulate the movement of animals, into a quarantined herd, premise, or area. In §161.048, a person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That is under §161.002.

Section 161.0541, entitled "Elk Disease Surveillance Program", provides that the Commission by rule may establish a disease surveillance program for elk. Section 161.007 provides that if a veterinarian employed by the Commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the Commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the Commission. Section 161.005 provides that the Commission may authorize the Executive Director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice, signed under that authority has the same force and effect as if signed by the entire Commission.

No other statutes, articles, or codes are affected by the proposal.

§40.6. CWD Movement Restriction Zone.

(a) Definitions:

(1) Containment Zone (CZ)--A geographic area which would include a known affected (quarantined) area or area within Texas where there is a high risk of CWD existing.

(2) High Risk Zone (HRZ)--Area which serves as a buffer (surveillance) zone separating the Containment Zone from the rest of Texas.

(3) Susceptible Species--All white-tailed deer, black-tailed deer, mule deer, elk, or other cervid species determined to be susceptible to Chronic Wasting Disease (CWD), which means an animal of that species has had a diagnosis of CWD confirmed by means of an official test conducted by a laboratory approved by USDA-APHIS.

(4) Unnatural Movement--Any artificially induced movement of a live susceptible species or the carcass of a susceptible species.

(b) Declaration of Area Restricted for CWD. CWD has been detected in mule deer and/or elk in the southern Sacramento Mountains and northern Hueco Mountains of Southern New Mexico, which creates the high risk that there are susceptible species for CWD that have been exposed or infected to CWD within the state. Considering the seemingly high CWD prevalence rate in the Sacramento and Hueco Mountains of New Mexico, CWD may be well established in the population and in the environment in Texas at this time. The current area of much concern was delineated as all land west of the Pecos River and Interstate Highway (IH) 20, and north of IH 10 to Ft. Hancock, and all land west and north of Ft. Hancock and the CZ was delineated as all land west of HWY 62-180 and HWY 54, and north of IH 10 to Ft. Hancock, and all land west and north of Ft. Hancock. Data regarding mule deer population parameters movement patterns of mule deer and elk in the area, and the geography and habitat of the area were considered in the delineation of these zones.

(c) Zone Boundaries:

(1) The CZ is defined as follows: beginning in Culberson County where State Highway 62-180 enters from New Mexico and thence in a southwesterly direction to the intersection with State Highway 54 and thence following that in a southwesterly direction to the intersection with Interstate Highway (IH) 20 and thence following it in a westerly direction until Ft. Hancock to State Highway 20 and thence following it a westerly direction to Farm Road 1088 (east of Ft. Hancock), and thence following it in a southerly direction to the Rio Grande River to where enters the State of New Mexico.

(2) The HRZ is defined as follows: beginning in Reeves County where the Pecos River enters from New Mexico and meanders in a southeasterly direction as the boundary between Reeves County and Loving and Ward Counties to the intersection with Interstate Highway 20 and thence following it in a westerly direction until the intersection with State Highway 54 and thence following it in a northwesterly direction until the intersection with State Highway 62-180 and thence in a northeasterly direction to the border with the state of New Mexico and Culberson County.

(d) Restrictions:

(1) Prohibition of Unnatural Movement of Non-Captive Susceptible Species:

(A) No susceptible species may be trapped and transported from within the HRZ or the CZ to another location. No susceptible species may be released within the HRZ or the CZ without participating in a monitored herd program in accordance with the requirements of §40.3 of this chapter (relating to Herd Status Plans for Cervidae) and having a herd with Level "C" status of five years or higher as established through §40.3(4)(C) of this chapter or for species under the authority of Texas Parks and Wildlife in accordance with their applicable requirements.

(B) No part of a carcass of a susceptible species, either killed or found dead, within the HRZ or CZ may be removed from the HRZ or CZ unless a testable CWD sample from the carcass is collected by or provided to the Commission or TPWD with appropriate contact information provided by the submitter.

(2) CWD monitored status within the CZ:

(A) Previously Established CWD Monitored Facilities within the CZ. Movement of susceptible species will only be allowed for animals from previously established facilities within the CZ that have obtained a five-year status while in the CZ in accordance with the requirements of §40.3 of this chapter and having a herd with Level "C" status of five years or higher as established through §40.3(4)(C) of this chapter or for species under the authority of Texas Parks and Wildlife in accordance with their applicable requirements.

(B) Newly Established CWD Monitored Facilities within the CZ. Susceptible species moving into newly established facilities within the CZ will have their status reset at zero and must be held within the facility until it has received five-year status in accordance with the requirements of §40.3 of this chapter and having a herd with Level "C" status of five years or higher as established through

§40.3(4)(C) of this chapter or for species under the authority of Texas Parks and Wildlife in accordance with their applicable requirements.

(3) CWD monitored status within the HRZ:

(A) Previously Established CWD Monitored Facilities within the HRZ. Movement of susceptible species from previously established facilities within the HRZ is only for animals that have obtained a five-year status is attained in accordance with the requirements of §40.3 of this chapter and having a herd with Level "C" status of five years or higher as established through §40.3(4)(C) of this chapter or for species under the authority of Texas Parks and Wildlife in accordance with their applicable requirements.

(B) Newly Established CWD Monitored Facilities within the HRZ. Susceptible species moving into newly established facilities within the HRZ will have their status reset to zero, and movement will be restricted until the facility has gained five-year status in accordance with the requirements of §40.3 of this chapter and having a herd with Level "C" status of five years or higher as established through §40.3(4)(C) of this chapter or for species under the authority of Texas Parks and Wildlife in accordance with their applicable requirements.

(e) The Executive Director may authorize movement. If movement is necessary or desirable to promote the objectives of this chapter and/or to minimize the economic impact of the restricted susceptible species without endangering those objectives or the health and safety of other susceptible species within the state, the Executive Director may authorize movement in a manner that creates minimal risk to the other susceptible animals in the state.

(f) Notice of High Risk Designation. The Executive Director shall give notice of the restrictions by publishing notice in a newspaper published in the county where the restrictions will be established, or by other accepted practices or publications which circulate information in the county or counties.

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 June 25, 2012.

TRD-201203357
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 719-0724

♦ ♦ ♦

CHAPTER 43. TUBERCULOSIS
SUBCHAPTER A. CATTLE AND BISON

4 TAC §43.6

The Texas Animal Health Commission (Commission) proposes new §43.6, Dairy Calf Ranches, in Chapter 43, Subchapter A, which is entitled "Cattle and Bison". The proposed new section is for the purpose of defining dairy calf ranches as high risk for disease transmission and outlining desired management and recordkeeping concepts that would facilitate epidemiological oversight necessary for adequate disease investigation processes. This proposed rule is also intended to mitigate the risk of Tuberculosis, and other diseases, being inadvertently spread throughout the dairy industry.

The "off-site" (not at location of the birthplace dairy) concentrated feeding practice for young dairy calves at a calf ranch has become common practice in the dairy industry. Commingling of calves in high numbers from multiple dairies increases the risk of disease transmission. The feeding of non-pasteurized colostrum or waste milk to calves prior to weaning, or not properly cleaning milk bottles between uses, can further exacerbate the possibility of transferring disease pathogens to a native calf population. Calf ranches have been implicated as the possible source of infection in many past bovine tuberculosis infected dairies in Texas and other states. The inability to completely trace the movement of calves through affected facilities in past investigations has also created the situation where exposed or infected calves could not be located for follow up testing, thus posing a risk to the entire dairy industry.

FISCAL NOTE

Ms. Debbie Metzler, Director of Financial Services, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rule. These responsibilities will be handled in the course and scope of ongoing activities. These requirements do not create a fiscal impact for these types of facilities other than compliance with existing requirements or by keeping and maintaining records for inspection if requested by the agency. As such, implementation of this rule poses no significant fiscal impact on small or micro-businesses.

PUBLIC BENEFIT NOTE

Ms. Metzler has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the ability of the Commission to trace and follow up on any Tuberculosis suspects based on exposure to infected colostrum or waste milk fed to dairy calves. This is in response to an outbreak in a Colorado dairy because of Tuberculosis transmission through these products.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rule will not impact local economies and therefore did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. This proposed rule is an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and is therefore compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us".

STATUTORY AUTHORITY

The new section is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and do-

mestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.061 provides that if the Commission determines that a disease listed in §161.041 of this Code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place.

No other statutes, articles, or codes are affected by the proposal.

§43.6. Dairy Calf Ranches.

(a) Definitions:

(1) Calf Ranch--A facility that feeds more than 10 dairy calves (sexually intact and/or steers) less than of 6 months age (determined by the presence of 1st molar or approximately 300 pounds) when not located on site of the dairy of origin.

(2) Colostrum--The "first milk" produced by a cow for a few days following parturition.

(3) Waste Milk/Hospital Milk--Milk produced by dairy cattle which is unsellable for human consumption.

(b) Declaration of High Risk: A facility that is feeding dairy calves (sexually intact and/or steers) from two or more dairies may be considered high risk for transmitting bovine tuberculosis. Other high risk factors may include but are not limited to the feeding dairy calves from out of state, calves from unknown sources, calves without required identification, the feeding of unpasteurized colostrum or waste milk, and/or other criteria as determined by TAHC veterinarians, based on veterinary science, and sound epidemiological principles.

(c) Colostrum/Waste Milk Recordkeeping Requirements: Calf ranches must maintain records of the source of colostrum and/or waste milk that they receive/feed. Such records shall show the seller's name and address, county of origin, date and approximate volume received. These records must be maintained for a minimum of five years. Such records must be made available to State or Federal animal health officials, upon request, during normal business hours.

(d) Recordkeeping: Calf ranches must comply with TAHC bovine tuberculosis dealer recordkeeping requirements as outlined in §43.2(h) of this chapter (relating to General Requirements).

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 June 25, 2012.

TRD-201203358
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 719-0724

♦ ♦ ♦

CHAPTER 45. REPORTABLE DISEASES

4 TAC §45.2

The Texas Animal Health Commission (Commission) proposes an amendment to §45.2, concerning Duty to Report, in Chapter 45, which is entitled "Reportable Diseases". The purpose of this amendment is to add Schmallenberg virus to the list of reportable diseases.

Section 161.101 of the Texas Agriculture Code provides for the duty of a veterinarian, veterinary diagnostic laboratory or a person having care, custody, or control of an animal to report specified animal health diseases to the Commission. The Commission has a specific list of reportable diseases in Chapter 45 of the Commission rules.

Since August 2011, a newly-identified infectious disease has been reported in cattle, sheep, goats, and bison in Europe. This disease was first reported in German dairy cows that exhibited signs of fever, anorexia, reduced milk yield, and loss of condition. Herd morbidities were high (20-70%) over 2-3 weeks, with affected individuals recovering in a few days. Reports of disease among cattle in Germany, and subsequently in the Netherlands, persisted throughout September and into October. By November 2011, farmers began reporting abortions and stillbirths associated with congenital malformations, mostly among sheep but also in goats and cattle. Some dystocias, with no other clinical signs, were observed in mature animals. The virus caused fever, viremia, and diarrhea in a small number of experimentally infected calves. By mid-March 2012, the virus had been identified on more than 2,100 farms in eight European countries. Most infected premises have been sheep farms (85%), followed by cattle (11%) and goat farms (4%) (FluTrackers.com).

This new virus is provisionally named Schmallenberg virus (SBV) after the town in Germany where the first positive samples were found. As of March 2012, cases of Schmallenberg virus infection has been confirmed in Germany, the Netherlands, Belgium, France, the United Kingdom, Luxembourg, Italy, and Spain. Spread of SBV from mainland Europe to Great Britain has been tentatively linked to natural movements of insects from infected areas, similar to the pattern of bluetongue virus in 2008 (European Commission 2012). In experimental challenge trials, three calves inoculated intravenously or subcutaneously with blood that was PCR positive for SBV became infected and had positive PCR results 2-5 days post-inoculation. The viremic stage in cattle seems to be short, as viral detection was

negative in all three infected animals 6 days after inoculation, and clinical signs subsided within a few days.

USDA-APHIS-VS has placed additional restrictions on shipments of ruminant semen and embryos (germplasm) originating from the European Union (EU), and from countries that are not formally part of the EU but which follow EU legislation (see list below). These restrictions became effective February 21, 2012, and were placed to address the emergence of Schmallenberg virus in Europe. The virus, thought to be distributed by flying insects such as midges and possibly mosquitoes, is not known to be present in the U.S. and has not been reported to be of human health concern. Infection with the virus causes transient disease in adult cattle, sheep and goats, resulting in production losses, but has also been associated with a high percentage of fetal malformations, abortions, dystocias and death of infected pregnant animals. No treatments or vaccines are currently are available, and testing is currently limited in nature.

Shipments of bovine germplasm collected in EU countries after June 1, 2011, are no longer eligible for importation to the U.S. To be eligible for importation, any consignments of bovine germplasm originating from the countries listed below must include a statement on the official export health certificate that they were collected prior to June 1, 2011. All other APHIS import requirements continue to apply.

Importations of live ruminants from the EU are currently prohibited due to bovine spongiform encephalopathy there. Sheep and goat semen protocols are currently being negotiated with the EU and will be revised to include similar restrictions for Schmallenberg virus. Cervid and camelid germplasm shipments are not affected by these additional restrictions for Schmallenberg virus. No restrictions have been placed by APHIS at this time on any ruminant products or by-products.

FISCAL NOTE

Ms. Debbie Metzler, Director of Financial Services, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rule. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse impact and therefore there is no need to do an EIS. Implementation of this rule poses no significant fiscal impact on small or micro-businesses.

PUBLIC BENEFIT NOTE

Ms. Metzler has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will allow the Commission to be made quickly aware of specific diseases that may be diagnosed in this state.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed amendment will not impact local economies and therefore did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. This proposed amendment is an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and is therefore compliant with the Private Real Property Preservation Act in Texas Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us".

STATUTORY AUTHORITY

The amendment is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. Section 161.101 provides that the Commission may adopt rules that require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report a disease not covered by subsection (a) or (b) if the Commission determines that action to be necessary for the protection of animal health in this state. The Commission shall immediately deliver a copy of a rule adopted under this subsection to the appropriate legislative oversight committees. A rule adopted by the Commission under this subsection expires on the first day after the last day of the first regular legislative session that begins after adoption of the rule unless the rule is continued in effect by act of the legislature. House Bill 4006 relating to veterinarian reports of diseased animals was passed during the 81st Legislative Session and amended the requirements found in §161.101.

No other statutes, articles, or codes are affected by the amendment.

§45.2. Duty to Report.

(a) A veterinarian, a veterinary diagnostic laboratory or a person having care, custody, or control of an animal, shall report the existence of the following diseases among livestock, exotic livestock, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis. The following listing includes diseases and conditions that are Office International Des Epizooties Diseases, Foreign Animal Diseases, National Program Diseases or Texas Animal Health Commission Designated Diseases.

Figure: 4 TAC §45.2(a)

[~~Figure:~~ 4 ~~TAC~~ ~~§45.2(a)~~]

(b) In addition to reporting the existence of a disease under subsection (a) of this section, the veterinarian shall also report to the commission information relating to:

(1) the species and number of animals involved;

(2) any clinical diagnosis or postmortem findings;

(3) any death losses;

(4) location; and[~~,~~]

(5) owner.

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 June 25, 2012.

TRD-201203359

Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 719-0724

♦ ♦ ♦

CHAPTER 49. EQUINE

4 TAC §49.6

The Texas Animal Health Commission (Commission) proposes new §49.6, Piroplasmosis: Area or County Test, in Chapter 49, which is entitled "Equine". The new section authorizes the Executive Director to issue an order which will classify an area or a county as high risk for holding equine exposed or positive for Piroplasmosis.

Equine Piroplasmosis is a disease of horses and other equine caused by the protozoa *Theileria equi* or *Babesia caballi.* A number of species of ticks are capable of transmitting the disease. At least one species, *Amblyomma cajennense,* is endemic to South Texas and several other southern states. The disease may also be spread between horses by unsafe animal husbandry practices such as sharing needles or equipment that is contaminated with blood. While Piroplasmosis can be a fatal disease, many horses may display vague signs of illness, such as fever, inappetence or jaundice. Equine Piroplasmosis is endemic in many countries around the world. It is considered a foreign animal disease in the United States, though sporadic outbreaks have occurred.

In October 2009, a ranch horse in South Texas was diagnosed with Equine Piroplasmosis. Laboratory results indicated the mare was infected with *Theileria equi.* Additional testing of horses on this ranch revealed a high percentage to be positive for the disease. Additional cases of Piroplasmosis were disclosed in this area of South Texas and in other parts of the state and country through testing of horses that had spent time on the affected ranch. A small number of cases outside the immediate vicinity of the ranch, but in the general area, are believed to have been caused by tick transmission from other horses in an infested pasture. Testing for movement has also disclosed positive horses in two other populations in the U.S. unrelated to the South Texas ranch, Quarter Horse (QH) racehorses and horses imported into the United States prior to 2006.

A disease investigation is conducted each time a Piroplasmosis affected horse is disclosed. A recent investigation of two such horses indicated possible exposure to other horses in a common pasture in Kenedy County. Forty-nine horses were tested in the pasture, and nine horses owned by five individuals were found positive for the disease. It is uncertain how these horses became infected. Given that the disease is spread by ticks and this area has a high population of these competent vectors, it is probable that horses used on local ranches for day work became infected and then exposed other horses in the same pasture. It is also possible that an infected imported horse or QH racehorse shared the pasture and introduced infection to the other horses through tick transmission. Establishment of a high risk area and subsequent testing of resident equine would determine the disease status of horses in the area and help assure the Texas equine population is free of Piroplasmosis.

FISCAL NOTE

Ms. Debbie Metzler, Director of Financial Services, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rule. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact on the equine industry and therefore there is no need to do an EIS. The purpose of the rule is to ensure that positive or reactor equine for this disease are identified in a manner which allows others with equine to be aware that the animal is positive and therefore able to ensure that there is a reduced risk of exposure to their horse or other horses. Implementation of this rule poses no significant fiscal impact on small or micro-businesses.

PUBLIC BENEFIT NOTE

Ms. Metzler has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the ability of the Commission to quickly and efficiently require testing of equine located in an area which is at high risk for being exposed to Piroplasmosis and therefore help protect other equine in the state from being exposed to Piroplasmosis.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rule will not impact local economies and therefore did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. This proposed rule is an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting disease, and treatment, in accordance with 4 TAC §59.7, and is therefore compliant with the Private Real Property Preservation Act in Texas Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us".

STATUTORY AUTHORITY

The new section is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized by §161.041(b) to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the in-

trastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.057 provides the Commission by rule may prescribe criteria for classifying areas in the state for disease control. The criteria must be based on sound epidemiological principles. The Commission may prescribe different control measures and procedures for areas with different classifications. In subsection (b), the Commission by rule may designate as a particular classification an area consisting of one or more counties.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

No other statutes, articles, or codes are affected by the proposal.

§49.6. Piroplasmosis: Area or County Test.

(a) Definitions:

(1) High risk area or county--An area or county that is epidemiologically judged to have a high probability for equine having or developing Equine Piroplasmosis.

(2) Hold Order--A document restricting movement of a herd, unit, or individual animal pending the determination of its Piroplasmosis disease status.

(3) Individual herd test plan--A written plan developed between the Commission and the owner for testing one or more equine for Piroplasmosis, and the management of any positive or exposed equine.

(b) Order to Test Equine in a High Risk County or Area for Piroplasmosis. The Executive Director of the Commission may issue an order for equine to be tested in a high risk area or county based on sound epidemiological principles for disease detection, control, and eradication. The epidemiological criteria used for designating an area or county as high risk may include the presence of disease vectors (ticks), multiple positive animals in the area, and common husbandry and animal use practices that could lead to disease exposure.

(c) The order shall contain the following elements:

(1) The epidemiological criteria for which the order is being issued.

(2) A description of the area or county determined to be high risk that enables a person to identify the area and determine if a premise(s) is included in the area.

(3) A statement that movement of equine is prohibited, if the Executive Director determines the threat of disease spread warrants such action.

(4) Any exceptions, terms, conditions, or provisions prescribed under this chapter must be stated in the order.

(5) State the class of persons authorized by the Commission or the Executive Director to issue certificates or permits permitting movement.

(6) Any authorized movement certificate or permit must be issued in conformity with the requirements stated in the quarantine notice:

(A) The Executive Director may provide for a written certificate or written permit authorizing the movement of equine from locations where the equine have been restricted.

(B) The certificate or permit must be issued by a veterinarian or other person authorized by the Commission to issue a certificate or permit.

(d) If the order prohibits the movement of any equine until tested negative for the disease, the Executive Director may prescribe:

(1) any exceptions;

(2) terms;

(3) conditions; or

(4) provisions that the Executive Director considers necessary or desirable to promote the objectives of this chapter or to minimize the economic impact of the equine without endangering those objectives or the health and safety of other equine.

(e) Testing Procedures:

(1) All equine located or maintained in an area shall be presented for testing. An individual herd test plan will be developed if a test date is not established within a reasonable time as determined by the Executive Director.

(2) All equine to be added to the herd shall be tested prior to commingling with the herd.

(3) All stray equine found in the area shall be presented for testing by the caretaker of the property where located.

(4) Equine identified as positive shall be removed in accordance with §49.5 of this chapter (relating to Piroplasmosis: Testing, Identification of Infected Equine).

(f) Publication of Notice. The Executive Director shall give notice of the order:

(1) by publishing notice in a newspaper published in the county in which the quarantine is established; or

(2) by delivering a written notice to the owner or caretaker of the animals or places to be quarantined.

(g) Procedure to Protest the Individual Herd Test Plan. A person may protest an initial test or a herd plan for testing their equine for Piroplasmosis after consultation with the state or federal veterinarian assigned to the testing:

(1) To protest, the herd owner must request a meeting, in writing, with the Executive Director of the Commission within 15 days of receipt of the herd plan or notice of an initial test and set forth a short, plain statement of the issues that shall be the subject of the protest, after which:

(A) the meeting will be set by the Executive Director no later than 21 days from receipt of the request for a meeting;

(B) the meeting or meetings shall be held in Austin; and

(C) the Executive Director shall render his decision in writing within 14 days from date of the meeting.

(2) Upon receipt of a decision or order by the Executive Director which the herd owner wishes to appeal, the herd owner may file an appeal within 15 days in writing with the chairman of the commission and set forth a short, plain statement of the issues that shall be the subject of the appeal.

(3) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, and Chapter 32 of this title (relating to Hearing and Appeal Procedures).

(4) If the Executive Director determines, based on epidemiological principles, that immediate action is necessary, the Executive Director may shorten the time limits, as set out in paragraph (1)(A) and (B) of this subsection, to not less than five days. The herd owner must be provided with written notice of any time limits so shortened.

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 June 25, 2012.

TRD-201203360
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 719-0724

♦ ♦ ♦

PART 12. TEXAS FOREST SERVICE

CHAPTER 216. RURAL VOLUNTEER FIRE DEPARTMENT ASSISTANCE PROGRAM

4 TAC §§216.1 - 216.9

Texas Forest Service (the agency) proposes new §§216.1 - 216.9, concerning the Rural Volunteer Fire Department Assistance Program. These new rules are necessary to comply with the requirements of Senate Bill 646, 82nd Legislature, to be codified at Government Code, §614.106. This bill requires that the agency director adopt rules for the administration of the Rural Volunteer Fire Department Assistance Program to assist volunteer fire departments in paying for equipment and training of personnel, including determining reasonable criteria for the distribution of money from the volunteer fire department assistance fund.

Robby DeWitt, Associate Director for Finance and Administration, has determined that for each year of the first five-year period the rules are in effect, there will be no fiscal impact for state and local government or local economies.

Mr. DeWitt also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There are no anticipated economic costs to individuals who are required to comply with rules as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. DeWitt has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the proposal will be current, updated rules that comply with recent changes made by the 82nd Legislature.

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

The agency has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Mr. Don Galloway, Office of the Associate Director, Forest Resource Protection Division, Texas Forest Service, 200 Technology Way, Suite 1162, College Station, Texas 77845-3424, (979) 458-6507. Comments must be received no later than thirty days from the date of publication of this proposal.

The new rules are proposed pursuant to Texas Government Code, §614.102, which authorizes the agency director to adopt rules considered necessary for the administration of the program, and Texas Government Code, §614.106, which mandates that the agency adopt rules to administer that section.

Texas Government Code, §§614.101, 614.102, 614.103, 614.105 and 614.106, are affected by this proposal.

§216.1. Purpose and Scope.

(a) Purpose. This chapter establishes procedures for the administration of the Rural Volunteer Fire Department program as authorized by §614.106 of the Texas Government Code.

(b) Scope.

(1) This chapter shall govern the agency's award of available grant funds to eligible fire department recipients.

(2) This chapter shall not be construed to enlarge, diminish, modify or otherwise alter the jurisdiction, powers, or authority of the Texas Forest Service, or the substantive rights of any person.

(3) To the extent any provision of this chapter is in conflict with any statute, the statute shall control.

§216.2. Definitions.

The following terms, when used in this chapter, shall have the following meanings unless the context or specific language of a section clearly indicates otherwise.

(1) Agency--The Texas Forest Service, a member of The Texas A&M University System and an agency of the State of Texas.

(2) Chartered Fire Department--A fire department chartered by the Texas Secretary of State as a not-for-profit entity or a fire department operating under the charter of a local government entity.

(3) Part-Paid Fire Department--Defined in §614.101(5) of the Texas Government Code.

(4) Program--The Rural Volunteer Fire Department Assistance Program, Texas Government Code, Chapter 614, Subchapter G.

(5) TIFMAS Grants--Grants for firefighter training and equipment for fire departments participating in the Texas Intrastate Fire Mutual Assistance System (TIFMAS).

(6) VFD Assistance Grants--Grants for firefighter training and equipment for volunteer fire departments (VFDs).

(7) Volunteer Fire Department--Defined in §614.101(6) of the Texas Government Code.

§216.3. Fire Department Eligibility.

The following eligibility criteria must be met for a fire department to receive a grant under the program.

(1) TIFMAS Grants.

(A) The fire department must be in one of the eligible categories listed in §614.105(c) of the Texas Government Code.

(B) The fire department must be a participating member of TIFMAS.

(C) The fire department must be located in and operate in Texas.

(D) The fire department must be in good standing with the State of Texas and the agency.

(E) The fire department must not be eligible to receive VFD Assistance Grants.

(2) VFD Assistance Grants.

(A) The fire department must be a part-paid fire department or a volunteer fire department, as defined in §614.101 of the Texas Government Code.

(B) The fire department must be a chartered fire department located in and operating in Texas.

(C) The fire department must be in good standing with the State of Texas and the agency.

§216.4. Application Requirements.

The following requirements must be met before the agency will consider an application under the program.

(1) TIFMAS Grants.

(A) Applications for assistance must be for equipment or training that complies with agency-published standards, specifications and limitations.

(B) All applications for assistance must be submitted on the required grant application form published by the agency.

(C) Applications must be complete, and all required information must be provided to the agency by the published due date. Incomplete applications are not considered.

(D) An applicant must provide any supplemental information requested by the agency on or before the requested due date. An application is not complete until the requested information is received by the agency.

(2) VFD Assistance Grants.

(A) Applications for assistance must be for equipment or training that complies with agency-published standards, specifications and limitations.

(B) All applications for assistance must be submitted on the required grant application form published by the agency.

(C) Applications must be complete, and all required information must be provided to the agency by the published due date. Incomplete applications are not considered.

(D) An applicant must provide any supplemental information requested by the agency on or before the requested due date. An application is not complete until the requested information is received by the agency.

§216.5. Award Criteria.

The following criteria are used by the agency to determine eligibility for grant awards.

(1) TIFMAS Grants.

(A) When determining eligibility for a part-paid fire department, a part-time paid position is counted as one-half of a full-time paid position.

(B) Applications for assistance are rated based upon a standardized numeric system that considers the following factors: number of personnel, past participation in TIFMAS and ability to provide TIFMAS resources to state deployments.

(C) The agency may limit the maximum amount of grant funds a fire department can receive per year to ensure a wider distribution of the funds.

(2) VFD Assistance Grants.

(A) When determining eligibility for a part-paid fire department, a part-time paid position is counted as one-half of a full-time paid position.

(B) Applications for assistance are rated based upon a standardized numeric system that considers the following factors: years in existence, size of the primary protection area, population of the primary protection area, distance to the nearest viable mutual aid department, age of the application and wildfire risk.

(C) The agency may award vehicle and equipment grants to eligible fire departments to assist in meeting matching requirements for federal grants. Applications for federal grant matching assistance are rated upon a standardized numeric system that considers the following factors: size of the department, annual budget and source of revenue and the amount the department would benefit from the grant.

(D) The agency may limit the maximum amount of grant funds a fire department can receive per year to ensure a wider distribution of the funds.

§216.6. Award Process.

The following procedures are used by the agency to award available grant funds.

(1) TIFMAS Grants.

(A) Available grant funding is allocated to each grant category annually by the agency.

(B) Training grants are funded upon receipt of complete applications until available funding is exhausted.

(C) Truck grants are handled as follows.

(i) Applications are assigned a numeric rating and sorted by region.

(ii) The agency holds periodic meetings throughout each fiscal year to approve grant awards. The date, time and location for each meeting are published on the agency's website at least two weeks prior to the meeting. The meetings are open to the public.

(iii) Grant awards are made to the top application in each region based upon the numeric ratings, subject to funding limitations. After each region receives an award, the process is repeated with the next highest rated application in each region until funding is exhausted.

(iv) Fire departments that have outstanding issues with the State of Texas or the agency will not be considered for new grant awards until the issues are resolved.

(v) The agency's approval of applications for award during a public meeting is preliminary, contingent upon a final review of each application for eligibility, errors, duplications and program compliance. Approvals are withdrawn in the event of an error or disqualifying condition. Following the final review, a grant award letter is sent to each approved grant recipient.

(vi) Grant awards have a specified termination date by which the recipient must complete its obligations and submit the necessary documentation to the agency for processing.

(vii) Applications not approved for funding are kept on file and considered during subsequent funding meetings.

(viii) The agency may award emergency grants to eligible fire departments that have suffered a catastrophic loss. A catastrophic loss is a sudden and unexpected event which seriously compromises the firefighting capability of an eligible fire department and which puts the local community at risk. Emergency grant awards are based on a department's application, agency assessment of impact and availability of program funds.

(D) Other equipment grants are handled as follows.

(i) Funds are divided by geographic region, based upon the number of fire departments per region, to establish target fund allocations. Allocations by region may be adjusted by the agency based on the applications received.

(ii) The agency holds periodic meetings throughout each fiscal year to approve grant awards. The date, time and location for each meeting are published on the agency's website at least two weeks prior to the meeting. The meetings are open to the public.

(iii) Grant awards are based upon the application ratings, the amounts requested, the date each application was received, the number and type of unfunded applications on file and the amount of funds available.

(iv) Fire departments that have outstanding issues with the State of Texas or the agency are not considered for new grant awards until the issues are resolved.

(v) The agency's approval of applications for award during a public meeting is preliminary, contingent upon a final review of each application for eligibility, errors, duplications and program compliance. Approvals are withdrawn in the event of an error or disqualifying condition. Following the final review, a grant award letter is sent to each approved grant recipient.

(vi) Grant awards have a specified termination date by which the recipient must complete its obligations and submit the necessary documentation to the agency for processing.

(vii) Applications not approved for funding are kept on file and considered during subsequent funding meetings.

(viii) The agency may award emergency grants to eligible fire departments that have suffered a catastrophic loss. A catastrophic loss is a sudden and unexpected event which seriously compromises the firefighting capability of an eligible fire department and which puts the local community at risk. Emergency grant awards are based on a department's application, agency assessment of impact and availability of program funds.

(2) VFD Assistance Grants.

(A) Available grant funding is allocated to each grant category annually by the agency.

(B) Training grants are funded upon receipt of complete applications until available funding is exhausted.

(C) Equipment grants are handled as follows.

(i) Funds are divided by geographic region, based upon the number of fire departments per region, to establish target fund allocations. Allocations by region may be adjusted by the agency based on the applications received.

(ii) The agency holds periodic meetings throughout each fiscal year to approve grant awards. The date, time and location for each meeting are published on the agency's website at least two weeks prior to the meeting. The meetings are open to the public.

(iii) Grant awards are based upon the application ratings, the amounts requested, the dates the applications were received, the number and type of unfunded applications on file and the amount of funds available.

(iv) Fire departments that have outstanding issues with the State of Texas or the agency are not considered for new grant awards until the issues are resolved.

(v) The agency's approval of applications for award during a public meeting is preliminary, contingent upon a final review of each application for eligibility, errors, duplications and program compliance. Approvals are withdrawn in the event of an error or disqualifying condition. Following the final review, a grant award letter is sent to each approved grant recipient.

(vi) Grant awards have a specified termination date by which the recipient must complete its obligations and submit the necessary documentation to the agency for processing.

(vii) Applications not approved for funding are kept on file and considered during subsequent funding meetings.

(viii) The agency may award emergency grants to eligible fire departments that have suffered a catastrophic loss. A catastrophic loss is a sudden and unexpected event which seriously compromises the firefighting capability of an eligible fire department and which puts the local community at risk. Emergency grant awards are based on a department's application, agency assessment of impact and availability of program funds.

§216.7. Requirements of Grant Recipients.

(a) TIFMAS Grants.

(1) Recipients of TIFMAS truck grants must commit resources to respond to TIFMAS requests. Formalization of this commitment is contained in the grant award document.

(2) All other grant awards are paid on a reimbursement basis to the grant recipient. Documentation supporting allowable expenses is required prior to payment.

(3) Grant recipients must meet the matching requirements published and identified in grant award letters.

(4) Equipment acquired by recipients of equipment grants must meet the agency's published standards and specifications.

(5) Recipients of training grants are required to take agency-approved courses in order to be eligible for payment.

(6) Equipment purchased is subject to agency inspection prior to grant payment.

(b) VFD Assistance Grants.

(1) All grant awards are paid on a reimbursement basis to the grant recipient. Documentation supporting allowable expenses is required prior to payment.

(2) Grant recipients must meet the matching requirements published and identified in grant award letters.

(3) Equipment acquired by recipients of equipment grants must meet the agency's published standards and specifications.

(4) Recipients of training grants are required to take agency-approved courses in order to be eligible for payment.

(5) Equipment purchased is subject to agency inspection prior to grant payment.

§216.8. Failure to Comply with Grant Requirements.

(a) TIFMAS Grants.

(1) Failure to respond to TIFMAS requests may result in the agency's removing the TIFMAS truck from the recipient fire department and assigning it to another fire department.

(2) Failure to provide the necessary documentation to support payment of other grant awards within the specified grant period will result in cancellation of the award. Extensions must be requested by the fire department and approved in writing by the agency.

(3) Failure to comply with grant requirements may result in ineligibility for future grants.

(b) VFD Assistance Grants.

(1) Failure to provide the necessary documentation to support payment of the grant award within the specified grant period will result in cancellation of the award. Extensions must be requested by the fire department and approved in writing by the agency.

(2) Failure to comply with grant requirements may result in ineligibility for future grants.

§216.9. Program Forms and Procedures.

Application forms and procedures are published on the agency's website.

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 June 20, 2012.

TRD-201203287
Kristen L. Worman
Assistant General Counsel
Texas Forest Service
Earliest possible date of adoption: August 5, 2012
For further information, please call: (979) 458-6648

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 311. OTHER LICENSES

SUBCHAPTER A. LICENSING PROVISIONS

DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.3

The Texas Racing Commission proposes an amendment to 16 TAC §311.3, Information for Background Investigation, concerning requirements and procedures for checking criminal history records. The fee to submit fingerprints and receive an applicant's criminal history record is currently set at $44.20. This amount was established strictly on a cost-recovery basis. However, the Federal Bureau of Investigation (FBI) recently decreased its portion of the criminal history charge by $2.75, from $19.25 to $16.50. As result the dollar amount set in the rule collects more than is required to pay the expenses of checking criminal history records. This proposal deletes the specific dollar amounts set in the rule for the background check and fingerprinting fees and provides the Commission the flexibility to charge licensees the actual cost, even if those costs subsequently change.

Chuck Trout, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Mr. Trout has also determined that for each year of the first five years the amendment is in effect the anticipated public benefit will be to collect only the amounts necessary to check criminal history records.

The rule will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Carolyn Weiss, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §5.03, which requires license applicants to submit fingerprints to the Commission.

The amendment implements Texas Revised Civil Statutes Annotated Article 179e.

§311.3. Information for Background Investigation.

(a) Fingerprint Requirements and Procedure.

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

(4) A person who desires to renew an occupational license must:

(A) - (B) (No change)

(C) if the applicant's original fingerprints are classified and on file with the Department of Public Safety, the applicant must pay a processing fee [~~of $34.25~~] to resubmit the original fingerprints in lieu of submitting another set of fingerprints under paragraph (6) of this subsection. The processing fee shall be equal to the amount necessary to reimburse the Department of Public Safety for obtaining criminal history records under subsection (b) of this section.

(5) (No change.)

(6) If an applicant for a license or license renewal is required to submit fingerprints under this section, the applicant must also

submit a fingerprinting fee and a processing fee equal to the amounts necessary to reimburse the Commission and the Department of Public Safety for obtaining criminal history records under subsection (b) of this section. [~~of $44.20.~~]

(b) (No change.)

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

Filed with the Office of the Secretary of State on June 22, 2012.

TRD-201203315
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 833-6699

♦ ♦ ♦

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY
SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1004

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1004(b) is not included in the print version of the Texas Register. The figure is available in the on-line version of the July 6, 2012, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §97.1004, concerning adequate yearly progress (AYP). The section establishes provisions related to AYP and sets forth the process for evaluating campus and district AYP status. The section also adopts the most recently published AYP guide. The proposed amendment would adopt applicable excerpts, *Sections II-V*, of the *2012 Adequate Yearly Progress Guide*. Earlier versions of the guide will remain in effect with respect to the school years for which they were developed.

Under the accountability provisions in the federal No Child Left Behind Act, all public school campuses, school districts, and the state are evaluated for AYP. Districts, campuses, and the state are required to meet AYP criteria on three measures: reading/English language arts, mathematics, and either graduation rate (for high schools and districts) or attendance rate (for elementary and middle/junior high schools). If a campus, district, or state receiving Title I, Part A, funds fails to meet AYP for two consecutive years, that campus, district, or state is subject to certain requirements such as offering supplemental educational services, offering school choice, or taking corrective actions. To implement these requirements, the agency developed the AYP guide.

Agency legal counsel has determined that the commissioner of education should take formal rulemaking action to place into the *Texas Administrative Code* procedures related to AYP. Through 19 TAC §97.1004, adopted effective July 14, 2005, the commissioner exercised rulemaking authority to establish provisions related to AYP and set forth the process for evaluating campus and district AYP status. Portions of each AYP guide have been adopted beginning with the 2004 AYP Guide, and the intent is to annually update 19 TAC §97.1004 to refer to the most recently published AYP guide.

The proposed amendment to 19 TAC §97.1004 would update the rule to adopt applicable excerpts, *Sections II-V*, of the *2012 Adequate Yearly Progress Guide*. These excerpted sections describe specific features of the system, AYP measures and standards, and appeals. In 2012, the U.S. Department of Education approved changes to specific components of the AYP system, including the areas addressed in the applicable excerpts of the 2012 AYP Guide. Examples of approved changes include the implementation of a new assessment system, the State of Texas Assessments of Academic Readiness (STAAR), for students enrolled in Grades 3-8 and STAAR end-of-course (EOC) examinations for students enrolled for the first time in Grade 9 during the 2011-2012 school year and students in Grades 3-8 taking high school level courses. Other changes include suspension of the Student Success Initiative for Grades 5 and 8 for 2012 AYP and evaluation of all individual student groups for graduation rate.

In addition, subsection (d) would be modified to specify that the AYP guide adopted for the school years prior to 2012-2013 will remain in effect with respect to those school years.

The proposed amendment would establish in rule the specific AYP procedures for 2012. Applicable procedures would be adopted each year as annual versions of the AYP guide are published. The proposed amendment would have no locally maintained paperwork requirements.

Criss Cloudt, associate commissioner for assessment and accountability, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

Dr. Cloudt has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to continue to inform the public of the AYP rating procedures for public schools by including this rule in the *Texas Administrative Code*. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins July 6, 2012, and ends August 6, 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 July 6, 2012.

The amendment is proposed under the Texas Education Code (TEC), §7.055(b)(32), which authorizes the commissioner to

perform duties in connection with the public school accountability system as prescribed by TEC, Chapter 39; TEC, §39.073, as this section existed before amendment by House Bill 3, 81st Texas Legislature, 2009, which authorizes the commissioner to determine how all indicators adopted under TEC, §39.051(b), may be used to determine accountability ratings; and TEC, §39.075(a)(4), as this section existed before amendment by House Bill 3, 81st Texas Legislature, 2009, which authorizes the commissioner to conduct special accreditation investigations in response to state and federal program requirements.

The amendment implements the TEC, §§7.055(b)(32), 39.073, and 39.075(a)(4).

§97.1004. Adequate Yearly Progress.

(a) In accordance with the federal No Child Left Behind Act and Texas Education Code, §§7.055(b)(32), 39.073, and 39.075, as these sections existed before amendment by House Bill 3, 81st Texas Legislature, 2009, all public school campuses, school districts, and the state are evaluated for Adequate Yearly Progress (AYP). Districts, campuses, and the state are required to meet AYP criteria on three measures: reading/English language arts, mathematics, and either graduation rate (for high schools and districts) or attendance rate (for elementary and middle/junior high schools). The performance of a school district, campus, or the state is reported through indicators of AYP status established by the commissioner of education.

(b) The determination of AYP for school districts and charter schools in 2012 [~~2011~~] is based on specific criteria and calculations, which are described in excerpted sections of the 2012 [~~2011~~] AYP Guide provided in this subsection.
Figure: 19 TAC §97.1004(b)
[~~Figure: 19 TAC §97.1004(b)~~]

(c) The specific criteria and calculations used in AYP are established annually by the commissioner of education and communicated to all school districts and charter schools.

(d) The specific criteria and calculations used in the AYP guide adopted for the school years prior to 2012-2013 [~~2011-2012~~] remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school 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 June 25, 2012.

TRD-201203336
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.8

The State Board of Dental Examiners (Board) proposes an amendment to §108.8, concerning Records of the Dentist.

The amendment is proposed to enhance the recordkeeping of dentists by including documentation of an oral pathology examination as an aspect of the dental record.

Mr. Glenn Parker, Interim Executive Director, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the rule.

Mr. Parker has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the section will be the protection of the public health and safety. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted in writing to Nycia Deal, Staff Attorney, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701. Comments may also be submitted electronically to *nycia@tsbde.texas.gov* or faxed to (512) 463-7452. To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register.*

The amendment is proposed under Texas Government Code §2001.021 et seq. and Texas Occupations Code §254.001, which authorize the Board to adopt and enforce rules necessary for it to perform its duties.

The proposal affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

§108.8. Records of the Dentist.

(a) The term dental records includes, but is not limited to: identification of the practitioner providing treatment; medical and dental history; limited physical examination; oral pathology examination; radiographs; dental and periodontal charting; diagnoses made; treatment plans; informed consent statements or confirmations; study models, casts, molds, and impressions, if applicable; cephalometric diagrams; narcotic drugs, dangerous drugs, controlled substances dispensed, administered or prescribed; anesthesia records; pathology and medical laboratory reports; progress and completion notes; materials used; dental laboratory prescriptions; billing and payment records; appointment records; consultations and recommended referrals; and post treatment recommendations.

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

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

Filed with the Office of the Secretary of State on June 19, 2012.

TRD-201203247
Glenn Parker
Interim Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 475-0972

♦ ♦ ♦

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 139. ENFORCEMENT
SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.35

The Texas Board of Professional Engineers (Board) proposes amendments to §139.35, concerning Sanctions and Penalties.

The proposed change to §139.35 adds to Figure: 22 TAC §139.35(b) and Figure: 22 TAC §139.35(c) one table entry regarding professional engineers who violate the 20-day requirement to provide a copy of design plans which require a review by a Registered Accessibility Specialist to the Texas Department of Licensing and Regulation. The rule citation "§137.63(b)(1)" is added to the two entries related to windstorm certification. There are also several formatting errors that are being corrected in the tables.

C.W. Clark, P.E., Director of Compliance and Enforcement for the Board, has determined that for the first five-year period the proposed amendments are in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the section as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Clark also has determined that for the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments is an improvement based on clarification of what the continuing education program is and what is required to meet minimum standards.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to C.W. Clark, P.E., Director of Compliance and Enforcement, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, faxed to his attention at (512) 440-5715 or sent by email to rules@engineers.texas.gov.

The amendments are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state, §1001.207, standards of conduct and ethics, and §1001.251, consumer interest information, §1001.252, general rules regarding complaint investigation and disposition, §1001.253, complaint information, §1001.501, imposition of administrative penalty, and §1001.502, amount of administrative penalty.

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

§139.35. Sanctions and Penalties.

(a) (No change.)

(b) The following is a table of suggested sanctions the board may impose against license holders for specific violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table. Also, for those suggested sanctions that list "suspension", all or any portion of the sanction could be probated depending on the severity of each violation and the specific case evidence.

Figure: 22 TAC §139.35(b)

(c) The following is a table of suggested sanctions that may be imposed against a person or business entity for specific violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table.

Figure: 22 TAC §139.35(c)

(d) - (e) (No change.)

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

Filed with the Office of the Secretary of State on June 22, 2012.

TRD-201203325
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 440-7723

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 39. PRIMARY HEALTH CARE SERVICES PROGRAM
SUBCHAPTER B. TEXAS WOMEN'S HEALTH PROGRAM

25 TAC §§39.31 - 39.45

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes new §§39.31 - 39.45 concerning the Texas Women's Health Program (TWHP).

BACKGROUND AND JUSTIFICATION

In 2005, the Texas Legislature required HHSC to establish a five-year Medicaid demonstration project to expand access to preventive health and family planning services to certain women who were not eligible to receive Medicaid services but who, should they become pregnant, likely will be eligible for the Medicaid prenatal program and whose babies, should those women become pregnant, likely will be eligible to receive Medicaid services. In accordance with the statutory directive and with the approval of the federal Centers for Medicare and Medicaid Services (CMS), HHSC established the Medicaid Women's Health Program in accordance with the statutory requirements. CMS approved the original waiver for a five-year period beginning December 21, 2006. The statute adopted in 2005, Human Resources Code, §32.0248, expired by its terms on September 1, 2011.

While the Legislature did not, in 2011, reenact the 2005 legislation, the Legislature adopted a rider to the General Appropria-

tions Act, Rider 62 to Article II, HHSC that authorizes the continuation of the program. The Legislature subsequently amended Human Resources Code, §32.024 to require HHSC to ensure that any funds spent for purposes of the Women's Health Program or a successor program not be used to perform or promote elective abortions or to contract with an entity that performs or promotes elective abortions or that affiliates with entities that perform or promote elective abortions. (Human Resources Code, §32.024(c-1).) Following the legislative reauthorization of the program, HHSC submitted a request to CMS to renew the demonstration project waiver in the fall of 2011.

In addition, to effectuate the legislative restriction on the use of Women's Health Program funds, HHSC adopted new rules barring from participation in the Women's Health Program any provider that performs or promotes elective abortions or that affiliates with another entity that performs or promotes elective abortions. Citing the adoption of these rules, CMS denied extending the demonstration project.

Rather than completely end the vital services provided by the Medicaid Women's Health Program, Texas has chosen to operate the program using only state funds within the DSHS Preventive and Primary Care Unit's (PPCU) Primary Health Care Services Program, which is operated under Health and Safety Code, Chapter 31. Chapter 31 authorizes DSHS to establish a primary health care services program to provide to eligible individuals primary health care services, including family planning services and health screenings.

These rules are intended to transition the Medicaid Women's Health Program to the TWHP, operated by DSHS or its designee through the DSHS PPCU Primary Health Care Services Program. DSHS has determined that there is a need for the services that this program will provide across the state, as directed by Health and Safety Code, §31.003(d). DSHS further has determined that the classes of women who will be served may be, without the establishment of the TWHP, unable to obtain the preventive health care, contraceptives, and screenings this program provides.

SECTION-BY-SECTION SUMMARY

Section 39.31 introduces the purpose of the rules and describes the statutory authority for adopting the rules.

Section 39.32 states that these rules do not create an entitlement and that the services described in the rules are subject to appropriated funds.

Section 39.33 defines terms used in the rules.

Section 39.34 sets out client eligibility requirements. As proposed, a woman is eligible to receive services through the TWHP if, among other things, she is between the ages of 18 and 44 (inclusive), is not pregnant or sterile, is a United States citizen or qualified alien, is a Texas resident, and has a countable income of 185% or less of the Federal Poverty Level (FPL). The proposed rule also elaborates on the age requirement and permits an applicant with creditable coverage to receive services under the TWHP, despite the creditable coverage, if she affirms that she may be subject to retaliation if she files a claim for services like those the TWHP provides. And the rule specifies that, once approved to receive services, the client is eligible for twelve months, except in certain circumstances, which are set out in the rule. Finally, the rule provides that a woman who is deemed eligible to receive services under the Medicaid Women's Health Program at the time the TWHP begins operations is essentially "grandfathered" in. The provisions of this proposed rule are consistent with the eligibility requirements for the Medicaid Women's Health Program.

Section 39.35 details the procedure a woman must follow to apply for TWHP services. The procedure, including procedures for the verification of the applicant's identity and status as a citizen or qualified alien, is similar to that currently used to apply for services through the Medicaid Women's Health Program.

Section 39.36 sets out financial eligibility requirements for a TWHP applicant. A woman may be eligible based on her countable income or by virtue of her membership in a budget group that receives benefits under the Women, Infants, and Children (WIC) supplemental nutrition program, Supplemental Nutrition Assistance Program (SNAP), Children's Health Insurance Program (CHIP), or Temporary Assistance for Needy Families (TANF). The requirements are consistent with those currently used to ascertain the eligibility of applicants for the Medicaid Women's Health Program.

Section 39.37 states that DSHS or its designee may deny, suspend, or terminate TWHP services to a client if DSHS or its designee determines that the client is ineligible. DSHS or its designee must notify the applicant or client and provide her with an opportunity for a fair hearing on the matter. Any appeal by an applicant or client is subject to Title 25, Chapter 1, Subchapter C. These provisions are consistent with an applicant's or client's opportunity to appeal under the Medicaid Women's Health Program.

Section 39.38 requires a health-care provider to follow procedures set out in Title 1, Chapter 354 of the Texas Administrative Code. The section also requires a TWHP provider to ensure that (1) outside the scope of TWHP, the provider does not perform or promote elective abortions and does not affiliate with an entity that performs or promotes elective abortions; and (2) within the scope of TWHP, the provider does not promote elective abortions, is physically separated from any abortion-providing or abortion-promoting entity, and does not operate under an identification mark that is registered to an entity that performs or promotes elective abortions. The term "promote" is defined for purposes of the rule. A TWHP provider must provide DSHS or its designee with information, as required by DSHS or its designee, to ensure that the provider complies with this section. Section 39.38 finally provides for provider disqualification, provider certification, and assistance to clients whose providers are disqualified.

Section 39.39 lists those services that a client may receive through the TWHP. The list of services is generalized; further detail is provided in the Texas Medicaid Provider Procedures Manual. With one exception, the list of services is identical to that provided by the Medicaid Women's Health Program: specifically, the TWHP will cover treatment for certain sexually transmitted infections.

Section 39.40 lists services that TWHP will not cover. With the exception of allowing treatment for certain sexually transmitted infections, the list is the same as those services that were not covered by the Medicaid Women's Health Program.

Section 39.41 pertains to reimbursement for services covered by TWHP. Subsection (a) cross-references Title 1, Chapter 355 of the Texas Administrative Code, which sets out specific reimbursement rules. Subsection (b) cross-references rules to which a provider must refer for procedural guidance on filing claims. And subsection (c) bars a TWHP provider from using any funds

received for providing TWHP services to pay any direct or indirect costs associated with elective abortions, consistently with Article II, Rider 17 of DSHS' portion of the current appropriations act. See General Appropriations Act, 82nd Legislature, Regular Session, 2011, Chapter 1355, Article II, II-57 (HHSC, DSHS).

Section 39.42 pertains to a TWHP provider's request to DSHS or its designee to review a denied claim. The appeal will be subject to procedures set out in Title 1, §354.2217 of the Texas Administrative Code.

Section 39.43 requires a TWHP provider to maintain the confidentiality of family planning information as required by law. Section 39.43 further bars a provider from releasing information that may identify a client unless the client authorizes the release in writing.

Section 39.44 provides for audits to verify compliance with applicable statutes and rules.

Finally, §39.45 provides that any rule in the subchapter that a court finds unconstitutional or unenforceable will be severed and the remaining rules will be enforced to the extent it is possible to do so consistently with the legislative intent and the subchapter's objectives.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has projected the fiscal impact of this rule for three years, assuming that all clients will be eligible for Medicaid following the expansion of the Medicaid program in January 2014.

Ms. Rymal determined that during the three fiscal years this rule is to be in effect, there will be a fiscal impact to state government as a result of enforcing or administering the sections as proposed. The effect on state government is an estimated cost to general revenue of $936,199 for state fiscal year (SFY) 2012, $39,132,223 for SFY 2013, and $15,861,313 for SFY 2014. The proposed new rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Greta Rymal has also determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering these new rules. Providers will not be required to alter their business practices as a result of these rules.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with these rules. There is no anticipated negative effect on local employment in geographic areas affected by these new rules.

PUBLIC BENEFIT

The public benefit, similar to the fiscal impact, has been projected for three years, assuming that all clients will be eligible for Medicaid beginning in January 2014.

HHSC has determined that for each of the three years these new rules are in effect, the public will benefit from the adoption of these rules. The anticipated public benefit of adopting the proposed new rules will be continued access to essential Women's Health Services. In addition maintaining a state-funded Women's Health Program would generate cost avoidance in the Medicaid program, resulting in a net projected savings of $4.4 million general revenue over the 14 months the program would operate.

REGULATORY ANALYSIS

DSHS has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. 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 the 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

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Imelda M. Garcia, Department of State Health Services, Division of Family and Community Health Services, Community Health Services Section, Mail Code 1923, P.O. Box 149347, Austin, Texas 78714-9347, by phone at 1-800-322-1305 or by email to CHSS@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

PUBLIC HEARING

No public hearing is currently scheduled.

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 generally by Health and Safety Code, §12.001 and §1001.071, and more specifically by Health and Safety Code, §§31.002(a)(4)(C) and (H), 31.003, and 31.004, under which DSHS may establish a program providing primary health care services, including family planning services and health screenings, and to adopt rules governing the type of services to be provided, the eligibility of recipients, and administration of the program. In addition, Government Code, §531.0055, authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules for the operation and provision of health and human services by the health and human services agencies.

No other statutes, articles, or codes are affected by this proposal.

§39.31. Introduction.

(a) Governing rules. Notwithstanding any contrary provision in Subchapter A of this chapter, this subchapter sets out rules governing the administration of the Texas Women's Health Program (TWHP) within the DSHS's Primary Health Care Services Program.

(b) Authority. This subchapter is authorized generally by Health and Safety Code, §12.001 and §1001.071, and more specifically by Health and Safety Code, §31.002(a)(4)(C) and (H), §31.003,

and §31.004, under which DSHS may establish a program providing primary health care services, including family planning services and health screenings, and to adopt rules governing the type of services to be provided, the eligibility of recipients, and administration of the program.

(c) Objectives. As reflected in several enactments of the Texas Legislature (including, but not limited to, Human Resources Code, §32.024(c-1)), the TWHP is established to achieve the following overarching objectives:

(1) to implement the state policy to favor childbirth and family planning services that do not include elective abortion or the promotion of elective abortion within the continuum of care or services;

(2) to ensure the efficient and effective use of state funds in support of these objectives and to avoid the direct or indirect use of state funds to promote or support elective abortion;

(3) to reduce the overall cost of publicly-funded health care (including federally-funded health care) by providing low-income Texans access to safe, effective services that are consistent with these objectives; and

(4) to the extent permitted by the Constitution of the United States and in addition to the restrictions imposed by this subchapter, to enforce Human Resources Code, §32.024(c-1), and any other state law that regulates delivery of non-federally funded family planning services.

§39.32. Non-entitlement and Availability.

(a) No entitlement. This subchapter does not establish an entitlement to the services described in this subchapter.

(b) Fund availability. The services described in this subchapter are subject to the availability of appropriated funds.

§39.33. Definitions.

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

(1) Affiliate--

(A) An individual or entity that has a legal relationship with another entity, which relationship is created or governed by at least one written instrument that demonstrates:

(i) common ownership, management, or control;

(ii) a franchise; or

(iii) the granting or extension of a license or other agreement that authorizes the affiliate to use the other entity's brand name, trademark, service mark, or other registered identification mark.

(B) The written instruments referenced in subparagraph (A) of this paragraph may include a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license.

(2) Applicant--A woman applying to receive services under TWHP, including a current recipient who is applying to renew.

(3) Budget group--Members of a household whose needs, income, resources, and expenses are considered in determining eligibility.

(4) Client--A woman who receives services through TWHP.

(5) Corporate entity--A foreign or domestic non-natural person, including a for-profit or nonprofit corporation, a partnership, and a sole proprietorship.

(6) Covered service--A medical procedure for which TWHP will reimburse an enrolled health-care provider, as listed in §39.39 of this title (relating to Covered Services).

(7) DSHS--The Department of State Health Services.

(8) Elective abortion--The intentional termination of a pregnancy by an attending physician who knows that the female is pregnant, using any means that is reasonably likely to cause the death of the fetus. The term does not include the use of any such means:

(A) to terminate a pregnancy that resulted from an act of rape or incest; or

(B) in a case in which a woman suffers from a physical disorder, physical disability, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(9) Family planning services--Educational or comprehensive medical activities that enable individuals to determine freely the number and spacing of their children and to select the means by which this may be achieved.

(10) Health-care provider--A physician, physician assistant, nurse practitioner, clinical nurse specialist, certified nurse midwife, federally qualified health center, family planning agency, health clinic, ambulatory surgical center, hospital ambulatory surgical center, laboratory, or rural health center.

(11) Health clinic--A corporate entity that provides comprehensive preventive and primary health care services to outpatient clients, which must include both family planning services and diagnosis and treatment of both acute and chronic illnesses and conditions in three or more organ systems. The term does not include a clinic specializing in family planning services.

(12) TWHP--Texas Women's Health Program.

(13) TWHP provider--A health-care provider that performs covered services.

§39.34. Client Eligibility.

(a) Criteria. A woman is eligible to receive services through TWHP if she:

(1) is 18 through 44 years of age, inclusive;

(2) is not pregnant;

(3) is not sterile, infertile, or unable to get pregnant because of medical reasons;

(4) has countable income (as calculated under §39.36 of this title (relating to Financial Eligibility Requirements)) that does not exceed 185 percent of the Federal Poverty Level, as published annually in the Federal Register by the United States Department of Health and Human Services;

(5) is a United States citizen, a United States national, or an alien who qualifies under §39.35(h) of this title (relating to Application Procedures);

(6) resides in Texas;

(7) does not currently receive benefits through a Medicaid program, Children's Health Insurance Program, or Medicare Part A or B;

(8) does not have creditable health coverage that covers the services TWHP provides, except as specified in subsection (d) of this section;

(9) is not a patient at a State mental hospital as defined in Health and Safety Code, §571.003(21); and

(10) is not incarcerated in any penal facility maintained under governmental authority. The term "incarcerated" means the involuntary physical restraint of a woman who has been arrested for or convicted of a crime.

(b) Age. For purposes of subsection (a)(1) of this section, an applicant is considered 18 years of age the month of her 18th birthday and 44 years of age through the month of her 45th birthday. A woman is ineligible for TWHP if her application is received the month before her 18th birthday or the month after she turns 45 years of age.

(c) Resources. DSHS or its designee does not request or verify resources for TWHP.

(d) Third-party resources. An applicant with creditable health coverage that would pay for all or part of the costs of covered services may be eligible to receive covered services if she affirms, in a manner satisfactory to DSHS or its designee, her belief that a liable third party may retaliate against her or cause physical or emotional harm if she assists DSHS or its designee (by providing information or by any other means) in pursuing claims against that third party. An applicant with such creditable health coverage who does not comply with this requirement is ineligible to receive TWHP benefits.

(e) Period of eligibility. A client is deemed eligible to receive covered services for 12 continuous months after her application is approved, unless:

(1) the client dies;

(2) the client voluntarily withdraws;

(3) the client no longer satisfies criteria set out in subsection (a) of this section;

(4) state law no longer allows the woman to be covered; or

(5) DSHS or its designee determines the client provided information affecting her eligibility that was false at the time of application.

(f) Transfer of eligibility. A woman who, when these rules becomes effective, receives services through the Medicaid Women's Health Program is automatically enrolled as a TWHP client and is eligible to receive covered services for as long as she would have been eligible for the Medicaid Women's Health Program.

§39.35. Application Procedures.

(a) Application. A woman, or an individual acting on the woman's behalf, may apply for TWHP services by completing an application form and providing documentation as required by DSHS or its designee.

(1) An applicant may obtain a paper application in the following ways:

(A) from a local benefits office of the Health and Human Services Commission, a TWHP provider's office, or any other location that makes TWHP applications available;

(B) from the TWHP website; or

(C) by calling 2-1-1.

(2) DSHS or its designee accepts and processes every application received through the following means:

(A) in person at a local benefits office of the Health and Human Services Commission;

(B) by fax; or

(C) by mail.

(b) Processing timeline. DSHS or its designee processes a TWHP application by the 45th day after the date DSHS or its designee receives the application.

(c) Start of coverage. Program coverage begins on the first day of the month in which DSHS or its designee receives a valid application. A valid application has, at a minimum, the applicant's name, address, and signature.

(d) Exclusive application. The TWHP application form may not be used to apply for any other programs.

(e) Social security number (SSN) required. In accordance with 42 U.S.C. §405(c)(2)(C)(i), DSHS or its designee requires an applicant to provide or apply for a social security number. DSHS or its designee requests, but does not require, budget group members who are not applying for TWHP to provide or apply for an SSN.

(f) Face-to-face interviews. In general, DSHS or its designee does not require an applicant to attend a face-to-face interview unless DSHS or its designee has received conflicting information related to the household membership or income that affects eligibility. An applicant may, however, request a face-to-face or telephone interview for an initial or a renewal application.

(g) Identity. An applicant must verify her identity the first time she applies to receive covered services.

(h) Citizenship. If an applicant is a citizen, she must provide proof of citizenship. If the applicant, who is otherwise eligible to receive TWHP services, is not a citizen, DSHS or its designee determines her eligibility in accordance with 1 TAC §366.513 (relating to Citizenship).

§39.36. Financial Eligibility Requirements.

(a) Calculating countable income. Unless an applicant is adjunctively eligible as described in subsection (b) of this section, DSHS or its designee determines an applicant's financial eligibility by calculating the applicant's countable income. To determine countable income, DSHS or its designee adds the incomes listed in paragraph (1) of this subsection, less any deductions listed in paragraph (2) of this subsection, and exempting any amounts listed in paragraph (3) of this subsection.

(1) DSHS or its designee determines countable income in accordance with 1 TAC §366.531(a) (relating to Determining Whose Income Counts).

(2) In determining countable income, DSHS or its designee deducts the items set forth in 1 TAC §366.533 (relating to Allowable Income Deductions).

(3) DSHS or its designee exempts from the determination of countable income the items set out in 1 TAC §366.535 (relating to Exempt Income).

(b) Adjunctive eligibility. An applicant or client is considered adjunctively eligible at an initial or renewal application, and therefore financially eligible, if:

(1) a member in her budget group receives benefits under the Women, Infants, and Children (WIC) supplemental nutrition program;

(2) she is a member of a certified Supplemental Nutrition Assistance Program (SNAP) household;

(3) she is in a Children's Medicaid budget group for someone receiving Medicaid; or

(4) she is receiving Temporary Assistance for Needy Families (TANF) cash or is in a TANF budget group for someone receiving TANF cash.

§39.37. Denial, Suspension, or Termination of Services; Client Appeals.

(a) Notice and opportunity for hearing. DSHS or its designee may deny, suspend, or terminate services to an applicant or client if it determines that the applicant or client is ineligible to participate.

(b) Notice and opportunity for a fair hearing. Before DSHS or its designee finalizes the denial, suspension, or termination under subsection (a) of this section, the applicant or client will be notified and provided an opportunity for a fair hearing.

(c) Appeal procedures. An applicant or client who is aggrieved by the denial, suspension, or termination of services under subsection (a) of this section may appeal the decision in accordance with Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures). An applicant or client may not appeal a decision to deny, suspend, or terminate services if the decision is the result of a decision by the State to reduce or stop funding the program.

§39.38. Health-Care Providers.

(a) Procedures. A TWHP provider must comply with the requirements set out in 1 TAC Chapter 354, Subchapter A, Division 1 (relating to Medicaid Procedures for Providers).

(b) Qualifications. A TWHP provider must ensure that:

(1) the provider does not perform or promote elective abortions outside the scope of the TWHP and is not an affiliate of an entity that performs or promotes elective abortions; and

(2) in offering or performing a TWHP service, the provider:

(A) does not promote elective abortion within the scope of the TWHP;

(B) maintains physical separation between its TWHP activities and any abortion-performing or abortion-promoting activity by, for example, providing TWHP services at a physical address that differs from the address at which elective abortions are performed, even if those abortions are performed by a different corporate entity, and not sharing employees or volunteer personnel with an entity that performs elective abortions; and

(C) does not use, display, or operate under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(c) Defining "promote." For purposes of subsection (b) of this section, the term "promote" includes, but is not necessarily limited to:

(1) providing to a TWHP client counseling concerning the use of abortion as a method of family planning or within the continuum of family planning services;

(2) providing to a TWHP client a referral for an elective abortion as a method of family planning or within the continuum of family planning services;

(3) furnishing or displaying to a TWHP client information that publicizes or advertises an abortion service or provider; and

(4) using, displaying, or operating under a brand name, trademark, service mark, or registered identification mark of an organization that performs or promotes elective abortions.

(d) Compliance information. Upon request, a TWHP provider must provide DSHS or its designee with all information DSHS or its designee requires to determine the provider's compliance with this section.

(e) Provider disqualification. If, after the effective date of this section, DSHS or its designee determines that a TWHP provider fails to comply with subsection (b) of this section, DSHS or its designee will disqualify the provider from TWHP.

(f) Client assistance and recoupment. If a TWHP provider is disqualified, DSHS or its designee will take appropriate action to:

(1) assist a TWHP client to find an alternate provider; and

(2) recoup any funds paid to a disqualified provider for TWHP services performed during the period of disqualification.

(g) Certification. Upon initial application for enrollment in the TWHP, a provider must certify its compliance with subsection (b) of this section and any other requirement specified by DSHS or its designee. Each provider enrolled in TWHP must annually certify that the provider complies with subsection (b) of this section.

(h) Exemption from initial certification. The initial application requirement of subsection (g) of this section does not apply to a provider that certified and was determined to be in compliance with the requirements of the Women's Health Program administered by the Health and Human Services Commission pursuant to Human Resources Code, §32.024(c-1).

§39.39. Covered Services.

A client may receive the following services through TWHP:

(1) annual family planning exam and Pap test;

(2) follow-up visits related to the chosen contraceptive method;

(3) counseling on specific methods and use of contraception (as part of evaluation and management services), including natural family planning and excluding emergency contraception;

(4) female sterilization;

(5) follow-up visits related to sterilization, including procedures to confirm sterilization;

(6) family-planning services as listed in the Texas Medicaid Provider Procedures Manual, including:

(A) pregnancy tests;

(B) sexually transmitted infection (STI) screenings;

(C) treatment of certain STIs;

(D) contraceptive methods; and

(7) lab services related to a service listed in paragraphs (1) - (6) of this section.

§39.40. Non-covered Services.

TWHP does not cover:

(1) counseling on and provision of abortion services;

(2) mammography and diagnostic services for breast cancer;

(3) treatment for any condition diagnosed during a TWHP visit, other than a sexually transmitted infection for which treatment is a covered service;

(4) a visit for a pregnancy test only;

(5) a visit for a sexually transmitted infection test only;

(6) a follow-up after an abnormal Pap test;

(7) counseling on and provision of emergency contraceptives; or

(8) other visits that cannot be appropriately billed with a permissible procedure code.

§39.41. Reimbursement.

(a) Fee for service reimbursement. Services provided through TWHP will be reimbursed on a fee-for-service basis in accordance with 1 TAC Chapter 355 (relating to Reimbursement Rates).

(b) Claims procedures. A TWHP provider must comply with 1 TAC Chapter 354, Subchapter A, Division 1 (relating to Medicaid Procedures for Providers) and Division 5 (relating to Physician and Physician Assistant Services).

(c) Improper use of reimbursement. A TWHP provider may not use any funds received for providing a covered service to pay the direct or indirect costs (including overhead, rent, phones, equipment, and utilities) of elective abortions.

§39.42. Provider's Request for Review of Claim Denial.

(a) Review of denied claim. A TWHP provider may request a review of a denied claim. The request must be submitted as an administrative appeal under 1 TAC §354.2217 (relating to Provider Appeals and Reviews).

(b) Appeal procedures. The administrative appeal will be subject to the timelines and procedures set out in 1 TAC §354.2217 and all other procedures and timelines applicable to a provider's appeal of a Medicaid claim denial.

§39.43. Confidentiality.

(a) Confidentiality required. A TWHP provider must maintain all family planning information as confidential to the extent required by law.

(b) Written release authorization. Before a TWHP provider may release any information that might identify a client, the client must authorize the release in writing.

(c) Confidentiality training. A TWHP provider's staff (paid and unpaid) must be informed during orientation of the importance of keeping client information confidential.

(d) Records monitoring. A TWHP provider must monitor client records to ensure that only appropriate staff and DSHS or its designee may access the records.

(e) Assurance of confidentiality. A TWHP provider verbally must assure each client that her records are confidential and must explain the meaning of confidentiality.

§39.44. Audits; Reports.

(a) Compliance audits. DSHS or the Health and Human Services Commission's Office of Inspector General may audit any TWHP provider to verify compliance with any applicable law or regulation.

(b) Reporting duties. A TWHP provider must submit information to DSHS or its designee as DSHS or its designee requires.

§39.45. Severability.

To the extent any part of this subchapter is determined by a court of competent jurisdiction to be unconstitutional or unenforceable, or to the degree an official or employee of DSHS, the Health and Human Services Commission, or the State of Texas is enjoined from enforcing any part of this subchapter, DSHS or its designee shall enforce the parts of this subchapter not affected by such injunctive relief to the extent DSHS or its designee determines it can do so consistently with legislative intent and the objectives of this subchapter, and to this end the provisions and application of this subchapter are severable.

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 June 25, 2012.

TRD-201203355
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER FF. CREDIT LIFE AND CREDIT ACCIDENT AND HEALTH INSURANCE

DIVISION 10. RESPONSIBILITIES AND OBLIGATIONS OF INSURANCE COMPANIES AND THEIR AGENTS AND REPRESENTATIVES

28 TAC §3.6011

The Texas Department of Insurance proposes amendments to Title 28 Texas Administrative Code (28 TAC) §3.6011, concerning the responsibility and obligation of insurers to provide copies of *Consumer Bill of Rights for Credit Life, Credit Disability, & Involuntary Unemployment Insurance* to each insured. The amendments are necessary to reflect updated law and contact information and to make the existing bill of rights document more consumer-friendly.

Insurance Code §501.156 requires the Office of Public Insurance Counsel (OPIC) to submit to the department for adoption a consumer bill of rights appropriate to each personal line of insurance regulated by the department. The Consumer Bill of Rights is required to be distributed to each policyholder on issuance of a policy by an insurer. The department regulates credit life, credit disability, and credit involuntary unemployment insurance under Insurance Code Chapter 1153. On May 3, 2012, the department received a petition from OPIC, requesting the adoption of a revised *Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance* (Consumer Bill of Rights). Copies of the Consumer Bill of Rights petition filed by OPIC are available for review on written request to the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.

The current Consumer Bill of Rights was adopted in §3.6011 to be effective October 1, 1993 (September 24, 1993, issue of the *Texas Register* (18 TexReg 6546)). This proposal to amend §3.6011 is necessary to ensure that current and future policyholders of credit life, credit disability, and credit involuntary unemployment insurance receive accurate information and are

properly informed of their rights. Proposed §3.6011 adopts by reference the revised Consumer Bill of Rights.

The updates address legislative changes affecting consumers that have occurred since the adoption of the current version of the Consumer Bill of Rights. The proposed revised Consumer Bill of Rights also adds notice of some rights applicable to credit life, credit disability, and credit involuntary unemployment insurance that are not included in the current version of the Consumer Bill of Rights. Finally, the proposed revised Consumer Bill of Rights updates contact information and makes editorial changes to the text of the current Consumer Bill of Rights.

Amendments to the title of the section and subsections (a) - (c) of §3.6011 are proposed to change references from "involuntary unemployment insurance" to "credit involuntary unemployment insurance." This non-substantive change is necessary for clarity. A second amendment to §3.6011(a) changes the name of the office and mail code from which the form may be obtained. A third amendment to §3.6011(a) updates the department's website address.

An amendment to §3.6011(c) adopts by reference the Spanish language version of the Consumer Bill of Rights. A second amendment to §3.6011(c) changes the name of the office from which the Spanish language version of the form may be obtained. A third amendment to §3.6011(c) updates the department's website address. Finally, some amendments to §3.6011 make editorial changes to the text of the rule.

FISCAL NOTE. Jan Graeber, director/chief actuary, Rate and Form Review Office, has determined that, for each year of the first five years the proposed section is in effect, there will be no fiscal impact on state or local government as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Graeber also has determined that for each year of the first five years the proposed section is in effect, the public benefits anticipated as a result of the proposal are increased consumer education and the facilitation of awareness by current and future policyholders of credit life, credit disability, and credit involuntary unemployment insurance of updated information summarizing their rights regarding the credit insurance. The updated Consumer Bill of Rights will clarify consumer rights and provide updated contact information for the department. These changes will result in greater ease of use and readability of the Consumer Bill of Rights.

Analysis of Potential Costs for Persons Required to Comply with the Proposal

Insurers are required to comply with the proposal and deliver the Consumer Bill of Rights to current and future policyholders and to deliver the Spanish language version of the Consumer Bill of Rights upon a consumer's request. Because the proposed amendments update existing documents already required to be provided with insurance policies or upon request, they do not impose any new duties. The amendments may result in printing costs for updating the existing Consumer Bill of Rights and mailing costs for any additional postage to the extent the new versions are a different number of pages than the original. If an insurer has an existing stock of the previously adopted versions of the Consumer Bill of Rights, the department expects the cost to replace the existing stock to be between 6 cents and 8 cents per page for printing and paper. The number of pages required will depend on the amount of existing stock. The department expects that the insurer will have the information necessary to determine its individual cost, including the number of pages to be printed, in-house printing costs, and out-of-house printing costs.

Insurers must provide policyholders with copies of the updated Consumer Bill of Rights with each new policy and certificate and upon renewal. Because the Consumer Bill of Rights is about four pages long, the department estimates that the cost per new policy and certificate, renewal, or request for the Spanish language version, will be between 24 cents and 32 cents plus any marginal increase in postage. An insurer's overall cost of complying with this requirement will vary depending on the number of notices that the insurer provides.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) provides that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. Government Code §2006.001(1) defines a "micro business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees. Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in Government Code §2006.002(b) - (d) for small businesses.

In accordance with Government Code §2006.002(c), the department has determined that the proposal may have an adverse economic impact on small and micro businesses that sell credit life, credit disability, and credit involuntary unemployment insurance coverage. The department has determined that approximately 56 carriers have filed credit insurance policy forms with the department in the past ten years. The department believes that one or more of the 56 carriers is a small or micro business pursuant to Government Code §2006.002(c). The adverse economic impact results from the costs associated with the requirement to print and distribute the Consumer Bill of Rights. These costs are stated in the public benefit/cost Note part of this proposal.

The department, in accordance with Government Code §2006.002(c-1), has considered the following alternative methods of achieving the purpose of the proposed rule: (i) reduce the length of the Consumer Bill of Rights for small and micro business insurers writing personal lines credit life, credit disability, and credit involuntary unemployment insurance insurance coverage; or (ii) exempt small and micro business insurers from providing copies of the revised Consumer Bill of Rights to existing policyholders upon renewal.

The department has determined that these alternatives for small and micro businesses are neither legal nor feasible because the purpose of the Consumer Bill of Rights is to ensure that current and future policyholders of personal credit life, credit disability, and credit involuntary unemployment insurance receive accurate information and are properly informed of their rights. Providing a shortened version of the Consumer Bill of Rights or not pro-

viding a Consumer Bill of Rights at all would leave out important consumer information and impede consumer access to current rights regarding credit insurance. Either alternative would frustrate the purpose of Insurance Code §501.156 and would be inconsistent with the health, safety, environmental, and economic welfare of the state.

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

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m., CST on August 6, 2012, to Sara Waitt, General Counsel, by email at: chiefclerk@tdi.state.tx.us or by mail at: Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Jan Graeber, by email at: LHLcomments@tdi.state.tx.us or by mail at: Rate and Form Review Office, Mail Code 106-1A, 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 113-2A, 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.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Insurance Code §501.156 and §36.001. Section 501.156 requires OPIC to submit to the department for adoption a consumer bill of rights appropriate to each personal line of insurance regulated by the department to be distributed on issuance of a policy by an insurer to each policyholder. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the following statute: Insurance Code §501.156.

§3.6011. Responsibility and Obligation of Insurers to Provide Copies of Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance to Each Insured.

(a) The commissioner adopts by reference the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance form. All insurers writing credit life, credit disability, and credit involuntary unemployment insurance policies must provide with each new policy and certificate of credit life, credit disability, and credit involuntary unemployment insurance a copy of the Texas Department of Insurance Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance. This form is filed with the Office of the Secretary of State, Texas Register Section. The form can be obtained from the Texas Department of Insurance, Rate and Form Review Office [~~Filings Intake Division~~], MC 106-1A [~~106-1E~~], P.O. Box 149104, Austin, Texas 78714-9104. The form can also be obtained from the department's internet web site at http://www.tdi.texas.gov [~~http://www.tdi.state.tx.us~~]. The Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance shall accompany each renewal notice for credit life, credit disability, and credit involuntary unemployment insurance unless the current version of the form has been previously provided to the insured by the insurer.

(b) Insurers may reproduce the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance for the distribution required by subsection (a) of this section. Alternatively, insurers may generate it on their own equipment. If the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance is generated by the insurers, it must appear in no less than 10-point type and be on separate pages with no other text on those pages.

(c) The commissioner adopts by reference the Spanish language version of the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance form. The Texas Department of Insurance has promulgated a Spanish language version of this form [~~the Consumer Bill of Rights~~], which is filed with the Secretary of State's Office. The Spanish language version of the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance [~~Consumer Bill of Rights~~] must be provided to any consumer who requests it from the company. The form can be obtained from the Texas Department of Insurance, Rate and Form Review Office [~~Filings Intake Division~~], MC 106-1A [~~106-1E~~], P.O. Box 149104, Austin, Texas 78714-9104. The form can also be obtained from the department's internet web site at http://www.tdi.texas.gov [~~http://www.tdi.state.tx.us~~].

(d) (No change.)

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

Filed with the Office of the Secretary of State on June 25, 2012.

TRD-201203354
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 463-6327

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER B. TREATMENT

DIVISION 1. PROGRAM PLANNING

37 TAC §§380.8701 - 380.8703

The Texas Juvenile Justice Department (TJJD) proposes to amend §380.8701 (concerning Case Planning), §380.8702 (concerning Rehabilitation Program Overview), and §380.8703 (concerning Rehabilitation Program Stage Requirements and Assessment).

The amended §380.8701 will establish that, at least once every 90 days (rather than every 30 days), a multi-disciplinary team will update each youth's individual case plan following an inte-

grated and comprehensive assessment of the youth's progress in the rehabilitation program. The assessment will include re-assessment of the youth's risk and protective factors, development of objectives and treatment recommendations that reflect the youth's specialized needs and individual abilities, and when appropriate, development of a plan for transitioning the youth to the community. The section will also be amended to clarify that individual case plan objectives will be reviewed and progress documented at least once every 30 days.

Section 380.8702 will be amended to correspond to the changes proposed in §380.8701.

Section 380.8703 will be amended to include a new provision requiring the youth's multi-disciplinary team to conduct a stage assessment when the youth completes the required objectives for the stage or within 90 days from the previous stage assessment, whichever comes first. References to monthly stage assessments will be deleted. Additionally, to be consistent with the purpose of the section, responsibilities of the multi-disciplinary team that are not directly related to stage assessment will be deleted.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the sections are in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the sections.

Rebecca Thomas, Director of Integrated State-Operated Programs and Services, has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be more efficient and effective delivery of case management and case planning services to youth in TJJD custody.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or email to policy.proposals@tjjd.texas.gov.

The amended sections are proposed under Human Resources Code §242.051, which provides TJJD with the authority to have general charge of and be responsible for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the department, and §244.006, which provides TJJD with the authority to require children committed to its care to participate in moral, academic, vocational, physical, and correctional training and activities.

The amended sections implement Human Resources Code §242.003.

§380.8701. Case Planning.

(a) Purpose. The purpose of this rule is to ensure the case management of each youth is individualized and flexible, and is based on the youth's risk and protective factors, abilities, and need for services. Risk and protective factors are identified and correspond to long and short-term objectives that are developed to facilitate the youth's progress in the rehabilitation program. The resulting case plan is reviewed regularly and revised when necessary.

(b) Applicability. This rule applies to youth committed to the Texas Juvenile Justice Department.

(c) [~~(b)~~] Definitions. Definitions for terms used in this rule are under §380.8501 [~~§85.1~~] of this title.

(d) [~~(c)~~] Case Planning.

(1) An Individual Case Plan (ICP) will be developed with and for each youth by the case manager in consultation with the multidisciplinary team. The ICP will be individualized for each youth and will identify objectives with specific strategies to address development of skills to reduce individual risk factors and increase individual protective factors.

(2) The ICP will be developed in accordance with the assessment of the youth's risk and protective factors, abilities, and progress in the rehabilitation program.

(3) The ICP will specify measurable objectives, expected outcomes and a means to evaluate progress.

(4) ICP objectives will be reviewed and progress documented at least once [~~updated~~] every 30 days [~~to reflect adjustments as the youth progresses or as new needs are identified~~].

(5) At least once every 90 days, a multi-disciplinary team will update each youth's ICP following an integrated and comprehensive assessment of the youth's progress in the rehabilitation program. This assessment includes:

(A) re-assessment of the youth's risk and protective factors;

(B) development of objectives and treatment recommendations that reflect the youth's specialized needs and individual abilities; and

(C) when appropriate, development of a plan for transitioning the youth to the community.

(6) [~~(5)~~] The ICP will be developed with individualized strategies to facilitate youth progress through the rehabilitation program.

(7) [~~(6)~~] The ICP will be initiated during the assessment process.

(8) [~~(7)~~] ICP development will include a review of youth progress and objectives and will be developed with the youth and the youth's parent/guardian [~~family~~] when possible.

§380.8702. Rehabilitation Program Overview.

(a) Purpose. The purpose of this rule is to identify the agency's philosophy and approach to rehabilitation of juvenile delinquents in order to reduce future delinquent behavior and increase youth accountability.

(b) Applicability. This rule applies to youth committed to the Texas Juvenile Justice Department (TJJD).

(c) [~~(b)~~] Definitions. See §380.8501 [~~§85.1~~] of this title for definitions of terms used in this rule.

(d) [~~(c)~~] General Provisions.

(1) Each TJJD-operated [~~Texas Youth Commission (TYC) operated~~] residential facility will utilize an integrated, system-wide rehabilitative strategy that offers a menu of therapeutic techniques, tools, and program components to help individual [~~TYC~~] youth increase their ability to be productive citizens and avoid re-offending.

(2) To the extent possible, TJJD's [~~TYC's~~] rehabilitative strategy will offer programs in an adequate manner so that youth receive appropriate rehabilitation services recommended by the committing court.

(3) All aspects of the TJJD [~~TYC~~] rehabilitation program will be individualized and performance-based with clearly defined expectations as set forth in §380.8703 [~~§87.3~~] of this title.

(4) Individual progress will be reviewed [~~measured~~] monthly and be based on all identified risk and protective factors and individual abilities.

(5) Youth in residential placements will be reviewed and assessed by a multi-disciplinary team. Youth on parole in the community will be reviewed and assessed by the assigned parole officer.

(6) [~~(5)~~] As youth progress in the rehabilitation program, there are increased expectations for demonstrating developed skills and social responsibility, a decreased need for direct staff supervision, and an increase in earned privileges as set forth in §380.9502 [~~§95.2~~] of this title.

(7) [~~(6)~~] TJJD [~~TYC~~] facilities shall maintain a structured, 16-hour day for all youth. During each day, the youth will work on components of the rehabilitation program.

(8) [~~(7)~~] TJJD [~~TYC~~] facilities shall provide for and youth will participate in a structured, individually appropriate educational program or equivalent, with appropriate supports.

(9) [~~(8)~~] TJJD [~~TYC~~] facilities shall provide and eligible youth may participate in work experiences.

(10) [~~(9)~~] TJJD [~~TYC~~] facilities shall provide and youth will participate in regular physical training programs.

(11) [~~(10)~~] TJJD [~~TYC~~] facilities shall provide and youth will participate in skills development groups.

(12) [~~(11)~~] Staff will receive appropriate training and certification related to their role in the rehabilitation program and the type of services they provide.

§380.8703. Rehabilitation Program Stage Requirements and Assessment.

(a) Purpose. Texas Juvenile Justice Department (TJJD) [~~Texas Youth Commission (TYC)~~] youth earn release from high and medium restriction placements by progressing through a stage system that measures progress in the rehabilitation program. The purpose of this rule is to provide a general outline of the areas in which a youth must demonstrate progress and to describe the process for how progress is assessed.

(b) Applicability. This rule applies to all residential facilities operated by TJJD [~~the TYC~~]. This rule does not apply to youth in contract care programs that are not required to provide the TJJD [~~TYC~~] rehabilitation program.

(c) Definitions. See §380.8501 [~~§85.1~~] of this title for definitions of terms used in this rule.

(d) General Themes in the Rehabilitation Program. For each stage, a youth completes objectives around the following four general themes [~~In each stage, there are objectives for the youth to complete which will~~]:

(1) demonstrate an understanding of risk and protective factors and show a decrease in risk factors and an increase in protective factors over the course of the rehabilitation program;

(2) demonstrate a youth's increased understanding of how those personal risk factors relate to success/lack of success in the community and assist the youth in understanding how his/her committing offense was related to risk factors;

(3) move the youth toward developing a concrete community reintegration plan from the time of admission; and

(4) engage the youth's family in programming.

(e) [~~General~~] Process for Stage Assessment.

(1) The multi-disciplinary team (MDT) conducts a stage assessment when the youth completes the required objectives for the stage or within 90 days from the previous stage assessment, whichever occurs first.

(2) Members of the MDT make stage decisions collaboratively, providing input in their areas of expertise. The MDT facilitates and confirms stage progression by reviewing progress and interviewing the youth. The youth's case manager serves as the MDT facilitator, and is responsible for contacting additional professional resources as appropriate to discuss the youth's individualized needs and abilities and to provide information regarding strategies to assist the youth to progress in the program.

(3) Each stage assessment meeting includes an integrated and comprehensive assessment of each youth's progress in the rehabilitation program.

(A) Prior to the meeting, assigned staff members are responsible for collecting specific information in their area of expertise and making it available for the meeting.

(B) The case manager is responsible for contacting the parent/guardian and parole officer to invite them to the meeting and ensuring their input into the process.

(C) The youth is responsible for being prepared to discuss information related to his/her program and preparing any information to present relative to stage progression.

(D) During the stage assessment, the youth's general progress in the program and on specific case plan objectives is reviewed, risk and protective factors are reviewed, medical and mental health information is discussed (where applicable), feedback is provided to the youth on areas of strength and areas needing improvement, interventions to assist the youth's progress are discussed and developed, and community re-entry planning is discussed.

[~~(1) For each stage, a youth completes objectives around the four general themes. Once those objectives are completed, the youth presents and discusses stage-related indicators with the multi-disciplinary team (MDT).~~]

[~~(2) The MDT assesses whether the youth has adequately completed the required indicators, taking into account the youth's individual abilities. The MDT is the primary decision authority regarding whether a youth earns stage promotion.~~]

(4) [~~(3)~~] If the MDT determines the stage objectives have been met, the MDT also evaluates whether the youth has consistently participated in the following other areas of programming:

(A) participation in development and completion of case plan objectives;

(B) participation in groups and individual counseling sessions;

(C) participation in specialized treatment programs (if applicable);

(D) participation in academic and workforce development programs; and

(E) application of learned skills in daily behavior[~~, as defined in the positive behavior change system~~].

(5) [~~(4)~~] If the MDT determines that a youth meets the required indicators for the stage and has consistently participated in the

other areas of programming, the youth will be promoted to the next stage.

(6) [~~(5)~~] If the MDT determines the youth has not met the indicators required for the stage or has not consistently participated in the other areas of programming, the youth remains on his/her current stage until the next stage assessment [~~MDT review (28-35 days)~~].

(7) [~~(6)~~] Youth may not be demoted in stage, except when:

(A) stage demotion is assigned as a disciplinary consequence following a due process hearing, in accordance with §380.9503 [~~§95.3~~] of this title; or

(B) a youth is returned to a high restriction facility, in accordance with subsection (h) [~~(l)~~] of this section.

(8) After the stage assessment meeting, the youth and the youth's parent/guardian are notified of the results of the assessment. If appropriate, an updated individual case plan shall be developed following the meeting.

[~~(7) The MDT gives the youth specific feedback on his/her areas of positive progress and assists the youth in focusing on what needs to be improved for the next review period.~~]

(f) [~~Stage~~] Requirements for Stage Promotion.

(1) Stage 1--this stage is completed when the MDT determines that the youth has demonstrated basic knowledge of the stage objectives. The youth attends the foundational skills development groups and participates in individual sessions with his/her case manager to develop an assessment of risk and protective factors. In order to complete stage 1, the youth must:

(A) complete the following objectives in accordance with the specified indicators for each objective:

(i) understand the definition of risk and protective factors;

(ii) explore risk factors related to TJJD [~~TYC~~] commitment;

(iii) attempt to involve a family member or an adult mentor in coordination with the family liaison and case manager; and

(iv) establish a personal goal and identify strategies to achieve that goal;

(B) present and discuss his/her progress with the MDT as specified in the stage indicators; and

(C) consistently participate in other areas of programming as described in subsection (e)(4) [~~(e)(3)~~] of this section.

(2) Stage 2--this stage is completed when the MDT determines that the youth has identified and discussed his/her personal risk and protective factors, has identified patterns in his/her thoughts, feelings, attitudes, values and beliefs that relate to TJJD [~~TYC~~] commitment and ongoing behaviors, has created an initial community re-integration plan, and has participated with the MDT in targeting specific skills for development related to his/her risk and protective factors. In order to complete stage 2, the youth must:

(A) complete the following objectives in accordance with the specified indicators for each objective:

(i) explore personal risk and protective factors;

(ii) share identified risk and protective factors with his/her family or adult mentor;

(iii) identify patterns in thoughts, feeling, attitudes, beliefs and values;

(iv) create an initial community re-integration plan;

(B) present and discuss his/her progress with the MDT as specified in the stage indicators; and

(C) consistently participate in other areas of programming as described in subsection (e)(4) [~~(e)(3)~~] of this section.

(3) Stage 3--this stage is completed when the MDT determines that the youth has completed skill lessons assigned by the case manager and MDT necessary to reduce risks and enhance protective factors. The youth is expected to take responsibility for the committing offense, identify patterns in thinking, and be able to discuss the impact of the offense on direct and indirect victims. The youth is expected to incorporate the new skills learned while in the facility into daily living situations and into a community re-integration plan. In order to complete stage 3, the youth must:

(A) complete the following objectives in accordance with the specified indicators for each objective:

(i) show a reduction of risk factors and an increase in protective factors;

(ii) take responsibility for the committing offense;

(iii) share progress on reducing risk factors and increasing protective factors with his/her family member or adult mentor;

(iv) complete the community re-integration plan;

(B) present and discuss his/her progress with the MDT as specified in the stage indicators; and

(C) consistently participate in other areas of programming as described in subsection (e)(4) [~~(e)(3)~~] of this section.

(4) Stage 4--this stage is completed when the MDT determines that the youth demonstrates and practices skills learned in skills groups through daily application in situations that present increased risk for the youth. Youth are expected to engage in responsible behaviors that are consistent with identified protective factors on a regular basis. Additional skills are learned as assigned and the community re-integration plan is revised as needed and reviewed. The community re-integration plan is considered complete when the case manager, youth and the youth's parent/guardian/adult mentor approve the document. In order to complete stage 4, the youth must:

(A) complete the following objectives in accordance with the specified indicators for each objective:

(i) show a reduction of risk factors and an increase in protective factors;

(ii) identify new thoughts, feelings, attitudes, beliefs and values that might increase success in the community;

(iii) share the community re-integration plan with his/her family or adult mentor;

(iv) finalize the community re-integration plan;

(B) present and discuss his/her progress with the MDT as specified in the stage indicators; and

(C) consistently participate in other areas of programming as described in subsection (e)(4) [~~(e)(3)~~] of this section.

(5) Stage 5--youth who have completed stage 4 in a high or medium restriction facility and remain in a medium restriction facility are assigned to stage 5. The youth updates the community re-integra-

tion plan as he/she encounters real situations and influences in the community. The youth reviews risk and protective factors and completes thinking reports on specific situations, identifying patterns in thinking. In order to complete stage 5, the youth must:

(A) complete the following objectives in accordance with the specified indicators for each objective:

(i) review any changes to risk factors and protective factors in the halfway house environment;

(ii) review thoughts, feelings, attitudes, values, and beliefs related to community re-integration;

(iii) comply with, review, and revise the community re-integration plan;

(iv) share the revised community re-integration plan with his/her family or adult mentor;

(B) present and discuss his/her progress with the MDT as specified in the stage indicators; and

(C) consistently participate in other areas of programming as described in subsection (e)(4) [~~(e)(3)~~] of this section.

(6) Youth Empowerment Status--youth who complete stage 4 and remain in a high restriction facility or who complete stage 5 and remain in a medium restriction facility are assigned to Youth Empowerment Status. This status ensures that youth continue to work in the program to maintain their gains, continue to reduce risk factors and increase protective factors, continue their skills development, update their community re-integration plan as circumstances change, and contribute positively to their living environment. If the MDT determines that the youth has met all objectives, the youth is placed on "active" status. If the MDT determines that the youth has not met all objectives, the youth is placed on "inactive" status. The objectives are:

(A) youth shows a reduction of risk factors and an increase in protective factors;

(B) youth reviews and revises the community re-integration plan;

(C) youth participates in the development and completion of the case plan;

(D) youth attends all scheduled groups;

(E) youth participates in specialized treatment program(s) or supplemental groups, if applicable;

(F) youth participates in academic and workforce development programs commensurate with abilities; and

(G) youth consistently applies learned skills in daily behavior.

~~[(g) Roles and Responsibilities for Multi-Disciplinary Team Meetings.]~~

~~[(1) Members of the MDT make stage decisions collaboratively, providing input in their areas of expertise. The MDT facilitates and confirms stage progression by reviewing progress and interviewing the youth. The youth's case manager serves as the MDT facilitator, and is responsible for contacting additional professional resources as appropriate to discuss the youth's individualized needs and abilities, and to provide information regarding strategies to assist the youth to progress in the program.]~~

~~[(2) The multi-disciplinary team for each dormitory or living unit meets weekly to discuss each youth's weekly performance ratings and other living unit issues.]~~

~~[(A) Based on each youth's weekly performance status rating (demonstration of skills relative to assigned stage), the MDT may adjust a youth's standard privileges for the week, and may reduce or remove consequences imposed for prior major or minor rule violations if the youth's improved behavior warrants it.]~~

~~[(B) On a weekly basis, the MDT makes decisions about youth participation in campus programs, participation in leisure skills building groups or extracurricular activities, approves various youth requests/suggestions, and makes recommendations to facility administration regarding youth movement due to specialized program need, program completion, or lack of progress in the assigned program.]~~

~~[(3) The MDT meets monthly for an integrated and comprehensive assessment of each youth's progress in the rehabilitation program.]~~

~~[(A) Prior to the meeting, assigned staff members are responsible for collecting specific information in their area of expertise and making it available for the meeting.]~~

~~[(B) The case manager is responsible for contacting the family to invite them to the meeting and ensuring their input into the process.]~~

~~[(C) The youth is responsible for being prepared to discuss information related to his/her program and preparing any information to present relative to stage progression.]~~

~~[(D) During the monthly assessment, the youth's general progress in the program and on specific case plan objectives is reviewed, risk and protective factors are reviewed, medical and mental health information is discussed (where applicable), feedback is provided to the youth on areas of strength and areas needing improvement, interventions to assist the youth's progress are discussed and developed, community re-entry planning is discussed and the youth's stage is assigned.]~~

~~[(E) An updated individual case plan is developed for youth following the meeting.]~~

~~[(F) Every 90 days the youth's assessment of risk and protective factors is reviewed and updated, and a progress report is provided to the parent following the MDT meeting.]~~

~~[(4) The MDT will address and make rehabilitation recommendations that also reflect:]~~

~~[(A) specialized treatment needs of the youth to include chemical dependency, mental health, cognitive, aggressive, sexual behavior and language proficiency;]~~

~~[(B) any other relevant specialized needs not identified specifically in this policy; and]~~

~~[(C) individualized strategies to facilitate youth progress based on the youth's strengths, needs, and abilities.]~~

~~[(h) Documentation and Youth Interview. A stage assessment is conducted on the basis of documentation related to the youth's performance during the previous 30-day period. The MDT conducts a face-to-face interview with the youth:]~~

~~[(1) monthly at the stage assessment;]~~

~~[(2) weekly if the youth's behavior indicates that a loss of privilege or privilege adjustment may be necessary (see §95.2 of this title for more information on the youth privilege system); and]~~

~~[(3) prior to movement to a less restrictive placement.]~~

(g) [~~(i)~~] Opportunity to Demonstrate Completion of Requirements.

(1) Some objectives may be completed in a single month. Completion of all stage requirements for promotion are demonstrated primarily through consistent participation in scheduled activities and development of skills to address risk factors, which will generally take longer than one month to achieve. The stage requirements are generally sequential.

(2) During each monthly assessment period, the youth is provided an equal opportunity, as the youth's behavior warrants, to participate in the scheduled activities needed to progress. With reasonable effort by the youth, the requirements of the highest stage will be completed by the youth's initial minimum length of stay or minimum period of confinement. For youth whose minimum length of stay or minimum period of confinement exceeds 12 months, the schedule must provide an opportunity for completion of the highest stage within one year.

[~~(j) Documentation and Youth Notification of Results of Stage Assessment. The following activities are required of the primary service worker (PSW) after a stage assessment:~~]

[~~(1) within two workdays of the stage assessment, the PSW meets with the youth to review the results of the assessment. The PSW discusses with the youth the strengths and specific areas needing improvement;~~]

[~~(2) within three workdays, the PSW enters the stage assessment results into the automated data entry system; and~~]

[~~(3) within seven calendar days, the PSW attempts to contact the youth's family by telephone to share the outcome of the stage assessment.~~]

[~~(k) Development of the Individual Case Plan. The following case planning activities are required of the PSW after a stage assessment:~~]

[~~(1) within seven calendar days of the stage assessment, the PSW completes the monthly Individual Case Plan (ICP) with and for the youth, reviews its content and obtains the youth's signature; and~~]

[~~(2) youth who have completed stage 3 and who are within 120 days of their minimum length of stay or minimum period of confinement will have a transition ICP initiated. The plan will be developed based upon the youth's individualized risk factors, strengths, and needs.~~]

(h) [~~(l)~~] Stage Assessment Upon Return to a High Restriction Facility.

(1) Youth who are returned to high restriction from a medium restriction facility for disciplinary reasons as a result of a due process hearing (other than parole revocation hearing) are placed on stage 3, or are retained on the current stage if currently assigned to stage 1 or 2.

(2) Youth who are returned to high restriction as a result of a parole revocation hearing or who are recommitted to TJJD [~~TYC~~] are placed on stage 1.

(i) [~~(m)~~] Appeal of Assessment. The youth may appeal the results of a stage assessment, or of the lack of opportunity to demonstrate completion of requirements, by filing a grievance in accordance with §380.9331 [~~§93.31~~] of this title. The person assigned to respond to the grievance must not be a member of the MDT or a staff member who has been involved in the youth's current assessment.

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 June 25, 2012.

TRD-201203337
Cheryln K. Townsend
Executive Director
Texas Juvenile Justice Department
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 424-6014

♦ ♦ ♦

SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE
DIVISION 1. BEHAVIOR MANAGEMENT

37 TAC §380.9503

The Texas Juvenile Justice Department (TJJD) proposes to amend §380.9503, concerning Rules and Consequences for Residential Facilities.

The amended section will include placement in the Phoenix program (as described in §380.9535, which is also proposed in this issue of the *Texas Register)* as a major disciplinary consequence for certain serious and aggressive rule violations. The amended section will also allow for demotion of a youth's stage in the agency's rehabilitation program as a major disciplinary consequence for a major rule violation resulting in admission to the Phoenix program.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

Rebecca Thomas, Director of Integrated State-Operated Programs and Services, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be improved safety and security in TJJD-operated secure facilities.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or by email to policy.proposals@tjjd.texas.gov.

The amended section is proposed under Human Resources Code §244.005, which provides TJJD with the authority to order a committed child's confinement under conditions it believes best designed for the child's welfare and the interests of the public, and §244.006, which provides TJJD with the authority to require a committed child to participate in moral, academic, vocational, physical, and correctional training and activities, and to require the modes of life and conduct that seem best adapted to fit the child for return to full liberty without danger to the public.

The proposed section implements Human Resources Code §242.003.

§380.9503. Rules and Consequences for Residential Facilities.

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

(c) Definitions. The following terms, as used in this rule, have the following meanings.

(1) (No change.)

(2) Multi-Disciplinary Team--has the meaning assigned by §380.8501 [~~§85.1~~] of this title.

(3) - (5) (No change.)

(d) General Provisions.

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

(4) Youth may be issued more than one disciplinary consequence for a rule violation proven in a Level II or III due process hearing held in accordance with §380.9555 [~~§95.55~~] or §380.9557 [~~§95.57~~] of this title, respectively.

(5) (No change.)

(6) A youth's disciplinary record shall consist only of rule violations that are proven through a Level I or II due process hearing in accordance with §380.9551 [~~§95.51~~] or §380.9555 [~~§95.55~~] of this title, respectively.

(7) Within 24 hours after a report of a major rule violation or a minor rule violation resulting in a security referral, a case worker, program supervisor, or other appropriate non-involved staff member will review the incident and assess whether to request a Level II due process hearing in order to pursue major consequences and/or placement of the violation on the youth's disciplinary record. The facility administrator or designee will determine whether or not to hold a Level II due process hearing. When a youth is found to be in possession of prohibited money as defined in this rule, a Level II due process hearing is required to seize the money. Seized money will be placed in the student benefit fund in accordance with §380.9555 [~~§95.55~~] of this title.

(8) - (12) (No change.)

(e) Consequences for High Restriction Facilities.

(1) Major Disciplinary Consequences.

(A) Placement in the Phoenix Program--in accordance with §380.9535 of this title, a youth may be placed in the Phoenix program when the youth has been found to have engaged in certain aggressive behavior.

(B) [~~(A)~~] Major Suspension of Privileges--a youth has all privileges suspended for 30 calendar days from the date of the hearing. This consequence may be issued only for minor rule violations resulting in a referral to the security unit or major rule violations, and only if the rule violation is proven through a Level II due process hearing in accordance with §380.9555 [~~§95.55~~] of this title.

(C) [~~(B)~~] Loss of Transition Eligibility--a youth who has not completed the minimum length of stay will serve an additional month in high restriction facilities prior to becoming eligible for transition to a medium restriction facility under §380.8545 [~~§85.45~~] of this title. This consequence may only be issued if it is proven through a Level II due process hearing that the youth committed:

(i) assault causing bodily injury to youth or staff, as defined in subsection (i)(3) - (4) of this section; or

(ii) sexual misconduct as defined in subsection (i)(21)(A) - (B) of this section.

(D) [~~(C)~~] Stage Demotion--a youth's assigned stage in the agency's rehabilitation program is lowered by one or more stages. This consequence may be issued only if it is proven through a Level II due process hearing that the youth committed:

(i) assault causing serious bodily injury to youth or staff, as defined in subsections (c)(5) and (i)(3) - (4) of this section; [~~or~~]

(ii) sexual misconduct, as defined in subsection (i)(21)(A) of this section; or[~~,~~]

(iii) any major rule violation resulting in admission to the Phoenix program.

(2) (No change.)

(f) Consequences for Medium Restriction Facilities.

(1) Major Consequences.

(A) Disciplinary Transfer--a youth assigned to a medium restriction facility is transferred to a high restriction facility. Disciplinary transfer may be issued only for major rule violations that are proven through a Level II due process hearing in accordance with §380.9555 [~~§95.55~~] of this title. This consequence does not apply to youth who are on parole status and who are currently assigned to a medium restriction facility.

(B) Placement in the Phoenix Program--in accordance with §380.9535 of this title, a youth on institutional status may be transferred to a high restriction facility and placed in the Phoenix program when the youth has been found to have engaged in certain aggressive behavior.

(C) [~~(B)~~] Major Suspension of Privileges--a youth has all privileges suspended for 30 calendar days from the date of the hearing. This consequence may be issued only for major rule violations that are proven through a Level II due process hearing.

(D) [~~(C)~~] Stage Demotion--a youth's assigned stage in the agency's rehabilitation program is lowered by one or more stages. This consequence may be issued only if it is proven through a Level II due process hearing that the youth committed:

(i) assault causing serious bodily injury to youth or staff, as defined in subsections (c)(5) and (i)(3) - (4) of this section; [~~or~~]

(ii) sexual misconduct, as defined in subsection (i)(21)(A) of this section; or [~~,~~]

(iii) any major rule violation resulting in admission to the Phoenix program.

(2) Minor Consequences. Minor disciplinary consequences include but are not limited to consequences described in this paragraph [~~herein~~]. Minor consequences may only be imposed following a Level III due process hearing held in accordance with §380.9557 [~~§95.57~~] of this title.

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

(D) Facility Restriction--youth is restricted for up to 48 hours from participating in any activity outside the assigned placement other than [~~the~~] approved constructive activities.

(g) Review and Appeal of Consequences.

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

(3) Youth may appeal major disciplinary consequences by filing an appeal in accordance with §380.9551 [~~§95.51~~] or §380.9555 [~~§95.55~~] of this title.

(h) Placement Disposition Options. In accordance with §380.9517 [~~§95.17~~] of this title, youth in high restriction facilities may be placed in the Redirect program when the youth is found to have

engaged in certain major rule violations. Placement in the Redirect program is not a disciplinary consequence.

(i) Major Rule Violations. It is a violation to knowingly violate, attempt to violate, or help someone else violate any of the following:

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

(16) Possession of Prohibited Items--possessing the following prohibited items:

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

(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 [~~§95.55~~] of this title for procedures concerning seizure of such money);

(E) - (H) (No change.)

(17) - (27) (No change.)

(j) (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 June 25, 2012.

TRD-201203338
Cheryl K. Townsend
Executive Director
Texas Juvenile Justice Department
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 424-6014

♦ ♦ ♦

37 TAC §380.9517

The Texas Juvenile Justice Department (TJJD) proposes to amend §380.9517, concerning Redirect Program.

Criteria for placement in the Redirect program will be expanded to include assignment to the Phoenix program (as described in §380.9535, which is proposed in this issue of the *Texas Register)* and fighting without injury.

The 42-day maximum time limit for placement in the Redirect program will be removed. Requirements for periodic reviews and oversight at the facility level and Central Office level will be added. The requirement for doors to remain unlocked except during sleeping hours or emergencies will also be removed.

The requirement for at least 30 minutes of counseling per day with a case manager will be changed to a requirement for daily visits from a case manager and at least 30 minutes of counseling per week.

Several changes are proposed regarding youth who receive special education services. When the behavior leading to a referral to the Redirect program occurs during school-related activities, the section will now require facility staff to recommend whether admission to the Redirect program should include a removal from the regular educational setting. Manifestation determination reviews will be required in cases where such a removal is recommended. If the finding of the manifestation determination review is that a youth's Redirect-eligible behavior is a result of the failure to implement a youth's Individualized Education Program (IEP) or that the conduct was caused by or had a direct relationship to his/her disability, the amended section will now allow the youth to be placed in the Redirect program. However, the youth must continue to receive educational services in his/her regular educational setting, unless the youth's parent or surrogate parent agrees to a change in the educational setting as part of the youth's behavior intervention plan. In accordance with 34 Code of Federal Regulations §300.530(g), for a youth whose conduct was found to be a manifestation of his/her disability but was removed from the regular education setting due to possession of a weapon or the infliction of serious bodily injury, a limit of 45 days will be added as the amount of time the youth may be removed from the regular educational setting.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

Rebecca Thomas, Director of Integrated State-Operated Programs and Services, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be improved safety and security in TJJD-operated secure facilities as well as compliance with federal regulations regarding special education services.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or by email to policy.proposals@tjjd.texas.gov.

The amended section is proposed under Human Resources Code §244.005, which provides TJJD with the authority to order a committed child's confinement under conditions it believes best designed for the child's welfare and the interests of the public, and §244.006, which provides TJJD with the authority to require a committed child to participate in moral, academic, vocational, physical, and correctional training and activities, and to require the modes of life and conduct that seem best adapted to fit the child for return to full liberty without danger to the public. The amended section is also proposed under 34 Code of Federal Regulations §300.530, which requires schools to conduct manifestation determination reviews when there is a decision to change the educational placement of a student with disabilities.

The proposed section implements Human Resources Code §242.003.

§380.9517. Redirect Program.

(a) Purpose. The Redirect program functions as a means for delivering intensive interventions in a structured environment for youth who have engaged in certain serious rule violations. The program is designed to promote violence reduction and skill building as a means of increasing safety on Texas Juvenile Justice Department (TJJD) campuses. This rule sets forth eligibility criteria, program completion requirements, and services to be provided to youth in the program.

(b) Applicability. This rule applies only to high restriction facilities operated by TJJD [~~the Texas Youth Commission~~].

(c) Definitions [~~Explanation of Terms Used~~].

(1) Admission, Review, and Dismissal (ARD) Committee--a committee that makes decisions on educational matters relating to special education-eligible youth.

(2) Behavior Intervention Plan--a written plan developed as a result of a functional behavioral assessment to address specific behavioral concerns that are impeding a youth's learning or the learning of others. The plan is part of a youth's individualized education program and includes positive behavioral interventions and supports and other strategies to address the behavior.

(3) Functional Behavioral Assessment--a process for observing and collecting data on specific behaviors that are impeding a youth's progress and determining the function the behavior plays for a youth (e.g., seeking attention, peer acceptance, avoidance, etc.).

(4) Individualized Education Program (IEP)--the program of special education and related services developed by a youth's ARD committee.

(5) Manifestation Determination Review--a review conducted by a youth's ARD committee when a decision has been made to change a special education-eligible youth's school placement due to a violation of the code of conduct. The committee determines whether a youth's conduct is a manifestation of the youth's disability and whether the youth's IEP was fully implemented.

(6) Multi-Disciplinary Team--a team which assesses youth progress through the [~~steps of the~~] Redirect program. At a minimum, the team must include representatives from the following departments: psychology, case management, education, and dorm supervision.

(d) Program Eligibility. A youth who is placed in the Phoenix program pursuant to §380.9535 of this title or engages in one or more of the following rule violations as defined in §380.9503 [~~§95.3~~] of this title meets criteria for placement in the Redirect program:

(1) assault or fighting [~~resulting in bodily injury~~];

[~~(2) assault - unauthorized physical contact with staff (no injury);~~]

(2) [~~(3)~~] escape or attempted escape;

(3) [~~(4)~~] vandalism (major rule violation only);

(4) [~~(5)~~] sexual misconduct (excluding kissing);

(5) [~~(6)~~] possessing or threatening others with a weapon or item which could be used as a weapon;

(6) [~~(7)~~] chunking bodily fluids; or

(7) [~~(8)~~] tampering with safety equipment.

(e) Request to Pursue Placement in Redirect Program. The facility administrator or designee may approve a request to pursue placement of a youth in the Redirect program only when it is determined that:

(1) the youth poses a continuing risk for the admitting behavior(s);

(2) less restrictive methods of documented intervention have been attempted when appropriate; and

(3) the mental status of the youth has been assessed by a psychologist and there are no therapeutic contraindications for admission to the Redirect program.

(f) Additional Considerations for Youth Receiving Special Education Services. When a youth who is receiving special education services engages in a rule violation during school-related activities and is recommended for placement in the Redirect program, the recommendation will include a determination of whether to request removal from the regular educational setting as part of the youth's placement in the Redirect program. The recommendation will take into consideration the youth's educational plan, behavior in school, safety issues, and any other relevant information. If a removal from the regular educational setting is recommended, the youth's ARD committee will determine the youth's educational placement.

(1) If a removal is not recommended, the youth may be placed in the Redirect program but will receive educational services in the youth's regular educational setting.

(2) If a removal is recommended, the youth's ARD committee will conduct a manifestation determination review as required by the Individuals with Disabilities Education Act (IDEA).

[~~(1) If the youth is receiving special education services, a manifestation determination review must be held to determine if the youth's conduct was a direct result of the failure to implement the youth's IEP, and if the conduct was caused by or had a direct and substantial relationship to the youth's disability. Except as noted in paragraph (2) of this subsection, the results of the manifestation determination review will have the following impact on admission to the Redirect program:~~]

[~~(A) if the determination is that there was a failure to implement the youth's IEP, the youth may not be placed in the Redirect program; and~~]

(A) [~~(B)~~] If the youth's ARD committee determines that the youth's conduct was a direct result of a failure to implement the youth's IEP or [~~if the determination is~~] that the conduct was caused by or had a direct and substantial relationship to the youth's disability:[~~, the youth may not be placed in the Redirect program unless the youth's parent/guardian consents to such placement as part of the youth's behavior intervention plan.~~]

(i) the ARD committee must conduct a functional behavior assessment and develop a behavior intervention plan or, if a behavior intervention plan already exists, modify the existing plan to address the youth's conduct;

(ii) the youth will not be removed from his/her regular educational setting unless the youth's parent or surrogate parent (as defined by 34 CFR §300.519) agrees to a change in the educational setting as part of the youth's behavior intervention plan; and

(iii) the youth may be admitted to the Redirect program.

(B) If the youth's ARD committee determines that the youth's conduct was not a result of a failure to implement the youth's IEP and was not caused by and did not have a direct and substantial relationship to the youth's disability, the ARD committee may determine that the youth may receive educational services in the Redirect housing area.

(C) [~~(2)~~] Regardless of the results of a manifestation determination review, a youth may be admitted to the Redirect program and may receive educational services in the Redirect housing area for up to 45 days if the rule violation includes possession of a weapon or the infliction of serious bodily injury upon another person.

(i) [~~(A)~~] For purposes of subparagraph (C) [~~paragraph (2)~~] of this paragraph [~~subsection~~] only, weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, not including a pocket knife with a blade of less than 2 1/2 inches in length.

(ii) [~~(B)~~] For purposes of subparagraph (C) [~~paragraph (2)~~] of this paragraph [~~subsection~~] only, serious bodily injury means bodily injury which involves:

(I) [~~(i)~~] a substantial risk of death;

(II) [~~(ii)~~] extreme physical pain;

(III) [~~(iii)~~] protracted and obvious disfigurement; or

(IV) [~~(iv)~~] protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(D) If a youth is removed from his/her regular educational setting, educational services must be provided so as to enable the youth to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the youth's IEP goals.

(g) Admission Process. A Level II due process hearing must be held in accordance with §380.9555 [~~§95.55~~] of this title. The [~~Unless there are considerations concerning special education services which would make the youth ineligible for placement in the Redirect program, as described in subsection (f) of this section, the~~] youth may be admitted to the Redirect program if there is a finding of true with no extenuating circumstances that the youth committed a rule violation listed in subsection (d) of this section. The parent/guardian will be provided prior notice of the hearing as required by §380.9555 of this title and will be given an opportunity to provide information to be considered in Redirect program placement decisions.

(h) Program Requirements.

(1) The Redirect program is administered in a special unit designated for such purpose. [~~If the Redirect program is administered in a designated location within the security unit, the doors will remain unlocked except during sleeping hours or emergencies.~~]

[~~(2) A youth's placement in the Redirect program shall not exceed 42 calendar days.~~]

(2) [~~(3)~~] On scheduled academic days, youth will be provided with the amount of education services established by the approved master schedule for the regular school program.

[~~(4) If a youth is currently receiving special education services, staff must ensure that the youth continues to receive educational services that will enable the youth to meet the goals of the youth's IEP.~~]

(3) [~~(5)~~] An individual plan must be developed for each youth. The plan must be written in a language clearly understood by the youth. The plan must:

(A) address the specific target behavior or cluster of behaviors that led to admission to the Redirect program, taking into consideration the psychologist's recommendations to address the motivation for the behavior;

(B) involve strategies for intervention and prevention of the target behavior through skills development;

(C) include a component which addresses transition to the general campus population; and

(D) provide clearly written objectives for release from the Redirect program.

(4) [~~(6)~~] Staff must explain the individual plan to the youth. Youth will be provided an opportunity to sign the plan in acknowledgment.

(5) [~~(7)~~] The individual plan and youth's progress with regard to target behaviors and skills development is reviewed and evaluated at least once every seven days by the multi-disciplinary team.

(6) [~~(8)~~] Youth shall be gradually reintegrated into campus programming as soon as he/she demonstrates comprehension of the goals established in the treatment plan.

(7) [~~(9)~~] Youth who are placed in the Redirect program are afforded living conditions and privileges approximating those available to the general campus population.

(8) [~~(10)~~] Youth will receive daily visits and a minimum of 30 minutes of counseling per week [~~day~~] with the assigned case manager or designee. The case manager or designee will immediately refer youth to a mental health professional if concerns exist as to the youth's mental health status.

(9) [~~(11)~~] Youth will receive weekly mental health status exams by a psychologist while youth movement and program activities are restricted to the Redirect unit. Youth will also receive weekly psychological counseling if deemed necessary by a psychologist.

(10) [~~(12)~~] Youth will be provided with at least one hour of large muscle exercise seven days per week.

(11) For youth who remain in the Redirect program more than 30 days, the facility administrator or designee will review the youth's progress, programming, and adequacy of interventions at least once every 30 days.

(12) For youth who remain in the Redirect program more than 60 days, the division director over residential facilities or designee will review the youth's progress, programming, and adequacy of interventions at least once every 30 days.

(i) Temporary Removal from the Redirect Program. Youth may be referred to the security program while currently assigned to the Redirect program if the youth meets criteria as set forth in §380.9740 [§97.40] of this title. [~~Any time spent in the security program is counted toward the 42-day maximum in the Redirect program.~~]

(j) Criteria for Release from Redirect Program. A youth shall be released from the Redirect program and returned to his/her assigned dorm upon the earliest of the following events:

(1) a determination by the multi-disciplinary team that the youth has:

(A) met goals set forth in his/her individual plan; and [~~or~~]

(B) demonstrated an ability to safely transition to campus programming; or

(2) a determination by the facility administrator [~~superintendent~~] or designee that the program has failed to be implemented as designed for reasons other than non-compliance of the youth; or

(3) a decision by the division director over residential facilities, the facility administrator, [~~superintendent~~] or their designees [~~designee~~] to return the youth to his/her assigned dorm or transfer to an alternative placement based on:

[~~(A) population concerns in the Redirect program; or~~]

(A) [~~(B)~~] a recommendation by a mental health professional due to the youth's mental health condition; or

(B) [~~(C)~~] other administrative concerns; or

(4) a decision by the receiving facility administrator [~~superintendent~~] or designee not to continue the Redirect program after an administrative transfer of the youth to another high restriction facility while assigned to the Redirect program.[~~; or~~]

[~~(5) the youth has completed 42 calendar days in the program.~~]

(k) Right to Appeal. The youth shall be notified in writing of his/her right to appeal placement in the Redirect program in accordance with §380.9353 [~~§93.53~~] of this title. The pendency of an appeal shall not preclude implementation of the decision.

(l) Family Notification. In accordance with §380.8705 [~~§87.5~~] of this title, a youth's parents or guardian shall be notified within 24 hours after the due process hearing of the youth's admission to the Redirect program.

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 June 25, 2012.

TRD-201203339
Cheryl K. Townsend
Executive Director
Texas Juvenile Justice Department
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 424-6014

♦ ♦ ♦

37 TAC §380.9535

The Texas Juvenile Justice Department (TJJD) proposes new §380.9535, concerning Phoenix Program.

The section establishes the new Phoenix program within TJJD. The purpose of the program is to protect staff and youth in TJJD's state-operated facilities from highly aggressive youth while providing such youth a highly structured environment to reduce their aggression and to progress in treatment. The new section sets forth eligibility criteria, standards of treatment, services to be provided, the process for reviewing progress in the program, program completion requirements, and oversight mechanisms.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

Rebecca Thomas, Director of Integrated State-Operated Programs and Services, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be improved safety and security in TJJD-operated secure facilities.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or by email to policy.proposals@tjjd.texas.gov.

The new section is proposed under Human Resources Code §244.005, which provides TJJD with the authority to order a committed child's confinement under conditions it believes best designed for the child's welfare and the interests of the public, and §244.006, which provides TJJD with the authority to require a committed child to participate in moral, academic, vocational, physical, and correctional training and activities, and to require the modes of life and conduct that seem best adapted to fit the child for return to full liberty without danger to the public. The new section is also proposed under 34 Code of Federal Regulations §300.530, which requires schools to conduct manifestation determination reviews when there is a decision to change the educational placement of a student with disabilities.

The proposed section implements Human Resources Code §242.003.

§380.9535. Phoenix Program.

(a) Purpose. The Phoenix program is designed to protect staff and youth in Texas Juvenile Justice Department (TJJD) state-operated facilities from highly aggressive youth while providing such youth a highly structured environment to reduce their aggression and to progress in treatment. This rule sets forth eligibility criteria, standards of treatment, and services to be provided to youth in the program.

(b) Applicability. This rule does not apply to:

(1) youth on parole status, unless parole status is revoked in conjunction with the criteria for admission;

(2) youth with determinate sentences who have been approved by the final TJJD authority for a court hearing to transfer the youth to the Institutions Division of the Texas Department of Criminal Justice;

(3) youth currently diagnosed with a major emotional disturbance and/or psychiatric disorder that contraindicates admission to the Phoenix program as determined by the manager of institutional clinical services at the youth's assigned facility; or

(4) youth with a current diagnosis of mental retardation that contraindicates admission to the Phoenix program as determined by the manager of institutional clinical services at the youth's assigned facility.

(c) Definitions. The following terms, as used in this rule, have the following meanings.

(1) Admission, Review, and Dismissal (ARD) Committee--a committee that makes decisions on educational matters relating to special education-eligible youth.

(2) Assault Causing Moderate or Serious Bodily Injury to Another Youth--intentionally and knowingly engaging in conduct that causes another youth to suffer moderate or serious injury as determined by medical staff.

(3) Assault Causing Substantial Bodily Injury to Staff--intentionally and knowingly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury that involves more than passing discomfort or fleeting pain.

(4) Chunking Bodily Fluids at Staff--intentionally and knowingly causing a person to contact the blood, seminal fluid, vaginal fluid, urine, and/or feces of another.

(5) Fighting Causing Moderate or Serious Bodily Injury to Another Youth--intentionally and knowingly engaging in a mutually instigated physical altercation that causes another youth to suffer moderate or serious injury as determined by medical staff.

(6) Isolation--the confinement of a youth in a locked room or cubicle as a tool to manage the behavior of a youth. Rules regarding isolation do not apply when doors are routinely locked during normal

sleeping hours and isolation has not otherwise been imposed and do not apply to placement of a youth in the security program.

(7) Multi-Disciplinary Team (MDT)--a group of staff who are responsible for partnering with the youth and his/her parent/guardian to facilitate his/her progress in the rehabilitation program.

(d) General Provisions.

(1) The Phoenix program is administered in a location designated for such purpose. The location is self-contained and the youth do not leave the location except for healthcare appointments or by approval of the facility administrator for a specific programmatic purpose.

(2) Security program referral/admission and room isolation are used as necessary in accordance with §380.9739 and §380.9740 of this title. The security program location for youth in the Phoenix program shall be in the Phoenix program unit, utilizing individual youth rooms.

(3) A youth will be demoted to the lowest stage in the agency's rehabilitation program upon admission to the Phoenix program.

(e) Authorized Facilities. The Phoenix program shall be administered only at TJJD-operated high restriction facilities designated by the executive director.

(f) Program Eligibility. The following youth are eligible for placement in the Phoenix program:

(1) a youth who engages in one or more of the following rule violations as defined in subsection (c) of this section:

(A) assault causing moderate or serious bodily injury to another youth;

(B) assault causing substantial bodily injury to staff;

(C) fighting causing moderate or serious bodily injury to another youth;

(D) chunking bodily fluids at staff; or

(2) a youth who engages in any other major rule violation when the totality of circumstances justifies the placement in the program and the placement is directed by the executive director or designee; or

(3) a youth who, on three separate occasions within a 90-day period, committed an assault causing bodily injury as defined in §380.9503 of this title and the second and third assaults were committed after a Level II due process hearing finding of true with no extenuating circumstances had been made for the previous assault.

(g) Additional Considerations for Youth Receiving Special Education Services. When a youth who is receiving special education services is recommended for placement in the Phoenix program due to a rule violation that occurred during school-related activities, the youth's ARD committee will conduct a manifestation determination review.

(1) If the ARD committee determines that the youth's conduct was a direct result of a failure to implement the youth's individualized education program (IEP) or that the conduct was caused by or had a direct and substantial relationship to the youth's disability:

(A) the ARD committee must conduct a functional behavior assessment and develop a behavior intervention plan or, if a behavior intervention plan already exists, modify the existing plan to address the youth's conduct; and

(B) the youth may only be removed from his/her regular educational setting and placed in the Phoenix program if the youth's parent or surrogate parent (as defined by 34 CFR §300.519) agrees to a change in the educational setting as part of the youth's behavior intervention plan.

(2) If the ARD committee determines that the youth's conduct was not a result of a failure to implement the youth's IEP and was not caused by and did not have a direct and substantial relationship to the youth's disability, the youth may be removed from his/her regular educational setting and placed in the Phoenix program. The ARD committee will determine the youth's IEP while the youth is in the Phoenix program.

(3) Regardless of the results of a manifestation determination review, a youth may be admitted to the Phoenix program and may receive educational services in the Phoenix housing area for up to 45 days if the rule violation includes possession of a weapon or the infliction of serious bodily injury upon another person.

(A) For purposes of paragraph (3) of this subsection only, weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, not including a pocket knife with a blade of less than 2 1/2 inches in length.

(B) For purposes of paragraph (3) of this subsection only, serious bodily injury means bodily injury which involves:

(i) a substantial risk of death;

(ii) extreme physical pain;

(iii) protracted and obvious disfigurement; or

(iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(4) Educational services in the Phoenix program must be provided so as to meet the youth's IEP goals set by the youth's ARD committee.

(h) Admission Decision Process.

(1) A Level II due process hearing must be held in accordance with §380.9555 of this title. Unless there are considerations concerning special education services which would make the youth ineligible for placement in the Phoenix program as described in subsection (f) of this section, the youth may be referred to the Phoenix program if there is a finding of true with no extenuating circumstances that the youth committed a rule violation listed in subsection (e) of this section.

(2) A committee composed of, at a minimum, the dorm supervisor, psychologist, and case manager assigned to the Phoenix program will review all youth referred to the program.

(3) The committee shall not approve a youth's admission to the program unless:

(A) a current mental health assessment indicates there is no therapeutic contraindication to placement in the Phoenix program; and

(B) the committee determines that the Phoenix program represents the most appropriate intervention given the circumstances.

(4) If the number of referrals exceeds the number of available beds, priority for admission is given to:

(A) youth with the most dangerous behavior;

(B) youth with chronic aggressive behavior;

(C) youth with greater frequency of weapon use; or

(D) a directive from the executive director or designee.

(i) Placement in the Redirect Program Pending Admission to the Phoenix Program. If after a Level II hearing there is a disposition for referral to the Phoenix program, the youth may be placed in the Redirect program pursuant to §380.9517 of this title at the youth's current placement pending admission and transfer of the youth to the Phoenix program. The facility may cancel the referral at any time.

(j) Program Components. The program's structure is designed to maximize the safety and security of youth and staff.

(1) Physical Structure and Safety Precautions.

(A) Youth are assigned to single housing units in accordance with §380.8524 of this title.

(B) Mechanical restraints may be used in a manner consistent with the use of such restraints in a security unit as provided by §380.9723 of this title.

(C) A structured daily schedule is maintained and posted to provide a predictable and safe environment.

(2) Case Planning.

(A) An individual plan must be developed for each youth. The plan must be written in a language clearly understood by the youth. The plan must:

(i) be based on a comprehensive assessment conducted by members of the MDT;

(ii) address the specific target behavior or cluster of behaviors that led to admission to the Phoenix program, taking into consideration the psychologist's recommendations to address the motivation for the behavior;

(iii) involve strategies for intervention and prevention of the target behavior through skills development;

(iv) include a component which addresses transition to the general campus population following graduation from the Phoenix program; and

(v) provide clearly written objectives for promotion through levels of the Phoenix program and graduation from the Phoenix program.

(B) Staff must explain the individual plan to the youth. Youth will be provided an opportunity to sign the plan in acknowledgment.

(C) The individual plan and youth's progress with regard to target behaviors and skills development are reviewed and evaluated at least once every seven days by the MDT.

(3) Academics.

(A) All youth are expected to participate in an educational program for a minimum of four hours per day with an additional two hours of individualized schoolwork which may be completed in their rooms.

(B) All special education services are provided in accordance with ARD committee decisions. For youth who are eligible to participate in special education services, an ARD meeting is held within ten days after admission to the Phoenix program to review the IEP. Subsequent ARD meetings and evaluations are completed in compliance with state and federal regulations.

(C) Youth with limited English Proficiency are provided with appropriate adaptations to the Educational Program as recommended by the Language Proficiency Assessment Committee (LPAC).

(4) Individual Counseling. Youth will have daily contact and weekly counseling with the assigned case manager or designee. The case manager or designee will immediately refer youth to a mental health professional if concerns exist as to the youth's mental health status.

(5) Skills Development Groups.

(A) In accordance with the daily schedule, the case manager assigned to the Phoenix program conducts groups on topics such as:

(i) aggression control;

(ii) emotional and behavior regulation;

(iii) skills development and demonstration;

(iv) identifying and modifying cognitive distortions;

(v) risk and protective factors; and

(vi) transition issues.

(B) Scheduled behavior groups are provided to all youth and are conducted daily by the assigned juvenile correctional officer (JCO).

(6) Medical and Psychological Services.

(A) Youth will receive weekly mental health status exams by the designated psychologist while assigned to the Phoenix program. Youth will also receive weekly psychological counseling if deemed necessary by a psychologist.

(B) Youth are seen by medical and/or psychiatric staff, as needed, and treatment is provided as ordered. The Phoenix program psychologist continually assesses the youth's mental status, provides individual counseling, and provides consultation with the MDT.

(7) Behavior Management.

(A) Youth are expected to follow a prescribed schedule and commit no rule violations as defined in §380.9503 of this title.

(B) Youth earn privileges in the Phoenix program based on progress through the Phoenix program levels and weekly performance ratings in accordance with §380.9502 of this title.

(8) Physical Exercise. Youth will be provided with at least one hour of large muscle exercise seven days per week in an exercise yard if safety and weather permit.

(9) Family Involvement.

(A) Youths' families will be encouraged to be involved in the youths' treatment while considerations are made for the safety and security of the program.

(B) Youth in the Phoenix program will be allowed phone calls to approved family members and visitation with immediate family members according to program visitation procedures.

(10) Youth Rights. Basic rights are recognized for each youth in TJJD pursuant to §380.9301 of this title.

(k) Progress in the Phoenix Program. The Phoenix program includes three levels. The MDT reviews each youth's progress weekly.

(1) Level I.

(A) This level is completed when the MDT determines that the youth has:

(i) demonstrated basic knowledge of the level objectives as defined in the youth's individual case plan (ICP); and

(ii) participated with the MDT in targeting specific skills for development.

(B) The youth:

(i) attends foundational skills development groups;

(ii) participates in individual sessions with his/her case manager; and

(iii) demonstrates consistent participation in other areas of programming.

(2) Level II.

(A) This level is completed when the MDT determines that the youth has:

(i) identified patterns in his/her thoughts, feelings, attitudes, values, and beliefs that relate to ongoing behaviors;

(ii) demonstrated sufficient competency in the targeted skills to address those behaviors; and

(iii) completed the level objectives as defined in the youth's ICP.

(B) The youth:

(i) attends intermediate skills development groups;

(ii) participates in individual sessions with his/her case manager; and

(iii) demonstrates consistent participation in other areas of programming.

(3) Level III.

(A) This level is completed when the MDT determines that the youth demonstrates and practices skills learned in skills development groups through daily application in situations that present increased risk for the youth. Youth are expected to engage in responsible behaviors and provide leadership in the program. Additional skills are learned as assigned and the plan for reintegration to general campus programming is completed.

(B) The youth:

(i) attends advanced skills development groups;

(ii) participates in individual sessions with his/her case manager; and

(iii) demonstrates consistent participation in other areas of programming.

(l) Progress Reviews.

(1) Multi-Disciplinary Team.

(A) The MDT reviews the youth's ICP, evaluates progress through program requirements, and reviews the effectiveness of treatment strategies on a weekly basis. The MDT may not promote youth in the stages of the agency's rehabilitation program while the youth is in the Phoenix program.

(B) The MDT makes decisions regarding promotion within Phoenix program levels based on achievement of established criteria.

(i) Level Promotion. Youth meeting the established criteria must be promoted to the next level.

(ii) Level Demotion. The MDT may assign the youth to a lower level when the youth's behavior demonstrates low use of pro-social skills as reflected in the youth's weekly performance ratings. The MDT may demote one or two levels depending upon the severity of the behavior and/or lack of consistency in the use of pro-social skills.

(2) Individual Case Plan Review. Case plan reviews and updates will be conducted in accordance with §380.8701 of this title.

(3) Mental Health Review.

(A) Youth will be evaluated on a regular basis by the Phoenix program psychologist for the presence of a mental health disorder that contraindicates continued placement in the Phoenix program.

(B) Youth will be released from the Phoenix program at any time for mental health reasons based on the recommendation of the psychologist or psychiatrist and the approval of the director of specialized treatment in Central Office.

(C) Youth with neurological and/or mental health disorders may be temporarily admitted to a TJJD-operated crisis stabilization unit pursuant to §380.8767 of this title for diagnostic purposes to determine the most appropriate placement.

(m) Graduation from the Phoenix Program.

(1) Youth shall graduate from the Phoenix program upon completion of Level III as described in subsection (k) of this section.

(2) Youth released from the Phoenix program will be assigned to the Redirect program at the receiving facility and will be provided support to reintegrate into the general campus population at the receiving facility.

(n) Program Monitoring and Youth Rights.

(1) To ensure the Phoenix program is being implemented according to provisions of this rule, staff from facility administration will visit the program daily and staff from psychology administration will visit the program weekly.

(2) Youth rights staff shall visit the Phoenix program daily to ensure that the youth have access to the youth grievance system.

(o) Appeal of Level Assessment in the Phoenix Program. A youth in the Phoenix program may appeal the results of a level assessment or of the lack of opportunity to demonstrate completion of requirements by filing a grievance in accordance with §380.9331 of this title. The person assigned to respond to the youth's grievance must not be a member of the youth's MDT or a staff member who has been involved in the youth's current assessment.

(p) Independent Review Team Oversight.

(1) A program supervisor not assigned to the Phoenix program will monitor the Phoenix MDT monthly.

(2) The director of facility operations will review compliance with Phoenix program policy and procedure requirements as part of routine facility assessment processes.

(3) A cross-divisional team in Central Office will review youth who remain on Level I or II after 120 days in the program until the youth progresses to the next level. The team will conduct quarterly reviews thereafter until the youth graduates from the program.

(4) The TJJD division responsible for quality and risk management will conduct random reviews of Phoenix program files and coordinate with other departments as appropriate for reviews of certain components of Phoenix program files such as psychological assessments, ICP's, and education service delivery.

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 June 25, 2012.

TRD-201203340
Cheryln K. Townsend
Executive Director
Texas Juvenile Justice Department
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 424-6014

♦ ♦ ♦

SUBCHAPTER F. SECURITY AND CONTROL

37 TAC §380.9715

The Texas Juvenile Justice Department (TJJD) proposes to amend §380.9715, concerning Drug Testing Youth.

The section title will be changed to "Testing for Alcohol and Other Drugs." The purpose statement will be revised to indicate that the primary purpose of the drug testing program is to detect and deter the illegal use of drugs.

The definitions section will be revised to include *for-cause testing, routine testing,* and *random testing.*

Clarification will be added to reflect that drug testing may be conducted at any time and may be used in support of a substance abuse treatment program, an investigation regarding the presence of illegal drugs in a facility, and to assist in the daily management of youth in the rehabilitative process.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

Rebecca Thomas, Director of Integrated State-Operated Programs and Services, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the rule will be improved safety and security of TJJD youth and staff and the ability to better identify and treat youth with substance use-related issues.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or by email to policy.proposals@tjjd.texas.gov.

The amended section is proposed under Human Resources Code §242.051, which assigns to TJJD the responsibility for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the department, and §244.005, which provides TJJD with the authority to permit a child liberty under supervision and on conditions the department believes conducive to acceptable behavior.

The proposed rule implements Human Resources Code §242.003.

§380.9715. [~~Drug~~] Testing for Alcohol and Other Drugs [~~Youth~~].

(a) Purpose. The purpose of this rule is to establish [~~procedures by which TYC implements~~] a testing program designed to detect and deter the unauthorized or illegal use of alcohol or other drugs by youth committed to the Texas Juvenile Justice Department. [~~monitor substance abuse problems, hold youth under agency jurisdiction accountable for their behavior, meet individual treatment needs and act as a deterrent to alcohol and other drug use.~~]

(b) Applicability. This rule [~~policy~~] applies to all youth: [~~under TYC jurisdiction whether supervised by TYC employees or by contracted service/program employees.~~]

(1) assigned to residential facilities operated by or under contract with the Texas Juvenile Justice Department (TJJD); and

(2) assigned to parole supervision under the jurisdiction of TJJD.

(c) Definitions [~~Explanation of Terms Used~~].

(1) For-Cause Testing--testing that is conducted due to evidence that reasonably suggests a youth or group of youth is using alcohol or drugs.

(2) Random Testing--testing of youth identified through a random selection process without regard to any indicators of past or current use of drugs or alcohol.

(3) Routine Testing--testing that is conducted:

(A) at regular intervals for youth who have a documented history of drug or alcohol use; or

(B) after a youth's participation in events or situations which include access to or contact with the public or otherwise present an increased risk for drug/alcohol use.

[~~(1) Laboratory confirmation testing - The testing of urine or blood specimens by professional technologists or technicians at a commercial laboratory to confirm the results of an Alcohol or Drug Screening Test.~~]

[~~(2) Negative result - Test result indicating a drug is not detected at or above the threshold of a test.~~]

[~~(3) On-site testing - The testing of a breath, saliva, or urine sample at a site other than a laboratory, using trained staff.~~]

[~~(4) Positive result - Drug detected at or above the threshold of a test.~~]

[~~(5) Testing program manager - The superintendent at a facility, the parole supervisor or quality assurance administrator, or their designees will designate a testing program manager to be responsible for answering questions about the alcohol or drug testing program and coordinating aspects of the drug testing process.~~]

(d) General Provisions.

(1) [~~(d)~~] Any youth [~~under TYC jurisdiction~~] may be tested for drug and/or alcohol use at any time.

(2) [~~(e)~~] Testing may be conducted for cause or on a random or routine basis.

(3) Testing may be conducted as part of a substance abuse treatment program, as part of an investigation regarding the presence of illegal drugs in a facility, and to assist in the daily management of youth in the rehabilitative process.

(4) [~~(f)~~] During orientation to TJJD [~~TYC~~], each youth shall be given notice that:

(A) [~~(1)~~] he/she [~~He or she~~] is subject to random, routine, and for-cause alcohol and drug testing; and[~~, which may be conducted for cause or on a random or routine basis.~~]

(B) [~~(2)~~] a positive result on an alcohol or drug test, refusal [~~Refusal~~] to submit to an alcohol or drug test, [~~(or~~] failure to provide a urine specimen, and tampering with a urine sample are serious rule violations that [~~within two (2) hours of request) is a category I rule violation and~~] will result in appropriate consequences as specified in §380.9503 and §380.9504 of this title [~~sanctions~~].

(5) All tests for alcohol and other drugs will be conducted, scored, and interpreted according to the instrument manufacturer's instructions.

[~~(3) A positive result on an alcohol or drug test is a category I rule violation and will result in appropriate sanctions.~~]

[~~(g) The frequency of testing individual youth will be determined locally.~~]

[~~(h) All breath, saliva, or urine tests will be conducted, scored, and interpreted according to the instrument manufacturer's instructions.~~]

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 June 25, 2012.

TRD-201203341
Cheryl K. Townsend
Executive Director
Texas Juvenile Justice Department
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 424-6014

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER C. NURSING FACILITY LICENSURE APPLICATION PROCESS

40 TAC §§19.201, 19.208 - 19.210, 19.214, 19.216

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to 40 TAC §19.201, Criteria for Licensing; §19.208, Renewal Procedures and Qualifications; §19.209, Exclusion from Licensure; §19.210, Change of Ownership License; §19.214, Criteria for Denying a License or Renewal of a License; and §19.216, License Fees, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

BACKGROUND AND PURPOSE

The purpose of the amendments is to implement Senate Bill (SB) 223 and House Bill (HB) 1720, 82nd Legislature, Regular Session, 2011, and portions of SB 7, 82nd Legislature, First Called Session, 2011. SB 223 and HB 1720 amended Texas Health and Safety Code (THSC) Chapter 242 to authorize DADS to require an applicant for a nursing facility license to disclose its complete compliance history in each state or other jurisdiction and to extend the maximum amount of time DADS may exclude a person from eligibility for a nursing facility license or license renewal from ten years to the person's lifetime or existence. SB 7 amended THSC Chapter 242 to change the length of a nursing facility license from two to three years. The amendment also describes the system by which nursing facility licenses will expire on staggered dates and renewal fees will be prorated to implement the three-year licensing term.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §19.201 changes satisfactory compliance history requirements from five years prior to a licensure application to any time prior to a licensure application and increases the license term from two to three years.

The proposed amendment to §19.208 increases the term of a renewal license from two to three years and describes the system by which licenses will expire on staggered dates and fees will be prorated in order to implement the change from a two-year to a three-year renewal license.

The proposed amendment to §19.209 extends the maximum length of a licensure exclusion from ten years to the lifetime or existence of the person being excluded.

The proposed amendment to §19.210 reflects the increase in a license term from two to three years for an applicant who meets licensure requirements before a temporary change of ownership license expires.

The proposed amendment to §19.214 allows DADS to deny a license or renewal license for an applicant based on the history of compliance for any time, rather than five years, prior to the application. The amendment also adds a reference to Chapter 91, relating to Hearings Under the Administrative Procedure Act.

The proposed amendment to §19.216 sets the prorated late fee for two-year licenses issued during the transition to three-year licenses.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, there are foreseeable implications relating to costs or revenues of state government. There are no foreseeable implications relating to costs or revenues of local governments.

The effect on state government for the first five years the proposed amendments are in effect is an estimated loss in revenue of $0 in fiscal year (FY) 2013; $166,110 in FY 2014; $0 in FY 2015; $498,330 in FY 2016; and $149,365 in FY 2017.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses, because the cost of a three-year license will be the same as a two-year license, resulting in a cost savings to nursing facilities.

PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is that the extended time frame for which applicants must demonstrate satisfactory compliance history will ensure that potential licensees submit all compliance history to DADS, rather than five years of history, thus positively impacting the health and safety of nursing facility residents.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS 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 Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Jennifer Morrison at (512) 438-4624 in DADS Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R29, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 11R29" in the subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

The amendments implement Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, Chapter 242.

§19.201. Criteria for Licensing.

(a) A person or governmental unit, acting jointly or severally, must be licensed by DADS to establish, conduct, or maintain a facility.

(b) An applicant for a license must submit a complete application form and license fee to DADS.

(c) No person may apply for a probationary license, a license, change of ownership, increase in capacity, or renewal of a nursing facility license without making a disclosure of information as required in this section.

(d) An applicant for a license must affirmatively show that:

(1) the applicant or license holder has the ability to comply with:

(A) minimum standards of medical care, nursing care and financial condition; and

(B) any other applicable state or federal standard;

(2) the facility meets the standards of the Life Safety Code;

(3) the facility meets the construction standards in Subchapter D of this chapter (relating to Facility Construction); and

(4) the facility meets the standards for operation based on an on-site survey.

(e) Before issuing a license, DADS considers the background and qualifications of:

(1) the applicant or license holder;

(2) a partner, officer, director, or managing employee of the applicant or license holder;

(3) a person who owns or who controls the owner of the physical plant of a facility in which the nursing facility operates or is to operate; and

(4) a controlling person with respect to the nursing facility for which a license or license renewal is requested.

(f) An [~~In making the evaluation required by subsection (e) of this section, DADS requires the~~] applicant or license holder must [~~to~~] submit to DADS a sworn affidavit of a satisfactory compliance history and any other information required by DADS to substantiate a satisfactory compliance history in [~~relating to~~] each state or other jurisdiction for any time period during [~~in~~] which persons described in subsection (e) of this section operated a long-term care facility [~~during the five-year period preceding the date on which the application is made~~]. For purposes of the sworn affidavit of a satisfactory compliance history, the applicant will be considered to have complied with the submission requirement (but not necessarily be entitled to a license) if the applicant swears or affirms that all the information disclosed in the application concerning previous state and federal nursing facility sanctions and penalties and related information are true and correct. The affidavit of compliance history is contained in DADS [~~DADS'~~] application form.

(g) A license is issued if, after inspection and investigation, DADS finds that the persons described in subsection (e) of this section meet all requirements of this chapter. Except as provided in §19.205 of this subchapter (relating to Probationary License) and §19.208(b)(2) of this subchapter (relating to Renewal Procedures and Qualifications), the [~~The~~] license is valid for three [~~two~~] years. Each license specifies the maximum allowable number of residents. The number of residents authorized by the license must not be exceeded.

(h) In making a determination whether to grant a nursing facility license, DADS reviews:

(1) the information contained in the application;

(2) the criminal history information of the persons described in subsection (e) of this section; and

(3) other documents DADS deems relevant, including survey and complaint investigation findings in each facility with which the applicant or any other person named in subsection (e) of this section has been affiliated at any time [~~with during the last five years~~].

§19.208. Renewal Procedures and Qualifications.

(a) A [~~Each~~] license issued under this chapter is not automatically renewed [~~must be renewed every two years~~]. Each license expires three [~~two~~] years from the date issued, except as provided in §19.205 of this subchapter (relating to Probationary Licenses) and subsection (b)(2) of this section [~~A license issued under this chapter is not automatically renewed~~].

(b) For a license that expires during the period September 1, 2013, through August 31, 2014, DADS:

(1) issues a three-year renewal license to a facility with a facility identification number ending in an odd digit; and

(2) issues a two-year renewal license to a facility with a facility identification number ending in an even digit.

(c) The license fee for renewal licenses issued in accordance with subsection (b)(2) of this section is two-thirds of the amount referenced in §19.216(a)(2) of this subchapter (relating to License Fees).

(d) For a license that expires after August 31, 2014, DADS issues a three-year renewal license.

(e) [~~(b)~~] Each license holder must, no later than the 45th day before the expiration of the current license, submit an application for renewal with DADS. DADS considers that an individual has submitted a timely and sufficient application for the renewal of a license if the license holder submits:

(1) a complete application to DADS, and DADS receives the complete application no later than the 45th day before the expiration date of the current license;

(2) an incomplete application to DADS with a letter explaining the circumstances which prevented the inclusion of the missing information, and DADS receives the incomplete application and letter no later than the 45th day before the expiration date of the current license; or

(3) a complete application or an incomplete application with a letter explaining the circumstances which prevented the inclusion of the missing information to DADS, DADS receives the application during the 45-day period ending on the date the current license expires, and the license holder pays the late fee established in §19.216(a)(6) of this subchapter [~~chapter (relating to License Fees)~~] in addition to the basic renewal fee.

(f) [~~(c)~~] If the application is postmarked by the submission deadline, the application will be considered timely if received in DADS [~~DADS'~~] Licensing and Credentialing Section, Regulatory Services Division within 15 days after the postmark.

(g) [~~(d)~~] The appropriate license fee must be paid upon submission of the renewal application.

(h) [~~(e)~~] The renewal of a license may be denied for the same reasons an original application for a license may be denied. See §19.214 of this subchapter (relating to Criteria for Denying a License or Renewal of a License).

§19.209. Exclusion from Licensure.

(a) DADS, after providing notice and opportunity for a hearing, may exclude a person from eligibility for a license if the person or any person described in §19.201(e) of this subchapter [~~§19.201(f) of this title~~] (relating to Criteria for Licensing) has substantially failed to comply with the rules in this chapter. Exclusion of a person must extend for at least two years, and may extend throughout the person's lifetime or existence [~~but not more than ten years~~]. During the period of exclusion, the excluded person is not eligible to be a license holder or a controlling person of a license holder.

(b) A license holder or controlling person who operates a nursing facility or an assisted living facility for which a trustee was appointed and for which emergency assistance funds, other than funds to pay the expenses of the trustee, were used is subject to exclusion from eligibility for the:

(1) issuance of an original license for a facility for which the person has not previously held a license; or

(2) renewal of the license of the facility for which the trustee was appointed.

§19.210. Change of Ownership License.

(a) A license holder may not transfer the license as part of a change of ownership. If there is a change of ownership, the license holder's license becomes invalid on the date of the change. The new owner must obtain a change of ownership license in accordance with subsection (b) of this section. The license holder and new license applicant must notify DADS [~~the Department of Aging and Disability Services~~] before a change of ownership occurs.

(1) Sole proprietor. A change of ownership occurs if:

(A) the sole proprietor who is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity not licensed to operate the facility; or

(B) upon the death of the sole proprietor, the facility continues to operate.

(2) General Partnership (as defined in the Texas Business Organizations [~~Organization~~] Code, §1.002). A change of ownership occurs if:

(A) a partner of a general partnership that is licensed to operate the facility is added or substituted;

(B) the partnership that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(C) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(D) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(E) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(3) Limited Partnership (as defined in the Texas Business Organizations [~~Organization~~] Code, §1.002). A change of ownership occurs if:

(A) a general partner of a limited partnership that is licensed to operate the facility is added or substituted;

(B) ownership of the limited partnership that is licensed to operate the facility changes by 50% or more and one or more controlling person is added;

(C) the partnership that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(D) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(E) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(F) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(4) Nonprofit organization. A change of ownership occurs if:

(A) the nonprofit organization that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(B) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(C) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(D) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(5) For-profit corporation or limited liability company. A change of ownership occurs if:

(A) ownership of the business entity that is licensed to operate the facility changes by 50% or more and one or more controlling person is added;

(B) the business entity that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(C) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(D) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(E) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(6) City, county, state or federal government authority, hospital district, or hospital authority. A change of ownership occurs if:

(A) the governmental entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility; or

(B) the entity that is licensed to operate the facility is terminated and the facility continues to operate.

(7) Trust, living trust, estate or any other entity type not included in paragraphs (1) - (6) of this subsection. A change of ownership occurs if:

(A) the entity that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(B) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(C) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(D) the entity that is licensed to operate the facility is terminated and the facility continues to operate.

(8) For license holders that have multiple-level ownership structures, a change of ownership also occurs if any action described in paragraphs (1) - (7) of this subsection occurs at any level of the license holder's entire ownership structure.

(9) For paragraphs (3)(B) and (5)(A) of this subsection, the substitution of the executor of a decedent's estate for a decedent is not the addition of a controlling person.

(10) A conversion as described in Subchapter C of Chapter 10 of the Texas Business Organizations [~~Organization~~] Code is not a change of ownership if no controlling person is added.

(b) The prospective new owner must submit to DADS:

(1) a complete application for a change of ownership license under §19.201 of this subchapter (relating to Criteria for Licensing) or an incomplete application with a letter explaining the circumstances that prevented the inclusion of the missing information;

(2) the application fee, in accordance with §19.216 of this subchapter (relating to License Fees); and

(3) signed, written notice from the facility's existing license holder of his intent to transfer operation of the facility to the applicant beginning on a date specified by the applicant.

(c) To avoid a facility operating while unlicensed, an applicant must submit all items in subsection (b) of this section at least 30 days before the anticipated date of the sale or other transfer to the new owner. DADS considers an application as submitted timely if the application is postmarked at least 30 days before the anticipated date of the sale or other transfer to the new owner and received in DADS [~~DADS'~~] Licensing and Credentialing Section, Regulatory Services Division within 15 days after the date of the postmark.

(d) The 30-day notification from the applicant or the 30-day notification from the existing license holder or both may be waived if DADS determines that the applicant presented evidence showing that circumstances prevented the submission of the 30-day notice and if DADS determines that not waiving the 30-day notification would create a threat to resident welfare or health and safety. If the applicant submits a timely and sufficient application for a change of ownership license and meets all requirements for a license, DADS issues a change of ownership license effective on the date requested by the applicant.

(e) A change of ownership license is a 90-day temporary license issued to an applicant who proposes to become the new operator of a nursing facility that exists on the date the application is submitted. Upon receipt of a complete application, fee, and signed, written notice from the facility's existing license holder of the intent to transfer the operation of the facility to the applicant beginning on a date specified by the applicant, DADS issues a change of ownership license to the prospective new owner if DADS finds that the prospective new owner and any other persons listed in §19.201(e) of this subchapter meet the requirements in §19.201(d)(1) and (f) of this subchapter.

(1) All applications must be made on forms prescribed by and available from DADS. Each application must be completed in accordance with DADS [~~DADS'~~] instructions, signed, and notarized, and must contain all forms required by DADS.

(2) DADS approves or denies an application for a change of ownership license not later than the 31st day after the date of receipt of the complete application, fee, and signed, written notice from the facility's existing license holder of his intent to transfer the operation of the facility to the applicant beginning on a date specified by the applicant. The effective date of the license is the later of the date requested in the application or the 31st day after the date DADS receives the application, fee, and signed, written notice from the existing license holder, unless waived in accordance with subsection (d) of this section. The effective date of the change of ownership license cannot precede

the date the application is received in DADS [~~DADS'~~] Licensing and Credentialing Section, Regulatory Services Division.

(3) If the applicant meets the requirements of §19.201 of this subchapter and passes an initial inspection, desk review, or a subsequent inspection before the change of ownership license expires, a regular three-year [~~two-year~~] license is issued. The effective date of the regular three-year [~~two-year~~] license is the same date as the effective date of the change of ownership and cannot precede the date the application is received by DADS [~~DADS'~~] Licensing and Credentialing Section, Regulatory Services Division.

(4) When an applicant has not previously held a license in Texas, a probationary license is issued following the change of ownership license. The effective date of the probationary one-year license is the same date as the change of ownership license and cannot precede the date the application is received in DADS [~~DADS'~~] Licensing and Credentialing Section, Regulatory Services Division.

(5) A change of ownership license expires on the 90th day after its effective date.

(6) DADS conducts an on-site inspection to verify compliance with the requirements after issuing a change of ownership license.

(7) DADS may allow a desk review in lieu of an on-site inspection or survey if:

(A) the facility specifically requests a desk review and submits evidence during the application process that no new controlling person is added;

(B) DADS determines the change does not involve a new controlling person; and

(C) the facility meets the standards for operation based on the most recent on-site inspection.

(f) A nursing facility license holder may be eligible to acquire, on an expedited basis, a license to operate another existing nursing facility. A license holder that appears on the expedited change of ownership list may be granted expedited approval in obtaining a change of ownership license to operate another existing nursing facility in Texas.

(1) DADS maintains and keeps current a list of nursing facility license holders that operate an institution in Texas and that have met the criteria to qualify for an expedited change of ownership according to the information available to DADS.

(2) In order to establish and maintain the expedited change of ownership list, DADS uses the criteria found in §19.2322(e) of this chapter (relating to Medicaid Bed Allocation Requirements). A nursing facility license holder meeting these criteria appears on the list and is eligible to be issued, on an expedited basis, a change of ownership license to operate another existing institution in Texas.

(3) A nursing facility license holder appearing on the list must submit an affidavit that demonstrates the license holder continues to meet the criteria established for being listed on the expedited change of ownership list, and continues to meet the requirements in §19.201(d)(1) and (f) of this subchapter.

(4) DADS processes a change of ownership license application on an expedited basis for a nursing facility license holder on the list if DADS finds that the license holder and any other persons listed in §19.201(e) of this subchapter meet the requirements in §19.201(d)(1) and (f) of this subchapter.

(5) If the nursing facility license holder requesting a change of ownership license on an expedited basis complies with subsections (b) - (e) of this section, DADS approves or denies the application for a change of ownership license not later than the 15th day after the date of receipt of the complete application, fee, and signed, written notice from the facility's existing license holder of the intent to transfer the operation of the facility to the applicant beginning on a date requested in the application. The effective date of the license is the later of the date requested in the application or the 31st day after the date DADS receives the application fee, and signed, written notice from the existing license holder, unless waived in accordance with subsection (d) of this section. The effective date of the change of ownership license cannot precede the date the application is received in DADS [~~DADS'~~] Licensing and Credentialing Section, Regulatory Services Division.

(6) An applicant for a change of ownership license on an expedited basis must meet all applicable requirements that an applicant for renewal of a license must meet. Any requirement relating to inspections or to an accreditation review applies only to institutions operated by the license holder at the time the application is made for the change of ownership license.

(g) If a license holder changes its name, but does not undergo a change of ownership, the license holder must notify DADS and submit a copy of a certificate of amendment from the Secretary of State's office. On receipt of the certificate of amendment, the current license will be re-issued in the license holder's new name.

§19.214. Criteria for Denying a License or Renewal of a License.

(a) DADS may deny an initial license or refuse to renew a license if any person described in §19.201(e) of this subchapter (relating to Criteria for Licensing):

(1) is subject to denial or refusal as described in Chapter 99 of this title (relating to Denial or Refusal of License) during the time frames described in that chapter;

(2) does not have a satisfactory history of compliance with state and federal nursing home regulations. In determining whether there is a history of satisfactory compliance with federal or state regulations, DADS at a minimum may consider:

(A) whether any violation resulted in significant harm or a serious and immediate threat to the health, safety, or welfare of any resident;

(B) whether the person promptly investigated the circumstances surrounding any violation and took steps to correct and prevent a recurrence of a violation;

(C) the history of surveys and complaint investigation findings and any resulting enforcement actions;

(D) a repeated failure to comply with regulation;

(E) an inability to attain compliance with cited deficiencies within an acceptable period of time as specified in the plan of correction or credible allegation of compliance, whichever is appropriate;

(F) the number of violations relative to the number of facilities the applicant or any other person named in §19.201(e) of this subchapter has been affiliated with at any time [~~during the last five years~~]; and

(G) any exculpatory information deemed relevant by DADS;

(3) has committed any act described in §19.2112(a)(2) - (7) of this chapter (relating to Administrative Penalties);

(4) violated Chapter 242 of the Texas Health and Safety Code in either a repeated or substantial manner;

(5) aids, abets, or permits a substantial violation described in paragraph (4) of this subsection about which the person had or should have had knowledge;

(6) fails to provide the required information and facts and/or references;

(7) fails to pay the following fees, taxes, and assessments when due:

(A) licensing fees as described in §19.216 of this subchapter (relating to License Fees);

(B) reimbursement of emergency assistance funds within one year after the date on which the funds were received by the trustee in accordance with the provisions of §19.2116(e) and (f) of this chapter (relating to Involuntary Appointment of a Trustee); or

(C) franchise taxes;

(8) has a history of any of the following actions at any time [~~during the five-year period~~] preceding the date of the application:

(A) operation of a facility that has been decertified or had its contract canceled under the Medicare or Medicaid program in any state or both;

(B) federal or state nursing facility sanctions or penalties, including, but not limited to, monetary penalties, downgrading the status of a facility license, proposals to decertify, directed plans of correction or the denial of payment for new Medicaid admissions;

(C) unsatisfied final judgments;

(D) eviction involving any property or space used as a facility in any state;

(E) suspension of a license to operate a health care facility, long-term care facility, assisted living facility, or a similar facility in any state;

(F) revocation of a license to operate a health care facility, long-term care facility, assisted living facility, or similar facility in any state;

(G) surrender of a license in lieu of revocation or while a revocation hearing is pending; or

(H) expiration of a license while a revocation action is pending and the license is surrendered without an appeal of the revocation or an appeal is withdrawn;

(9) fails to meet minimum standards of financial condition as described in §19.201(d)(1)(A) of this subchapter and §19.1925(a) of this chapter (relating to Financial Condition); or

(10) fails to notify DADS of a significant adverse change in financial condition as required under §19.1925 of this chapter.

(b) DADS does not issue a license to an applicant to operate a new facility if the applicant has a history of any of the following actions at any time [~~during the five-year period~~] preceding the date of the application:

(1) revocation of a license to operate a health care facility, long-term care facility, assisted living facility, or similar facility in any state;

(2) surrender of a license in lieu of revocation or while a revocation hearing is pending;

(3) expiration of a license while a revocation action is pending and the license is surrendered without an appeal of the revocation or an appeal is withdrawn;

(4) debarment or exclusion from the Medicare or Medicaid programs by the federal government or a state; or

(5) a court injunction prohibiting the applicant or manager from operating a facility.

(c) Only final actions are considered for purposes of subsections (a)(8) and (b) of this section. An action is final when routine administrative and judicial remedies are exhausted. All actions, whether pending or final, must be disclosed.

(d) If an applicant for a new license owns multiple facilities, DADS examines the overall record of compliance in all of the applicant's facilities. Denial of an application for a new license will not preclude the renewal of licenses for the applicant's other facilities with satisfactory records.

(e) If DADS denies a license or refuses to issue a renewal of a license, the applicant or license holder may request an administrative hearing. Administrative hearings are held under the Health and Human Services Commission's hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act).

§19.216. License Fees.

(a) Basic fees.

(1) Probationary license. The license fee is $125 plus $5 for each unit of capacity or bed space for which a license is sought.

(2) Initial and renewal license. The license fee is $250 plus $10 for each unit of capacity or bed space for which a license is sought. The fee must be paid with each initial and renewal of license application.

(3) Increase in bed space. An approved increase in bed space is subject to an additional fee of $10 for each unit of capacity or bed space.

(4) Change of administrator. A facility must report a change of administrator within 30 days of the effective date of the change by submitting a change of administrator notice and a $20 fee to DADS [~~DADS'~~] Licensing and Credentialing Section, Regulatory Services Division. If DADS [~~DADS'~~] Licensing and Credentialing Section, Regulatory Services Division does not receive the notice within 30 days of the effective date of the change, DADS may impose a $500 administrative penalty. If the notice is postmarked within the 30-day period, 15 days will be added to the time period to receive the notice.

(5) Background information fee. The background information fee is $50.

(6) Late renewal fee. An applicant for license renewal that submits an application during the 45-day period ending on the date the current license expires must pay a late fee of an amount equal to one-half of the total basic renewal fee in subsection [~~§19.216~~](a)(2) of this section. The late fee for a two-year renewal license issued in accordance with §19.208(b)(2) of this subchapter (relating to Renewal Procedures and Qualifications) is one half of the total two-year renewal fee calculated in accordance with §19.208(c) of this subchapter.

(b) Trust fund fee.

(1) In addition to the basic license fee described in subsection (a) of this section, DADS has established a trust fund for the use of a court-appointed trustee as described in the Texas Health and Safety Code, Chapter 242, Subchapter D.

(2) DADS charges and collects an annual fee from each facility licensed under the Texas Health and Safety Code, Chapter 242 each calendar year if the amount of the nursing and convalescent trust fund is less than $10,000,000. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space, not to exceed $20 annually, and is in an amount sufficient to provide not more than $10,000,000 in the trust fund. In calculating the fee, the amount will be rounded to the next whole cent.

(3) Veterans homes (as defined in the Texas Natural Resources Code, §164.002) are exempt from paying a trust fund fee.

(4) DADS may charge and collect a fee more than once a year only if necessary to ensure that the amount in the nursing and convalescent trust fund is sufficient to allow required disbursements.

(c) Alzheimer's certification. In addition to the basic license fee described in subsection (a) of this section, a facility that applies for certification to provide specialized services to persons with Alzheimer's disease or related conditions under Subchapter W of this chapter (relating to Certification of Facilities for Care of Persons with Alzheimer's Disease and Related Disorders) must pay an annual fee of $100.

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 June 25, 2012.

TRD-201203344
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 438-4162

♦ ♦ ♦

CHAPTER 72. MEMORANDUM OF UNDERSTANDING WITH OTHER STATE AGENCIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §72.102, concerning a memorandum of understanding (MOU) with regard to the long-term care state plan for the elderly; §72.104, concerning a relocation pilot program; Subchapter D, Memorandum of Understanding for Family Planning Programs, containing §72.401, concerning an MOU with regard to statewide coordinated family planning programs; Subchapter E, Memorandum of Understanding Concerning the Capacity Assessment of Persons Who Are Elderly and Persons with an Intellectual Disability and/or Developmental Disabilities, containing §72.501, concerning an MOU with regard to a uniform assessment tool for assessing decision-making capacity; Subchapter F, Memorandum of Understanding for Releasing Physically Handicapped Inmates, containing §72.601, concerning an MOU with regard to releasing physically handicapped inmates; Subchapter G, Memorandum of Understanding concerning Elderly Inmates, containing §72.801, concerning an MOU with regard to continuity of care for elderly inmates; Subchapter H, Memorandum of Understanding on Transition Planning for Students Enrolled in Special Education, containing §72.1001, concerning an MOU on transition planning for students enrolled in special education; Subchapter I, Memorandum of Agreement Concerning the Texas Department on Aging Options for Independent Living Program, containing §72.2001, concerning an Memorandum of Agreement with the Texas Department on Aging; and Subchapter M, MOU--Continuity of Care System for Offenders with an Intellectual Disability, containing §72.5002, concerning an MOU with regard to a continuity of care system for offenders with mental impairments, in Chapter 72, Memorandum of Understanding with Other State Agencies.

BACKGROUND AND PURPOSE

The purpose of the repeal is to delete unnecessary rules concerning MOUs in which the former Texas Department of Human Services, the former Texas Department of Mental Health and Mental Retardation, or both, were parties. The rules are unnecessary because the statute requiring an MOU has been repealed or amended so DADS is not a required party to the MOU, the rule contains an obsolete version of an MOU, the rule relates to a pilot program that has ended, or the rule duplicates another rule section.

SECTION-BY-SECTION SUMMARY

The repeal of §72.102 is proposed because the MOU regarding the long-term care state plan for the elderly was required by Texas Human Resources Code, §101.031, which was repealed in 1995.

The repeal of §72.104 is proposed because it relates to the pilot program described in Texas Human Resources Code, §22.037, which has ended.

The repeal of §72.401 is proposed because the MOU regarding statewide coordinated family planning programs was required by Texas Human Resources Code, §22.012, which was repealed in 1995.

The repeal of §72.501 is proposed because it contains an obsolete version of an MOU regarding a uniform assessment tool for assessing decision-making capacity. An updated version of the MOU was adopted in 1999 and is found in §72.5001.

The repeal of §72.601 and §72.801 is proposed because they contain obsolete versions of MOUs regarding the release of inmates with physical disabilities and continuity of care for older inmates. These MOUs have been combined into one MOU that was adopted in 2007 and is found at 37 TAC §159.19.

The repeal of §72.1001 is proposed because the statute requiring an MOU on transition planning for students enrolled in special education, Texas Education Code §29.011, was amended in 2003, deleting the requirement for the MOU. In addition, §72.1001 adopts by reference 19 TAC §89.246, a rule of the Texas Education Agency that has been repealed.

The repeal of §72.2001 is proposed because the MOU between the former Texas Department on Aging (TDOA) and the former Texas Department of Human Services was required by TDOA's rider in several Appropriations Acts. However, TDOA was abolished and its functions were transferred to DADS when health and human service agencies were consolidated in 2004, and the requirement for an MOU no longer exists.

The repeal of §72.5002 is proposed because the statutory basis for the MOU, Texas Health and Safety Code §614.013, was amended in 2007 and DADS was not included as one of the agencies required to adopt the MOU.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foresee-

able implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, because the sections proposed for repeal concern state agencies and do not affect businesses.

PUBLIC BENEFIT AND COSTS

Jon Weizenbaum, DADS Deputy Commissioner, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the sections is that the DADS rule base will not contain obsolete rules.

Mr. Weizenbaum anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS 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 Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Mary Valente at (512) 438-4287 in DADS Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R32, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 11R32" in the subject line.

SUBCHAPTER A. MEMORANDA OF UNDERSTANDING FOR LONG-TERM CARE

40 TAC §72.102, §72.104

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

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055; and Texas Human Resources Code, §161.021.

§72.102. Long-term Care State Plan for the Elderly.

§72.104. Relocation Pilot Program.

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 June 25, 2012.

TRD-201203345
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER D. MEMORANDUM OF UNDERSTANDING FOR FAMILY PLANNING PROGRAMS

40 TAC §72.401

(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 Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055; and Texas Human Resources Code, §161.021.

§72.401. Statewide Coordinated Family Planning Programs.

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

Filed with the Office of the Secretary of State on June 25, 2012.

TRD-201203346
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER E. MEMORANDUM OF UNDERSTANDING CONCERNING THE CAPACITY ASSESSMENT OF PERSONS WHO ARE ELDERLY AND PERSONS WITH AN INTELLECTUAL DISABILITY AND/OR DEVELOPMENTAL DISABILITIES

40 TAC §72.501

(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 Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055; and Texas Human Resources Code, §161.021.

§72.501. Uniform Assessment Tool for Assessing Decision-making 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 June 25, 2012.

TRD-201203347
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER F. MEMORANDUM OF UNDERSTANDING FOR RELEASING PHYSICALLY HANDICAPPED INMATES

40 TAC §72.601

(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 Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055; and Texas Human Resources Code, §161.021.

§72.601. Releasing Physically Handicapped Inmates.

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 June 25, 2012.

TRD-201203348
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER G. MEMORANDUM OF UNDERSTANDING CONCERNING ELDERLY INMATES

40 TAC §72.801

(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 Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055; and Texas Human Resources Code, §161.021.

§72.801. Continuity of Care for Elderly Inmates.

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 June 25, 2012.

TRD-201203349
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER H. MEMORANDUM OF UNDERSTANDING ON TRANSITION PLANNING FOR STUDENTS ENROLLED IN SPECIAL EDUCATION

40 TAC §72.1001

(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 Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055; and Texas Human Resources Code, §161.021.

§72.1001. Memorandum of Understanding on Transition Planning for Students Enrolled in Special Education.

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

Filed with the Office of the Secretary of State on June 25, 2012.

TRD-201203350
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER I. MEMORANDUM OF AGREEMENT CONCERNING THE TEXAS DEPARTMENT ON AGING OPTIONS FOR INDEPENDENT LIVING PROGRAM

40 TAC §72.2001

(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 Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055; and Texas Human Resources Code, §161.021.

§72.2001. Memorandum of Agreement with the Texas Department on Aging.

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 June 25, 2012.

TRD-201203351
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER M. MOU--CONTINUITY OF CARE SYSTEM FOR OFFENDERS WITH AN INTELLECTUAL DISABILITY

40 TAC §72.5002

(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 Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055; and Texas Human Resources Code, §161.021.

§72.5002. Memorandum of Understanding concerning Continuity of Care System for Offenders with Mental Impairments.

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 June 25, 2012.

TRD-201203352

Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 438-4162

♦ ♦ ♦

CHAPTER 100. MISCELLANEOUS
SUBCHAPTER B. INTERAGENCY AGREEMENTS

40 TAC §§100.51 - 100.55, 100.57, 100.58, 100.64, 100.75

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

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Subchapter B, Interagency Agreements, consisting of §100.51, concerning purpose; §100.52, concerning application; §100.53, concerning definitions; §100.54, concerning a memorandum of understanding (MOU) regarding provision, regulation, and funding of services in hospitals and long-term care facilities; §100.55, concerning an MOU regarding coordination of services to disabled persons; §100.57, concerning an MOU regarding coordination of delivery of mental health and intellectual disability services to hearing-impaired or deaf persons; §100.58, concerning an MOU regarding coordination of exchange and distribution of public awareness information; §100.64, concerning an MOU regarding the relocation pilot program; and §100.75, concerning distribution, in Chapter 100, Miscellaneous.

BACKGROUND AND PURPOSE

The purpose of the repeal is to delete unnecessary rules concerning memoranda of understanding (MOUs) to which the former Texas Department of Mental Health and Mental Retardation was a party. The rules are unnecessary because they adopt by reference a rule containing an MOU found elsewhere in DADS rules, adopt by reference a rule that has been repealed, or relate to a pilot program that has ended.

SECTION-BY-SECTION SUMMARY

The repeal of §100.51, which describes the purpose of the subchapter, is proposed because it is no longer necessary with the repeal of the MOUs in this subchapter.

The repeal of §100.52, which describes the application of the subchapter, is proposed because it is no longer necessary with the repeal of the MOUs in this subchapter.

The repeal of §100.53, which provides definitions for the subchapter, is proposed because it is no longer necessary with the repeal of the MOUs in this subchapter.

The repeal of §100.54 is proposed because it adopts by reference an MOU found in 40 TAC §72.101, concerning services in hospitals and long-term care facilities.

The repeal of §100.55 is proposed because it adopts by reference an MOU found in 40 TAC §§72.201 - 72.212, concerning coordination of services to persons with disabilities.

The repeal of §100.57 is proposed because it adopts by reference 40 TAC Chapter 181, Subchapter H, a rule of the former Texas Commission for the Deaf and Hard of Hearing that was transferred to the Department of Assistive and Rehabilitative Services in 2004 as 40 TAC §101.6821. However, that section was repealed in 2007.

The repeal of §100.58 is proposed because it adopts by reference an MOU found in 40 TAC §72.301, concerning coordination of exchange and distribution of public awareness information.

The repeal of §100.64 is proposed because it relates to the pilot program described in Texas Human Resources Code, §22.037, which has ended.

The repeal of §100.75, which describes the distribution of the subchapter, is proposed because it is no longer necessary with the repeal of the other sections in this subchapter.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, because the sections proposed for repeal concern state agencies and do not affect businesses.

Jon Weizenbaum, DADS Deputy Commissioner, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the sections is that the DADS rule base will not contain obsolete rules.

Mr. Weizenbaum anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS 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 Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Mary Valente at (512) 438-4287 in DADS Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R32, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 11R32" in the subject line.

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055; and Texas Human Resources Code, §161.021.

§100.51. Purpose.

§100.52. Application.

§100.53. Definitions.

§100.54. Memorandum of Understanding: Provision, Regulation, and Funding of Services in Hospitals and Long-Term Care Facilities.

§100.55. Memorandum of Understanding: Coordination of Services to Disabled Persons.

§100.57. Memorandum of Understanding: Coordination of Delivery of Mental Health and Mental Retardation Services to Hearing-Impaired or Deaf Persons.

§100.58. Memorandum of Understanding: Coordination of Exchange and Distribution of Public Awareness Information.

§100.64. Memorandum of Understanding (MOU) on Relocation Pilot Program.

§100.75. Distribution.

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 June 25, 2012.

TRD-201203353
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 438-4162

♦ ♦ ♦

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 843. JOB MATCHING SERVICES
SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §843.1

The Texas Workforce Commission (Commission) proposes amendments to the following section of Chapter 843, relating to Job Matching Services:

Subchapter A. General Provisions, §843.1

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 843 amendments is to conform the Subchapter A general provisions with the requirements of Senate Bill (SB) 563, enacted by the 82nd Texas Legislature, Regular Session (2011).

Previously, anyone could submit an open records request for WorkInTexas.com data and legally obtain personal and contact information for any job seeker who has registered with the system. This information could be used for purposes other than the Agency's job matching system, such as marketing outreach, and for potentially illegal activities.

SB 563 amends Texas Labor Code §301.085 by requiring the Commission to "adopt and enforce reasonable rules governing the confidentiality, custody, use, preservation, and disclosure of job matching services information. The rules must include safeguards to protect the confidentiality of identifying information regarding any individual or any past or present employer or employing unit contained in job matching services information, including any information that foreseeably could be combined with other publicly available information to reveal identifying information regarding the individual, employer, or employing unit, as applicable."

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rule and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§843.1. Employer and Job Seeker Services

New §843.1(d):

(1) defines "job matching services information" as information in the records of the Agency that pertains to the job matching services system provided to employers, employing units, and job seekers through the Internet, Workforce Solutions Offices, or other means, and maintained by the Agency, Local Workforce Development Boards (Boards), and their workforce service providers;

(2) states that job matching services information is not public information and shall be maintained as confidential to the same degree as unemployment compensation information as set forth in 40 TAC Chapter 815, Subchapter E;

(3) does not limit or waive any right or obligation of the Agency to invoke limitations or confidentiality requirements based on separate laws or regulations; and

(4) states that disclosure of job matching services information is permissible:

(A) for the purposes of administering job matching services;

(B) when disclosing information about a job seeker or employer to that job seeker or employer;

(C) when there is a written information release signed by the job seeker or employer;

(D) when the information is provided to a public official for use in the performance of his or her official duties; and

(E) in other situations that do not violate the confidentiality of the job seeker or employer and that have been approved by the Agency's Open Records Unit.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rule will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rule.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rule.

There are no anticipated economic costs to persons required to comply with the rule. There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rule.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rule will not have an adverse economic impact on small businesses as this proposed rule will place no requirements on small businesses.

Rich Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rule.

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to:

--ensure compliance with federal and state requirements; and

--protect the personally identifiable information of the employers, employing units, and job seekers who use the Agency's job matching system.

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

PART IV. COORDINATION ACTIVITIES

In the development of this rule for publication and public comment, the Commission sought the involvement of Texas's 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on April 10, 2012. The Commission also conducted a conference call with Board executive directors and Board staff on April 13, 2012, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rule may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Labor Code Chapter 302 and Texas Government Code Chapter 657.

§843.1. Employer and Job Seeker Services.

(a) Purpose. Job matching services provide the public with a clearinghouse for exchanging information on job postings and job seekers. This section sets forth for employers and job seekers the methods available for accessing the clearinghouse of employer and job seeker information.

(b) Employer Postings of Job Openings. Employers may obtain access to the job matching services, including information to assist employers in posting job openings in the job matching system, by one or more of the following methods:

(1) registering directly [~~over the Internet~~] using the Internet-based job matching system at www.workintexas.com [~~*www.texasworkforce.org* or transmitting by electronic mail (e-mail) to *hire.texas@twc.state.tx.us* or its successor web site~~];

(2) calling or visiting any Workforce Solutions Office [~~Texas Workforce Center~~] in Texas; or

(3) through any other means approved by the Local Workforce Development Board (Board) in consultation with Workforce Solutions Office [~~employment services~~] staff located in the local workforce development area (workforce area) in which the open position exists, including sending or requesting information by mail or facsimile.

(c) Job Seeker [~~Seekers~~] Access to Job Opening Information and Posting Résumé [~~Resume~~]. Job seekers can [~~may~~] obtain access to the job matching services, including information to assist job seekers in posting a résumé [~~resume~~], obtaining information on job openings posted in the job matching system, labor market information, and employment and training opportunities by one or more of the following methods:

(1) viewing online [~~on-line~~] information available on the Internet;

(2) registering directly [~~over the Internet~~] using the Internet-based job matching system at www.workintexas.com [~~*www.texasworkforce.org* or transmitting by electronic mail (e-mail) to *hire.texas@twc.state.tx.us* or its successor web site~~];

(3) calling or visiting any Workforce Solutions Office [~~Texas Workforce Center~~] in Texas; or

(4) through any other means approved by the Board in consultation with Workforce Solutions Office [~~employment services~~] staff located in the workforce [~~local workforce development~~] area in which the open position exists, including sending or requesting information by mail or facsimile.

(d) Confidentiality and Disclosure of Job Matching Services Information.

(1) "Job matching services information" is information in the records of the Agency that pertains to the job matching services system provided to employers, employing units, and job seekers through the Internet, Workforce Solutions Offices, or other means, that is maintained by the Agency and Boards and their workforce service providers.

(2) Job matching services information is not public information and shall be maintained as confidential to the same degree as unemployment compensation information as set forth in Chapter 815, Subchapter E, of this title.

(3) This subsection does not limit or waive the Agency's rights or obligations to invoke limitations or confidentiality requirements based on separate laws or regulations.

(4) Disclosure of job matching services information is permissible:

(A) for the purposes of administering job matching services;

(B) when disclosing information about a job seeker or employer to that job seeker or employer;

(C) when there is a written information release signed by the job seeker or employer;

(D) when the information is provided to a public official for use in the performance of his or her official duties; and

(E) in other situations that do not violate the confidentiality of the job seeker or employer and that have been approved by the Agency's Open Records Unit.

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

Filed with the Office of the Secretary of State on June 19, 2012.

TRD-201203256
Reagan Miller
Director, Workforce Development Division
Texas Workforce Commission
Earliest possible date of adoption: August 5, 2012
For further information, please call: (512) 475-0829

♦ ♦ ♦

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 321. PARI-MUTUEL WAGERING

SUBCHAPTER A. MUTUEL OPERATIONS

DIVISION 1. GENERAL PROVISIONS

16 TAC §321.21

Proposed amended §321.21, published in the December 16, 2011, issue of the *Texas Register* (36 TexReg 8480), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on June 21, 2012.

TRD-201203290

♦ ♦ ♦

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 8. TEXAS JUDICIAL COUNCIL

CHAPTER 175. COLLECTION IMPROVEMENT PROGRAM

The administrative director of the Office of Court Administration (OCA) of the Texas Judicial System adopts amendments to 1 TAC §§175.1 - 175.7, concerning Collection Improvement Program. Sections 175.1 - 175.3, 175.6 and 175.7 are adopted without changes to the proposed text as published in the March 30, 2012, issue of the *Texas Register* (37 TexReg 2131) and will not be republished. Section 175.4 and §175.5 are adopted with changes to the proposed text to correct typographical errors and will be republished. The adopted amendments implement changes to OCA's Collection Improvement Program (CIP) required by House Bill (HB) 2949, 82nd Legislature, Regular Session, and clarify certain provisions of the rules.

The adopted amendments substitute OCA for "Comptroller of Public Accounts (Comptroller)" throughout the rules to reflect the transfer of the CIP responsibilities from the Comptroller to OCA enacted by HB 2949. They also clarify throughout the rules that extensions of time to pay court costs, fees and fines are considered payment plans under the CIP rules.

The adopted amendments to §175.2 also define "eligible case" and "contact." In addition to including the definition of "eligible case" provided by HB 2949, the adopted amendment expands the definition of "eligible case" to exclude cases involving incarceration from the CIP. The definition of "contact" clarifies that it means a documented attempt to reach a defendant.

The adopted amendments to §175.3(a) and §175.3(b)(3) implement the requirement in Article 103.0033(d)(2) of the Code of Criminal Procedure that each local program have a component designed to improve the collection of balances more than 60 days past due.

The adopted amendments to §175.3(c)(3) and §175.3(c)(4)(C)(iv) clarify that: 1) either court or collection program staff can conduct an interview with a defendant to review the application and determine an appropriate payment plan or extension, or to review the terms of a payment plan or extension imposed by a judge; and 2) an extension of the time requirements for payment in full may be allowed if a defendant has multiple cases.

The adopted amendment to §175.3(d) provides that the time requirements for defendant communications set forth in §175.3(c) do not start until the program receives a completed application or contact information form. It also gives a program credit for making the effort to obtain the required information either by mail or telephone.

The adopted amendment to §175.4(c)(1) changes the annual report requirements to provide for expenditure information rather than budget information and allows sufficient time to obtain expenditure data by changing the required due date for the report from the 20th day of the month following the program implementation to the 60th day following their fiscal year end.

The adopted amendments to §175.5 implement the changes enacted by HB 2949 regarding the transfer of authority of CIP responsibilities to OCA and the definition of "eligible case."

To correct typographical errors, §175.4 and §175.5 are adopted with the following changes to the text published in the March 30, 2012, issue of the *Texas Register* (37 TexReg 2131): 1) the word "reports" in §175.4(c)(2) has been changed to "report," and 2) the word "critical" has been deleted from §175.5(a).

No comments were received regarding the proposed rules during the comment period.

SUBCHAPTER A. GENERAL COLLECTION IMPROVEMENT PROGRAM PROVISIONS

1 TAC §§175.1 - 175.5

The amendments are adopted under Article 103.0033 of the Texas Code of Criminal Procedure, as amended by House Bill 2949, 82nd Legislature, Regular Session, 2011, and §71.019 of the Texas Government Code, which authorizes the Judicial Council to adopt rules expedient for the administration of its functions.

§175.4. Content and Form of Local Government Reports.

(a) General Scope. Article 103.0033(i) requires that each program submit a written report to OCA at least annually that includes updated information regarding the program, with the content and form to be determined by OCA. Reporting under Article 103.0033 and this subchapter is not the same as reporting of judicial statistics under Government Code §71.035 and different rules for reporting and waiver apply.

(b) Reporting Format and Account Setup. OCA has implemented a web-based Online Collection Reporting System for program participants or jurisdictions to enter information into the system. For good cause shown by a jurisdiction, OCA may grant a temporary waiver from timely online reporting. Program participants or jurisdictions must provide OCA with information for the online reporting system to enable OCA to establish the program reporting system account. The information must include the program name, program start date, start-up costs, the type of collection and case management software programs used by the program, the entity to which the program reports (e.g., district clerk's office, sheriff, etc.), the name and title of the person who manages the daily operations of the program, the mail and e-mail addresses and telephone and fax numbers of the program, the courts serviced by the program, and contact information

for the program staff with access to the system so user identifications and passwords can be assigned.

(c) Content and Timing of Reports.

(1) Annual Report. By the 60th day following their fiscal year end, each program or jurisdiction must report the following information:

(A) Number of full-time and part-time collection program employees;

(B) Total program expenditures;

(C) Salary expenditures for the program;

(D) Fringe benefit expenditures for the program;

(E) Areas other than court collections for which the program provides services;

(F) Local and contract jail statistics and average cost per day to house a defendant; and

(G) A compilation of 12 months of the monthly reporting information described in paragraph (3) of this subsection, if not reported each month as requested.

(2) Additional information may be requested in the annual report on a voluntary basis.

(3) Monthly Reports. By the 20th day of the following month, each program or jurisdiction is requested to provide the following information regarding the previous month's program activities:

(A) Number of cases in which court costs, fees, and fines were assessed;

(B) For assessed court costs and fees: the dollar amount assessed and collected; the dollar amount of credit given for jail time served; the dollar amount of credit given for community service performed; the dollar amount waived because of indigent status, and the dollar amount waived for reasons other than indigency;

(C) For fines: the dollar amount assessed, collected, or waived; the dollar amount of credit given for jail time served; and the dollar amount of credit given for community service performed; and

(D) Aging information consisting of the time span from date of assessment through the date of payment, in 30-day increments up to 120 days, and for more than 120 days.

§175.5. Audit Standards.

(a) Compliance Audits. In accordance with Article 103.0033(j), OCA must periodically audit jurisdictions to confirm compliance with the components described in §175.3(b) and (c).

(b) Compliance Audit Methods. OCA must use random selection to generate an adequate sample of eligible cases to be audited, and must use the same sampling methodology as used for programs with similar automation capabilities.

(c) Compliance Audit Standards. OCA must use the following standards in the compliance audit:

(1) A county has met the requirements of §175.3(b) when either 90 percent of all courts in the county, or all courts in the county except one court, have satisfied all four requirements. Partial percentages are rounded in favor of the county. A municipality must satisfy all four requirements of §175.3(b).

(2) To be in substantial compliance with a component of §175.3(c), the requirement must be met for at least 80% of the eligible cases at that stage of collection. To be in partial compliance with a component of §175.3(c), the requirement must be met for at least 50% of the eligible cases at that stage of collection. For OCA to find a jurisdiction in compliance with the requirements of §175.3(c), the jurisdiction cannot be in less than partial compliance with any component, may be in partial compliance with a maximum of one component, and must be in substantial compliance with all of the other applicable components.

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 June 25, 2012.

TRD-201203342
Mena Ramon
General Counsel
Texas Judicial Council
Effective date: July 15, 2012
Proposal publication date: March 30, 2012
For further information, please call: (512) 463-6321

♦ ♦ ♦

SUBCHAPTER B. IMPLEMENTATION SCHEDULE AND WAIVERS

1 TAC §175.6, §175.7

The amendments are adopted under Article 103.0033 of the Texas Code of Criminal Procedure, as amended by House Bill 2949, 82nd Legislature, Regular Session, 2011, and §71.019 of the Texas Government Code, which authorizes the Judicial Council to adopt rules expedient for the administration of its functions.

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 June 25, 2012.

TRD-201203343
Mena Ramon
General Counsel
Texas Judicial Council
Effective date: July 15, 2012
Proposal publication date: March 30, 2012
For further information, please call: (512) 463-6321

♦ ♦ ♦

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER B. GENERAL PROVISIONS

1 TAC §354.1451

The Texas Health and Human Services Commission (HHSC) adopts new §354.1451, concerning the Medicaid Recovery Audit Contractor Program, with changes to the proposed text as published in the April 20, 2012, issue of the *Texas Register* (37 TexReg 2821). The text of the rule will be republished.

Background and Justification

Section 7 of 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.

Comments

The 30-day comment period ended May 20, 2012. During this period, HHSC received comments regarding the new rule from the Texas Association for Home Care & Hospice and the Teaching Hospitals of Texas. A summary of comments related to the proposed new rule and HHSC's responses follow.

Comment: One commenter asked whether the RAC will exclude claims associated with contract monitoring performed by the Texas Department of Aging and Disability Services (DADS) of its contracted providers, which is considered fiscal and compliance monitoring of elements such as duplicate payments, pricing errors, etc.

Response: HHSC acknowledges the comment but no changes were made to the rule. When DADS claims are selected for review under the RAC Program, HHSC will address and determine with the RAC and DADS staff which claims will or will not be subject to review.

Comment: One commenter recommended that the rule include secure and encrypted email as a means for providers to submit requested medical documentation to the RAC in addition to acceptable methods of submission already listed in the rule.

Response: HHSC agrees with the recommendation and modified subsection (d)(2) to include other methods of electronic transmission as allowed by the RAC.

Comment: One commenter recommended that HHSC add language requiring the RAC to include the applicable regulatory or policy citations when sending written notice to the provider with a detailed reason for the identified improper payment.

Response: HHSC acknowledges the comment but no changes were made to the rule.

Comment: One commenter recommended that the RACs be paid a flat fee instead of a contingency fee for improper payments. Further, if the State uses the contingency fee methodology, it should apply accountability and performance measures and not pay the full contingency rate unless performance measures are met.

Response: HHSC acknowledges the comment but no changes were made to the rule. Federal regulations at 42 Code of Federal Regulations (CFR) §455.510 require states to pay RACs on a contingent basis from amounts recovered. Additionally, HHSC will ensure that accountability and performance measures are in place for any RAC-contracted services.

Comment: One commenter recommended that language in one subsection stating that the purpose of the RAC Program is to recoup overpayments be modified to reflect the language in another subsection (audit procedures) stating that HHSC will also refund underpayments.

Response: HHSC acknowledges the comment but no changes were made to the rule. These are two different sections: one defining the purpose of the RAC program, which follows 42 CFR §455.506(a), and one that lists audit procedures.

Comment: One commenter recommended that HHSC clearly state in the rule how RACs are paid and what upper payment amount (percentage) the RAC will receive.

Response: HHSC acknowledges the comment but no changes were made to the rule.

Comment: One commenter recommended that the rule include more detailed language related to how and by whom medical necessity determinations will be handled.

Response: HHSC acknowledges the comment but no changes were made to the rule. The contract between HHSC and the RAC requires the RAC to employ a full-time medical director licensed in Texas (42 C.F.R. §455.508(b)), registered nurses, and certified coders. The federal regulations allow states to define the qualifications/requirements of all medical professionals for this program except for the medical director.

Comment: One commenter recommended that rule language be clarified to indicate the timelines for RACs requesting medical documentation from providers and what happens if a provider fails to meet the timeline.

Response: HHSC acknowledges the comment but no changes were made to the rule. Policies and procedures currently in place regarding timelines for submission of medical documentation for any audit will be addressed and followed with the RAC under the terms of the contract with HHSC. Additionally, provider communication from the RAC will inform providers of the timeline and that non-submission of medical documentation will result in a technical denial.

Statutory Authority

The new rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and 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 §531.117, which requires HHSC to establish a Medicaid recovery audit contractor program.

§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, DVD, or other method of electronic submission allowed by the RAC; 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 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 June 22, 2012.

TRD-201203298
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 12, 2012
Proposal publication date: April 20, 2012
For further information, please call: (512) 424-6900

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER A. TEXAS COMMODITY REFERENDUM LAW

DIVISION 3. TEXAS GRAIN PRODUCER INDEMNITY FUND PROGRAM

4 TAC §§17.26 - 17.29

The Texas Department of Agriculture (the department) adopts new §§17.26 - 17.29, concerning the Texas Grain Producer Indemnity Fund Program (Program), without changes to the proposed text as published in the May 11, 2012, issue of the *Texas Register* (37 TexReg 3503).

The Program is established as Texas Agriculture Code, Chapter 41, Subchapter I, by the enactment of House Bill 1840 (HB 1840), 82nd Legislature, 2011. The new sections are adopted to provide procedures for conducting the grain producer indemnity referendum authorized by HB 1840, including voter eligibility requirements, notice requirements, voting procedures, verification requirements, and the process for requesting a recount.

One comment in general support of the proposal was submitted by the Texas Farm Bureau.

New §§17.26 - 17.29 are adopted under the Texas Agriculture Code, Chapter 41, Subchapter I, §41.212, which requires that the department adopt rules necessary to conduct a grain producers indemnity referendum.

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 June 22, 2012.

TRD-201203326
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: July 12, 2012
Proposal publication date: May 11, 2012
For further information, please call: (512) 463-4075

♦ ♦ ♦

PART 6. TEXAS GRAIN PRODUCER INDEMNITY BOARD

CHAPTER 90. TEXAS GRAIN PRODUCER INDEMNITY FUND PROGRAM RULES

The Texas Grain Producer Indemnity Board (Board) adopts new Chapter 90, Subchapter A, §90.1; Subchapter B, §§90.20 - 90.24; Subchapter C, §§90.30 - 90.38; Subchapter D, §§90.40 - 90.44; and Subchapter E, §90.50 and §90.51, concerning Texas Grain Producer Indemnity Fund Program Rules, without changes to the proposed text as published in the May 11, 2012, issue of the *Texas Register* (37 TexReg 3505).

The new sections are adopted to establish the procedures for the new Texas Grain Producers Indemnity Board program, adopted by the 82nd Texas Legislature in House Bill 1840, and now found in the Texas Agriculture Code, Chapter 41, Subchapter I, and to provide a financial safety net for grain producers who have not been compensated for their stored or contracted grain. The new sections provide definitions, board duties and responsibilities, procedures for collecting producer assessments, recordkeeping and reporting requirements, procedures for initiating indemnity claims, and administrative review procedures.

The Board received three comments on the proposal. Comments were submitted by the Texas Corn Producers Board, the Corn Producers Association of Texas, and the Texas Farm Bureau. All three comments received were in support of the proposed rules. Two commenters suggested that grain facilities should be allowed the option of submitting information on a more frequent basis than the annual requirement stated in the rules, and further suggested that both the grain buyer and seller should be required to sign grain contracts that are submitted as part of an indemnity claim. Another commenter stated that while the currently proposed rules and guidelines appear to be appropriate to carry out the concepts envisioned by the coalition of agriculture organizations involved in the formation of the Board, there will be a need to continually review and revise the Board's program requirements as the grain industry continues to change and evolve its business practices. This commenter also encouraged the Board to work to ensure that funds are available to satisfy potential indemnity claims.

The Board appreciates the submission of the comments received. Based on the Board's interpretation of the rules, a grain facility already has the option of submitting information to the Board on a more frequent basis than the annual requirement. Moreover, because there are many legitimate grain contracts that are entered into without both buyer and seller signing the contract, and because the rules include several provisions addressing how to affirm the validity of such agreements and the price point for an indemnity claim, the Board will adopt the rules as initially proposed. The Board commits to continually review the program, to be fiscally responsible, and to propose revisions to the rules as necessary.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §90.1

Chapter 90, Subchapter A, §90.1 is adopted under the Texas Agriculture Code, §41.211, which provides the Texas Grain Producer Indemnity Board with the authority to adopt rules to administer its duties under the Texas Agriculture Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 2012.

TRD-201203331
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Texas Grain Producer Indemnity Board
Effective date: July 15, 2012
Proposal publication date: May 11, 2012
For further information, please call: (512) 463-4075

♦ ♦ ♦

SUBCHAPTER B. TEXAS GRAIN PRODUCER INDEMNITY BOARD

4 TAC §§90.20 - 90.24

Chapter 90, Subchapter B, §§90.20 - 90.24 are adopted under the Texas Agriculture Code, §41.211, which provides the Texas Grain Producer Indemnity Board with the authority to adopt rules to administer its duties under the Texas Agriculture Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 2012.

TRD-201203332
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Texas Grain Producer Indemnity Board
Effective date: July 15, 2012
Proposal publication date: May 11, 2012
For further information, please call: (512) 463-4075

♦ ♦ ♦

SUBCHAPTER C. PRODUCER ASSESSMENTS

4 TAC §§90.30 - 90.38

Chapter 90, Subchaper C, §§90.30 - 90.38 are adopted under the Texas Agriculture Code, §41.211, which provides the Texas Grain Producer Indemnity Board with the authority to adopt rules to administer its duties under the Texas Agriculture Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 2012.

TRD-201203333
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Texas Grain Producer Indemnity Board
Effective date: July 15, 2012
Proposal publication date: May 11, 2012
For further information, please call: (512) 463-4075

♦ ♦ ♦

SUBCHAPTER D. CLAIMS

4 TAC §§90.40 - 90.44

Chapter 90, Subchapter D, §§90.40 - 90.44 are adopted under the Texas Agriculture Code, §41.211, which provides the Texas Grain Producer Indemnity Board with the authority to adopt rules to administer its duties under the Texas Agriculture Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 2012.

TRD-201203334
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Texas Grain Producer Indemnity Board
Effective date: July 15, 2012
Proposal publication date: May 11, 2012
For further information, please call: (512) 463-4075

♦ ♦ ♦

SUBCHAPTER E. APPEALS, REMEDIES

4 TAC §90.50, §90.51

Chapter 90, Subchapter E, §90.50 and §90.51 are adopted under the Texas Agriculture Code, §41.211, which provides the Texas Grain Producer Indemnity Board with the authority to adopt rules to administer its duties under the Texas Agriculture Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 2012.

TRD-201203335
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Texas Grain Producer Indemnity Board
Effective date: July 15, 2012
Proposal publication date: May 11, 2012
For further information, please call: (512) 463-4075

♦ ♦ ♦

PART 13. PRESCRIBED BURNING BOARD

CHAPTER 227. CERTIFICATION, RECERTIFICATION, RENEWAL AND RECORDS

SUBCHAPTER A. CERTIFICATION REQUIREMENTS

4 TAC §227.6

The Texas Department of Agriculture (department), on behalf of the Prescribed Burning Board (PBB), adopts an amendment to §227.6, relating to a new category of certification for a "not-for-profit certified and insured prescribed burn manager," with changes to the proposed text as published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1580).

The amendment is adopted to add a new category of certification for a "not-for-profit certified and insured prescribed burn manager." The amendment specifies the purpose and limitations of the new category, along with standards for certification, including eligibility, educational, and training requirements. The new category is established to promote public safety by increasing the number of certified and insured prescribed burn managers in Texas through creation of another category for certification. Additional certified and insured prescribed burn managers will be able to assist the public at no cost to help alleviate the threats of fire posed to communities as a result of the extreme drought that has affected Texas, particularly rural communities. Section 277.6(a)(3)(C)(i) is adopted with a change made for purposes of clarification. In addition, other non-substantive grammatical changes have been made.

Comments on the proposal were received from Larry Joe Doherty, on behalf of the Prescribed Burn Alliance of Texas. Mr. Doherty commented that the PBB should have the sole discretion to review and determine if an insurance policy meets the requirements of the law and rules. The PBB has not accepted the requested change to the proposal. Insurance policies are reviewed by Legal staff and all eligibility requirements are ap-

proved by the Chairman of the PBB, under the authority delegated by the PBB to the Chairman. To require the PBB to also approve all policies would create additional work and expense for the Board and would decrease efficiency of the application process.

Another comment asserted that the phrase "on property owned or leased by the Prescribed Burning Organization" found in §277.6(a)(3)(C)(i), would prevent the organization from burning on its own property. This was not the intent of the Board. Clarifying language has been added to state that the requirement in not intended to prevent a Prescribed Burning Organization from burning on its own property.

Mr. Doherty also commented that the language in §227.6(a)(3)(C)(v)(I) relating to the coverage of insurance is too broad and should be limited to what the insurer becomes legally obligated to pay. The Board is not adopting this comment because the referenced language tracks the language in the Natural Resources Code relating to the insurance coverage requirement.

The amendment to §227.6 is adopted under the Natural Resources Code, §153.046, which provides the PBB with the authority to establish standards for prescribed burning, and standards for certification, recertification, and training for prescribed burn managers.

§227.6. Categories of Certification.

(a) Prescribed burn managers may be certified in one of the following categories:

(1) Commercial Certified Prescribed Burn Manager. A commercial certified prescribed burn manager may conduct prescribed burns for hire on any property allowed by his or her certification, including that of his or her employer, and covered by the required insurance policy as set forth in subparagraph (B) of this paragraph. To obtain certification, an applicant must:

(A) meet training and experience requirements as required by Chapter 228 of this title (relating to Training for Certified Prescribed Burn Managers);

(B) carry or be covered by a general liability insurance policy in the amount of $1 million per occurrence, and $2 million aggregate, that:

(i) insures the applicant for damages to persons or property occurring as a result of prescribed burning activities conducted under Natural Resources Code, Chapter 153, and the rules adopted thereunder; and

(ii) covers the commercial certified prescribed burn manager's activities at any location within a designated burn eco-region in the state of Texas where the commercial certified prescribed burn manager is authorized to burn; and

(C) meet all qualifications required under Natural Resources Code, Chapter 153 and the rules adopted thereunder, including continuing education and insurance verification requirements.

(2) Private Certified Prescribed Burn Manager. A private certified prescribed burn manager conducts prescribed burns on property owned by, leased by, or occupied by the private certified prescribed burn manager or that person's employer. An employee qualifies as a private certified prescribed burn manager only if he or she is employed to perform other duties related to the operation and provides labor for the prescribed burning activities, but does not provide the necessary equipment. To obtain certification, an applicant must:

(A) meet training and experience requirements as required by Chapter 228 of this title;

(B) carry or be covered by a general liability insurance policy, in the amount of $1 million per occurrence, and $2 million aggregate, that:

(i) insures the private certified prescribed burn manager for damages to any persons or any property occurring as a result of prescribed burning activities conducted under Natural Resources Code, Chapter 153, and the rules adopted thereunder; and

(ii) covers the private certified prescribed burn manager's activities on property owned by, leased by, or occupied by the private certified prescribed burn manager, or property owned by, leased by, or occupied by his or her employer. An employee qualifying under this category may use the insurance policy of his or her employer as long as the policy specifically covers employees of the policy holder; and

(C) meet all qualifications required under Natural Resources Code, Chapter 153 and the rules adopted thereunder, including continuing education and insurance verification requirements.

(3) Not-for-Profit Certified and Insured Prescribed Burn Manager. A not-for-profit certified and insured prescribed burn manager conducts prescribed burns on property owned or leased by a not-for-profit Prescribed Burning Organization or on property owned or leased by a person who is a member of a Prescribed Burning Organization. For purposes of this section, a Prescribed Burning Organization is defined as an entity established for the purpose of promoting the use of prescribed burning as a tool for land management, including an entity established to represent interests of persons involved in land conservation and/or land management.

(A) For purposes of this section, a Prescribed Burning Organization must be an association, cooperative, or organization legally formed and authorized under Texas law, or a domestic entity legally formed under the Texas Business Organizations Code, and shall:

(i) hold a certificate of account status from the Texas Comptroller of Public Accounts reflecting that the association, cooperative, organization, or domestic entity is current in paying all franchise taxes due under Texas law, or provide appropriate documentation, issued by the Texas Comptroller of Public Accounts, or in a form approved by the Board, that the association, cooperative, organization, or domestic entity is exempt from the payment of franchise taxes under Texas law;

(ii) have its registered office and principal place of business in the State of Texas; and

(iii) provide, as one of the primary purposes of the organization, education and training to its members or shareholders regarding the safe and effective use of prescribed burning within the State of Texas as an agricultural, ranching, and land management practice, or provide education and other resources to its member or shareholders regarding land conservation and management.

(B) The Board shall have sole and absolute discretion to determine whether a Prescribed Burning Organization meets the requirements of this section.

(C) To obtain certification as a not-for-profit certified and insured prescribed burn manager, an applicant must:

(i) engage in prescribed burning only on property owned or leased by the Prescribed Burning Organization, or on property owned or leased by a person who is a member of the Prescribed

Burning Organization. This requirement is not intended to prevent a landowner from burning on his or her own property;

(ii) engage in prescribed burning only for the Prescribed Burning Organization that sponsors the application, or for members of that Prescribed Burning Organization;

(iii) charge no fees for prescribed burning;

(iv) meet training and experience requirements as required by Chapter 228 of this title;

(v) carry or be covered by a general liability insurance policy, in the amount of $1 million per occurrence, and $2 million aggregate, that:

(I) insures the not-for-profit certified and insured prescribed burn manager and the Prescribed Burning Organization for damages to any persons or any property occurring as a result of prescribed burning activities conducted under Natural Resources Code, Chapter 153, and the rules adopted thereunder; and

(II) covers the not for profit certified and insured prescribed burn manager's activities on all property where prescribed burning will take place; and

(vi) meets all qualifications required under Natural Resources Code, Chapter 153 and the rules adopted thereunder, including continuing education and insurance verification requirements.

(b) A certified prescribed burn manager shall be certified to conduct burn activities based on the eco-region of Texas in which the certified prescribed burn manager has been trained to conduct prescribed burns.

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 June 25, 2012.

TRD-201203328
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Effective date: July 15, 2012
Proposal publication date: March 9, 2012
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

The Public Utility Commission of Texas (commission) adopts the repeal of §26.403, relating to the Texas High Cost Universal Service Plan, with no changes to the proposed text as published in the February 10, 2012, issue of the *Texas Register* (37 TexReg 585); the adoption of a new §26.403, relating to the Texas High Cost Universal Service Plan, and amendment to §26.412, relating to the Lifeline Service Program, with changes to the proposed text as published in the February 10, 2012, issue of the *Texas Register* (37 TexReg 585). The new rule provides for reduction in support for local exchange carriers from the THCUSP based on the difference between current rates for basic local exchange service and a reasonable rate to be determined by the commission. The rule also provides an option whereby an incumbent local exchange carrier may choose to reduce its support to zero over a five-year period. The purpose of the amendments to §26.412 is to reflect new §26.403. Project Number 39937 is assigned to this proceeding.

The commission received comments on the proposed rule changes from AMA Techtel Communications (AMA Techtel), Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T), Sprint Communications Company L.P., Texas Cable Association and tw telecom of Texas, llc (collectively, the "USF Reform Coalition"), United Telephone Company of Texas, Inc. d/b/a CenturyLink, Central Telephone Company of Texas, Inc. d/b/a CenturyLink (CenturyLink), Valor Communications of Texas L.P. d/b/a Windstream Communications Southwest (Windstream), GTE Southwest Incorporated d/b/a Verizon Southwest (Verizon), TEXALTEL, the Office of Public Utility Counsel (OPUC), Cumby Telephone Cooperative, Inc., Panhandle Telecommunications Systems, Inc. d/b/a PTCI, Santa Rosa Telephone Cooperative, Inc., WT Services, Inc., XIT Telecommunications & Technology Ltd. d/b/a XT&T (collectively, "Rural CLECs"). Reply comments were filed by AMA TechTel, Rural CLECs, Verizon, Windstream, USF Reform Coalition, CenturyLink, AT&T, Josh Constancio, William Keley, Greg Clay, and Clay Ireland.

No party requested that a public hearing be held regarding the proposed changes to the commission's rules.

Comments on new §26.403

(1) Issues Relating to the Timing of THCUSP support reductions

Verizon and AT&T requested that the new §26.403 be modified to require that reductions in support should be concurrent with offsetting increases in rates for BLTS. AT&T also requested a modification to the proposed rule that would permit an ETP to accelerate its THCUSP support reduction in any year and increase the offsetting local rate increase in order to produce rounded rates.

Windstream recommended that the transition period in the proposed rule be five years rather than four years, to mirror the FCC's transition period for phase-in of the federal Access Recovery Charge.

Commission response

The commission agrees with AT&T's recommendation that an ETP should have the ability to accelerate the reduction in its THCUSP support and increase the offsetting local rate increase that otherwise would be required in order to produce rounded rates. The rule has been changed accordingly.

The commission declines to adopt the recommendation by AT&T and Verizon that reductions in THCUSP support be made concurrent with offsetting increases in local rates. The proposed rule provides ETPs with the opportunity to increase local rates. Nothing in the rule requires such increases. Under the rule, each ETP has the discretion whether or not to raise its local rates to offset reductions in THCUSP support, as well as some control over the timing of those potential increases.

The commission also declines to adopt Windstream's recommendation that the period over which THCUSP reductions will be implemented should be increased to five years, to accord with the FCC's transition period for phase-in of the federal Access Recovery Charge. The proposed rule, with its rate rebalancing provisions, operates independently of changes in federal access rates and offsetting recovery mechanisms.

(2) Issues Relating to Deregulated Exchanges

AT&T proposed modifications to the proposed rule that would provide that any support lost to an ILEC due to the deregulation of an exchange will offset any reductions in support calculated under the rule. Verizon also proposed that the rule be modified so that any reductions in support experienced by an ILEC due to the deregulation of exchanges would be credited to the annual reduction in THCUSP support required under the rule. Windstream agreed with the concept proposed by AT&T and Verizon that companies receive a "credit" against the reductions that they would otherwise be required to take for support lost in exchanges deregulated subsequent to the effective date of this rule. Windstream, however, pointed out that each of the proposals vary in terms of how they would accomplish this result and also have differing dates for determining line counts for the initial support reductions.

The USF Reform Coalition opposed the edits to the proposed rule offered by AT&T concerning the treatment of deregulated exchanges. According to the USF Reform Coalition, these edits simply add complexity to the rule without improving the legitimacy of the reform.

In its reply comments, AT&T offered a new proposal under which an ILEC's THCUSP support reductions would be offset by support reductions due to the ILEC's deregulation of exchanges only if the ILEC committed to receive zero support from the THCUSP after December 31, 2017.

Commission response

The commission declines to adopt the recommendations of those parties who advocated that loss of support due to exchange deregulation should be used as an offset to scheduled reductions due to rate rebalancing in cases where the ILEC does not elect to total elimination of support after a four-year period. These proposals would unnecessarily complicate the calculation of the support due to each carrier in each month. The commission prefers an approach that would result in a more predictable reduction in the amount of support provided for each exchange.

The commission, however, adopts a revision to the rule similar to that proposed by AT&T. If an ILEC ETP voluntarily agrees to reduce its THCUSP support to zero over a five-year period, then the ILEC should be permitted to manage the annual reductions to its support through a combination of exchange deregulation and scheduled rate rebalancing. The mechanism adopted by the commission, in the event that an ILEC ETP voluntarily agrees to reduce its THCUSP support to zero beginning January 1, 2017, provides that the ILEC's support will be reduced over a four-year period beginning January 1, 2013 by the difference in revenue that would result if a reasonable rate for basic local exchange service were charged in those exchanges where the current rate for BLTS is below the reasonable rate. At the end of the four-year period, support for an ILEC electing this option will be reduced to zero. Loss THCUSP support resulting from the deregulation of exchanges may be credited against the support reductions produced by rate rebalancing. The commission also requires an ILEC making such an election to notify the commission of its commitment within 10 days of the effective date of this rule. The proposed rule has been revised accordingly.

(3) Issues Relating to THCUSP support of CLECs serving Rural Exchanges

AMA Techtel argued that support should continue to be portable with the consumer. Elimination of the portability provision of the current rule would, in AMA TechTel's view, result in the reestablishment of a monopoly over telecommunications service in deregulated markets, providing ILECs with the benefits of deregulation without the checks that a competitive market provides. AMA TechTel also argued that it would reduce incentives for investment in rural markets.

AT&T did not disagree with AMA TechTel that support from the THCUSP should be portable with the end user. CenturyLink also supported AMA Techtel's suggestion that the rule be made clear to show that support is portable. CenturyLink, however, conditioned its support for AMA TechTel's position upon adoption of CenturyLink's proposal that the monthly per line support amounts available to any ETP should be based on ILEC-specific calculations. Finally, the USF Reform Coalition did not oppose AMA TechTel's proposal that THCUSP support continue to be portable with the end user.

The Rural CLECs pointed out that the proposed rule appears to permit ILECs to elect to deregulate exchanges and thereby terminate THCUSP support for a particular exchange unilaterally. The Rural CLECs argued that the continuation of THCUSP support should not be dependent solely on the discretion of ILECs in this fashion. Rather, they argued that the commission should incorporate language into the proposed rule permitting any ETP in a given exchange, regardless of whether it is deregulated or not, to petition the commission for continued support under the THCUSP.

AT&T was opposed to the Rural CLECs' proposal that support for CLECs should be continued even if support for the ILEC is phased out. In AT&T's view, if support for the ILEC is eliminated, then there is nothing left to port. They further noted that the change in the rule proposed by the Rural CLECs was contrary to PURA. The USF Reform Coalition likewise opposed the Rural CLEC's proposal that CLECs be permitted to petition the commission for continued THCUSP support in exchanges where the ILEC has been deregulated. The USF Reform Coalition specifically argued that it was inappropriate for consumers throughout Texas to subsidize the expansion of one ILEC into the territory of another ILEC.

Commission response

The commission agrees with those parties that argued that support from the THCUSP should continue to be portable with the customer. Ensuring that support is portable with the customer ensures that support under the THCUSP will be provided in a competitively neutral manner. The proposed rule has been changed to incorporate the portability language in the current rule.

The commission declines to adopt the proposals by AMA TechTel and the Rural CLECs that support should continue to be made available to CLECs in exchanges where support to the ILEC has been eliminated because the exchange has been deregulated. To continue to provide support to a CLEC when support to the ILEC has been eliminated would grant an unwarranted competi-

tive advantage to the CLEC vis-à-vis the ILEC with which it competes.

(4) Issues Relating to Line Counts Used in Support Calculations

AT&T proposed that the definition of "business lines" be eliminated from new §26.403(b)(2) and that the reference to business lines be removed from §26.403(d)(1)(A). In addition, AT&T proposed a modification of §26.403(e) that would clarify that the term "basic local telecommunications service" refers only to residential services, and that the terms "wire center" and "exchange" refer only to regulated exchanges and wire centers.

Verizon requested a clarification in the rule that the reductions in the amount of support calculated under the rule should be based upon the difference between current residential rates for BLTS and the reasonable rate determined by the commission, multiplied by the ETP's regulated residential lines. Verizon also requested that the rule be clarified such that lines in service used in the support calculation be those lines in service as of a specific date: September 30, 2012.

In reply comments, Verizon opposed the proposal by the USF Reform Coalition that line counts used in calculating the amount of support reductions under the rule should be based on 2011 line counts. Verizon argued that because line counts are steadily declining, this approach would result in a lack of opportunity for ETPs to offset reductions in THCUSP support with increases in rates for BLTS. Verizon supported either AT&T's proposal to use line counts as of November 1, 2012 or its original proposal to use line counts as of September 30, 2012. Verizon also pointed out that the use of 2011 line counts would include lines in exchanges that already have been deregulated. Verizon also reiterated its proposal that the rule be clarified to ensure that only residential lines in regulated exchanges be counted in the calculation of required support reductions.

In reply comments, the USF Reform Coalition opposed AT&T's proposal to restrict the line counts used in calculating THCUSP reductions to residential lines. The USF Reform Coalition argued in particular that the definition of BLTS contained in PURA specifically includes business local exchange service. The USF Reform Coalition further stated that if business lines are eligible for support, then they should be included in the calculation of support reductions.

The USF Reform Coalition also opposed Verizon's proposal to restrict the lines used in calculating support reductions to regulated exchanges. The USF Reform Coalition claimed that the proposals that it suggested address this issue. They do so by proposing a date certain to establish the amount and schedule of reductions. As such, this issue was moot. The USF Reform Coalition further opposed Verizon's proposal to use lines in service as of September 30, 2012 in the calculation of support reductions. They argued that the use of lines as of this date, rather than the USF Reform Coalition's proposed date of December 31, 2011, would allow ILECs to reduce the amount of support reductions by excluding lines that are deregulated in 2012.

Windstream opposed AT&T's proposal that business lines be excluded from the definition of "basic local exchange service." According to Windstream, eliminating business lines would create an additional loss of support beyond that already included within §26.403(e)(1). Windstream pointed out that AT&T offers no basis for this proposed change other than to say that the terms of its 2008 THCUSP settlement, which was based only on residential lines, should control the structure of THCUSP going forward for all the THCUSP companies.

CenturyLink did not agree with AT&T's proposal that references to "business lines" should be eliminated in order for the commission to treat all ILECs the same. Unlike AT&T, CenturyLink finds this proposal to be too dramatic a step. CenturyLink also opposed TEXALTEL's proposal to include deregulated lines in the rate rebalancing calculation. CenturyLink reiterated its Initial Comments by stating that the commission's jurisdiction over Chapter 65 lines is extremely limited.

In reply comments, AT&T opposed the USF Reform Coalition's recommendation that business lines be included in the calculation of THCUSP support reductions. AT&T noted that the existing settlement in Docket No. 34723 provided for support of business lines only during the first year of the settlement term for AT&T, and that the intent of the proposed rule is to now treat all ILECs the same for purposes of calculating settlement amounts.

Commission response

The commission agrees that the rule should specify the date upon which lines in service should be counted for purposes of calculating the reduction in THCUSP support. The commission does not, however, agree with the proposal by the USF Reform Coalition that line counts should be "back-dated" to the end of 2011. Lines in exchanges that have been deregulated since that time currently receive no support. It therefore would be inappropriate and illogical to calculate the THCUSP support reductions required under the rule as if they did receive support.

The rule has been modified to provide that line counts used to calculate the support reduction shall be those lines in service as of the end of the month prior to the effective date of this rule.

Regarding the question of whether references to business lines should be removed from the rule, as proposed by AT&T and opposed by Windstream and Century Link, the commission notes first that the nature of lines used in the calculation of the reduction in THCUSP support required by §26.403(e)(3) is a separate question than that of how the per-line support amount will be distributed. The commission's intent in adopting this new rule is that the reductions in THCUSP support required by the rule will be based upon the difference between current residential rates and the reasonable rate established by the commission in a subsequent contested case proceeding. For this purpose, it makes sense that only residential lines be used in calculating the required reduction.

Once the required reduction is calculated, it is immaterial how that reduction is distributed. While the rule requires the reduction be distributed proportionally among all regulated exchanges supported by the THCUSP, it makes little difference whether that reduction is distributed to residential lines or business lines or both. What is critical is that total dollar amount of the reduction must be achieved over the time frame specified in the rule. In fact, the rule is silent as to how the required reduction is distributed to lines served by that wire center. This is an issue that will be determined in the subsequent contested case contemplated by this rule. Moreover, eliminating any support for business lines regardless of whether those lines currently receive support could have the unintended consequence of reducing support for some carriers beyond the support reductions achieved through rate rebalancing.

Accordingly, the commission declines to adopt AT&T's proposed elimination of the definition of "business line" in §26.403(b)(2) and its proposed elimination of the reference to business lines in §26.403(d)(1)(A). Because AT&T's proposed revision to §26.403(e), however, refers to the calculation of the required

reduction in THCUSP support through rate rebalancing, this proposed revision is adopted in the rule. The commission intended the term "basic local telecommunications service" to refer only to residential services, and that the terms "wire center" and "exchange" refer only to regulated exchanges and wire centers. The change proposed by AT&T clarifies the intent of the rule.

(5) Issues Relating to Federal Support Used to Offset THCUSP Support

Windstream proposed a clarifying amendment to the proposed rule to define the federal USF support offset. The amendment proposed by Windstream would make clear that the proposed new §26.403(e)(1) required the offset of existing, and now frozen, federal support for High Cost Loop, High Cost Model, Safety Net Additive and Safety Valve Support, at the frozen level, and to exclude federal support for other purposes, including the CAF I incremental support and CAF II Support. Additionally, with Windstream's proposal, the federal offset amount would remain at the 2011 frozen amount, even if at a later date, the frozen amount is reduced. The result would be that as federal support is reduced, state support would not be correspondingly increased. CenturyLink also proposed that the rule should specifically define the types of federal universal service support that have been used under the current rule to create an offset to THCUSP support.

The USF Reform Coalition opposed Windstream and CenturyLink's proposal that the offset to THCUSP support of federal universal service support exclude federal support through the Interstate Access Support (IAS), Interstate Common Line Support (ICLS) and Local Switching Support (LSS) mechanisms. While the USF Reform Coalition agrees with these companies that THCUSP support should be reduced by the frozen federal high cost support amounts, the USF Reform Coalition argues that the IAS, ICLS, and LSS support mechanisms are also considered by the FCC to be high-cost support and should be included in the federal offset. The USF Reform Coalition agrees that Connect America Fund I (CAF-I) should not be included in the federal offset.

Commission response

It is the commission's intent that the federal high cost support amounts that are offset from THCUSP support should be the same categories of federal high cost support amounts that are deducted under procedures currently in effect. The proposal of the USF Reform Coalition would have the effect of increasing the amount of the deduction for federal universal service support, and therefore would reduce support beyond the amount that would be produced through rate rebalancing. The amendments to the rule proposed by Windstream are therefore incorporated in the rule.

(6) Issues Relating to the Calculation of the Support Amount

AMA TechTel opposed the method proposed in the published rule for calculation of each ETP's support amount. In particular, AMA TechTel argued that the rule, as published, would require a calculation of a different support amount for each ETP, based on the difference between each ETP's rate for BLTS and the target rate adopted by the commission. According to AMA TechTel, this would result in a burdensome and time-consuming process, that ultimately will result in rewarding carriers with escalating costs and declining cost of service, and would result in the re-creation of monopoly telephone service in areas that currently support competition. AMA TechTel argued that support amounts should be provided in a competitively neutral manner, based on the rates charged by the incumbent carrier, and that support not be limited to carriers that have a Provider of Last Resort (POLR) obligation.

CenturyLink argued that non-ILEC ETPs providing service in a THCUSP ILEC service area *(i.e.,* wire center) should not receive more per-line support than the THCUSP ILEC. CenturyLink asserted that this situation could occur because the new provisions regarding a "reasonable rate" and reductions in base and per-line support amounts in §26.403(e) appear to apply to all ETPs when they should only apply to ILEC ETPs. CenturyLink further noted that the proposed new §26.403 broadly applies to all ETPs that receive THCUSP in high cost rural areas of the state and suggested that the term "THCUSP ILEC" or "ILEC ETP" should be used for all references to "ETP" in §26.403(e)(1), (2), and (3).

TEXALTEL noted that there is some question as to how the proposed rule will handle a situation in which an ILEC's rates are above the reasonable rate set in a subsequent contested case proceeding. TEXALTEL suggests adding language requiring the calculation only in situations in which rates are below the reasonable rate.

In reply comments, AMA TechTel noted that CenturyLink, and perhaps Verizon, all agreed with its position that the per-line support amount should be the same for all ETPs in an exchange. Stating that Verizon's comments could be interpreted in two different ways, AMA TechTel stated that it agreed with Verizon if its comments supported the idea that all ETPs in each exchange should be subject to the same reduction in support, but disagreed with Verizon if instead its comments were meant to support the same support reduction being applied to all exchanges. According to AMA TechTel, requiring all ILEC ETPs to reduce support by the same percentage in all exchanges would ignore cost variances among wire centers.

Commission response

The commission agrees with those parties that propose that calculation of the reduction in THCUSP support should be based upon the difference between the ILEC's rate for basic local telecommunications service and the reasonable rate adopted by the commission in a future contested case proceeding. To calculate a separate reduction for each non-ILEC ETP, based on the difference between each ETP's rate and the reasonable rate would be unduly complicated, and would make portability of support problematic. The commission further agrees with CenturyLink's recommendation that, for purposes of clarity, the term "ILEC ETP" should be substituted for all occurrences of the term "ETP" in §26.403(e)(1), (2), and (3), and has amended the rule accordingly.

(7) Other Issues Addressed in Comments

The Rural CLECs proposed that the rule be modified to explicitly permit the determination of a reasonable rate in each market or exchange, rather than a single statewide reasonable rate. This position was supported by AMA in reply comments.

Responding to the Rural CLECs' proposal that the "reasonable rate" should be established on a market-specific basis, the USF Reform Coalition argued that this proposal is premature, and should be the subject of the contested case proceeding required under the proposed rule.

TEXALTEL raised a concern that the rule does not address a situation where the current rate for BLTS is above the commis-

sion-determined "reasonable rate" and suggests language to address this situation.

AT&T stated that the language in the proposed §26.403(e)(4) is not consistent with PURA §56.031, which provides that changes in the monthly support amounts from the THCUSP may be made only after notice and an opportunity for hearing, and limits the initiation of a review of support amounts only to the commission itself.

Commission response

With regard to the geographic basis for establishing a reasonable rate for BLTS, the commission notes that the rule does not specify whether the reasonable rate to be determined in a subsequent contested case proceeding must be a statewide rate or whether some other geographic basis might be more appropriate. The commission determines that this is an issue that should be addressed in the contested case proceeding, and not in the rule.

With regard to the concern raised by TEXALTEL, the commission agrees that this point is in need of clarification. The commission has adopted the language proposed by TEXALTEL to clarify that, for an ILEC whose current rate for BLTS is above the commission-determined reasonable rate, THCUSP support will not be increased to offset decreases in the BLTS rate.

Finally, with regard to AT&T's concern with the proper language relating to future reviews of per-line support amounts, the commission agrees that the rule must be consistent with the statute, and deletes the subsection in question as superfluous.

(8) Issues Relating to Effects of the Proposed Rule on Small Business

As an initial matter, the Rural CLECs raised questions regarding the commission's finding that the proposed rule will have no direct adverse impact on small businesses. They noted the depending upon the application and interpretation of the proposed rule, rural CLECs that qualify as small businesses could potentially be adversely impacted. Specifically, the Rural CLECs focused on the possibility that CLECs may be adversely impacted if they lose THCUSP support in exchanges that are deregulated by an ILEC.

AMA TechTel likewise argued that, contrary to statements made by commission staff in the preamble to the Proposal for Publication, the rule as published would have significant adverse impacts on small businesses, specifically on the business operations of the small CLECs that serve rural communities. Without support from the TUSF, according to AMA TechTel, there is "no viable economic model to serve high cost rural areas." The elimination of competitive alternatives to the ILECs, in AMA TechTel's view, would result in a "loss of the inherent value that comes with a competitive marketplace."

AT&T rejected the Rural CLECs' complaint that the commission's publication of the rule in the *Texas Register* did not properly address the impact of the rule changes on small business by noting that nothing in the rule affects business lines; the rate rebalancing and support reductions contemplated by the rule affect only residential lines. The USF Reform Coalition also disagreed with the Rural CLECs' argument that the commission's notice in this project did not comply with statutory requirements because it failed to consider the impact on small businesses that are customers of the Rural CLECs. According to the Coalition, the Rural CLECs cited no case law that requires an agency to consider the impact on customers of regulated entities, and that none exists.

Commission response

The commission disagrees with the comments of the Rural CLECs and AMA TechTel. In enacting a rule, the commission is required to conduct an economic impact study and regulatory flexibility analysis only if there is a direct, adverse economic impact on small businesses subject to the proposed rule. The commission determined that there will be no adverse economic impacts on small or micro-businesses as a result of adopting the new §26.403 and amended §26.412. The rule builds upon the 2008 settlement approved by the Public Utility Commission in Docket Number 34723 by continuing to require reductions in THCUSP funding, but equally offering providers with the opportunity to raise their rates. This agreement ended on January 1, 2012. The new rule continues to provide small businesses with the same opportunity to increase rates charged for BLTS in an amount corresponding to any reductions in THCUSP support as provided under the previous settlement agreement. As such, the commission does not agree that there will be any adverse impact to those small businesses subject to the new rule. With regard to the Rural CLECs' specific concerns about the potential impacts of §26.403(e)(5), the commission notes that this provision merely restates the existing law as set forth in PURA §56.032. Because the proposed rule reiterates existing law, it cannot have an "adverse" impact on small or micro-business. The Rural CLECs also noted that the commission did not consider the impact of potential rate increases on small businesses served by the Rural CLECs. The commission, however, need only consider direct adverse economic impacts on small businesses subject to the rule, *i.e.,* ETPs that are small businesses. Indirect impacts, if any, on small businesses that are not subject to the rule are beyond the required scope of the commission's economic or regulatory flexibility analysis.

(9) Issues Relating to Reporting Requirements

AT&T proposed modifications to the rule as published that would reduce reporting requirements by eliminating the requirement that ETPs report the rate that the ETP charges for residential and single-line business service, because these rates are already on file at the commission or posted on ILEC web sites. AT&T also proposed that the TUSF administrator not be permitted to request information that is not expressly required by the rule.

In reply comments, Verizon supported AT&T's proposal to reduce reporting requirements for providers receiving support from the THCUSP.

The USF Reform Coalition proposed a modification to the proposed rule that would require all reports filed with the commission pursuant to §26.403(f) to be made publicly available.

In reply comments, AT&T opposed the Coalition's proposal that all THCUSP reports should be filed publicly, arguing that much of this information is protected from public disclosure under the Open Records Act.

Commission response

The commission agrees that the rates charged for residential and single-line business basic local exchange service are already on file with the commission or otherwise publicly available, and has changed the rule accordingly. The commission declines to limit the ability of the TUSF administrator to request such information as is required to assess contributions to and disbursements from the fund.

The commission also declines to adopt the proposal by the USF Reform Coalition that would have the rule require that all reports

filed with the commission be made publicly available. Information filed by ETPs relating to disbursements from the fund may be commercially sensitive information. In addition, the commission currently is conducting a separate proceeding under Project No. 39939 to determine what information should be made available in order to ensure transparency and accountability in the administration of the TUSF. The commission believes Project No. 39939 is the proper venue for discussion of what information may or may not be made available without harming the commercial interests of companies that participate in the fund.

(10) Other Issues

Various residents of Rising Star, Texas also submitted comments opposing any changes to the THCUSP. Specifically, Josh Constancio, the Fire Chief of the Rising Star Volunteer Fire Department, William Kelcy, the Chief of Police of the Rising Star Police Department, Greg Clay, and Clay Ireland all filed letters detailing the benefits to their community resulting from the current operation of the THCUSP.

Commission response

In Senate Bill 980, the legislature specifically called upon the commission to conduct a review and evaluation of the THCUSP. Based on the commission's review of the THCUSP, the proposed changes will improve the overall operation of the program and reflect sound public policy.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting the new and amended sections, the commission makes changes to clarify its intent.

16 TAC §26.403

The repeal is adopted under the PURA, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, §56.021, which requires the commission to adopt rules concerning the Texas universal service fund.

Cross Reference to Statutes: PURA §14.002 and §56.021.

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 June 18, 2012.

TRD-201203216
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 8, 2012
Proposal publication date: February 10, 2012
For further information, please call: (512) 936-7223

♦ ♦ ♦

16 TAC §26.403, §26.412

The new section and amendment are adopted under the PURA, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, §56.021, which requires the commission to adopt rules concerning the Texas universal service fund.

Cross Reference to Statutes: PURA §14.002 and §56.021.

§26.403. Texas High Cost Universal Service Plan (THCUSP).

(a) Purpose. This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that serve the high cost rural areas of the state, other than study areas of small and rural incumbent local exchange companies (ILECs), so that basic local telecommunications service may be provided at reasonable rates in a competitively neutral manner.

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

(1) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply.

(2) Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs.

(3) Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(4) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply.

(c) Application. This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title.

(d) Service to be supported by the THCUSP. The THCUSP shall support basic local telecommunications services provided by an ETP in high cost rural areas of the state. Local measured residential service, if chosen by the customer and offered by the ETP, shall also be supported.

(1) Initial determination of the definition of basic local telecommunications service. Basic local telecommunications service shall consist of the following:

(A) flat rate, single party residential and business local exchange telephone service, including primary directory listings;

(B) tone dialing service;

(C) access to operator services;

(D) access to directory assistance services;

(E) access to 911 service where provided by a local authority;

(F) telecommunications relay service;

(G) the ability to report service problems seven days a week;

(H) availability of an annual local directory;

(I) access to toll services; and

(J) lifeline service.

(2) Subsequent determinations.

(A) Initiation of subsequent determinations.

(i) The definition of the services to be supported by the THCUSP shall be reviewed by the commission every three years from September 1, 1999.

(ii) The commission may initiate a review of the definition of the services to be supported on its own motion at any time.

(B) Criteria to be considered in subsequent determinations. In evaluating whether services should be added to or deleted from the list of supported services, the commission may consider the following criteria:

(i) the service is essential for participation in society;

(ii) a substantial majority, 75% of residential customers, subscribe to the service;

(iii) the benefits of adding the service outweigh the costs; and

(iv) the availability of the service, or subscription levels, would not increase without universal service support.

(e) Criteria for determining amount of support under THCUSP. The commission shall determine the amount of per-line support to be made available to ETPs in each eligible wire center. The amount of support available to each ETP shall be calculated using the base support amount as of the effective date of this section and applying the annual reductions as described in this subsection. As used in this subsection, "basic local telecommunications service" refers to services available to residential customers only, and "exchange" or "wire center" refer to regulated exchanges or wire centers only.

(1) Determining base support amount available to ILEC ETPs. The initial annual base support amount for an ILEC ETP shall be the annualized monthly THCUSP support amount for the month preceding the effective date of this section, less the 2011 amount of support disbursed to the ILEC ETP from the federal universal service fund for High Cost Loop, High Cost Model, Safety Net Additive, and Safety Valve components of the frozen high-cost support as determined by the Universal Service Administration Company pursuant to 47 C.F.R. §54.312(a). The initial per-line monthly support amount for a wire center shall be the per-line support amount for the wire center for the month preceding the effective date of this section, less each wire center's pro rata share of one-twelfth of the 2011 amount of support disbursed to the ILEC ETP from the federal universal service fund for High Cost Loop, High Cost Model, Safety Net Additive, and Safety Valve components of the frozen high-cost support determined by the Universal Service Administration Company pursuant to 47 C.F.R §54.312(a). The initial annual base support amount shall be reduced annually as described in paragraph (3) of this subsection.

(2) Determination of the reasonable rate. The reasonable rate for basic local telecommunications service shall be determined by the commission in a contested case proceeding. To the extent that an ILEC ETP's existing rate for basic local telecommunications service in any wire center is less than the reasonable rate, the ILEC ETP may, over time, increase its rates for basic local telecommunications service to an amount not to exceed the reasonable rate. The increase to the existing rate shall not in any one year exceed an amount to be determined by the commission in the contested case proceeding. An ILEC ETP may, in its sole discretion, accelerate its THCUSP reduction in any year by as much as 10% and offset such reduction with a corresponding local rate increase in order to produce rounded rates. In no event shall any such acceleration obligate the ETP to reduce its THCUSP support in excess of the total reduction obligation initially calculated under paragraph (3) of this subsection.

(3) Annual reductions to THCUSP base support and per-line support recalculation. As part of the contested proceeding referenced in paragraph (2) of this subsection, each ILEC ETP shall, using line counts as of the end of the month preceding the effective date of this rule, calculate the amount of additional revenue that would result if the ILEC ETP were to charge the reasonable rate for basic local telecommunications service to all residential customers for those services where the price, or imputed price, are below the reasonable rate. Lines in exchanges for which an application for deregulation is pending as of June 1, 2012 shall not be included in this calculation. If the application for deregulation for any such exchanges subsequently is denied by the commission, the ILEC ETP shall, within 20 days of the final order denying such application, submit revised calculations including the lines in those exchanges for which the application for deregulation was denied. Without regard to whether an ILEC ETP increases its rates for basic local telecommunications service to the reasonable rate, the ILEC ETP's annual base support shall be reduced on January 1 of each year for four consecutive years, with the first reduction occurring on January 1, 2013. The ETP's annual base support amount shall be reduced by 25% of the additional revenue calculated pursuant to this paragraph in each year of the transition period. This reduction shall be accomplished by reducing support for each wire center served by the ETP proportionally.

(4) Portability. The support amounts established pursuant to this section are applicable to all ETPs and are portable with the customer.

(5) Limitation on availability of THCUSP support.

(A) THCUSP support shall not be provided in a wire center in a deregulated market that has a population of at least 30,000.

(B) An ILEC may receive support from the THCUSP for a wire center in a deregulated market that has a population of less than 30,000 only if the ILEC demonstrates to the commission that the ILEC needs the support to provide basic local telecommunications service at reasonable rates in the affected market. An ILEC may use evidence from outside the wire center at issue to make the demonstration. An ILEC may make the demonstration for a wire center before or after submitting a petition to deregulate the market in which the wire center is located.

(6) Total Support Reduction Plan. Within 10 days of the effective date of this section, an ILEC may elect to participate in a Total Support Reduction Plan (TSRP) as prescribed in this subsection, by filing a notification of such participation with the commission. The TSRP would serve as an alternative to the reduction plan prescribed in paragraph (3) of this subsection. The TSRP will be implemented as follows:

(A) For an ILEC making this election, the ILEC shall reduce its THCUSP funding in accordance with paragraph (3) of this subsection with the exception that THCUSP reductions due to exchange deregulation may be credited against the electing ILEC's annual reduction obligation in the calendar year immediately following such deregulation.

(B) In no event shall an electing ILEC seek or receive THCUSP funding after January 1, 2017 even if it would otherwise be entitled to such funding as of this date.

(f) Reporting requirements. An ETP that receives support pursuant to this section shall report the following information:

(1) Monthly reporting requirement. An ETP shall report the following to the TUSF administrator on a monthly basis:

(A) the total number of eligible lines for which the ETP seeks TUSF support; and

(B) a calculation of the base support computed in accordance with the requirements of subsection (d) of this section.

(2) Quarterly filing requirements. An ETP shall file quarterly reports with the commission showing actual THCUSP receipts by study area.

(A) Reports shall be filed electronically in the project number assigned by the commission's central records office no later than 3:00 p.m. on the 30th calendar day after the end of the calendar quarter reporting period.

(B) Each ETP's reports shall be filed on an individual company basis; reports that aggregate the disbursements received by two or more ETPs will not be accepted as complying with the requirements of this paragraph.

(C) All reports filed pursuant to paragraph (3) of this subsection shall be publicly available.

(3) Annual reporting requirements. An ETP shall report annually to the TUSF administrator that it is qualified to participate in the THCUSP.

(4) Other reporting requirements. An ETP shall report any other information that is required by the commission of the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF.

§26.412. Lifeline Service Program.

(a) Scope and purpose. Through this section, the commission seeks to identify and make available Lifeline Service to all qualifying customers and households, establish a procedure for Lifeline Automatic Enrollment and Lifeline Self-Enrollment, and define the responsibilities of all providers of local exchange telephone service that provide Lifeline Service, qualified customers, the Texas Health and Human Services Commission (HHSC), and the Low-Income Discount Administrator (LIDA) Program.

(b) Applicability. This section applies to the following providers of local exchange telephone service collectively referred to in this section as Lifeline providers:

(1) ETC--A carrier designated as such by a state commission pursuant to 47 C.F.R. §54.201 and §26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds).

(2) ETP--A provider designated as an ETP as defined by §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(3) Resale ETP--A certificated provider that provides local exchange telephone service solely through the resale of an incumbent local exchange carrier's service and that has been designated as an ETP as defined by §26.419 of this title (relating to Telecommunication Resale Providers Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service).

(4) Non-ETP/ETC Certificated Provider--Any certificated provider of local exchange telephone service that chooses not to become an ETP or an ETC as defined by §§26.417, 26.418, or 26.419 of this title.

(c) Definitions.

(1) Qualifying low-income customer--A customer who meets the qualifications for Lifeline Service, as specified in subsection (d) of this section.

(2) Toll blocking--A service provided by Lifeline providers that let customers elect not to allow the completion of outgoing toll calls from their telephone.

(3) Toll control--A service provided by Lifeline providers that allow customers to specify a certain amount of toll usage that may be incurred on their telephone account per month or per billing cycle.

(4) Toll limitation--Denotes either toll blocking or toll control for Lifeline providers that are incapable of providing both services. For Lifeline providers that are capable of providing both services, "toll limitation" denotes both toll blocking as defined in paragraph (2) of this subsection and toll control as defined in paragraph (3) of this subsection.

(5) Eligible resident of Tribal lands--A "qualifying low-income customer," as defined in paragraph (1) of this subsection, living on or near a reservation. Pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), a "reservation" is defined as any federally recognized Indian tribe's reservation, pueblo, or colony.

(6) Income--As defined in 47 C.F.R. §54.400(f) includes all income actually received by all members of the household. This includes salary before deductions for taxes, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, lottery winnings, and the like. The only exceptions are student financial aid, military housing and cost-of-living allowances, irregular income from occasional small jobs such as baby-sitting or lawn mowing, and the like.

(d) Customer Eligibility Requirements. A customer is eligible for Lifeline Service if they meet one of the criteria of paragraph (1), (2), or (3) of this subsection as determined by the LIDA. Nothing in this section shall prohibit a customer otherwise eligible to receive Lifeline Service from obtaining and using telecommunications equipment or services designed to aid such customer in utilizing qualifying telecommunications services.

(1) The customer's household income is at or below 150% of the federal poverty guidelines as published by the United States Department of Health and Human Services and updated annually;

(2) A customer who receives benefits from or has a child that resides in the customer's household who receives benefits from any of the following programs qualifies for Lifeline Services: Medicaid, Food Stamps, Supplemental Security Income (SSI), Federal Public Housing Assistance, Low Income Home Energy Assistance Program (LIHEAP), or health benefits coverage under the State Child Health Plan (CHIP) under Chapter 62, Health and Safety Code; or

(3) A customer is an eligible resident of tribal lands as defined in subsection (c)(5) of this section.

(e) Lifeline Service Program. Each Lifeline provider shall provide Lifeline Service as provided by this section. Lifeline Service is a retail local exchange telephone service offering available to qualifying low-income customers. Lifeline Service shall be provided according to the following requirements:

(1) Designated Lifeline services. Lifeline providers shall offer the services or functionalities enumerated in 47 C.F.R. §54.101(a)(1)-(9) (relating to Supported Services for Rural, Insular and High Cost Areas).

(2) Toll limitation. Lifeline providers shall offer toll limitation to all qualifying low-income customers at the time the customer subscribes to Lifeline Service. If the customer elects to receive toll limitation that service shall become part of the customer's Lifeline Service and the customer's monthly bill will not be increased by otherwise applicable toll limitation charges.

(3) Disconnection of service.

(A) Disconnection prohibition. Lifeline providers may not disconnect Lifeline Service for non-payment of toll charges.

(B) Discontinuance of Lifeline Discounts for customers automatically enrolled. The eligibility period for automatically enrolled customers is the length of their enrollment in HHSC benefits plus a period of 60 days for renewal. Automatically enrolled customers will have an opportunity to renew their HHSC benefits or self enroll with LIDA upon the expiration of their automatic enrollment.

(C) Discontinuance of Lifeline discounts for customers who have self-enrolled. Individuals not receiving benefits through HHSC programs, but who have met Lifeline income qualifications in subsection (d) of this section, are eligible to receive the Lifeline discount for seven months, which includes a period of 60 days during which the customer may renew their eligibility with LIDA for an additional seven months.

(4) Number Portability. Consistent with 47 C.F.R. §52.33(a)(1)(C), Lifeline providers may not charge Lifeline customers a monthly number-portability charge.

(5) Service deposit prohibition. If the qualifying low-income customer voluntarily elects toll limitation from the Lifeline provider, the Lifeline provider may not collect a service deposit pursuant to §26.24 of this title (relating to Credit Requirements and Deposits) in order to initiate Lifeline Service.

(6) Ancillary services. A Lifeline provider shall provide customers who apply for or receive Lifeline Service access to available vertical services or custom calling features, including caller ID, call waiting, and call blocking, at the same price as other consumers. Lifeline discounts shall only apply to that portion of the bill that is for basic network services.

(7) Bundled packages. A Lifeline provider shall provide customers who apply to receive Lifeline Service access to bundled packages at the same price as other consumers less the Lifeline discount that shall only apply to that portion of the bundled package bill that is for basic network service.

(f) Lifeline support and recovery of support amounts.

(1) Lifeline discount amounts. All Lifeline providers shall provide the following Lifeline discounts to all eligible Lifeline customers:

(A) Waiver of the monthly subscriber line charge (SLC)--Lifeline providers shall grant a waiver of the monthly SLC at the rate tariffed by the incumbent local exchange carrier serving the area of the qualifying low-income customer. If the ETP does not charge the SLC, it shall reduce its lowest tariffed residential rate for supported services by the amount of the SLC tariffed by the Incumbent Local Exchange Carrier (ILEC) serving the area of the qualifying low-income customer.

(B) Federally approved $1.75 reduction--A Lifeline provider shall give a qualifying low-income customer a federally approved reduction of $1.75 in the monthly amount of intrastate charges paid pursuant to 47 C.F.R. §54.403 (relating to Lifeline Support Amount).

(C) Additional state reduction with federal matching--A Lifeline provider shall give a qualifying low-income customer an additional state-approved reduction of up to a maximum of $3.50 in the monthly amount of intrastate charges.

(D) Federal match of state reduction--A Lifeline provider shall provide a further federally approved reduction equal to one-half the amount of the state-mandated reduction in subparagraph (C) of this paragraph up to a maximum of $1.75.

(E) Additional federal Lifeline support of up to $25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e).

(F) Additional Texas High Cost Universal Service Plan (THCUSP) ILEC Area Discount--

(i) Beginning January 1, 2009, Lifeline providers operating in the service areas of Southwestern Bell Telephone Company d/b/a AT&T Texas, GTE Southwest Incorporated d/b/a Verizon Southwest, Central Telephone Company d/b/a Embarq, United Telephone Company d/b/a Embarq, and Windstream Communications Southwest, or their successors, (collectively, THCUSP ILECs) shall provide a reduction (THCUSP ILEC Area Discount) equal to 25% of any actual increase by a THCUSP ILEC to its residential basic network service rate that occurs in a THCUSP ILEC's Public Utility Regulatory Act (PURA) Chapter 58 regulated exchanges and is consistent with the Unanimous Settlement Agreement filed on April 8, 2008, and adopted by the commission in its Order filed on April 25, 2008, in Docket Number 34723, *Petition for Review of Monthly Line Support Amounts from the Texas High Cost Universal Service Plan, Pursuant to PURA §56.031 and P.U.C. SUBST. R. §26.403 (Rate Increase)* and with new §26.403 of this title adopted by the commission in Project Number 39937, *Rulemaking to Consider Amending Substantive Rule §26.403, Relating to the Texas High Cost Universal Service Plan and Substantive Rule §26.412, Relating to the Lifeline Service Program.*

(ii) A THCUSP ILEC Area Discount shall be calculated by a THCUSP ILEC on the basis of the weighted average of the Rate Increase(s). The calculation of the weighted average of the Rate Increase(s) shall use a denominator that is the sum of all PURA Chapter 58 regulated residential lines with Rate Increases, and shall use a numerator that is the sum of each product that results from multiplying the number of PURA Chapter 58 regulated residential lines affected by each discrete Rate Increase times the corresponding Rate Increase. The weighted average of the Rate Increase(s) calculation shall be included in the tariff filing made to implement the THCUSP ILEC AREA Discount.

(iii) A THCUSP ILEC Area Discount shall be provided to all qualifying Lifeline customers who are located in the service area of the THCUSP ILEC that has implemented the corresponding Rate Increase.

(iv) A THCUSP ILEC shall file with the commission tariffs implementing a THCUSP ILEC Area Discount at the time it files for a Rate Increase.

(v) A competitive local exchange carrier (CLEC) Lifeline provider operating in the service area of a THCUSP ILEC shall file with the commission tariffs or price lists implementing the appropriate THCUSP ILEC Area Discount.

(vi) The effective date of a THCUSP ILEC Area Discount shall have the same effective date as the corresponding Rate Increase.

(2) Lifeline support amounts. The following Lifeline providers shall receive support amounts for the Lifeline discounts outlined in paragraph (1) of this subsection:

(A) ETC--Pursuant to 47 C.F.R. §54.403(a), the federal Lifeline support an ETC shall receive is:

(i) The tariffed rate in effect for the primary residential SLC of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service.

(ii) Additional federal Lifeline support in the amount of $1.75 per month.

(iii) Additional federal Lifeline support in an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of $1.75 per month.

(iv) Additional federal Lifeline support of up to $25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e).

(B) ETP--

(i) An ETP shall receive state support of up to a maximum of $3.50 which is eligible for federal matching as described in paragraph (1)(C) of this subsection.

(ii) An ETP operating in the service areas of the THCUSP ILECs shall receive additional state support equal to the discount prescribed by paragraph (1)(F) of this subsection.

(iii) If an ETP has been designated as an ETC, then the certificated provider shall also receive support amounts prescribed by subparagraph (A) of this paragraph.

(C) Resale ETP--A resale ETP shall receive Lifeline Service support equal to the following state and federal amounts as long as the Lifeline Service was not purchased as a wholesale offering from the ILEC. Any Lifeline Service purchased as a wholesale offering from the ILEC includes the Lifeline Discount and is therefore not eligible to receive an additional discount. The Texas Universal Service Fund (TUSF), regardless of whether the Lifeline Service Discount is state or federally mandated, will provide all Lifeline Service support.

(i) The tariffed rate in effect for the primary residential SLC of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service. If the Resale ETP does not charge the SLC, it shall reduce its lowest tariffed residential rate for supported services by the amount of the SLC tariffed by the ILEC serving the area of the qualifying low-income customer;

(ii) Additional federally mandated Lifeline support in the amount of $1.75 per month;

(iii) Additional federally mandated Lifeline support in an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of $1.75 per month;

(iv) Additional federally mandated Lifeline support of up to $25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e);

(v) A resale ETP shall receive state-mandated support of up to a maximum of $3.50 which is eligible for federal matching as described in paragraph (1)(C) of this subsection; and

(vi) A Resale ETP operating in the service areas of the THCUSP ILECs shall receive additional state support equal to the discount prescribed by paragraph (1)(F) of this subsection.

(D) Non-ETP/ETC--A Non-ETP/ETC is not eligible to receive any state or federally mandated Lifeline support.

(g) Obligations of the customer and the Lifeline provider.

(1) Obligations of the customer.

(A) Customers who meet the low-income requirement for qualification but do not receive benefits under the programs listed in subsection (d) of this section may provide the LIDA with self-enrollment for Lifeline benefits.

(B) Customers receiving benefits under the programs listed in subsection (d) of this section and who have telephone service will be subject to the Lifeline automatic enrollment procedures as provided by the LIDA unless they provide the LIDA with a request to be excluded from Lifeline Service.

(C) Customers receiving benefits under the programs listed in subsection (d) of this section and who do not have telephone service must initiate a request for service from a participating telecommunications carrier providing local service in their area.

(D) Opportunity for contest.

(i) A customer who believes that their self-enrollment application has been erroneously denied may request in writing that LIDA review the application, and the customer may submit additional information as proof of eligibility.

(ii) A customer who is dissatisfied with LIDA's action following a request for review under clause (i) of this subparagraph may request in writing that an informal hearing be conducted by the commission staff.

(iii) A customer dissatisfied with the determination after an informal hearing under clause (ii) of this subparagraph may file a formal complaint pursuant to §22.242(e) of this title (relating to Complaints).

(2) Obligations of Lifeline providers.

(A) A Lifeline provider shall only provide Lifeline Service to all eligible customers identified by the LIDA within its service area in accordance with this section.

(i) A Lifeline provider shall identify, on the initial database provided by the LIDA, those customers to whom it is providing telephone service and shall begin reduced billing for those qualifying low-income customers.

(ii) The eligible customer shall not be charged for changes in telephone service arrangements that are made in order to qualify for Lifeline Service, or for service order charges associated with transferring the account into Lifeline Service. If the eligible customer changes the telephone service, the Lifeline provider shall begin reduced billing at the time the change of service becomes effective.

(iii) Upon receipt of the monthly update provided by the LIDA, a Lifeline provider shall begin reduced billing for those qualifying low-income customers subscribing to services within 30 days.

(iv) The LIDA shall provide a self-enrollment form by direct mail at the customer's request. The LIDA shall maintain customers' self-enrollment forms and provide a database of self-enrolling customers to all Lifeline providers.

(B) Tariff Requirement. Each Lifeline provider shall file a tariff to implement Lifeline Service, or revise its existing tariff for compliance with this section and with applicable law, including subsection (f)(1)(C) of this section.

(C) Reporting requirements. Lifeline providers providing Lifeline Service pursuant to this section shall report information as required by the commission or the TUSF administrator, including but not limited to the following information:

(i) Initial reporting requirements. Lifeline providers shall provide the commission and the TUSF administrator with information demonstrating that its Lifeline Service plan meets the requirements of this section.

(ii) Monthly reporting requirements. Lifeline providers shall report monthly to the TUSF administrator the total number of qualified low-income customers to whom Lifeline Service was provided for the month by the Lifeline providers. Resale ETPs shall not report any customers whose Lifeline Services were purchased from an ILEC as a wholesale Lifeline Service offering. The ILEC from whom these lines were purchased will include those customers in its total number of qualified low-income customers reported to the TUSF administrator. Non-ETP Lifeline providers are excluded from this reporting requirement since they have elected not to receive any type of Lifeline support.

(iii) Other reporting requirements. Lifeline providers shall report any other information required by the commission or the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF. Non-ETP Lifeline providers may be required to report certain information to the commission but will not be required to submit information to the TUSF administrator since they have elected not to receive any type of Lifeline support.

(iv) ETPs shall file the following information with the administrator of the Federal Lifeline Program. Non-ETP Lifeline providers are exempt from this requirement.

(I) information demonstrating that the ETP's Lifeline Service plan meets the criteria set forth in 47 C.F.R. Subpart E (relating to Universal Service Support for Low-Income Consumers);

(II) the number of qualifying low-income customers served by the ETP;

(III) the amount of state assistance; and

(IV) other information required by the administrator of the Federal Lifeline Program.

(D) Notice Requirement. A Lifeline provider shall provide the following notices of Lifeline Service:

(i) Notice of Lifeline Service in any directory it distributes to its customers advising customers of the availability of Lifeline Service. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its directory, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format;

(ii) An annual bill message-advising customers of the availability of Lifeline Service. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its annual bill messages, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format;

(iii) Inform all customers both orally and in writing of the existence of the Lifeline Service program when they request or initiate service or change service locations or providers. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its directory, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format; and

(iv) Shall publicize the availability of Lifeline Service in a manner reasonably designed to reach those likely to qualify for the service.

(E) Confidentiality agreements. Each Lifeline provider must execute a confidentiality agreement with the LIDA prior to receiving the LIDA's eligibility database. The agreement will specify that client information is released by the LIDA to the Lifeline provider for the sole purpose of providing Lifeline Service to eligible customers and that the information cannot be released by the Lifeline provider or be used by the Lifeline provider for any other purpose.

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 June 18, 2012.

TRD-201203217
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 8, 2012
Proposal publication date: February 10, 2012
For further information, please call: (512) 936-7223

♦ ♦ ♦

PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS

DIVISION 2. PROGRAM FOR HORSES

16 TAC §303.97

The Texas Racing Commission adopts new 16 TAC §303.97, Dually Registered Horses, concerning awards of Accredited Texas Bred funds from state breed registries. The new rule is adopted without changes to the proposed text as published in the April 27, 2012, issue of the *Texas Register* (37 TexReg 2957) and will not be republished.

The new rule provides that a dually registered horse is not eligible to receive an award from more than one breed registry for the same race. The effect of the rule will be to conserve the Accredited Texas Bred funds of the state breed registries.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under the Texas Revised Civil Statutes Annotated Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing.

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 June 22, 2012.

TRD-201203312

Mark Fenner
General Counsel
Texas Racing Commission
Effective date: July 12, 2012
Proposal publication date: April 27, 2012
For further information, please call: (512) 833-6699

♦ ♦ ♦

CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

The Texas Racing Commission adopts amendments to 16 TAC §§313.101, 313.103, 313.104 and 313.306. These sections relate to procedures for entering a horse into a race, eligibility requirements, registration certificates, and claiming races. The rule amendments are adopted without changes to the proposed text as published in the April 27, 2012, issue of the *Texas Register* (37 TexReg 2961) and will not be republished.

The adopted change to §313.101 requires a person entering a dually registered Accredited Texas Bred horse into a mixed breed conditioned race to declare which breed the horse shall run as for purposes of Breeder Awards eligibility. The amendment also makes a technical change by substituting Equibase for the American Quarter Horse Association as a source of past performance information. The amendment to §313.103 repeals the prohibition against allowing a dually registered horse from participating as a member of more than one breed during a race meet. The amendment requires both registration certificates of a dually registered horse to be on file with the racing secretary. The amendment also increases from 45 to 60 days the length of time in advance of a race during which a trainer may secure an official workout for a horse. The amendment to §313.104 adds language requiring that both registration certificates of a dually registered horse be in the racing secretary's office if the horse is entered into a claiming race. The amendment to §313.306 adds language that requires both certificates of a dually registered claimed horse to be transferred to the successful claimant. As a result of these changes, dually registered horses will have additional opportunities to compete during each meet, the Accredited Texas Bred funds will be conserved, and the rights of potential claimants in claiming races will be protected. In addition, the change to §313.103 provides a trainer with an additional 15 days in advance of a race in which to secure a horse's workout.

No comments were received regarding the adoption of the amendments.

SUBCHAPTER B. ENTRIES, SCRATCHES, AND ALLOWANCES
DIVISION 1. ENTRIES

16 TAC §§313.101, 313.103, 313.104

The amendments are adopted under the Texas Revised Civil Statutes Annotated Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing.

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 June 22, 2012.

TRD-201203310
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: July 12, 2012
Proposal publication date: April 27, 2012
For further information, please call: (512) 833-6699

♦ ♦ ♦

SUBCHAPTER C. CLAIMING RACES

16 TAC §313.306

The amendment is adopted under Texas Revised Civil Statutes Annotated Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing.

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 June 22, 2012.

TRD-201203311
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: July 12, 2012
Proposal publication date: April 27, 2012
For further information, please call: (512) 833-6699

♦ ♦ ♦

SUBCHAPTER D. RUNNING OF THE RACE
DIVISION 1. JOCKEYS

16 TAC §313.409

The Texas Racing Commission adopts an amendment to 16 TAC §313.409, Jockey Mount Fees, concerning the fees paid to jockeys. The rule amendment is adopted without changes to the proposed text as published in the April 27, 2012, issue of the *Texas Register* (37 TexReg 2962) and will not be republished.

The adopted change makes the pay scale of jockeys comparable to that in the model rules and in Texas' surrounding states. The change also clarifies existing policy that a jockey who has been replaced by the owner or trainer after being named on a horse shall be paid the same amount that the replacement jockey receives.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Texas Revised Civil Statutes Annotated Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing.

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 June 22, 2012.

TRD-201203314

Mark Fenner
General Counsel
Texas Racing Commission
Effective date: July 12, 2012
Proposal publication date: April 27, 2012
For further information, please call: (512) 833-6699

♦ ♦ ♦

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL DIPLOMAS FOR CERTAIN VETERANS

19 TAC §61.1061

The Texas Education Agency (TEA) adopts an amendment to §61.1061, concerning high school diplomas for certain veterans. The amendment is adopted without changes to the proposed text as published in the March 30, 2012, issue of the *Texas Register* (37 TexReg 2141) and will not be republished. The section adopts in rule the diploma application to be used by a veteran or a person acting on behalf of a deceased veteran and specifies acceptable evidence of eligibility for a diploma. The adopted amendment implements the requirements of the Texas Education Code (TEC), §28.0251, as amended by the 82nd Texas Legislature, 2011.

The TEC, §28.0251, allows a school district to issue a high school diploma to a person who is an honorably discharged member of the armed forces of the United States; was scheduled to graduate from high school after 1940 and before 1975; and left high school before graduation to serve in World War II, the Korean War, or the Vietnam War. A school district may issue a diploma to an eligible veteran notwithstanding the fact that the person holds a high school equivalency certificate or is deceased. The TEC, §28.0251(c), requires the commissioner by rule to adopt a form for a diploma application to be used by certain veterans (or a person acting on behalf of a deceased veteran) to obtain a high school diploma and specify acceptable evidence of eligibility of such a diploma. Section 61.1061 was adopted effective August 12, 2001, and amended effective June 11, 2006, in accordance with statute.

Senate Bill 966, 82nd Texas Legislature, 2011, amended the TEC, §28.0251. The amendment extended eligibility to individuals who were scheduled to graduate from high school after 1989 and left school after completing Grade 6 or higher, but before graduating from high school, to serve in the Persian Gulf War; the Iraq War; the war in Afghanistan; or any other war formally declared by the United States, military engagement authorized by the United States Congress, military engagement authorized by a United Nations Security Council resolution and funded by the United States Congress, or conflict authorized by the president of the United States under the War Powers Resolution of 1973 (50 United States Code §1541 et seq.).

The adopted amendment to 19 TAC §61.1061 updates the rule to reflect the extended eligibility and the additional specified wars. The application form provided as part of the rule has also been updated accordingly.

The adopted amendment has no new procedural or reporting implications. The adopted amendment has no new locally maintained paperwork requirements.

The TEA determined 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 began March 30, 2012, and ended April 30, 2012. No public comments were received.

The amendment is adopted under the TEC, §28.0251, which requires the commissioner of education to adopt by rule a form for a diploma application to be used by a veteran or a person acting on behalf of a deceased veteran and specify acceptable evidence of eligibility of a diploma.

The amendment implements the TEC, §28.0251.

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 June 22, 2012.

TRD-201203299
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: July 12, 2012
Proposal publication date: March 30, 2012
For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 75. CURRICULUM
SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING PROVISIONS FOR CAREER AND TECHNICAL EDUCATION

19 TAC §§75.1023, 75.1024, 75.1031 - 75.1033

The Texas Education Agency (TEA) adopts amendments to §§75.1023, 75.1024, 75.1031, 75.1032, and 75.1033, concerning career and technical (CTE) education. The amendments are adopted without changes to the proposed text as published in the March 23, 2012, issue of the *Texas Register* (37 TexReg 1973) and will not be republished. The sections establish requirements for CTE, including provisions for members of special populations and opportunities for students to participate in student leadership organizations, and address provisions related to voluntary workforce training programs. The amendments align language with rules concerning special education services, update the list of recognized CTE organizations, update provisions relating to voluntary workforce training programs, and make technical edits.

The TEC, §29.185, authorizes the TEA to prescribe requirements for CTE in public schools as necessary to comply with federal law.

The TEC, §29.001, directs the TEA to develop and implement a statewide plan with programmatic content that includes procedures designed to ensure that, when appropriate, each student with a disability is provided an opportunity to participate in CTE classes in addition to participating in regular or special classes.

The TEC, §29.182, requires the TEA to prepare and biennially update a state plan for CTE that sets forth objectives for CTE for the next biennium and long-term goals for the following five years. The statute requires that the state plan ensure that CTE constitutes an option for student learning that provides a rigorous course of study consistent with the required curriculum and that the state plan outline outcomes and opportunities for students in CTE programs.

Additionally, the Texas Labor Code, §311.004, authorizes the TEA to adopt rules necessary to administer its responsibilities related to the program for voluntary workforce training for certain students.

The commissioner's rules in 19 TAC Chapter 75, Subchapter BB, implement these statutory requirements. During the statutorily required review of rules in 19 TAC Chapter 75, staff identified the need to update rules related to CTE. The adopted amendments to 19 TAC Chapter 75, Subchapter BB, include amendments as follows.

An amendment to §75.1023, Provisions for Individuals Who Are Members of Special Populations, clarifies that a student with a disability must have access to CTE in accordance with the Individuals with Disabilities Education Act. In addition, the section is amended to align with federal requirements that excuse a teacher from attending an admission, review, and dismissal (ARD) committee meeting if the teacher provides written feedback to the ARD committee. The change clarifies that the CTE representative does not necessarily have to attend each meeting in order to provide feedback. Finally, provisions relating to transition services are amended to align with special education rules in 19 TAC Chapter 89 to make the language consistent and avoid confusion.

An amendment to §75.1024, Career and Technical Student Organizations, adds the Future Educators Association to the list of CTE student organizations recognized by the United States Department of Education and the TEA. Subsequent paragraphs are renumbered accordingly.

Technical edits to §75.1031, Voluntary Workforce Training Standards and Agreements, correct word usage.

An amendment to §75.1032, Certification Standards, specifies that voluntary workforce training programs must comply with any local regulations pertaining to fair labor standards and workplace health and safety. In addition, references to the TEA are updated.

An amendment to §75.1033, Certified Program Agreements, clarifies that employers' agreements are not required to extend after the participant's first year of postsecondary education. The amendment allows more flexibility when establishing employment agreements for career and technical secondary and postsecondary education programs.

The adopted amendments have no new procedural or reporting implications. The adopted amendments have no new locally maintained paperwork requirements.

The TEA determined 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 began March 23, 2012, and ended April 23, 2012. No public comments were received.

The amendments are adopted under the TEC, §29.001, which directs the TEA to develop and implement a statewide plan with programmatic content that includes procedures designed to ensure that, when appropriate, each student with a disability is provided an opportunity to participate in CTE classes, in addition to participating in regular or special classes; the TEC, §29.182, which requires the TEA to prepare and biennially update a state plan for CTE that includes procedures to ensure that CTE constitutes an option for student learning that provides a rigorous course of study consistent with the required curriculum and which also requires the state plan for CTE to outline outcomes and opportunities for students in CTE programs; the TEC, §29.185, which authorizes the TEA to prescribe requirements for CTE in public schools as necessary to comply with federal law; and the Texas Labor Code, §311.004, which authorizes the TEA to adopt rules necessary to administer its responsibilities related to the Voluntary Workforce Training for Certain Students program.

The amendments implement the TEC, §§29.001, 29.182, and 29.185, and the Texas Labor Code, §311.004.

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 June 22, 2012.

TRD-201203308
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: July 12, 2012
Proposal publication date: March 23, 2012
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER K. SCIENTIFIC AREAS

31 TAC §57.910

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 29, 2012 adopted new §57.910, concerning the San Marcos River State Scientific Area (SMRSSA), with changes to the proposed text as published in the February 17, 2012, issue of the *Texas Register* (37 TexReg 874).

The changes are nonsubstantive clarifications intended to reduce or eliminate potential ambiguity or confusion. The change to subsection (b) inserts the word "River" in the first line of the subsection to make the reference to the title of the scientific area accurate. The change to subsection (c) alters the phrase "120 cubic feet per second" to read "120 cubic feet per second or less," to clarify that the provisions of the section are also applicable at flow rates below 120 cfs. The change to subsection (c) also inserts the phrase "within the boundaries described by subsection (b) of this section" in order to be absolutely clear as to the places in which unauthorized entry is prohibited when restric-

tions are in effect. The change to subsection (d) alters paragraph (1) to read "restricted area within the boundaries described by subsection (b) of this section" to eliminate confusion about what is meant by the word "area." The change to subsection (d) also alters paragraph (3) by replacing the phrase "except as may be permitted" with the phrase "except as may be expressly authorized" in order to clarify that entry into a restricted area is prohibited except by explicit authorization.

The intent of the new rule is to offer additional protection to Texas wild-rice *(Zizania texana).* The San Marcos River in Hays County is home to the world's only naturally occurring populations of Texas wild-rice, which are located primarily along a two-mile stretch of the headwaters of the San Marcos River adjacent to the City of San Marcos and the main campus of Texas State University. Texas wild-rice is habitat-specific, requiring complete submergence in a minimum of one foot of clear, clean, flowing water in order to survive and remain viable. Construction activities, urbanization and increased water-related recreational activities in the San Marcos River have increased the risk potential for wild-rice populations, mainly as a result of physical disturbance, which is exacerbated during drought-induced low-flow conditions when reduced water depths bring humans and animals into very close proximity with wild-rice plants that are already under stress.

In 1978, Texas wild-rice was listed by the U.S. Fish and Wildlife Service as an endangered species and therefore has certain protections under federal law. However, in 2007 the Texas Legislature enacted Senate Bill 3, which required the Edwards Aquifer Authority, the groundwater district that manages and regulates the San Antonio segment of the Edwards Aquifer, to cooperate with the Texas Commission on Environmental Quality, the Texas Parks and Wildlife Department, the Texas Department of Agriculture, the Texas Water Development Board, and other stakeholders to develop a recovery implementation program with the U.S. Fish and Wildlife Service for species associated with the aquifer that are listed as threatened or endangered under federal law. As a consequence, the group of stakeholders comprising the Edwards Aquifer Recovery Implementation Program (EARIP) developed and adopted a Habitat Conservation Plan (HCP) to protect those species that depend on a healthy aquatic ecosystem for survival. The designation of the SMRSSA is a mechanism within the HCP for offering additional state protection for the remaining populations of Texas wild-rice. The concept for the SMRSSA was developed by the department in cooperation with the City of San Marcos, Texas State University, the Edwards Aquifer Authority, and the many other stakeholders on the EARIP.

The new rule designates an approximately two-mile segment of the public waters of the San Marcos River in Hays County as a state scientific area, within which it would be unlawful to uproot wild-rice. In addition, the new rule allows the designation of restricted areas of the river associated with Texas wild-rice stands that could be temporarily designated as off-limits to unauthorized entry when the river's streamflow falls below 120 cfs (cubic feet per second). The 120 cfs threshold was developed by the Chief Science Officer at the River Systems Institute at Texas State University in consultation with the department, City of San Marcos, and other resource managers. The U.S. Fish and Wildlife Service has established a minimum flow of 100 cfs as the trigger for federal actions to protect habitat of the various threatened and endangered species in the San Marcos river system. By establishing a threshold that is slightly higher than the 100 cfs trigger, the department intends to afford protection to wild-rice populations when environmental conditions are approaching, but not at, absolute critical levels that would trigger federal actions. The department and other cooperators will clearly mark restricted areas with equipment such as booms or buoys, will install signage at river access points to inform the public, and will conduct extensive public education and outreach efforts to ensure that, to the greatest extent possible, the recreational public is made aware of regulations to protect wild-rice populations. The new rule affects only activities in public waters and does not affect the use of any private property. When conditions necessitate the temporary designation of restricted areas, the river will not at any point within the area be completely blocked to public access or use.

The new rule will function by protecting wild rice in the San Marcos River from additional external stress during low-flow conditions.

The department received seven comments opposing adoption of the proposed new rule. One commenter articulated a specific reason or rationale for opposing adoption. The commenter stated that there is already ample protection for wild rice in place and that the rule represents the efforts of bureaucrats and moneyed interests to control the river for personal and political gain. The department disagrees with the comment and responds that the rule as adopted provides additional protective measures without affecting public enjoyment of the river. The department also responds that it is not aware of any aspect of the rule that results in either personal or political gain for any person or entity. No changes were made as a result of the comment.

The department received 55 comments supporting adoption of the proposed new rule.

The San Marcos River Foundation, the Edwards Aquifer Authority, the Edwards Aquifer Recovery Implementation Program, the Lone Star Chapter of the Sierra Club, the National Wildlife Federation, the San Antonio Water System, Texas State University, the City of San Marcos, the San Marcos Lions Club, and the Texas Wildlife Association commented in favor of adoption of the proposed new rule.

No groups or associations commented in opposition to adoption of the proposed new rule.

The new rule is adopted under Parks and Wildlife Code, §81.501, which authorizes the commission to create state scientific areas for the purposes of education, scientific research, and preservation of flora and fauna of scientific or educational value; §13.101, which authorizes the commission to promulgate regulations, governing the health, safety, and protection of persons and property in state scientific areas, including regulations governing the conservation of natural features and destructive conduct; and §88.006, which authorizes the department to adopt regulations governing the provisions of Chapter 88, which governs endangered plants.

The new rule affects Parks and Wildlife Code, Chapter 13, Subchapter B; Chapter 81, Subchapter F; and Chapter 88.

§57.910. San Marcos River State Scientific Area.

(a) Purpose. The San Marcos River State Scientific Area is established for the purpose of education, scientific research, and preservation of flora and fauna of scientific or educational value, specifically, the preservation of Texas wild-rice *(Zizania texana).*

(b) Boundaries. The San Marcos River State Scientific Area consists of the public waters of the San Marcos River from midstream to the boundary of public waters in the area within the following boundaries:

(1) 29 53 26.04 Lat N, 97 55 55.29 Long W (northeast boundary near Spring Lake Dam);

(2) 29 53 22.71 Lat N, 97 56 19.01 Long W (southeast boundary near the San Marcos Water Treatment Plant);

(3) 29 51 52.63 Lat N, 97 55 56.07 Long W (southwest boundary near the San Marcos Water Treatment Plant); and

(4) 29 51 53.92 Lat N, 97 55 31.94 Long W (northwest boundary near Spring Lake Dam).

(c) Restricted Areas. When the streamflow of the San Marcos River is measured at 120 cubic feet per second or less at the San Marcos River gaging station (United States Geological Survey gage 081705000 San Marcos River at San Marcos), the department may restrict areas within the boundaries described by subsection (b) of this section by means of clearly marked booms, buoys, and/or signage to reflect the fact that the area is restricted to unauthorized entry.

(d) Prohibited Acts. It is an offense for any person to:

(1) move, remove, deface, alter, or destroy any sign, buoy, boom, or other such marking delineating the boundaries of the San Marcos River State Scientific Area or a restricted area within the boundaries described by subsection (b) of this section;

(2) uproot Texas wild-rice within the San Marcos River State Scientific Area; or

(3) enter an area that is marked by signage, booms, buoys, or other apparatus clearly identifying the area as a restricted area, except as may be expressly authorized by the department or the U.S. Fish and Wildlife Service.

(e) Penalties. The penalty for violation of this section is prescribed by Parks and Wildlife Code, §13.112.

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 June 18, 2012.

TRD-201203215
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: July 8, 2012
Proposal publication date: February 17, 2012
For further information, please call: (512) 389-4775

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3052

The Comptroller of Public Accounts adopts an amendment to §9.3052, concerning request form for separate taxation of stockholders' interest in cooperative housing, without changes to the proposed text as published in the May 18, 2012, issue of the *Texas Register* (37 TexReg 3679).

This section is amended to delete outdated language regarding penalties associated with Penal Code, §37.10.

No comments were received regarding adoption of the amendment.

This amendment is adopted pursuant to Tax Code, §5.07, which provides for the comptroller to prescribe the contents of all forms necessary for the administration of the property tax system.

This amendment implements Tax Code, §5.07.

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 June 25, 2012.

TRD-201203329
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: July 15, 2012
Proposal publication date: May 18, 2012
For further information, please call: (512) 475-0387

♦ ♦ ♦

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

Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission files this notice of intent to review Chapter 309, Racetrack Licenses and Operations. This review is conducted pursuant to the Texas Government Code, §2001.039, which requires state agencies to review and consider for re-adoption their administrative rules every four years.

The review shall assess whether the reasons for initially adopting the rules within the chapter continue to exist and whether any changes to the rules should be made.

All comments or questions in response to this notice of rule review may be submitted in writing to Carolyn Weiss, Assistant to the Executive Director of the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907. The Commission will accept public comments regarding the chapter and the rules within it for 30 days following publication of this notice in the *Texas Register.*

Any proposed changes to the rules within Chapter 309 as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Commission.

TRD-201203318
Mark Fenner
General Counsel
Texas Racing Commission
Filed: June 22, 2012

♦ ♦ ♦

Texas Department of Transportation

Title 43, Part 1

In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review Texas Administrative Code, Title 43, Part 1, Chapter 21, concerning Right of Way.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments regarding this rule review may be submitted in writing to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483.

TRD-201203356
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: June 25, 2012

♦ ♦ ♦

Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 100, Charters, Subchapter AA, Commissioner's Rules Concerning Open-Enrollment Charter Schools, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 100, Subchapter AA, in the February 10, 2012, issue of the *Texas Register* (37 TexReg 722).

Relating to the review of 19 TAC Chapter 100, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. The TEA received comments related to the review of Subchapter AA. Following is a summary of the public comments received and the corresponding responses.

Comment: The Texas Charter Schools Association (TCSA) stated that the rules in 19 TAC Chapter 100, Subchapter AA, should continue to exist with changes. The TCSA stated that the current definition of "employee of a charter school" in §100.1011(3)(A) is problematic in that even individuals who are not on the payroll of the charter school are considered employees of the charter school. The TCSA further stated that in the event that an individual is terminated from his or her position, this individual, who was under the payroll of a third party, could potentially file a claim against the charter school such as a claim for unemployment compensation at the Texas Workforce Commission, possibly making the charter school responsible for unemployment benefits and unnecessarily expending public funds on an individual who was never a bona fide employee on the charter school's payroll. The TCSA recommended amending this definition to ensure that individuals who are not actually employees of the charter school are not so considered.

Agency response: The agency agrees that 19 TAC Chapter 100, Subchapter AA, should continue to exist but disagrees with the suggested change. The current definition of a charter school employee provided in §100.1011(3)(A) ensures that the charter school is responsible for any person on a charter campus working under the direction and control of an officer of a charter school, thereby clearly making the Texas Education Code (TEC), §12.120, applicable to all who are on campus. This section in statute describes past criminal histories that prohibit

one from serving on a charter holder board, a charter school board, or as an employee of the charter school and is a law designed to protect the health, safety, and welfare of charter school students.

Comment: The TCSA commented that §100.1011(14) should be changed to add an exception to the definition of a "management company" that includes charter school membership associations such as TCSA, similar to the exception in §100.1011(14)(C) that excludes regional education service centers (ESCs) from being considered management companies.

Agency response: The agency disagrees with the suggested change. The exemption is appropriate for ESCs that are established and operated statutorily by the commissioner of education under the TEC, Chapter 8. Therefore, ESCs are under the supervision of the commissioner while membership associations are not.

Comment: The TCSA commented that §100.1011(16) should be changed to align the definition of "officer of a charter school" with the statutory definition found in the TEC, §12.1012(6). The TCSA further stated that the rule encompasses significantly more individuals than what is articulated in statute and that the definition in §100.1011(16) should comport precisely with the statute.

Agency response: The agency disagrees with the suggested change. The term "charter school" is defined by §100.1011(3) to mean a Texas public school operated by a charter holder under an open-enrollment charter granted by the State Board of Education (SBOE) pursuant to the TEC, §12.101. Therefore, the chief executive officer and/or the superintendent and other central administrative officers meet the definition of "other chief operating officer of an open-enrollment charter school" as stated in the TEC, §12.1012(6). The TEA has determined that it is appropriate to include other central administrative officers as officers of the charter school as they oversee both the operations of the school or schools and the campus officers that are explicitly listed in the TEC, §12.1012(6). In addition, many charters use unique titles for charter school officers, and the language in §100.1011(3) assists charters in understanding who the TEA considers to be officers of the charter school based on roles rather than titles.

Comment: The TCSA commented that §100.1033(c)(5), pertaining to expansion amendments, should be changed. The TCSA stated that if a charter school submits its request before the February 1 deadline for expansion amendments for the following school year, the request is not considered by TEA staff until after the February 1 deadline and that charter schools must wait indefinitely on a response since there is not a deadline for when the TEA must respond to an expansion amendment request. The TCSA recommended a 45-day deadline by which TEA must respond to a charter school's expansion amendment request. Additionally, the TCSA recommended the adoption of an "application window," defined as a time period during which charter schools may apply for expansion amendments, in order to allow charter schools to make final financial, educational, staffing, and real estate decisions well in advance of the expansion year. The TCSA recommended an application window of October 1 through February 1 and stated that an application window would also give TEA staff members the opportunity to spread out their workloads and address expansion amendment requests as they are submitted. The TCSA stated that it is imperative that TEA explicitly list all criteria taken into account by the agency when considering an expansion amendment request.

Agency response: The agency disagrees with the suggested changes. It is inaccurate to state that if a charter school submits an expansion amendment request before the February 1 deadline, it is not considered until after the deadline as agency staff initiate a review process upon receipt of a request. For the commissioner to make an informed decision to grant or deny an expansion amendment request, data are gathered from the following TEA program areas once an expansion amendment is received: Performance Reporting, Charter School Administration, Child Nutrition, Financial Audits, Grants Administration, Legal Services, PEIMS Data Reporting, Program Monitoring and Interventions, NCLB and IDEA Programs, Student Assessment, Governance and Waivers, General Inquiries, Educator Standards and Certification, and Complaints. The data must then be compiled and analyzed by multiple individuals prior to it being presented to the commissioner for final determination. Such a careful and thorough review typically exceeds 45 days. In many instances, charters with successful performance over multiple years have submitted requests and been approved for expansion beyond the upcoming school year. The concept of an application window is unclear as charters can currently submit expansion requests for the upcoming year earlier than the February 1 deadline. Also, it is often important for the commissioner to consider the most recent financial audit report of a charter in determining whether expansion is appropriate for the following school year, and audit reports are not due to TEA for most charters until the end of January. The agency has also determined that the language in §100.1033(c) aligns with the agency's goal of maintaining administrative flexibility in lieu of the inflexibility of rules to allow the commissioner to consider the best interest of students at the charter schools, as well as the best interest of students throughout the state, prior to approving substantive amendments, which include all expansion amendment requests. However, the agency is reviewing its expansion amendment request processes and plans to revise current processes so that charters will receive commissioner determinations more quickly.

Comment: The TCSA commented that §100.1033(c)(6)(A)(ii)(II), pertaining to new school amendments, should be changed. The TCSA stated that the rule provides charters evaluated under standard accountability procedures in §100.1033(c)(6)(A)(ii)(I) with a safe harbor by requiring certain levels of performance for three of the last five years while charters evaluated under alternative education accountability (AEA) procedures must meet an absolute standard of five of the last five years and recommended that charters evaluated under AEA procedures should have a similar safe harbor.

Agency response: The agency disagrees with the suggested change. The agency has determined that the requirements in §100.1033(c)(6) for a charter to obtain new school designation ensure that consistent, sustained high performance is demonstrated before the commissioner waives any expansion amendment requirements and/or designates a school as a new school, and that, for the purposes of a new school amendment, it is appropriate in §100.1033(c)(6)(A)(ii)(II) to require a charter evaluated under AEA procedures to maintain acceptable accountability ratings for five of the last five years. It should be noted that charters evaluated under standard procedures are held to a different standard both by being evaluated under standard procedures and by being required to maintain a district rating of Exemplary or Recognized for three of the last five years with at least 75% of the campuses rated under the charter also being rated Exemplary or Recognized and no campus with an unacceptable rating in the most recent state accountability system.

Comment: The TCSA commented that §100.1033(c)(6)(A)(iii), pertaining to staging in the No Child Left Behind (NCLB) school improvement program for failure to meet adequate yearly progress (AYP), should be changed. The TCSA stated that the standard is not based on federal guidance, is inflexible, and should be revised to allow charters with campuses in Stages 1 and 2 to be eligible for new school designations.

Agency response: The agency disagrees with the suggested change. The agency has determined that it is appropriate to reserve new school amendments for those charters with no campuses that have been placed

in Stages 2-5 in the NCLB school improvement program for failure to meet AYP in the most current report to ensure that new school amendments are reserved for those charters that are clearly high performing. The agency notes that charters not designated by the commissioner as new schools under existing charters may still request and potentially be granted expansion through the traditional expansion amendment process.

Comment: The TCSA commented that §100.1035(a)(4), pertaining to the requirement to develop and maintain compliance records on nepotism, conflicts of interest, and restrictions on serving at the charter school, should be eliminated. The TCSA stated that, while much of the information stated in the rule reflects that which a school would maintain in the course of operations, the overt recordkeeping requirement in §100.1035(a)(4) is burdensome, especially for larger charter school networks that employ a thousand or more employees. The TCSA stated that it is a strain on a charter school's time and resources to compile this information into one form and that time is better spent on the educational mission of the school, particularly since charter board members and officers are required to report essentially the same information in the annual governance reporting forms required by the SBOE under §100.101, Annual Report on Open-Enrollment Charter Governance.

Agency response: The agency disagrees with the suggested change. It should be noted that annual governance reporting forms are required for board members and officers and do not require documentation about the handling of issues that could be considered conflicts of interest. In addition, no information is submitted to the agency about employees other than board members and officers who could have nepotistic relationships with one another and/or conflict of interest issues. The agency has determined that maintaining this documentation on one form is in the best interest of transparency to the public so that it is readily available for charter holder board members and the public to routinely review. In addition, the documentation is appropriate for review when the commissioner is considering expansion amendment requests and must be submitted with such requests as required in §100.1033(c)(5)(C)(iv).

Comment: The TCSA commented that §§100.1102-100.1105, regarding the required training of charter board members and officers, should be changed. The TCSA stated that board members and officers should participate in continuing education training but that the rules are entirely prescriptive as to the subject matter of the training as well as the exact time that must be allotted to each topic, while continuing education requirements for independent school district board members are not so rigid. The TCSA recommended allowing more latitude in regard to the subject matter and the time commitment that must be spent on each topic. The TCSA also requested a change to §100.1105 that would allow business managers similar latitude in training requirements as that provided to board members, chief executives, central administrative officers, and campus officers of charters with acceptable ratings for two of the last three years.

Agency response: The agency disagrees with the suggested changes. The requirements for charter board members may be more rigid than the required training for board members of traditional school districts, but residents of traditional school districts may choose to elect new board members when they are unsatisfied with the knowledge of and decisions made by these board members. Most charter school board members are not elected, and it is incumbent on them to be knowledgeable of the specific areas for which they are responsible. Since they cannot be removed by majority vote, one way to encourage board members to make decisions that are in the best interest of students is to require training on subjects of great importance to the proper operations of charter schools. It is also important to note that latitude is afforded to the board members of charters that have been rated acceptable or higher for two of the most recent three years. The training requirements for the chief executive, central administrative officers, and campus administrators are important as, unlike school officers in traditional districts, there are no education or certification requirements for charter school officers. In addition, the chief executive, central administrative officers, and campus administrators are eligible for latitude in training that is similar to that provided to board members if their charters have acceptable ratings for two of the last three years. Also, there is a training exemption for any chief executive and central administrative officer who holds a standard Superintendent Certificate in good standing, or its lifetime equivalent, issued by the State Board for Educator Certification (SBEC), and there is an exemption for any school officer who holds a standard Principal Certificate in good standing, or its lifetime equivalent, issued by the SBEC. The business managers must, at all times, remain informed on issues that impact the financial operations of the charter school, and there are many credentials listed in §100.1105(g)(1) and (2) that, if held in good standing, would exempt a business manager from training requirements. The established time requirements were carefully considered based on the nature of the topics so that more time is required on areas that may be more complicated, and less time is required for issues that can be presented and understood more quickly. The agency has determined that these time requirements remain appropriate.

Comment: The TCSA commented that §100.1113 and §100.1114, relating to nepotism and charters with exemptions to nepotism provisions, should be changed. The TCSA stated that the nepotism prohibitions articulated in the Texas Government Code apply to relationships within the third degree by consanguinity or within the second degree by affinity, with 19 TAC Chapter 100 inadvertently extending to the third degree of affinity. The TCSA recommended amendments to ensure that the nepotism provision does not go beyond statute and instead extends only to the second degree of affinity.

Agency response: The agency disagrees with the suggested changes. Section 100.1112, which applies the nepotism restriction to the third degree of consanguinity and affinity, is in alignment with annually adopted SBOE governance reporting forms that require information about board member and school officers within the third degree of consanguinity and affinity and with the TEC, §12.1054(a)(1), which defines the third degree of consanguinity or affinity.

The TEA is proposing amendments to 19 TAC Chapter 100, Subchapter AA, that would improve the application process for charters authorized by the SBOE; specifically define the mitigating factors to be considered when the commissioner considers adverse action for an open-enrollment charter school; allow the commissioner the latitude to enforce sanctions other than charter revocation for student health, safety, and welfare issues; require that a charter holder notify the parents and the TEA any time that operations are suspended at a campus or site for a period of more than three days; clarify that a charter holder that is a nonprofit entity must maintain its nonprofit status at all times; and update references to statute. The proposed amendments may be found in the Proposed Rules section of the June 8, 2012, issue of the *Texas Register* (37 TexReg 4152).

TRD-201203309
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: June 22, 2012

Texas Board of Nursing

Title 22, Part 11

In the April 6, 2012, issue of the *Texas Register* (37 TexReg 2437), the Texas Board of Nursing filed a Notice of Intent to review and consider for re-adoption, revision, or repeal the following chapters contained in Texas Administrative Code, Title 22, Part 11:

Chapter 213, Practice and Procedure, §§213.1 - 213.34.

Chapter 216, Continuing Competency, §§216.1 - 216.11.

Chapter 221, Advanced Practice Nurses, §§221.1 - 221.17.

Government Code §2001.039 requires each state agency to review its rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules in Chapters 213, 216, and 221 were scheduled for this four-year review. No comments were received concerning the Board's proposed rule review.

The Board has completed its review of the rules in Chapters 213, 216, and 221 and has determined that the reasons for originally adopting these rules continue to exist. The rules were also reviewed to determine whether they were obsolete, whether they reflected current legal and policy considerations and current procedures and practices of the Board, and whether they were in compliance with Chapter 2001 of the Government Code (Administrative Procedure Act).

The Board re-adopts the rules in Chapters 213, 216, and 221 without changes, pursuant to Government Code §2001.039 and Occupations Code §301.151, which authorizes the Board to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This concludes the rule review of Chapters 213, 216, and 221 under the implementation of the Board's rule review plan for 2011-2013 that is published on the Secretary of State's website.

TRD-201203382
Lance Brenton
General Counsel
Texas Board of Nursing
Filed: June 27, 2012

♦ ♦ ♦

Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission has completed its reviews of Chapter 301, Definitions, Chapter 303, General Provisions, and Chapter 319, Veterinary Practices and Drug Testing. This review was conducted pursuant to the Texas Government Code, §2001.039, which requires state agencies to review and consider for re-adoption their administrative rules every four years.

Notice of the rule reviews was published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4423).

During the Chapter 301 review, the Commission amended the definition of a greyhound performance and added definitions for an Active and Inactive license. The Commission made no changes to rules within Chapter 303. During the Chapter 319 review, the Commission adopted amendments addressing restricted medications, plus amendments regarding the auditing, approval, and payment of drug testing costs.

The commission received no comments on the rule review in response to the notice other than the comments received in response to individual rule proposals.

The commission has determined that the reasons for initially adopting each rule within the chapters continue to exist and re-adopts the chapters with the amended rules as referenced above.

This completes the review of 16 TAC Part 8, Chapters 301, 303, and 319.

TRD-201203317
Mark Fenner
General Counsel
Texas Racing Commission
Filed: June 22, 2012

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §19.300(a)

Common Name	Botanical Name
Noxious plants	
alligatorweed	*Alternanthera philoxeroides*
balloonvine	*Cardiospermum halicacabum*
Brazilian peppertree	*Schinus terebinthifolius*
broomrape	*Orobanche ramosa*
camelthorn	*Alhagi camelorum*
Chinese tallow tree	*Triadica sebifera*
Eurasian watermilfoil	*Myriophyllum spicatum*
giant duckweed	*Spirodela oligorrhiza*
giant reed	*Arundo donax*
hedge bindweed	*Calystegia sepium*
hydrilla	*Hydrilla verticillata*
itchgrass	*Rottboellia cochinchinensis*
Japanese dodder	*Cuscuta japonica*
kudzu	*Pueraria montana* var. *lobata*
lagarosiphon	*Lagarosiphon major*
paperbark	*Melaleuca quinquenervia*
purple loosestrife	*Lythrum salicaria*
rooted waterhyacinth	*Eichhornia azurea*
saltcedar	*Tamarix* spp.
salvinia	*Salvinia* spp.
serrated tussock	*Nassella trichotoma*
torpedograss	*Panicum repens*
tropical soda apple	*Solanum viarum*
water spinach	*Ipomoea aquatica*
waterhyacinth	*Eichhornia crassipes*
waterlettuce	*Pistia stratiotes*

Invasive plants	
Chinese tallow tree	*Triadica sebifera*
kudzu	*Pueraria Montana* var. *lobata*
saltcedar	*Tamarix* spp.
tropical soda apple	Solanum viarum
japanese climbing fern	***Lygodium japonicum***

Figure: 4 TAC §45.2(a)

Multiple species diseases

Akabane - Akabane virus

Anthrax**- Bacillus anthracis

Aujeszky's disease - Pseudorabies virus, herpesvirus suis

Leishmaniasis** - Leishmania infantum and L donavani

Foot and mouth disease - Aphthovirus, types A,O,C, SAT, Asia

Heartwater - Cowdria ruminantium

African Trypanosomosis (Nagana) - Trypanosoma brucei, T. vivax,

T. brucei

Rinderpest - Morbillivirus

Rift Valley fever - Bunya virus

Vesicular stomatitis - Rhabdovirus; 2 serotypes; New Jersey and Indiana

Screwworm - Cochliomyia hominivorax

Schmallenberg virus

Cattle diseases (including Exotic Bovidae)

Bovine babesiosis - *B. bovis, B. divergens*, Babesia microti

Bovine brucellosis - Brucella abortus

Bovine ephemeral fever – Rhabdovirus

Bovine trichomonosis – trichomoniasis****

Bovine tuberculosis - Mycobacterium bovis

East coast fever (Theileriosis) - Theileria parva

Malignant catarrhal fever (wildebeest associated) - Alcelaphine

herpesvirus (AHV 1)

Contagious bovine pleuropneumonia - Mycoplasma mycoides

Lumpy skin disease - Neethling poxvirus

Bovine spongiform encephalopathy

Scabies - Sarcoptes scabiei, Psoroptes bovis, Chorioptes bovis

Cervidae

Brucellosis - Brucella abortus, Brucella suis (biotype 4)

Chronic Wasting Disease

Tuberculosis - Mycobacterium bovis

Sheep and goat diseases

Caprine and ovine brucellosis (not B. ovis infection) – Brucella melitensis

Contagious caprine pleuropneumonia - Mycoplasma capri (biotype 78)

Louping ill - Flavovirus

Nairobi sheep disease - Bunyaviridae

Peste des petits ruminants - Morbillivirus, Paramyxoviridae family

Sheep pox and goat pox - Capripoxvirus

Scrapie

Scabies - Sarcoptes scabiei

Equine diseases

African horse sickness - Orbivirus

Contagious equine metritis - Tayorella equigenitalis

Dourine - Trypanosoma equiperdum

Epizootic lymphangitis - Histoplasma farciminosum

Equine encephalomyelitis (Eastern and Western)** - Alphavirus

Equine infectious anemia - Lentivirus

Equine morbillivirus pneumonia - Morbillivirus

Equine piroplasmosis - Babesia equi, B. caballi

Glanders - Pseudomonas mallei

Japanese encephalitis - Flavovirus

Surra - Trypanosoma evansi

Venezuelan equine encephalomyelitis** - Alphavirus; Togaviridae family

Equine Viral Arteritis (EVA)***

Equine Herpes Virus-1 (EHV-1)

Swine diseases

African swine fever - Poxvirus

Classical swine fever (hog cholera) - Togovirus

Pseudorabies - Herpesvirus suis

Porcine brucellosis - Brucella suis

Swine vesicular disease - Picornavirus

Vesicular Exanthema - Calicivirus

Poultry diseases

Avian influenza - Orthomyxoviruse

Avian infectious laryngotracheitis - Orthomyxovirus, herpesvirus

Avian tuberculosis - Mycobacterium avium serovars 1,2

Duck virus hepatitis - Picornavirus

Fowl typhoid - Salmonella gallinarum

Highly pathogenic avian influenza (fowl plague) – Orthomyxovirus (type H5 or H7)

Infectious encephalomyelitis - Arbovirus

Ornithosis (psitticosis) - Chlamydia psittaci

Pullorum disease - Salmonella pullorum

Newcastle disease (VVND) - Paramyxovirus-1 (PMV-1)

Paramyxovirus infections (other than Newcastle disease) - PMV-2 to PMV-9

Rabbit diseases

Myxomatosis - Myxomatosis virus

Viral haemorrhagic disease of rabbits - Calciviral disease

**These diseases are also reportable to the Department of State Health Services (DSHS)

***This disease has reporting standards in Chapter 49, §49.4 of this title.

****Results of tests for this disease shall be reported within 48 hours of completion of the tests.

Figure: 22 TAC §139.35(b)

CLASSIFICATION	VIOLATION	CITATION	SUGGESTED SANCTION
Administrative	Failure to return seal imprint and/or portrait	§133.97(e), (f); §137.31(a)	Reprimand/$250
	Failure to report: change of address or employment, or of any criminal convictions	§137.5	Reprimand/$100
	Failure to respond to board communications	§137.51(c)	Reprimand/$500
	Failure to include "inactive" or "retired" representation with title while in inactive status	§137.13(f)	Reprimand/$250
Engineering Misconduct	Gross negligence	§137.55(a), (b)	Revocation/$3,000
	Failure to exercise care and diligence in the practice of engineering	§137.55(b); §137.63(b)(6)	1 year suspension/ $1500
	Incompetence; includes performing work outside area of expertise	§137.59(a), (b)	3 year suspension/ $3,000
	Misdemeanor or felony conviction without incarceration relating to duties and responsibilities as a professional engineer	§139.43(b)	3 year suspension/ $3,000
	Felony Conviction with incarceration	§139.43(a)	Revocation/$3,000
Licensing	Fraud or deceit in obtaining a license	§1001.452(2); §1001.453	Revocation/$3,000
	Retaliation against a reference	§137.63(c)(3)	1 year suspension/ $1,500
	Enter into a business relationship which is in violation of §137.77 of this title (relating to Firm Compliance)	§137.51(d)	1 year suspension/ $1,000
Ethics Violations	Failure to engage in professional and business activities in an honest and ethical manner	§137.63(a)	2 year suspension/ $2,500
	Failure to follow TDI qualified windstorm inspection procedures	§1001.652; §137.19 and §137.63(b)(1)	Reprimand/$1000
	Failure to design a structure associated with windstorm insurance that complies with cited windstorm code design criteria	§1001.652, §1001.653; §137.19 and §137.63(b)(1)	1 year suspension/ $2000/Roster Removal
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are fraudulent or deceitful	§137.57(a) and (b)(1) or (2)	2 year suspension/ $2,500
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are misleading	§137.57(a) and (b)(3)	1 year suspension/ $1000
	Conflict of interest	§137.57(c), (d)	2 year suspension/ $2,500
	Inducement to secure specific engineering work or assignment	§137.63(c)(4)	2 year suspension/ $2,500
	Accept compensation from more than one party for services on the same project	§137.63(c)(5)	2 year suspension/ $2,500
	Solicit professional employment in any false or misleading advertising	§137.63(c)(6)	1 year suspension/ $2,500
	Offer or practice engineering while license is expired or inactive	§137.7(a); §137.13(a) and (h)	1 year suspension/ $500

	Failure to act as a faithful agent to their employers or clients	§137.63(b)(4)	1 year suspension/ $1,500
	Reveal confidences and private information	§137.61(a), (b), (c)	Reprimand/$1,500
	Attempt to injure the reputation of another	§137.63(c)(2)	1 year suspension/ $1,500
	Retaliation against a complainant	§137.63(c)(3)	1 year suspension/ $1,500
	Aiding and abetting unlicensed practice or other assistance	§137.63(b)(3), (c)(1)	3 year suspension/ $3,000
	Failure to report violations of others	§137.55(c)	Reprimand/$1,500
	Failure to consider societal and environmental impact of actions	§137.55(d)	Reprimand/$1,500
	Failure to prevent violation of laws, codes, or ordinances	§137.63(b)(1), (2)	Reprimand/$1,500
	Failure to conduct engineering and related business in a manner that is respectful of the client, involved parties and employees	§137.63(b)(5)	1 year suspension/ $1,500
	Competitive bidding with governmental entity	§137.53	Reprimand/$1,500
	Expressing an opinion before a court or other public forum which is contrary to generally accepted scientific and engineering principles without fully disclosing the basis and rationale for such an opinion	§137.59(c)	2 year suspension/ $2,500
	Falsifying documentation to demonstrate compliance with CEP	§137.17(p)(2), (3)	2 year suspension/ $2,500
	Action in another jurisdiction	§137.65(a) and (b)	Similar sanction as listed in this table if action had occurred in Texas
	Failure to provide plans and/or specs to TDLR/RAS for assessment within 20 days of issuance	§1001.452(5); §137.63(b)(1) and (2)	Informal Reprimand/ $500
Improper use of Seal	Failure to safeguard seal and/or electronic signature.	§137.33(d)	Reprimand/$1,000
	Failure to sign, seal, date, or include firm identification on work	§137.33(e), (f), (h), (n); §137.35(a), (b)	Reprimand/$500
	Alter work of another	§137.33(i); §137.37(3)	1 year suspension/ $1,500
	Sealing work not performed or directly supervised by the professional engineer	§137.33(b)	Reprimand/$1,000
	Practice or affix seal with expired or inactive license	§137.13(h); §137.37(2)	1 year suspension/ $500
	Practice or affix seal with suspended license	§137.37(2)	Revocation/$3,000
	Preprinting of blank forms with engineer seal; use of a decal or other seal replicas	§137.31(e)	1 year suspension/ $1,500
	Sealing work endangering the public	§137.37(1)	Revocation/$3,000
	Work performed by more than one engineer not attributed to each engineer	§137.33(g)	Reprimand/$500
	Improper use of standards	§137.33(c)	Reprimand/$500

Figure: 22 TAC §139.35(c)

VIOLATION	CITATION	SUGGESTED SANCTION	
		FIRST OCCURENCE	SUBSEQUENT OCCURENCES
Use of "Engineer" title	§1001.004(c)(2)(B)(C); §1001.301(b)(1)	Voluntary Compliance Notice to Cease and Desist	Injunctive/Criminal and $1,000
Use of "P.E." designation, or claim to be a "Professional Engineer"	§1001.301(b)(2)-(6), (c), and (e)	Notice to Cease and Desist and $1,500	Injunctive/Criminal and $3,000
Offer or attempt to practice engineering (e.g., through solicitation, proposal, contract, etc.)	§§1001.004(c)(2)(A); 1001.301(a), (c)-(e); 1001.405	Notice to Cease and Desist and $1,500	Injunctive/Criminal and $3,000
Representation of ability to perform engineering (e.g., telephone or HUB listing, newspaper, or other publications, letterhead, Internet, etc.)	§1001.405(e)	Voluntary Compliance	Notice to Cease and Desist and $500
Use of word "engineer" or any variation or abbreviation thereof under any assumed, trade, business, partnership, or corporate name	§1001.405(e)	Voluntary Compliance	Injunctive/Criminal and $3,000
Unlicensed practice of engineering	§§1001.004(c)(2)(A); 1001.301(a), (c)-(e); 1001.405; §§137.51(e), 137.77(a)	Notice to Cease and Desist and $2,000	Injunctive/Criminal and $3,000

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of a Texas Water Code Enforcement Action

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title: *State of Texas v. Preston Word and Pres Word, Inc.;* Cause No. D1GV09001696; in the 53rd District Court, Travis County, Texas.

Background: This case involves a 2.163 acre unpermitted municipal solid waste site adjacent to Cibolo Creek, west of the Comal County Cemetery on Bracken Drive, Comal County, Texas. The site is owned by Pres Word, Inc. In 1995 the TNRCC, predecessor to the TCEQ, issued an agreed administrative order styled "In the Matter of Preston Word and Pres Word, Inc., Municipal Solid Waste Unauthorized Site No. 33546, Docket No. 951392MSWE (Oct. 6, 1995)" ("the Order"). The Order found that Preston Word and Pres Word, Inc., were in violation of the municipal solid waste regulations at the site, assessed administrative penalties and ordered a cleanup. The current lawsuit was filed in 2009; in it the TCEQ alleged that the defendants were in violation of the Order and the regulations and asked for civil penalties, administrative penalties and attorneys' fees.

Nature of the Settlement: The lawsuit will be settled by an agreed final judgment in the district court.

Proposed Settlement: The proposed judgment provides for the recovery of civil penalties, administrative penalties and attorneys' fees.

The Office of the Attorney General will accept written comments relating to the proposed judgment for thirty (30) days from the date of publication of this notice. The proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. Copies may be obtained in person or by mail for the cost of copying. Requests for copies of the judgment, and written comments on the same, should be directed to Thomas H. Edwards, Assistant Attorney General, Office of the Attorney General (MC-066), P.O. Box 12548, Austin, Texas 78711-2548; telephone (512) 463-2012, fax (512) 320-0052.

TRD-201203375
Katherine Cary
General Counsel
Office of the Attorney General
Filed: June 26, 2012

♦ ♦ ♦

Central Texas Council of Governments

Request for Proposal for Audit Services

The Central Texas Council of Governments (CTCOG) is soliciting proposals from qualified firms to audit financial statements of CTCOG and the Central Texas Workforce Development Board, Inc. (CTWDB) for the fiscal year ending June 30, 2012, with the option of auditing its financial statements for each of the four (4) subsequent fiscal years.

The audit shall be conducted in accordance with generally accepted accounting standards; the standards set forth for financial audits in the U.S. General Accounting Office's (GAO) Government Auditing Standards; U.S. Office of Management and Budget (OMB) Circulars and Compliance Supplements; Uniform Grant Management Standards (UGMS); State of Texas Single Audit Circular, American Institute of Certified Public Accountants (AICPA) Industry Audit Guides, and General Accounting Standards Board Statement (GASB 34).

The proposal packets may be obtained by submitting a request to Mr. Michael Irvine, Director of Administration, CTCOG, by telephone at (254) 770-2227 or by email at michael.irvine@ctcog.org.

TRD-201203295
R. Michael Irvine
Director of Administration
Central Texas Council of Governments
Filed: June 21, 2012

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Contract Amendments

The Comptroller of Public Accounts (Comptroller) has entered into amendments with several independent contractors to their respective original Professional Services Agreements for Independent Examining Services (Contracts) resulting from Comptroller's Request for Qualifications 201d (RFQ 201d). The Contracts were awarded as authorized by Chapter 111, Subchapter A, §111.0045 of the Texas Tax Code.

Notice of RFQ 201d was published in the April 15, 2011, issue of *Texas Register* (36 TexReg 2524). Notice of Awards was published in the September 30, 2011, issue of *Texas Register* (36 TexReg 6530).

Amendments No. 1 to their respective Contracts have been entered into with the following persons or firms:

Willie L. Sullivan, Jr., 4530 Brookren Court, Pearland, Texas 77584, is extended by Amendment No. 1.

Celia Chang, 2600 Cason Street, Houston, Texas 77005, is extended by Amendment No. 1.

State and Local Tax Group, LLC, 308 Cooper Drive, Hurst, Texas 76053, is extended by Amendment No. 1.

The original term of the Contracts was September 1, 2011 through August 31, 2012. Amendment No. 1, the subject of this notice, extends the term of the Contracts through August 30, 2013, with one (1) option to renew.

The total amount of each Contract is based on the size of contract tax examination packages awarded by the Comptroller's Project Manager during the term of each Contract.

TRD-201203386
Jette B. Withers
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: June 27, 2012

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/02/12 - 07/08/12 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 07/02/12 - 07/08/12 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-201203367
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 26, 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 **August 6, 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 August 6, 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: 16303 Food Store Associates, Incorporated dba Sunrise Super Stop 15; DOCKET NUMBER: 2012-0286-PST-E; IDENTIFIER: RN103146536; LOCATION: Houston, Fort Bend 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 every month (not to exceed 35 days between each monitoring); PENALTY: $3,050; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Air Liquide Large Industries U.S. LP; DOCKET NUMBER: 2012-0602-AIR-E; IDENTIFIER: RN100215334; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: industrial gas manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O2391, General Terms and Conditions, by failing to submit the Permit Compliance Certification within 30 days from the end of the certification period; PENALTY: $4,875; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: AMERICAN HONDA MOTOR COMPANY, INCORPORATED; DOCKET NUMBER: 2012-0324-PST-E; IDENTIFIER: RN102280898; LOCATION: Irving, Dallas County; TYPE OF FACILITY: vehicle refueling; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain all underground storage tank records and making them immediately available for inspection upon request by agency personnel; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 430-6021; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: B. K. TRADING, INCORPORATED dba Speedy Stop 8; DOCKET NUMBER: 2012-0126-PST-E; IDENTIFIER: RN101878254; LOCATION: Paris, Lamar 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 piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $3,275; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: Bexar County; DOCKET NUMBER: 2012-0328-PST-E; IDENTIFIER: RN100697044; LOCATION: San Antonio, Bexar 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 tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,250; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Chung Nguyen dba Hilltop Village Mobile Home Park; DOCKET NUMBER: 2011-2082-MWD-E; IDENTIFIER: RN104845029; LOCATION: Belton, Bell County; TYPE OF FACILITY: mobile home park with an on-site sewage facility; RULE VIOLATED: TWC, §26.121, 30 TAC §305.42(a), and TCEQ AO

Docket Number 2007-0612-MWD-E, Ordering Provision Numbers 2.a., 2.b., and 2.c., by failing to obtain proper authorization for the treatment and disposal of wastewater; PENALTY: $58,750; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: City of Paris; DOCKET NUMBER: 2012-0139-PST-E; IDENTIFIER: RN102026549; LOCATION: Paris, Lamar County; TYPE OF FACILITY: aircraft refueling; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: City of Rosebud; DOCKET NUMBER: 2011-1884-MWD-E; IDENTIFIER: RN101918423; LOCATION: Rosebud, Falls County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010731001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations; and 30 TAC §305.125(1) and TPDES Permit Number WQ0010731001, Monitoring and Reporting requirements Number 3(b), by failing to maintain records of monitoring activities and making them available for review upon request; PENALTY: $34,050; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: Cliff Roberts dba Cliff's Auto Sales; DOCKET NUMBER: 2012-0600-AIR-E; IDENTIFIER: RN102091642; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: vehicle dealership; RULE VIOLATED: 30 TAC §114.20(c)(1) and Texas Health and Safety Code, §382.085(b), by failing to equip a motor vehicle with either the control systems or devices that were originally a part of the motor vehicle or motor vehicle engine or an alternate control system prior to offering it for sale; PENALTY: $563; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: COLLINS CORPORATION dba Collins Machine Shop; DOCKET NUMBER: 2012-0407-MLM-E; IDENTIFIER: RN106303191; LOCATION: Longview, Gregg County; TYPE OF FACILITY: machine shop; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities; 30 TAC §§331.3(a), 331.5(a), and 335.4 and TWC, §26.121(a), by failing to prevent the unauthorized discharge of industrial waste onto the ground and into a class V injection well; 30 TAC §§335.62, 335.503(a), and 335.513 and 40 CFR §262.11, by failing to conduct waste determinations and classifications; and 30 TAC §324.1 and 40 CFR §279.22(c), by failing to label or clearly mark containers storing used oil with the words, Used Oil; PENALTY: $18,100; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: Copano Field Services/North Texas, L.L.C.; DOCKET NUMBER: 2012-0639-AIR-E; IDENTIFIER: RN105271779; LOCATION: Rosston, Cooke County; TYPE OF FACILITY: compressor station; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2), and 122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O3353/General Operating Permit (GOP) Number 514, Site-Wide Requirements (b)(2), by failing to submit a Permit Compliance Certification and a semi-annual deviation report within 30 days after the end of the certification and reporting period; and 30 TAC §122.143(4), THSC, §382.085(b), and FOP Number O3353/GOP Number 514, Site-Wide Requirements (b)(9)(B)(iv)(c), by failing to maintain records of observations for visible emissions from stationary vents for emission units at least once per quarter; PENALTY: $7,266; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: D.N.D. CORPORATION dba Andy's Food Mart; DOCKET NUMBER: 2012-0522-PST-E; IDENTIFIER: RN101542405; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,600; ENFORCEMENT COORDINATOR: Thane Barkley, (512) 239-2552; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Dalhart Independent School District; DOCKET NUMBER: 2012-0405-PST-E; IDENTIFIER: RN101444297; LOCATION: Dalhart, Dallam County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 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 USTs; and 30 TAC §334.10(b), by failing to maintain the required UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Thane Barkley, (512) 239-2552; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(14) COMPANY: Eagle Railcar Services - Roscoe, Incorporated; DOCKET NUMBER: 2012-0060-AIR-E; IDENTIFIER: RN100218296; LOCATION: Roscoe, Nolan County; TYPE OF FACILITY: railcar refurbishing; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.085(b) and §382.0518, by failing to submit a permit renewal application for the surface coating operations prior to the expiration of the permit; and 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518, by failing to submit a permit renewal application for the railcar cleaning and degassing operations prior to the expiration of the permit; PENALTY: $44,000; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(15) COMPANY: Guynn, Benjamin G.; DOCKET NUMBER: 2012-0949-WOC-E; IDENTIFIER: RN105244149; LOCATION: Rusk, Cherokee 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: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: INVISTA S.a r.l.; DOCKET NUMBER: 2012-0260-AIR-E; IDENTIFIER: RN104392626; LOCATION: Orange, Orange County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 1302 and PSDTX1085, Special

Conditions Number 1, Federal Operating Permit Number O1897, Special Terms and Conditions Number 21, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions during an event that occurred on July 3 - 6, 2011 (Incident Number 156402); PENALTY: $16,800; Supplemental Environmental Project offset amount of $6,720 applied to Texas Parent Teacher Association (PTA) - Texas PTA Clean School Buses; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: Istar Investment, Incorporated dba EZ To Stop; DOCKET NUMBER: 2012-0456-PST-E; IDENTIFIER: RN103141131; 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 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 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: JOLLY DREAMS CORPORATION dba Jollys Barn Stop; DOCKET NUMBER: 2012-0088-PST-E; IDENTIFIER: RN102379013; LOCATION: Fairfield, Freestone 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: $5,000; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: OVERSEAS ENTERPRISES USA, INCORPORATED dba Gateway Travel Plaza; DOCKET NUMBER: 2012-0351-PST-E; IDENTIFIER: RN101743730; LOCATION: Vidor, 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, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $3,809; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: Ravenna-Nunnelee Water Supply Corporation; DOCKET NUMBER: 2012-0659-PWS-E; IDENTIFIER: RN101217214; LOCATION: Ravenna, Fannin County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.2 milligrams per liter free chlorine in each finished water storage tank and throughout the distribution system at all times; and 30 TAC §290.46(m), by failing to ensure the good working condition and general appearance of the facility's system and equipment; PENALTY: $100; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Real International, Incorporated dba Real Food; DOCKET NUMBER: 2012-0032-PST-E; IDENTIFIER: RN102869666; LOCATION: Murchison, 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 release detection for the piping associated with the underground storage tanks (USTs); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $3,388; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(22) COMPANY: Rhone Building Corporation; DOCKET NUMBER: 2012-0958-WQ-E; IDENTIFIER: RN105948566; LOCATION: Wichita Falls, Wichita County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(23) COMPANY: Rio Concho, Incorporated; DOCKET NUMBER: 2012-1071-WQ-E; IDENTIFIER: RN105171557; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, (325) 655-9479.

(24) COMPANY: SAT Malik LLC dba Sunny's Market; DOCKET NUMBER: 2012-0307-PST-E; IDENTIFIER: RN103029104; LOCATION: Aransas Pass, San Patricio County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3) and §334.8(c)(4)(C), by failing to renew the underground storage tank (UST) delivery certificate and notify the agency of any change or additional information regarding the UST system within 30 days after change in ownership of the facility; 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; and 30 TAC §334.50(b)(1)(A), (2)(A)(i)(III) and (ii)(I) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the pressurized piping associated with the UST system; PENALTY: $8,124; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(25) COMPANY: SHOALWATER FLATS ASSOCIATION; DOCKET NUMBER: 2012-0363-PWS-E; IDENTIFIER: RN101199347; LOCATION: Port Lavaca, Calhoun County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of January 2010, June 2010, and February 2011; 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of four repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample during the months of August 2010 and March 2011; 30 TAC §290.109(c)(2)(F), by failing to collect at least five routine distribution coliform samples the month following a coliform-positive sample result for the month of April 2011 and October 2011; and 30 TAC §290.51(b) and TWC, §5.702, by failing to pay all annual Public Health Service fees, including any associated late fees and penalties, for TCEQ Financial Administration Account Number 90290036, in a timely manner; PENALTY: $2,095; ENFORCEMENT COORDINATOR: James

Fisher, (512) 239-2537; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(26) COMPANY: Signal Hill Water System 24; DOCKET NUMBER: 2012-0373-PWS-E; IDENTIFIER: RN101271146; LOCATION: Hays County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement which covers the land within 150 feet of Well Number 2; and 30 TAC §290.45(b)(1)(B)(iv) and Texas Health and Safety Code, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; PENALTY: $330; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753-1808, (512) 339-2929.

(27) COMPANY: Simon Stephen dba KK Food Store; DOCKET NUMBER: 2012-0464-PST-E; IDENTIFIER: RN101930873; 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 (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for review upon request by agency personnel; PENALTY: $4,270; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: Total Petrochemicals & Refining USA, Incorporated; DOCKET NUMBER: 2012-0335-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical refinery; RULE VIOLATED: Federal Operating Permit Number O1267, Special Terms and Conditions Number 29, New Source Review (NSR) Permit Numbers 16840 and PSD-TX-688M2, General Conditions Number 8, NSR Permit Numbers 46396 and PSDTX1073M1, Special Conditions Number 1, 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $13,125; Supplemental Environmental Project offset amount of $5,250 applied to Southeast Texas Regional Planning Commission - Southeast Texas Regional Air Monitoring Network Ambient Air Monitoring Station; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(29) COMPANY: U.S. Department of the Army - Corpus Christi Army Depot; DOCKET NUMBER: 2012-0631-AIR-E; IDENTIFIER: RN100223197; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: aerospace manufacturing; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O1638, General Terms and Conditions, by failing to submit a semi-annual deviation report within 30 days after the end of the reporting period; PENALTY: $2,425; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-201203365
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 26, 2012

♦ ♦ ♦

Enforcement Orders

An agreed order was entered regarding Star Serve, Inc. dba Beamer Shell, Docket No. 2011-1305-PST-E on May 31, 2012, assessing $5,200 in administrative penalties with $1,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zaydan Corporation, Inc. dba Kwik Stop, Docket No. 2011-1359-PST-E on May 31, 2012, assessing $6,129 in administrative penalties with $1,225 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 City of Petrolia, Docket No. 2011-1440-MWD-E on May 31, 2012, assessing $5,564 in administrative penalties with $1,112 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2011-1462-AIR-E on May 31, 2012, assessing $6,750 in administrative penalties with $1,350 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 JAVERIA ENTERPRISES INC dba Best Food Mart, Docket No. 2011-1475-PST-E on May 31, 2012, assessing $3,100 in administrative penalties with $620 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PALA, INC. dba E-Z Mart Shell, Docket No. 2011-1481-PST-E on May 31, 2012, assessing $4,600 in administrative penalties with $920 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GWD OPERATING, LTD. dba Vintage Car Wash, Docket No. 2011-1634-PST-E on May 31, 2012, assessing $2,550 in administrative penalties with $510 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EKO GROUP, INC. dba Med Center Exxon Mobil, Docket No. 2011-1720-PST-E on May 31, 2012, assessing $4,829 in administrative penalties with $965 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, P.G., Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CAMPBELL OIL CO. dba Sunshine Truck Stop, Docket No. 2011-1826-PST-E on May 31, 2012, assessing $5,129 in administrative penalties with $1,025 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Asherton, Docket No. 2011-1837-MWD-E on May 31, 2012, assessing $2,730 in administrative penalties with $546 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Partus Land, L.L.C., Docket No. 2011-1862-MSW-E on May 31, 2012, assessing $5,250 in administrative penalties with $1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCJR ENTERPRISES, INC. dba Bayside Market, Docket No. 2011-1914-PST-E on May 31, 2012, assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Ashlee Terry, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNITED PETROLEUM TRANSPORTS, INC., Docket No. 2011-1936-PST-E on May 31, 2012, assessing $7,359 in administrative penalties with $1,471 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amindus Service, LLC dba Mobil Fry Road, Docket No. 2011-1957-PST-E on May 31, 2012, assessing $1,754 in administrative penalties with $350 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 Thanh K. Nguyen dba Quick Food Mart, Docket No. 2011-1964-PST-E on May 31, 2012, assessing $1,875 in administrative penalties with $375 deferred.

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 Rio Water Supply Corporation, Docket No. 2011-1974-PWS-E on May 31, 2012, assessing $2,773 in administrative penalties with $554 deferred.

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 SHREE HARIOM CORPORATION dba Bandera Ice House, Docket No. 2011-1980-PST-E on May 31, 2012, assessing $4,092 in administrative penalties with $818 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Klaas Talsma dba Talsma Dairy, Docket No. 2011-1984-AGR-E on May 31, 2012, assessing $3,300 in administrative penalties with $660 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bell Helicopter Textron Inc., Docket No. 2011-1992-AIR-E on May 31, 2012, assessing $5,000 in administrative penalties with $1,000 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 ISS GROUPS INC. dba Shop N Go, Docket No. 2011-1999-PST-E on May 31, 2012, assessing $3,353 in administrative penalties with $670 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bridgeport Truck Manufacturing, Inc., Docket No. 2011-2000-MLM-E on May 31, 2012, assessing $5,792 in administrative penalties with $1,158 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding San Antonio Water System, Docket No. 2011-2034-MWD-E on May 31, 2012, assessing $4,100 in administrative penalties with $820 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 Seneca Water Supply Corporation, Docket No. 2011-2042-MLM-E on May 31, 2012, assessing $3,395 in administrative penalties with $679 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CRYSTAL INTERNATIONAL, INC. dba Fuel Stop, Docket No. 2011-2045-PST-E on May 31, 2012, assessing $4,485 in administrative penalties with $897 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Boonville Food Mart, LLC, Docket No. 2011-2054-PST-E on May 31, 2012, assessing $3,500 in administrative penalties with $700 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Karim Juma dba Zoom In Food Store 1, Docket No. 2011-2057-PST-E on May 31, 2012, assessing $5,129 in administrative penalties with $1,025 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Susser Petroleum Company LLC dba QS 346, Docket No. 2011-2106-PST-E on May 31, 2012, assessing $5,000 in administrative penalties with $1,000 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 Rains Independent School District, Docket No. 2011-2109-PST-E on May 31, 2012, assessing $6,600 in administrative penalties with $1,320 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 Donnie R. Brown dba Brown's 66, Docket No. 2011-2111-PST-E on May 31, 2012, assessing $2,550 in administrative penalties with $510 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.K. TENG CORP. dba Donut Plus, Docket No. 2011-2125-PST-E on May 31, 2012, assessing $5,529 in administrative penalties with $1,105 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ESSA INC. dba East Freeway Chevron, Docket No. 2011-2137-PST-E on May 31, 2012, assessing $3,545 in administrative penalties with $709 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ATHENS TWIN VENTURES, INC. dba Jiffy Junction, Docket No. 2011-2138-PST-E on May 31, 2012, assessing $5,126 in administrative penalties with $1,025 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.

An agreed order was entered regarding City of Krum, Docket No. 2011-2139-MWD-E on May 31, 2012, assessing $6,238 in administrative penalties with $1,247 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gonzales County Water Supply Corporation, Docket No. 2011-2140-PWS-E on May 31, 2012, assessing $5,786 in administrative penalties with $1,156 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Racetrac Petroleum, Inc. dba Racetrac 173, Docket No. 2011-2154-PST-E on May 31, 2012, assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hanna Musleh Adams Citgo Food Store, Docket No. 2011-2156-PST-E on May 31, 2012, assessing $2,055 in administrative penalties with $411 deferred.

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 ATA Land, L.P., Docket No. 2011-2160-EAQ-E on May 31, 2012, assessing $4,025 in administrative penalties with $805 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Doost, L.L.C. dba Arapaho Shell, Docket No. 2011-2167-PST-E on May 31, 2012, assessing $2,550 in administrative penalties with $510 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc., Docket No. 2011-2168-MWD-E on May 31, 2012, assessing $3,479 in administrative penalties with $695 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Planters Grain Cooperative of Odem, Texas, Docket No. 2011-2170-PST-E on May 31, 2012, assessing $1,125 in administrative penalties with $225 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding South Hampton Resources, Inc., Docket No. 2011-2177-AIR-E on May 31, 2012, assessing $3,822 in administrative penalties with $764 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stream Realty Partners, L.P., Docket No. 2011-2179-PST-E on May 31, 2012, assessing $4,409 in administrative penalties with $881 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mercedes, Docket No. 2011-2204-MSW-E on May 31, 2012, assessing $3,750 in administrative penalties with $750 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 SHY INVESTMENT, INC. dba Times Market 52, Docket No. 2011-2209-PST-E on May 31, 2012, assessing $3,000 in administrative penalties with $600 deferred.

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 North Hunt Special Utility District, Docket No. 2011-2214-PWS-E on May 31, 2012, assessing $1,340 in administrative penalties with $267 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BK GOLDEN SILVER, INC. dba Lucky One Stop, Docket No. 2011-2219-PST-E on May 31, 2012, assessing $2,387 in administrative penalties with $477 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mindy Huynh Nguyen dba West Orem Mart, Docket No. 2011-2223-PST-E on May 31, 2012, assessing $2,679 in administrative penalties with $535 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 INEOS USA LLC, Docket No. 2011-2264-AIR-E on May 31, 2012, assessing $3,450 in administrative penalties with $690 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.

An agreed order was entered regarding City of Gregory, Docket No. 2011-2289-PWS-E on May 31, 2012, assessing $2,470 in administrative penalties with $494 deferred.

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 HUSAM ENT. INC. dba Richmond Stop Food Store, Docket No. 2011-2295-PST-E on May 31, 2012, assessing $5,100 in administrative penalties with $1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Convenience Stores, LLC, Docket No. 2011-2298-PST-E on May 31, 2012, assessing $1,375 in administrative penalties with $275 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PYRAMID LAND DEVELOPMENT COMPANY dba Pyramid Ranch, Docket No. 2011-2304-PST-E on May 31, 2012, assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Felicia Lam and Timmy J. Lam dba Post Oak Bend Grocery, Docket No. 2011-2348-PST-E on May 31, 2012, assessing $2,005 in administrative penalties with $401 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pottsboro Independent School District, Docket No. 2011-2364-PST-E on May 31, 2012, assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WEST HOUSTON INFINITI, LTD., Docket No. 2012-0008-PST-E on May 31, 2012, assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Swift Energy Operating, LLC, Docket No. 2012-0036-AIR-E on May 31, 2012, assessing $2,925 in administrative penalties with $585 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Caruthers Oil Co., Inc. dba Hudson Fina, Docket No. 2012-0051-PST-E on May 31, 2012, assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SPBK National Inc dba Fate Grocery Store, Docket No. 2012-0078-PST-E on May 31, 2012, assessing $2,379 in administrative penalties with $475 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Charles Busbey dba Clinnons Grocery, Docket No. 2012-0120-PST-E on May 31, 2012, assessing $2,004 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Z & S CORPORATION dba LUCKY FOOD MART, Docket No. 2012-0169-PST-E on May 31, 2012, assessing $2,379 in administrative penalties with $475 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 E. H. BROKERAGE, INC. dba RP Circuitry, Docket No. 2010-1896-IHW-E on June 14, 2012, assessing $8,675 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 YFZ Land, LLC, Docket No. 2011-0379-MLM-E on June 14, 2012, assessing $30,582 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 AVONDALE RANCH, LTD., NRH Woodland Estates, L.P., and BUCK DEVELOPMENT SERVICES, L.L.C., Docket No. 2011-0430-IHW-E on June 14, 2012, assessing $5,000 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.

A default order was entered regarding AZIZ ENTERPRISES, LLC dba Alvarado Market, Docket No. 2011-0817-PST-E on June 14, 2012, assessing $5,129 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 City Concrete, Inc., Docket No. 2011-0966-IWD-E on June 14, 2012, assessing $27,614 in administrative penalties with $5,522 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding Riverside Texas Enterprises, Inc. dba Riverside Shell, Docket No. 2011-0977-PST-E on June 14, 2012, assessing $6,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, 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 Briarwood Lutheran Ministries, Docket No. 2011-1115-MWD-E on June 14, 2012, assessing $4,137 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike 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 Rita Laura Redow Karbalai, Docket No. 2011-1117-MWD-E on June 14, 2012, assessing $17,640 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Oscar Ruiz, Docket No. 2011-1371-PST-E on June 14, 2012, assessing $8,925 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 agreed order was entered regarding City of Cotulla, Docket No. 2011-1421-MWD-E on June 14, 2012, assessing $7,680 in administrative penalties with $1,536 deferred.

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.

A default order was entered regarding Danny Joe King dba Kings Tire & Wheel, Docket No. 2011-1510-MSW-E on June 14, 2012, assessing $525 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, 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 Balcones Distilling LLC, Docket No. 2011-1517-WQ-E on June 14, 2012, assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jose Vasquez dba West Side Body Shop, Docket No. 2011-1544-AIR-E on June 14, 2012, assessing $2,040 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, 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 Douglas Leland Barr, Docket No. 2011-1575-WQ-E on June 14, 2012, assessing $4,080 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding Jian Enterprises Inc., Docket No. 2011-1605-PST-E on June 14, 2012, assessing $5,100 in 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.

An agreed order was entered regarding BUCHANAN LAKE VILLAGE, INC., Docket No. 2011-1670-PWS-E on June 14, 2012, assessing $1,575 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.

A default order was entered regarding Ben B. Parks dba Super Stop 28, Docket No. 2011-1706-PST-E on June 14, 2012, assessing $13,668 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 Crosswinds I Partnership, Ltd., Docket No. 2011-1813-EAQ-E on June 14, 2012, assessing $13,750 in administrative penalties with $2,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANN, INC. dba Kiest Shell, Docket No. 2011-1851-PST-E on June 14, 2012, assessing $8,750 in administrative penalties with $1,750 deferred.

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 PAISANO REDI-MIX, INC. dba GENCO REDI MIX, Docket No. 2011-1942-IWD-E on June 14, 2012, assessing $30,003 in administrative penalties with $6,000 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 Fort Hancock Water Control and Improvement District, Docket No. 2011-1943-MWD-E on June 14, 2012, assessing $13,770 in administrative penalties with $2,754 deferred.

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 Equistar Chemicals, LP, Docket No. 2011-1947-AIR-E on June 14, 2012, assessing $10,571 in administrative penalties with $2,114 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRISTAR CONVENIENCE STORES, INC. dba Handi Stop 64, dba Handi Stop 79, dba Handi Stop 51, and dba Handi Stop 60, Docket No. 2011-2013-PST-E on June 14, 2012, assessing $10,964 in administrative penalties with $2,192 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical, LLC, Docket No. 2011-2099-AIR-E on June 14, 2012, assessing $20,545 in administrative penalties.

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 Aqua Utilities, Inc., Docket No. 2011-2118-MWD-E on June 14, 2012, assessing $6,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources Port Arthur, LLC, Docket No. 2011-2129-AIR-E on June 14, 2012, assessing $12,400 in administrative penalties with $2,480 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, P.G., Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ascend Performance Materials LLC, Docket No. 2011-2133-AIR-E on June 14, 2012, assessing $7,650 in administrative penalties with $1,530 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mallard Point WWTP, LLC, Docket No. 2011-2246-MWD-E on June 14, 2012, assessing $7,934 in administrative penalties with $1,586 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201203395
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 27, 2012

♦ ♦ ♦

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

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 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 **August 6, 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 6, 2012.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Cowtown Excavating Company; DOCKET NUMBER: 2011-1207-MSW-E; TCEQ ID NUMBER: RN102273950; LOCATION: 10031 Hicks Field Road, Saginaw, Tarrant County; TYPE OF FACILITY: unauthorized mulching facility; RULES VIOLATED: 30 TAC §328.5(b), by failing to prevent the unauthorized processing, storage and/or management of approximately 39,907 cubic yards of wood material at the facility; PENALTY: $12,500; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Kun Won Yu d/b/a Terry's Supermarket; DOCKET NUMBER: 2011-1929-PST-E; TCEQ ID NUMBER: RN102959319; LOCATION: 3025 Webb Chapel Extension, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), 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), and by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $7,449; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Magellan Pipeline Terminals, L.P.; DOCKET NUMBER: 2012-0632-AIR-E; TCEQ ID NUMBER: RN102186129; LOCATION: 7901 Wallisville Road, Houston, Harris County; TYPE OF FACILITY: tank farm; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(a) and Standard Exemption Registration Number 36092, by failing to prevent unauthorized emissions; THSC, §382.085(a) and (b), 30 TAC §116.115(c), New Source Review Permit Number 83542, Special Conditions Number 1, and Standard Exemption Registration Number 36092, by failing to prevent unauthorized emissions; THSC, §382.085(b) and 30 TAC §101.201(b)(1)(G), by failing to identify the individually listed compounds or mixtures of air contaminants released at each emissions point during an emissions event (Incident Number 160355); and THSC, §382.085(b), 30 TAC §116.115(c), and New Source Review Permit Number 83542, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $112,750; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: NAS AND S CORPORATION d/b/a In & Out Food Mart; DOCKET NUMBER: 2011-1757-PST-E; TCEQ ID NUMBER: RN102355971; LOCATION: 2992 Walnut Hill Lane, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $5,624; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: ONE STOP FOOD STORES, INC.; DOCKET NUMBER: 2011-1370-PST-E; TCEQ ID NUMBER: RN102256013; LOCATION: 1221 East Belt Line Road, DeSoto, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; and TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), 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), and by failing to provide proper release detection for the pressurized piping associated with the USTs; PENALTY: $11,237; STAFF ATTORNEY: Kari L. Gilbreth,

Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: T & M BEER AND WINE, INC.; DOCKET NUMBER: 2011-2245-PST-E; TCEQ ID NUMBER: RN102242807; LOCATION: 106 South Fitzhugh Avenue, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; PENALTY: $5,100; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: YAA ALI CORPORATION d/b/a R & Y Mini Mart; DOCKET NUMBER: 2012-0382-PST-E; TCEQ ID NUMBER: RN102388832; LOCATION: 5520 Highway 59 South, Shepherd, San Jacinto County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for review upon request by agency personnel; TWC, §26.3475(d) and 30 TAC §334.49(a), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), 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); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the piping associated with the USTs; 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons; and 30 TAC §334.50(d)(1)(B)(iii)(IV), by failing to measure any water level in the bottom of the USTs to the nearest 1/8 of an inch at least once a month and make appropriate adjustments to the inventory control records; PENALTY: $8,879; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201203368
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 26, 2012

♦ ♦ ♦

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is 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 **August 6, 2012.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO 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 DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 6, 2012.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Addie Marlin d/b/a Marlin Marina Water System; DOCKET NUMBER: 2011-2069-PST-E; TCEQ ID NUMBER: RN101196079; LOCATION: 614 Griffin Drive, Freeport, Brazoria County; TYPE OF FACILITY: underground storage tank (UST) system and a public water supply; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition; 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and TWC, §5.702 and 30 TAC §290.51(a)(3), by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Account Number 90200461 for Fiscal Years 2007 - 2011; PENALTY: $3,815; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: David T. Gillott d/b/a T L Water Jones Acres; DOCKET NUMBER: 2012-0114-PWS-E; TCEQ ID NUMBER: RN101196905; LOCATION: approximately one mile north of Farm-to-Market Road 3433 and Farm-to-Market Road 718, Newark, Wise County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(4)(B), by failing to collect at least one raw groundwater source E. coli sample from each of the two active sources within 24 hours of being notified of a distribution total coliform-positive result, and by failing to provide public notice of the failure; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year, and by failing to submit to the executive director by July of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.106(e), by failing to provide the results of triennial metals sampling to the executive director; 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director; and TWC, §5.702 and 30 TAC §290.51(a)(3), by failing to pay Public Health Service fees, including late fees, for

TCEQ Financial Administration Account Number 92490018 for Fiscal Year 2011; PENALTY: $1,450; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: George Mathis; DOCKET NUMBER: 2012-0418-MSW-E; TCEQ ID NUMBER: RN103045332; LOCATION: Intersection of Highway 97 and Interstate 10 near Waelder, Gonzales County; TYPE OF FACILITY: agricultural property; RULES VIOLATED: 30 TAC §330.15(c) and TCEQ Agreed Order Docket Number 2001-0406-MSW-E, Ordering Provisions Numbers 2.a. and 2.b., by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $35,000; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: Luis Escobedo d/b/a Pallet Services; DOCKET NUMBER: 2011-1777-MLM-E; TCEQ ID NUMBER: RN100669217; LOCATION: 4700 Durazno Avenue, El Paso, El Paso County; TYPE OF FACILITY: wood pallet recycling facility; RULES VIOLATED: 40 Code of Federal Regulations (CFR) §122.26(c) and 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System Multi-Sector Industrial General Permit Number TXR050000; 40 CFR §279.22 and 30 TAC §324.1, by failing to prevent an unauthorized discharge of used oil; 40 CFR §279.22(b)(1) and 30 TAC §324.1, by failing to store used oil in containers that are in good condition; and 40 CFR §279.22(c)(1) and 30 TAC §324.1, by failing to label or clearly mark containers used to store used oil; PENALTY: $2,868; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(5) COMPANY: Oakhollow MH Park, LLC d/b/a Oakhollow Mobile Home Park, and Gary Don Stahlheber d/b/a Oakhollow Mobile Home Park; DOCKET NUMBER: 2012-0301-PWS-E; TCEQ ID NUMBER: RN101453843; LOCATION: 16730 County Road 127, TRLR 1A, Pearland, Brazoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter and by failing to provide public notice of the failure; 30 TAC §290.106(e) and §290.122(c)(2)(A), by failing to provide the results of triennial metal and mineral sampling to the executive director and by failing to provide public notice of the failure; 30 TAC §290.106(e) and §290.122(c)(2)(A), by failing to provide the results of annual nitrate sampling to the executive director and by failing to provide public notice of the failure; 30 TAC §290.107(e) and §290.122(c)(2)(A), by failing to provide the six-year period monitoring results for volatile organic compound contaminant sampling to the executive director and by failing to provide public notice of the failure; 30 TAC §290.271(b) and §290.274(a) and (c) and TCEQ Agreed Order Docket Number 2010-0701-PWS-E, Ordering Provisions Numbers 3.a. and 3.b., failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year, and by failing to submit to the executive director by July of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.113(e), by failing to provide the results of Stage 1 Disinfectant Byproduct sampling to the executive director; and TWC, §5.702 and 30 TAC §290.51(a)(3), by failing to pay Public Health Service fees, including late fees, for TCEQ Financial Administration Account Number 9020005 for Fiscal Years 1997 - 2012; PENALTY: $6,716; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201203369
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 26, 2012

♦ ♦ ♦

Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is 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 **August 6, 2012.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO 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 S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 6, 2012.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Amin Makhani d/b/a Asian Groceries; DOCKET NUMBER: 2011-1950-PST-E; TCEQ ID NUMBER: RN102783867; LOCATION: 2300 Northeast Loop 410, San Antonio, Bexar County;

TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b) and TCEQ Agreed Order Docket Number 2007-1603-PST-E, Ordering Provision Number 2.a., by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.8(c)(5)(C) and TCEQ Agreed Order Docket Number 2007-1603-PST-E, Ordering Provision Number 2.b., by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form; 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; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), 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); and TWC, §26.3475(d) and 30 TAC §334.49(a), by failing to provide proper corrosion protection for the UST system; PENALTY: $11,582; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Kong C. Hok d/b/a Texas Grocery; DOCKET NUMBER: 2011-2067-PST-E; TCEQ ID NUMBER: RN101533750; LOCATION: 2042 West Northwest Highway, Dallas, Dallas County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); and TWC, §26.2475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; PENALTY: $5,100; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: MALIK GROUP, INC d/b/a Dairy Mart; DOCKET NUMBER: 2011-1916-PST-E; TCEQ ID NUMBER: RN101539849; LOCATION: 101 Lake Park Road, Lewisville, Denton County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(B)(ii), by failing to timely 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; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), (d)(1)(B)(ii), and (iii)(I), 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); and by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons; and by failing to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form; 30 TAC §334.51(b)(2)(B)(i) and (ii), by failing to have a spill container or catchment basin that is liquid-tight; TWC, §26.3475(c)(1) and 30 TAC §334.49(c)(4), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with the UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight, and free of liquid and debris; and Texas Health and Safety Code, §382.085(b) and 30 TAC §115.226(1), by failing to maintain a record at the station of the dates on which gasoline was delivered to the dispensing station; PENALTY: $20,959; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: NABIHA ENTERPRISES, L.L.C. d/b/a Boyd Pit Stop; DOCKET NUMBER: 2012-0118-PST-E; TCEQ ID NUMBER: RN101908267; LOCATION: 108 South Allen Street, Boyd, Wise County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), 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); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: $2,624; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201203370
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 26, 2012

♦ ♦ ♦

Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Limited Scope Major Amendment Permit No. 2270

APPLICATION. Fort Bend Regional Landfill, L.P., 14115 Davis Estates Road, Needville, Fort Bend County, Texas 77461, 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 Major Amendment proposing to change the waste acceptance and operating hours to 24 hours per day, 7 days a week with no limitations on waste acceptance and the operation of heavy equipment. The facility is located at the address listed above. The TCEQ received the application on May 21, 2012. The permit application is available for viewing and copying at George Memorial Library, 1001 Golfview Drive, Richmond, Fort Bend County, Texas 77469. 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=29.3961&lng=-95.7247&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 Fort Bend Regional Landfill, L.P., at the address stated above or by calling Mr. Brent Ryan, Attorney, McElroy, Sullivan, & Miller, LLP at (512) 327-8111.

TRD-201203392
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 27, 2012

♦ ♦ ♦

Notice of Water Quality Applications

The following notices were issued on June 15, 2012, through June 22, 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

CITY OF BAYTOWN has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010395010, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility is located at 8808 Needlepoint Road, 5,000 feet south of Interstate Highway 10, adjacent to the east right-of-way of Union Pacific Railroad, west of State Highway 146 in Harris County, Texas 77521.

ROYALWOOD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010608002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 260,000 gallons per day. The facility is located at 7107 Uvalde Road, approximately 6,500 feet south of the intersection of Uvalde Road and U.S. Highway 90 in Harris County, Texas 77049.

TYSON FARMS INC which operates a poultry processing facility, has applied for a renewal of TPDES Permit No. WQ0002064000, which authorizes the discharge of process wastewater, utility wastewater, domestic wastewater and storm water at a daily average flow not to exceed 1,500,000 gallons per day via Outfall 001 and stormwater on an intermittent and flow variable basis via Outfall 002. The facility is located at 1019 Shelbyville Street in the City of Center, Shelby County, Texas 75935.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. WQ0010104001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,350,000 gallons per day. The facility is located at 611 Avenue E, at the west end of Avenue E, on the east shoreline of Whites Lake, in the Community of Highland in Harris County, Texas 77562.

CITY OF MAYPEARL has applied for a renewal of TPDES Permit No. WQ0010431001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 175,000 gallons per

day. The facility is located at the east end of Martin Luther King Street, approximately 0.5 mile south of the intersection of Farm-to-Market Road 66 and Farm-to-Market Road 157 in Ellis County, Texas 76064.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495119, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 23,100,000 gallons per day. The facility is located at 9400 White Chapel Lane on the southeast side of U.S. Highway 59 South and 0.5 mile south of Bissonett Road, between White Chapel Lane and Keegans Bayou in Harris County, Texas 77074.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE has applied for a renewal of TPDES Permit No. WQ0010743001, 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 at 59 Darrington Road, within the Darrington Prison Farm, approximately 1 mile west of the intersection of Farm-to-Market Road 521 and County Road 43, approximately 15 miles west of the City of Alvin and approximately 4 miles northwest of the City of Rosharon in Brazoria County, Texas 77583.

HAYS COUNTY MUNICIPAL UTILITY DISTRICT NO 5 has applied for a renewal of TCEQ Permit No. WQ0014358001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day via a public access subsurface drip irrigation system with a minimum area of 68.87 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 2.3 miles south of U.S. Highway 290 and approximately 6,500 feet east of Sawyer Ranch Road. The disposal sites are located throughout the Highpointe Subdivision. The entrance to the subdivision is located on the east side of Sawyer Ranch Road, approximately 1.7 miles along Sawyer Ranch Road, south of the intersection of U.S. Highway 290 and Sawyer Ranch Road. Sawyer Ranch Road is located 8.2 miles west of the intersection of U.S. Highway 290 and Texas Highway 71 (the "Y" in Oak Hill), and 5.5 miles east of Dripping Springs in Hays County, Texas 78737.

LAKE MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0014478001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 240,000 gallons per day. The facility is located approximately 3,774 feet north of Interstate Highway 10 at John Martin Road and approximately 2,800 feet east of the intersection of John Martin Road and Battle Bell Road in Harris County, Texas 77521.

MSEC ENTERPRISES INC has applied for a renewal of TPDES Permit No. WQ0014638001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located at 16550 Farm-to-Market Road 2854, approximately 1.2 miles west of the intersection of Farm-to-Market Road 2854 and Rabon Chapel Road, on the north side of Farm-to-Market Road 2854 in Montgomery County, Texas 77316.

LAUGHLIN THYSSEN INC has applied for a renewal of TPDES Permit No. WQ0014947001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 990,000 gallons per day. The facility is located at 928 19th Street Galena, Texas, adjacent to Hunting Bayou, west of the intersection of the confluence of Hunting Bayou and the Houston Ship Channel, 1.1 miles upstream of the Federal Road crossing of Hunting Bayou in Harris County, Texas 77547.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

CITY OF SPEARMAN has applied for a minor amendment to the TPDES Permit No. WQ0010977001 to authorize the use of an accredited laboratory that has obtained a variance from the maximum holding time for bacteria from EPA Region 6 pursuant to 40 CFR §136.3(e). The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately one mile northwest of the intersection of State Highway 15 and Farm-to-Market Road 760 and 1.6 miles northeast of the intersection of State Highway 15 and Farm-to-Market Road 2387 in Hansford County, Texas 79081.

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.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201203390
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 27, 2012

♦ ♦ ♦

Notice of Water Rights Applications

Notice issued June 21, 2012.

APPLICATION NO. 12686; BP America Production Company, P.O. Box 959, Hallsville, Texas 75650, Applicant, seeks a temporary water use permit to divert and use not to exceed 300 acre-feet of water from an existing dam and reservoir (Fern Lake) on Picnitt Creek, Cypress Creek Basin within a period of three years for mining purposes in Harrison County. The application and fees were received on March 17, 2011. Additional information was received on June 20, July 29, and August 8, 2011. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on August 16, 2011. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by July 12, 2012.

Notice issued June 26, 2012.

APPLICATION NO. 12685; BP America Production Company, P.O. Box 959, Hallsville, Texas 75650, seeks a temporary water use permit to divert and use not to exceed 300 acre-feet of water from an existing dam and reservoir (Highland Lake) on Holly Creek, Cypress Creek Basin within a period of three years for mining purposes in Harrison County. The application and fees were received on March 17, 2011. Additional information was received on June 20, July 29, and August 8, 2011. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on August 16, 2011. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin,

TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by July 17, 2012.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC-103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201203394
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 27, 2012

♦ ♦ ♦

Revised Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Limited Scope Permit

Permit No. 1410C

APPLICATION. BFI Waste Systems of North America, LLC (owner of BFI Tessman Road Landfill, a municipal solid waste disposal and processing facility), 7000 IH 10 East, San Antonio, Bexar County, Texas 78219, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type I Municipal Solid Waste Limited Scope Permit Amendment proposing to change the operating hours to 24 hours per day, 7 days a week. The facility is located at 7000 IH 10 East, San Antonio, Bexar County, Texas 78219. The TCEQ received the application on May 25, 2012. The limited scope permit amendment application is available for viewing and copying at the San Antonio Public Library - Carver Library, 3350 E. Commerce Street, San Antonio, Bexar County, Texas 78220. 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=29.450555&lng=-98.344722&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 limited scope permit amendment 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 BFI Waste Systems of North America, LLC, at the address stated above or by calling Mr. Ray L. Shull, P.E. V.P., Civil & Environmental Consultants, Inc. at (512) 329-0006.

TRD-201203391
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 27, 2012

♦ ♦ ♦

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Computed Tomography and Magnetic Resonance Imaging

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 15, 2012, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Computed Tomography and Magnetic Resonance Imaging.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code, Title 1 (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for Computed Tomography and Magnetic Resonance Imaging are proposed to be effective October 1, 2012.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services; and

§355.8085, which addresses the reimbursement methodology for physicians and other medical professionals, including medical services, surgery, assistant surgery, and physician-administered drugs/biologicals; medical services, surgery, assistant surgery, radiology, laboratory, and radiation therapy.

The reimbursement rates proposed reflect applicable reductions directed by the 2012 - 2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session, 2011 (Article II, All Health and Human Services Agencies, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at http://public.tmhp.com/FeeSchedules/Default.aspx.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after August 1, 2012. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201203292
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 21, 2012

♦ ♦ ♦

Notice of Public Hearing on Proposed Medicaid Payment Rates for Healthcare Common Procedure Coding System Updates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 15, 2012, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for first quarter 2012 Healthcare Common Procedure Coding System (HCPCS) update.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code, Title 1 (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for first quarter 2012 HCPCS are proposed to be effective October 1, 2012.

Methodology and Justification. The proposed payment rates for HCPCS were calculated in accordance with 1 TAC:

§355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services; and

§355.8085, which addresses the reimbursement methodology for physicians and other medical professionals, including medical services, surgery, assistant surgery, and physician-administered drugs/biologicals; medical services, surgery, assistant surgery, radiology, laboratory, and radiation therapy.

The reimbursement rates proposed reflect applicable reductions directed by the 2012 - 2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session, 2011 (Article II, All Health and Human Services Agencies, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at http://public.tmhp.com/FeeSchedules/Default.aspx.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after August 1, 2012. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201203293
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 21, 2012

♦ ♦ ♦

Notice of Public Hearing on Proposed Medicaid Payment Rates for Hearing Devices and Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 15, 2012, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Hearing Devices and Services.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code, Title 1 (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for Hearing Devices and Services are proposed to be effective October 1, 2012.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for Home Health and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies;

§355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;

§355.8085, which addresses the reimbursement methodology for physicians and other medical professionals, including medical services, surgery, assistant surgery, and physician administered drugs/biologicals; medical services, surgery, assistant surgery, radiology, laboratory, and radiation therapy;

§355.8121, which addresses the reimbursement methodology for Ambulatory Surgical Centers; and

§355.8141, which addresses the reimbursement methodology for Hearing Aid Services.

The reimbursement rates proposed reflect applicable reductions directed by the 2012 - 2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session, 2011 (Article II, All Health and Human Services Agencies, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at http://public.tmhp.com/FeeSchedules/Default.aspx.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after August 1, 2012. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201203296
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 21, 2012

♦ ♦ ♦

Notice of Public Hearing on Proposed Medicaid Payment Rates for Medicaid Biennial Calendar Fee Review

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 15, 2012, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medicaid Biennial Calendar Fee Review.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code, Title 1 (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for Medicaid Biennial Calendar Fee Review are proposed to be effective October 1, 2012 for the following services:

(1) Family Planning

(2) General and Integumentary System Surgery

(3) Orthotics and Prosthetics

(4) Physician-Administered Drugs, Vaccines, and Toxoids

(5) Respiratory Therapists

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for Home Health Services and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies;

§355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;

§355.8085, which addresses the reimbursement methodology for physicians and other medical professionals, including medical services, surgery, assistant surgery, and physician-administered drugs/biologicals; medical services, surgery, assistant surgery, radiology, laboratory, and radiation therapy;

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services; and

§355.8582, which addresses payments for purchased counseling, educational, medical, and sterilization family planning services.

The reimbursement rates proposed reflect applicable reductions directed by the 2012 - 2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session, 2011 (Article II, All Health and Human Services Agencies, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at http://public.tmhp.com/FeeSchedules/Default.aspx.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after August 1, 2012. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201203294
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 21, 2012

♦ ♦ ♦

Notice of Public Hearing on Proposed Rule Amendment to the Reimbursement Methodology for Inpatient Hospitals and on Proposed Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Monday, July 23, 2012, at 1:30 p.m., to receive comments on proposed amendments to the administrative rule at 1 Texas Administrative Code (TAC) §355.8052. This section governs the payment methodology for Medicaid inpatient hospital reimbursement. HHSC will also receive comments during the public hearing on proposed rates developed as a result of these proposed rule amendments.

The hearing will be held in compliance with Texas Government Code §2001.029, which provides an opportunity for a public hearing, when requested, before adoption of a rule. The hearing will also be held in compliance with Human Resources Code §32.0282 and 1 TAC §355.201(e) - (f), which require public notice and hearings when Medicaid reimbursement rates are proposed or adjusted.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

Proposal. HHSC proposes to amend current 1 TAC §355.8052 to update the Medicaid inpatient hospital reimbursement methodology. The 82nd Legislature amended the Government Code to add Chapter 536: Medicaid and Child Health Plan Programs: Quality-Based Outcomes and Payments. As amended, the Government Code requires HHSC, to the extent possible, to convert hospital reimbursement systems in Medicaid programs to a diagnosis-related groups (DRG) methodology that will allow HHSC to more accurately classify specific patient populations and account for severity of patient illness and mortality risk. HHSC is proposing to transition from the use of Medicare Severity Diagnosis Related Groups (MS-DRG) to the 3MTM All Patient Refined Diagnosis Related Groups (APR-DRG) for hospital inpatient reimbursement.

The APR-DRGs, through expanded diagnosis and procedure codes, will more appropriately reimburse Medicaid hospitals for the cost of providing Medicaid services. For state fiscal year 2013, the transition to the APR-DRG will require the statewide standard dollar amount (SDA) and existing add-ons to be rebased using fiscal year 2010 claims data to ensure that reimbursement to hospitals remains within available funds. The proposed rates will be effective September 1, 2012, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

Methodology and Justification. The payment rates were calculated in accordance with the proposed amended rule at 1 TAC §355.8052, which describes the reimbursement methodology for Medicaid Inpatient Hospital Services. Note that the proposed amendment of 1 TAC §355.8052 was published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4295)

Rate Briefing Package. A briefing package describing the proposed payment rates will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after July 16, 2012. Those interested may also obtain a copy of the briefing package before the hearing by contacting Esther Brown at (512) 491-1358, by fax at (512) 491-1983; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the rule proposal or proposed payment rates may be submitted instead of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Esther Brown, HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; by e-mail to esther.brown@hhsc.state.tx.us; or by overnight mail, special delivery or hand delivery to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-201203388
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 27, 2012

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Notice of Revision to the Neighborhood Stabilization Program One Program Income Notice of Funding Availability

The Texas Department of Housing and Community Affairs (the "Department") announces revisions to the Neighborhood Stabilization Program One Program Income Notice of Funding Availability (NOFA). This NOFA will distribute approximately $13,000,000. The Neighborhood Stabilization Program (NSP) created under the Community Development Block Grant Program provides for funding to be awarded for the redevelopment of abandoned, foreclosed, and vacant homes and residential properties and was initially authorized under §2301(b) of the Housing and Economic Recovery Act of 2008 (Pub. L 110-289, approved July 30, 2008).

For questions regarding single family activities contact Marni Holloway, Director of Texas NSP, at marni.holloway@tdhca.state.tx.us and for multifamily activities contact Cameron Dorsey, Multifamily Finance Director, at cameron.dorsey@tdhca.state.tx.us.

TRD-201203389
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 27, 2012

♦ ♦ ♦

Heart of Texas Workforce Development Board

Request for Proposals

The Heart of Texas Workforce Development Board, Inc. (Board) is soliciting proposals for lease space for a workforce solutions center to be located in Waco, McLennan County, Texas.

The Request for Proposals (RFP) document may be obtained from the Board's office located at 801 Washington Avenue, Suite 700, Waco, Texas 76701, beginning Friday, June 22, 2012. The RFP will also be available on the Board's website: **www.hotworkforce.com/Contractors_Vendors/.**

A non-mandatory Pre-Bid Conference will be held on Thursday, June 28, 2012, at 1:30 p.m. at the McLennan County Workforce Solutions Center, 1416 S. New Road, Waco, Texas 76711. Bids will be accepted until 12:00 noon, on Wednesday, August 1, 2012. No facsimile or e-mail may be used.

All bids must be received at the Board's office by the specified time. Questions and information about this procurement should be addressed to Margie Cintron, Procurement Contractor for the Board, via e-mail at jcintron@grandecom.net, or phone (254) 855-6543.

The Board encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability. HOTWDB, Inc. is an equal opportunity employer/program. Auxiliary aids and services are available upon request to include individuals with disabilities. TTY/TDD via Texas Relay Service 1-800-735-2989 (TDD), 1-800-735-2988 (Voice).

TRD-201203371
Anthony Billings
Executive Director
Heart of Texas Workforce Development Board
Filed: June 26, 2012

♦ ♦ ♦

Nortex Regional Planning Commission

Request for Proposals

Nortex Regional Planning Commission is requesting proposals from qualified firms of certified public accountants to audit its financial statements for the fiscal year ending September 30, 2012, with the option of auditing its financial statements for each of the three subsequent fiscal years. These audits are to be performed in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants, OMB Circular A-133, and the State of Texas Single Audit Circular.

To obtain copies of this Request for Proposal, please contact James Springer, Nortex Regional Planning Commission, P.O. Box 5144, Wichita Falls, Texas 76307, telephone (940) 322-5281. A bidder's conference is scheduled for July 20, 2012, 10:00 a.m., CST, at the offices of Nortex Regional Planning Commission, 4309 Jacksboro Highway, Wichita Falls, Texas 76302, to answer any and all questions. All proposals must be received no later than 4:30 p.m., CST, on July 31, 2012. Proposals received after the specified date and time will not be considered.

TRD-201203361
Dennis Wilde
Executive Director
Nortex Regional Planning Commission
Filed: June 25, 2012

♦ ♦ ♦

North Central Texas Council of Governments

Request for Proposals for the Hurst-Euless-Bedford Transit Project

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is requesting written proposals from transportation providers to manage and operate the Hurst-Euless-Bedford (HEB) Transit Project, a demand-responsive service within the Cities of Hurst, Euless and Bedford. In 2001, the Federal Transit Administration

(FTA) awarded NCTCOG $1.5 million (federal) in Job Access/Reverse Commute funds for the Northeast Tarrant County Job Access Program. The purpose of the funding is to provide new or expanded transportation services to employment and employment-related opportunities. The HEB Transit Project has been in operation since August 2006 and provides transportation disadvantaged individuals trips to and from work and work-related appointments within the Cities of Hurst, Euless and Bedford. The provider will be responsible for scheduling, dispatch, and general operation of the service. The initial contract term will be for a period of twelve (12) months with four (4) optional one-year renewals available at NCTCOG's sole discretion. The budget for this project is approximately $125,000 per year.

Due Date

Proposals must be received no later than 5:00 p.m., on Friday, August 3, 2012, to James Powell, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at http://www.nctcog.org/rfp by the close of business on Friday, July 6, 2012. NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201203396
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: June 27, 2012

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 22, 2012, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of CoBridge Communications, LLC d/b/a Fidelity Communications for a Service Provider Certificate of Operating Authority, Docket Number 40504.

Applicant intends to provide facilities-based and resale telecommunications services.

Applicant proposes the geographic area throughout AT&T Texas' service area within the State of Texas, including the Cities of Marshall, Hallsville, Jefferson, Atlanta, Carthage, and Queen City and portions of the unincorporated areas surrounding these cities, including Cass, Marion, and Harrison Counties.

Persons who wish to comment upon the action sought 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 (888) 782-8477 no later than July 13, 2012. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 40504.

TRD-201203378
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 26, 2012

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 19, 2012, Cable & Wireless Americas Operations, Inc., filed an application to amend its service provider certificate of operating authority (SPCOA) Number 60666. Applicant seeks to reflect a change in ownership/control wherein Cable & Wireless Americas Operations, Inc., will become an indirect subsidiary of Vodafone Europe B.V.

The Application: Application of Cable & Wireless Americas Operations, Inc., for Amendment to its Service Provider Certificate of Operating Authority, Docket Number 40491.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 13, 2012. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 40491.

TRD-201203288
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2012

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 19, 2012, Network Billing Systems, LLC, filed an application to amend its service provider certificate of operating authority (SPCOA) Number 60557. Applicant seeks to reflect a change in ownership/control wherein Network Billing Systems, LLC, will become an indirect subsidiary of Fusion Telecommunications International, Inc.

The Application: Application of Network Billing Systems, LLC, for Amendment to its Service Provider Certificate of Operating Authority, Docket Number 40492.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-

782-8477 no later than July 13, 2012. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 40492.

TRD-201203289
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2012

♦ ♦ ♦

Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of a petition filed with the Public Utility Commission of Texas (commission) on June 20, 2012, for designation as an eligible telecommunications carrier (ETC) in the State of Texas pursuant to Substantive Rule §26.418 for purposes of establishing eligibility to participate in the Mobility Fund Phase I Auction (Auction) at the Federal Communications Commission (FCC) that is scheduled to be held on September 27, 2012, and the Mobility Fund Phase II Auction, for which an auction date has not yet been determined.

Docket Title and Number: Application of TexNet 4G for Designation as an Eligible Telecommunications Carrier in the State of Texas for the Purpose of Establishing Eligibility to Participate in the Mobility Fund Phase I Auction and the Mobility Fund Phase II Auction at the Federal Communications Commission. Docket Number 40498.

The Application: The Federal Communications Commission (FCC) has established for the first time a universal service support mechanism dedicated exclusively to mobile service, the "Mobility Fund." Phase I of the Mobility Fund will provide up to $300 million in one-time support to immediately accelerate deployment of networks for mobile voice and broadband services in unserved areas. As part of the FCC's criteria for Mobility Fund eligibility, a carrier must be designated as an ETC at the time it files its short-form application for participation in a spectrum auction 90 days prior to the start of the auction. TexNet 4G seeks ETC designation only for the purposes of eligibility to participate in the Mobility Fund Phase I and Mobility Fund Phase II auctions, and does not seek ETC designation for purposes of legacy high cost funding, or any state ETP designation. TexNet 4G requested that if it is not successful in winning support at the auction, then TexNet 4G's ETC designation in Texas would be automatically revoked and rendered void.

The FCC has provided the final list of eligible census blocks that are deemed eligible for Mobility Fund Phase I support. The requested service area for TexNet 4G at this time contains the census blocks in the counties of Atascosa, Frio, McMullen, LaSalle, Dimmit, and Webb in Texas that the FCC has identified as eligible for bidding in the Mobility Fund Phase I Auction. TexNet 4G requests that its service area be limited to the census blocks in Texas where the FCC determines that TexNet 4G is eligible for support pursuant to the Mobility Fund Phase I auction.

Persons who wish to comment on this application should notify the commission by July 10, 2012. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission's Customer Protection Division 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 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 40498.

TRD-201203313
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 22, 2012

♦ ♦ ♦

Notice of Application for Good Cause Exception to P.U.C. Substantive Rule §25.101(b)(3) for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on June 25, 2012, to waive for good cause P.U.C. Substantive Rule §25.101(b)(3).

Docket Style and Number: Application of Oncor Electric Delivery Company LLC for a Good Cause Exception to P.U.C. Substantive Rule §25.101(b)(3), Docket Number 40495.

The Application: Oncor Electric Delivery Company LLC (Oncor) requests that the commission waive for good cause P.U.C. Substantive Rule §25.101(b)(3) so that it can exempt the relocation and rebuild of the Martin Lake - Mount Enterprise 345-kV transmission line circuit from the commission's certificate of convenience and necessity (CCN) requirements. The proposed project is a rebuild and relocation of a portion of the existing, previously certificated transmission line from Martin Lake to Mount Enterprise. The project will, however, involve the construction of new, additional transmission line structures within an existing Oncor right-of-way for approximately 1.2 miles.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by 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 40495.

TRD-201203376
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 26, 2012

♦ ♦ ♦

Notice of Request for Approval of Alternate Technology

Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 20, 2012, petitioning for approval of an alternate technology pursuant to P.U.C. Substantive Rule §26.57.

Docket Title and Number: Application of Southwest Texas Telephone Company for Approval of Alternate Technology, Docket Number 40496.

The Application: Southwest Texas Telephone Company (Southwest Texas or the company) filed an application with the Public Utility Commission of Texas for approval for the use of voice-over-internet-protocol (VoIP) as an alternate technology in certain circumstances. Southwest Texas requests pursuant to P.U.C Substantive Rule §26.57 that in the limited circumstance where it meets its provider of last resort "POLR" obligation with fixed wireless service, the commission grant the company authority to use VoIP service as an alternate technology to the analog service required by P.U.C. Substantive Rule §26.54(b)(3).

Persons who wish to comment upon the action sought 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 telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 40496.

TRD-201203377
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 26, 2012

♦ ♦ ♦

Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

The City of Liberty, 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 Liberty Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of Liberty. TxDOT CSJ No. 1220LBRTY. Scope: Provide engineering/design services to improve west side drainage.

The DBE goal for the current project is nine percent. TxDOT Project Manager is Matt Jasso, P.E.

Future scope work items for engineering/design services within the next five years may include the following:

1. Construct small public terminal building

2. Construct 10 Unit T-hangar

3. Construct east side hangar access taxiway and pavement

4. Reconstruct west apron

5. Rehabilitate southwest apron, hangar access taxiway, and concrete apron, and seal joints

6. Install fencing

7. Upgrade signs

8. Relocate fuel farm to east side of airport

9. Extend utilities to east side for public

The City of Liberty 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, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Liberty Municipal Airport." 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 **July 31, 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 Aviation Division staff 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 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 Scott Bryan, Project Manager.

TRD-201203323
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 22, 2012

♦ ♦ ♦

Aviation Division - Request for Proposal for Professional Engineering Services

The City of Fort Worth, 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: City of Fort Worth, Meacham International Airport. TxDOT CSJ No. 1202MCHAM. Scope: Perform a Wildlife Hazard Assessment (WHA) by a qualified Wildlife Damage Management Biologist meeting the requirements established by FAA Advisory Circular AC 150/5200-36, latest edition. The assessment will include, but is not limited to, an analysis of the events prompting the assessment, identifying wildlife species observed and their numbers, locations, local movements, and daily and seasonal occurrences; identification and

location of features on or near the airport that attract wildlife; a description of wildlife hazards to aircraft operations; and recommended actions for reducing wildlife hazards to aircraft operations.

There is no DBE goal. TxDOT Project Manager is Molly Lamroeux.

A voluntary site visitation is scheduled for this project at 10:00 a.m. on July 19, 2012, at Meacham International Airport Conference Room, 4201 N. Main, Fort Worth, Texas.

NOTE: This is the only available time for interested firms to visit the site prior to proposal submission. Please contact Ruseena Johnson at (817) 392-5407 to sign up for this visit.

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 **July 31, 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 Edie Stimach.

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 Edie Stimach, Grant Manager, or Molly Lamroeux, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-201203324
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 22, 2012

♦ ♦ ♦

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, July 24, 2012, at 10:00 a.m. at 200 East Riverside Drive, Room 1A-2, in Austin, Texas, to receive public comments on the July 2012 Out of Cycle Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2011 - 2014.

The STIP reflects the federally funded transportation projects in the FY 2011 - 2014 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134(j) requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135(g) requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed July 2012 Out of Cycle Revisions to the FY 2011 - 2014 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, phone number (512) 486-5033, and on the department's website at: http://www.txdot.gov/business/governments/stips.htm.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033, not later than Monday, July 23, 2012, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed July 2012 Out of Cycle Revisions to the FY 2011 - 2014 STIP to James L. Randall, P.E., Director, Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, August 6, 2012.

TRD-201203330

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 25, 2012

♦ ♦ ♦

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and 43 Texas Administrative Code §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

http://www.txdot.gov/public_involvement/hearings_meetings/schedule.htm.

Or visit www.txdot.gov, click on Public Involvement, click on Hearings and Meetings, and then click on Hearings and Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-201203387
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 27, 2012

♦ ♦ ♦

Upper Rio Grande Workforce Development Board

Request for Proposals for Facility Improvements to Workforce Solutions Centers

View Request for Proposals PY11-RFP-200-120 at: http://www.urgjobs.com/Procurements/2012/Facility_Improvements_Workforce.pdf

Release Date: June 21, 2012, 12:00 p.m. MDT

Question Submission Deadline: July 2, 2012, 5:00 p.m. MDT

Submission Deadline: July 9, 2012, 5:00 p.m. MDT

TRD-201203385
Joseph G. Sapien
Special Projects Administrator
Upper Rio Grande Workforce Development Board
Filed: June 27, 2012

♦ ♦ ♦

Texas Water Development Board

2013 Draft Clean Water and Drinking Water Intended Use Plan Public Hearing

The Texas Water Development Board (TWDB) will hold a public hearing on the draft State Fiscal Year (SFY) 2013 Clean Water State Revolving Fund (CWSRF) Intended Use Plan (IUP) and the Drinking Water State Revolving Fund (DWSRF) IUP. The hearing for the DWSRF and CWSRF IUPs will begin promptly at 2:00 p.m. on July 19, 2012, in Room 170 of the Stephen F. Austin Building at 1700 N. Congress Avenue, Austin, Texas 78701.

The DWSRF IUP contains a list of water infrastructure projects in prioritized order which will be considered for funding in SFY 2013. The draft SFY 2013 DWSRF IUP has been prepared pursuant to the rules adopted by the TWDB in 31 Texas Administrative Code Chapter 371.

The CWSRF IUP contains a list of wastewater projects in prioritized order which will be considered for funding in 2013. The draft SFY 2013 CWSRF IUP has been prepared pursuant to rules adopted by the TWDB in 31 Texas Administrative Code Chapter 375.

Interested persons are encouraged to attend the hearings and to present relevant and material comments concerning the draft IUPs. In addition, persons may submit written comments to Ms. Stacy Barna, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78 711, or may email comments to *iupcomments@twdb.texas.gov.* Comments may also be received online utilizing an electronic form located at *http://www.twdb.texas.gov/apps/iup.* Comments and supplemental information will only be accepted by electronic submission at the addresses stated, written comments to Ms. Stacy Barna, or at the public hearing on July 19, 2012. Any comments and supplemental information must be received by 5:00 p.m. central standard time, July 23, 2012, to be considered. Interested persons also may review the draft DWSRF and CWSRF IUPs at the Board's website at *www.twdb.state.tx.us/financial/programs/doc/dwsrf/draft_FY13_DWSRF_IUP.pdf* and *www.twdb.state.tx.us/financial/programs/doc/cwsrf/draft_FY13_CWSRF_IUP.pdf* respectively.

Please note that time limits on public comments may be imposed to allow all members of the public to be heard. Additionally, the TWDB discourages comments requesting a revised rating based on new project information.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Merry Klonower at (512) 463-8165 two (2) working days prior to the hearing so that appropriate arrangements can be made.

TRD-201203319
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: June 22, 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)*