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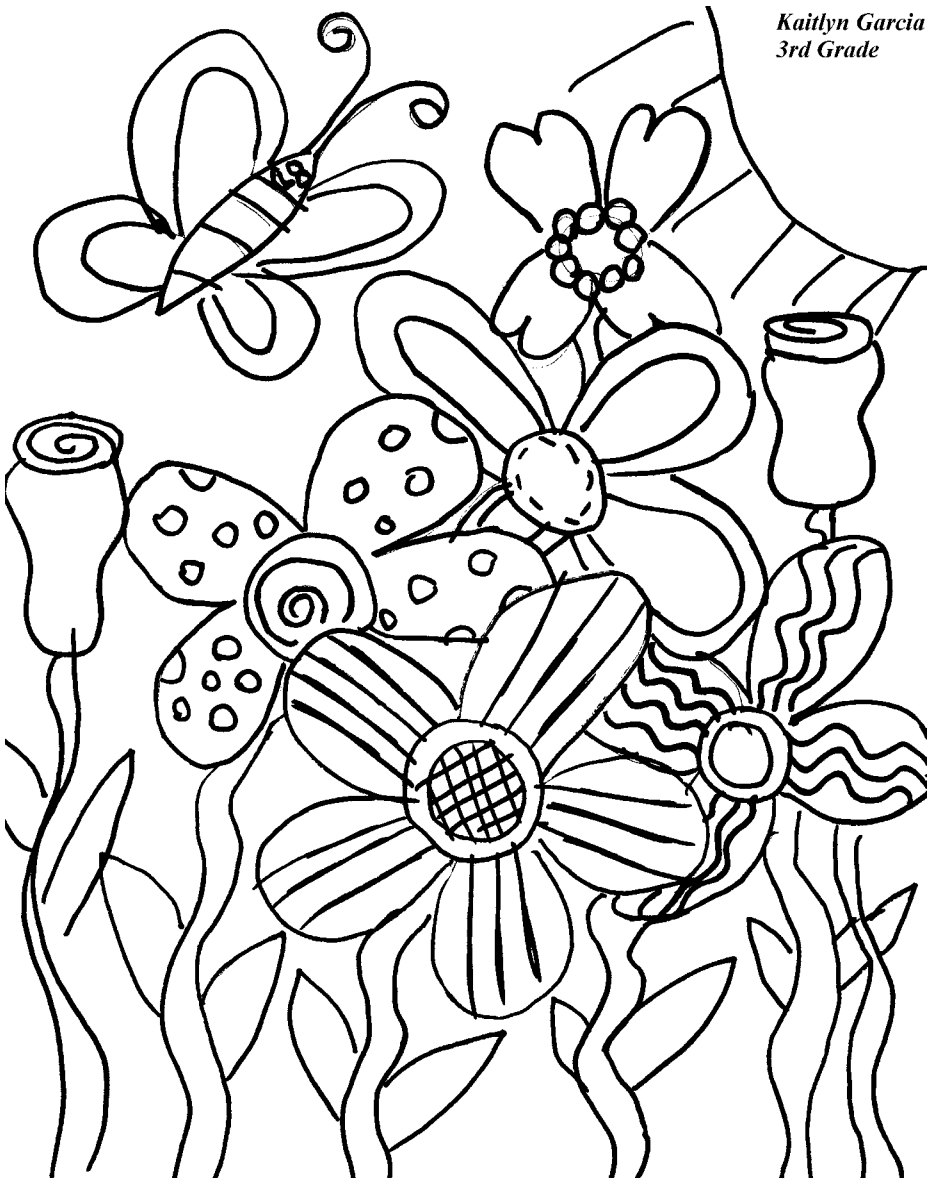

Kaitlyn Garcia
3rd Grade

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*.

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IN THIS ISSUE

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

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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.

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

1 TAC §351.3

The Texas Health and Human Services Commission (HHSC) proposes to amend §351.3, concerning Purpose, Task and Duration of Advisory Committees.

Background and Justification

The proposed amendment clarifies the names of two existing committees, updates the expiration date of two existing committees, updates the name of an existing committee, deletes an expired committee, and adds three new HHSC advisory committees: the Quality Based Payment Advisory Committee, the Physician Payment for Quality Committee, and the Neonatal Intensive Care Unit Council.

The amendment is proposed to comply with Government Code §2110.005 and §2110.008, which require the following information regarding advisory committees to be included in rules: the purpose and task of the committee; the manner in which the committee will report to the agency; and the date on which the committee will be abolished, if any.

The amendment is also proposed in response to:

- Senate Bill (SB) 37, 82nd Legislature, Regular Session, 2011, which amends Government Code §531.02441 by adding a date on which the Promoting Independence Advisory Committee expires;

- SB 293, 82nd Legislature, Regular Session, 2011, which amends the title of the Telemedicine Advisory Committee, authorized under the Government Code §531.02172, to the Telemedicine and Telehealth Advisory Committee, expanding the scope of the committee to include the term "Telehealth";

- SB 7, 82nd Legislature, First Called Session, 2011, which adds Chapter 536 to the Government Code, requiring HHSC to establish the Quality Based Payment Advisory Committee to provide recommendations to HHSC concerning Medicaid and the Children's Health Insurance Program (CHIP):

(1) reimbursement systems used to compensate physicians or other health care providers under those programs that reward the provision of high-quality, cost-effective health care and quality performance and quality of care outcomes with respect to health care services;

(2) standards and benchmarks for quality performance, quality of care outcomes, efficiency, and accountability by managed care organizations and physicians and other health care providers;

(3) programs and reimbursement policies that encourage high-quality, cost-effective health care delivery models that increase appropriate provider collaboration, promote wellness and prevention, and improve health outcomes; and

(4) outcome and process measures;

- The 2012-2013 General Appropriations Act, House Bill (HB) 1, 82nd Legislature, Regular Session, 2011 (Article II, Health and Human Services Commission, Rider 68), which requires HHSC to establish the Physician Payment for Quality Committee to identify the ten most overused services performed by physicians; and

- HB 2636, 82nd Legislature, Regular Session, 2011, which requires HHSC to establish the Neonatal Intensive Care Unit Council. The Council will make recommendations regarding neonatal intensive care unit operating standards and reimbursement through the Medicaid program for services provided to an infant admitted to a neonatal intensive care unit, including:

(1) developing standards for operating a neonatal intensive care unit in this state;

(2) developing an accreditation process for a neonatal intensive care unit to receive reimbursement for services provided through the Medicaid program; and

(3) studying and making recommendations regarding best practices and protocols to lower admissions to a neonatal intensive care unit.

Section-by-Section Summary

Proposed paragraph (3)(A) clarifies that the Drug Use Review Board is commonly known as the Drug Utilization Review Board.

Paragraph (7) is deleted, as the Informal Dispute Resolution Quality Assurance Committee has fulfilled its purpose and is expired. The remaining paragraphs are renumbered.

Proposed paragraph (8)(C) updates the abolishment date of the Physician Payment Advisory Committee to August 31, 2017.

Proposed paragraph (9)(A) adds a reference to the statutorily known name of the committee.

Proposed paragraph (9)(C) updates the abolishment date of the Promoting Independence Advisory Committee to September 1, 2017.

Proposed paragraph (12) updates the name of the Telemedicine Advisory Committee to include the term "Telehealth."

Proposed new paragraphs (15), (16), and (17) add three new committees and describe the committees' purpose and task, the manner in which the committees will report to the agency, and the date on which the committees will be abolished.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect, there will be no fiscal impact to state government as a result of amending the rule. The amended rule will not result in any fiscal implications for local health and human services agencies or local governments.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the proposed rule because the rule concerns HHSC advisory committees and does not apply to businesses. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Billy Millwee, Deputy Executive Commissioner for Health Services Operations, has determined that for each year of the first five years the amended section is in effect, the public will benefit from the adoption of the section. The anticipated public benefit, as a result of enforcing the amended section, will be that the rules will reflect the current status of the advisory committees.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on this proposal may be submitted to Mary Haifley, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, Austin, Texas 78708-5200, Mail Code H-600, Austin, Texas 78758; by fax to (512) 491-1953; or by e-mail to mary.haifley@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Government Code §531.012, which provides the authority to establish advisory committees.

The amendment affects the Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§351.3. Purpose, Task and Duration of Advisory Committees.

The Health and Human Services Commission (HHSC) receives recommendations from advisory committees established through state and federal laws, rules, and regulations. The following advisory committees are approved by the HHSC Executive Commissioner:

(1) Children's Policy Council.

(A) The Children's Policy Council is established under the Human Resources Code, Chapter 22, §22.035. The work group assists the HHSC Executive Commissioner and HHS agencies in developing, implementing, and administering family support policies and related long-term care and health programs for children.

(B) The Children's Policy Council studies and makes recommendations on long-term care and health policies and submits a report on its findings and recommendations to the legislature and the HHSC Executive Commissioner each even numbered year.

(C) The Human Resources Code, Chapter 22, §22.035, exempts the Children's Policy Council from the abolishment date required in the Government Code, Chapter 2110, §2110.008.

(2) Consumer Direction Work Group.

(A) The Consumer Direction Work Group is established under the Government Code, Chapter 531, Subchapter B, §531.052. The work group advises HHSC on the development, implementation, expansion and delivery of services through consumer direction in all programs offering long-term services and supports.

(B) The Consumer Direction Work Group makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The Government Code, Chapter 531, Subchapter B, §531.052, exempts the Consumer Direction Work Group from the abolishment date required in the Government Code, Chapter 2110, §2110.008.

(3) Drug Use Review Board.

(A) The Drug Use Review Board is established under the authority of Title 42, Code of Federal Regulations (CFR), §456.716, and is internally referred to as the Drug Utilization Review Board. This advisory committee advises HHSC about criteria and standards for appropriate drug use in the Medicaid program.

(B) The Drug Use Review Board makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The Drug Use Review Board is required by federal regulations and will continue as long as the federal law that requires it remains in effect. The continued need for the committee will be reviewed by August 31, 2016.

(4) HHSC Medicaid and Children's Health Insurance Program (CHIP) Regional Advisory Committees.

(A) The HHSC Executive Commissioner established the HHSC Medicaid and CHIP Regional Advisory Committees under the authority of the Government Code, Chapter 531, Subchapter A, §531.012 and Chapter 533, Subchapter B, §533.021. These advisory

committees meet quarterly to discuss the implementation and operations of Medicaid and CHIP programs within the respective regions and to provide recommendations to HHSC.

(B) The HHSC Medicaid and CHIP Regional Advisory Committees report quarterly and make recommendations through HHSC staff assigned to the committees.

(C) The HHSC Medicaid and CHIP Regional Advisory Committees will be automatically abolished August 31, 2016.

(5) Hospital Payment Advisory Committee.

(A) The Hospital Payment Advisory Committee (HPAC) is established under the Human Resources Code, Chapter 32, Subchapter B, §32.022(e). HPAC functions as a subcommittee of the Medical Care Advisory Committee (MCAC). HPAC advises MCAC and HHSC about hospital reimbursement methodologies for inpatient hospital prospective payment and on adjustments for disproportionate share hospitals. The committee advises HHSC to ensure reasonable, adequate, and equitable payments to hospital providers and to address the essential role of rural hospitals.

(B) The HPAC makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The HPAC will be automatically abolished August 31, 2016.

(6) Medical Care Advisory Committee.

(A) The Medical Care Advisory Committee (MCAC) is established under the authority of Title 42, CFR, §431.12 and the Human Resources Code, Chapter 32, Subchapter B, §32.022. MCAC makes recommendations to HHSC regarding health and medical care policy for the Medicaid program.

(B) The MCAC makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The MCAC is required by federal regulations and will continue as long as the federal law that requires it remains in effect. The continued need for the committee will be reviewed by August 31, 2016.

~~[(7) Informal Dispute Resolution Quality Assurance Committee.]~~

~~[(A) The Informal Dispute Resolution (IDR) Quality Assurance Committee is established under Government Code §531.012. This committee advises the HHSC IDR program to ensure that the HHSC IDR program stakeholders are kept informed of IDR issues and to provide stakeholders with ongoing opportunity for input.]~~

~~[(B) The IDR Quality Assurance Committee makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.]~~

~~[(C) The IDR Quality Assurance Committee will be automatically abolished December 31, 2011.]~~

(7) [~~(8)~~] Pharmaceutical and Therapeutics Committee.

(A) The Pharmaceutical and Therapeutics Committee is established under the authority of the Government Code, Chapter 531, Subchapter B, §531.074. The committee advises HHSC on the clinical efficacy, safety, cost-effectiveness and any program benefit associated with a drug product and develops recommendations for the preferred drug lists.

(B) The Pharmaceutical and Therapeutics Committee makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The Government Code, Chapter 531, Subchapter B, §531.074, exempts the Pharmaceutical and Therapeutics Committee from the abolishment date requirement by the Government Code, Chapter 2110, §2110.008.

(8) [~~(9)~~] Physician Payment Advisory Committee.

(A) The Physician Payment Advisory Committee (PPAC) is created pursuant to the authority granted by the Government Code, Chapter 531, Subchapter A, §531.012. PPAC functions as a subcommittee of the MCAC. PPAC advises MCAC and HHSC about technical issues regarding physician payment policies.

(B) The PPAC makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The PPAC will be automatically abolished August 31, 2017 [~~2012~~].

(9) [~~(10)~~] Promoting Independence Advisory Committee.

(A) The Promoting Independence Advisory Committee (PIAC) is authorized by the Government Code, Chapter 531, Subchapter B, §531.02441 and is statutorily known as the Task Force on Ensuring Appropriate Care Settings for Persons with Disabilities. The task force advises HHSC in the development of a comprehensive, effectively working plan to ensure appropriate care settings for persons with disabilities.

(B) The PIAC will meet at the call of the commissioner. Not later than September 1 of each year, the Committee shall submit a report to the commissioner on its findings and recommendations.

(C) The PIAC will be automatically abolished September 1, 2017 [~~August 31, 2011~~].

(10) [~~(11)~~] Public Assistance Health Benefit Review and Design Committee.

(A) The Public Assistance Health Benefit Review and Design Committee was established under the Government Code, Chapter 531, Subchapter B, §531.067. This committee provides recommendations to HHSC regarding health benefits and coverage provided under the Medicaid program, the Children's Health Insurance Program and any other income-based health care program administered by HHSC.

(B) The Public Assistance Health Benefit Review and Design Committee makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The Government Code, Chapter 531, Subchapter B, §531.067, exempts the Public Assistance Health Benefit Review and Design Committee from the abolishment date required by the Government Code, Chapter 2110, §2110.008.

(11) [~~(12)~~] Pilot Project Consortium; Expansion Plan.

(A) The Pilot Project Consortium is established under the Government Code, Chapter 531, Subchapter G-1, §531.251. The consortium shall develop criteria for and implement the expansion of the Texas Integrated Funding Initiative (TIFI) pilot project and criteria to develop local mental health care systems in communities for minors who are receiving residential mental health services or who are at risk of residential placement to receive mental health services.

(B) The Pilot Project Consortium makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the consortium.

(C) The Pilot Project Consortium will be automatically abolished effective August 31, 2012.

(12) [~~(13)~~] Telemedicine and Telehealth Advisory Committee.

(A) The Telemedicine and Telehealth Advisory Committee is established under the authority of the Government Code, Chapter 531, Subchapter B, §531.02172. The committee makes recommendations to HHSC on policy for telemedicine and telehealth services, development of telecommunication technology, and coordinating and monitoring related programs and activities.

(B) The Telemedicine and Telehealth Advisory Committee makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The Telemedicine and Telehealth Advisory Committee will be automatically abolished effective August 31, 2016.

(13) [~~(14)~~] Advisory Committee on Qualifications for Health Care Translators and Interpreters.

(A) The Advisory Committee on Qualifications for Health Care Translators and Interpreters is established under the authority of the Government Code, §531.704. The committee advises HHSC on qualifications and standards for health care translators and interpreters for persons with limited English proficiency and persons who are deaf and hard of hearing.

(B) The Advisory Committee on Qualifications for Health Care Translators and Interpreters, through regularly scheduled meetings and verbal or written recommendations to HHSC staff assigned to the committee, establishes and recommends qualifications for health care interpreters and health care translators. The committee will:

(i) develop strategies for implementing the regulation of health care interpreters and health care translators;

(ii) make recommendations to HHSC for any legislation necessary to establish and enforce qualifications for health care interpreters and health care translators or for the adoption of rules by state agencies regulating health care practitioners, hospitals, physician offices, and health care facilities that hire health care interpreters or health care translators; and

(iii) perform other activities assigned by HHSC related to health care interpreters or health care translators.

(C) The Advisory Committee on Qualifications for Health Care Translators and Interpreters will be automatically abolished January 1, 2021.

(14) [~~(15)~~] Electronic Health Information Exchange System Advisory Committee.

(A) The Electronic Health Information Exchange System Advisory Committee is established under the authority of the Government Code §531.904. The committee advises HHSC on the development and implementation of the electronic health information exchange system for Medicaid and the Children's Health Insurance Program, including any issue specified by HHSC and the following specific issues:

(i) data to be included in an electronic health record;

(ii) presentation of data;

(iii) useful measures for quality of service and patient health outcomes;

(iv) federal and state laws regarding privacy and management of private patient information;

(v) incentives for increasing health care provider adoption and usage of an electronic health record and the health information exchange system; and

(vi) data exchange with local or regional health information exchanges to enhance:

(I) the comprehensive nature of the information contained in electronic health records; and

(II) health care provider efficiency by supporting integration of the information into the electronic health record used by health care providers.

(B) The Electronic Health Information Exchange System Advisory Committee makes recommendations to HHSC through regularly scheduled meetings and verbal or written recommendations to HHSC staff assigned to the committee.

(C) The Electronic Health Information Exchange System Advisory Committee will be automatically abolished August 31, 2013.

(15) Quality Based Payment Advisory Committee.

(A) The Quality Based Payment Advisory Committee is established under the authority of the Government Code, Chapter 536, Subchapter A, §536.002. The committee makes recommendations to HHSC on quality of care and cost-efficiency benchmarks, process measures and measurable goals, and quality-based payment systems and other payment initiatives that may be implemented for Medicaid and CHIP.

(B) The Quality Based Payment Advisory Committee must submit an annual report to the Texas Legislature.

(C) The Quality Based Payment Advisory Committee will be automatically abolished September 28, 2015.

(16) Physician Payment for Quality Committee.

(A) The Physician Payment for Quality Committee is established under the authority of the Government Code, Chapter 531, Subchapter A, §531.012. The committee will identify the top ten overused physician services.

(B) The Physician Payment for Quality Committee does not have a reporting requirement.

(C) The Physician Payment for Quality Committee will be automatically abolished September 1, 2015.

(17) Neonatal Intensive Care Unit Council.

(A) The Neonatal Intensive Care Unit (NICU) Council is established under the authority of the Government Code, Chapter 531, Subchapter A, §531.012. The committee makes recommendations to HHSC on standards and certification for NICU services and Medicaid reimbursement.

(B) The NICU Council must submit a report not later than January 1, 2013, to the HHSC executive commissioner, the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the appropriate legislative committees on its findings and recommendations.

(C) The NICU Council will be automatically abolished June 1, 2013.

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

Filed with the Office of the Secretary of State on July 12, 2012.

TRD-201203599
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 26, 2012
For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 30. FAMILY PLANNING

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8581, concerning Reimbursement Methodology for Family Planning Services; and proposes to repeal §355.8582, concerning Medical Services; §355.8583, concerning Elective Sterilization; and §355.8584, concerning Maximum Rates and Specific Codes.

Background and Justification

HHSC proposes to amend §355.8581 to eliminate policy language and outdated cross references and to add reimbursement language pertinent to family planning services.

Additionally, HHSC proposes to repeal §§355.8582, 355.8583, and 355.8584 to eliminate outdated policy language and cross references and to consolidate all family planning services reimbursement language into one rule, §355.8581.

Section-by-Section Summary

The title of Division 30 is updated to more accurately describe the content of the Division.

The proposed amendment to §355.8581 eliminates outdated references to the Texas Department of Health, removes program and policy language, updates the rule cross references, and adds language describing where the different types of reimbursement rates can be found. The title is revised to more accurately describe the content of the rule.

The proposed repeals of §§355.8582, 355.8583, and 355.8584 delete outdated information as well as information that is proposed to be incorporated into §355.8581, Reimbursement Methodology for Family Planning Services.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed amendment and repeals are in effect there will be no fiscal impact to state government. The proposal will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Pam McDonald, Director of Rate Analysis, has determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed amendment and repeals, because the proposal does not require businesses to alter their business practices. There is no anticipated economic cost to persons who are required to comply with the proposed amendment and repeals. There is no anticipated effect on local employment in geographic areas affected by the proposed amendment and repeals.

Public Benefit

Pam McDonald also has determined that for each of the first five years the amendment and repeals are in effect, the expected public benefit is the elimination of duplicate and obsolete rules and increased consistency in reimbursement for family planning services.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Reuben Leslie, Lead Analyst, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to reuben.leslie@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

1 TAC §355.8581

Statutory Authority

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

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

§355.8581. Reimbursement Methodology for Family Planning Services [~~Purchased Counseling and Educational Services~~].

Family planning services described in 25 TAC Chapter 56 (relating to Family Planning) are reimbursed as follows: [~~Counseling and educational services the Texas Department of Health purchases include, but are not limited to:~~]

(1) For physician and other practitioner services, physician-administered drugs and biologicals, and the administration of immunizations, providers are reimbursed the lesser of:

(A) the provider's billed charges; or

(B) fees determined by the Texas Health and Human Services Commission in accordance with §355.8085 of this subchapter (relating to Reimbursement Methodology for Physicians and Other Practitioners).

(2) Durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) are reimbursed in the same manner as DMEPOS under home health services at §355.8021(b) of this subchapter (relating to Reimbursement Methodology for Home Health Services and Durable Medical Equipment, Prosthetics, Orthotics and Supplies).

~~[(1) initial education and counseling for clients concerning the various contraceptive methods and elementary reproductive anatomy to facilitate effective use of the method chosen. This service is reimbursable once for new clients of the agency or for clients whose agency records have been closed for at least one year;]~~

~~[(2) method-specific education and counseling for Title XX clients that provides information about the specific methods chosen by clients including proper use, possible side effects, reliability, and reversibility of the methods. This is reimbursable if provided in conjunction with the initial or annual examination, or when the client changes contraceptive methods or has difficulty with a method;]~~

~~[(3) problem counseling for Title XX clients about problems that are not related to contraceptive methods such as pregnancy, sexually transmitted infections, social and marital problems, health disorders, and sexuality concerns of the disabled and adolescents. This service is reimbursable as often as a physician deems it necessary;]~~

~~[(4) introduction to family planning in a hospital setting for Title XX clients that consists of an overview of family planning benefits to clients in a hospital or in a clinic under the auspices of a hospital to recruit postpartum women to use family planning services following a delivery or pregnancy termination;]~~

~~[(5) natural family planning instruction provided in two sessions to instruct a couple or an individual in natural family planning methods;]~~

~~[(6) for Title XX, group presentations and discussions with a minimum of five adolescents age 19 and younger to include aspects of human sexuality, personal physical care and hygiene, and methods of family planning. This service is reimbursable once for each type of presentation for a client as part of a group by any one agency provider. The presentations and discussions must comply with policies of the organization under whose auspices the presentations occur. This service is considered outreach and may be billed without determining eligibility of the participants; and]~~

~~[(7) additional services listed in §56.802 of this title (relating to Family Planning Program Services Provided by Department Direct Delivery Staff, Family Health Services Nurses, and Providers).]~~

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

Filed with the Office of the Secretary of State on July 16, 2012.

TRD-201203637

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 26, 2012
For further information, please call: (512) 424-6900

♦ ♦ ♦

DIVISION 30. FAMILY PLANNING: PURCHASED SERVICES

1 TAC §§355.8582 - 355.8584

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

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

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

§355.8582. Medical Services.
§355.8583. Elective Sterilization.
§355.8584. Maximum Rates and Specific Codes.

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

Filed with the Office of the Secretary of State on July 16, 2012.

TRD-201203636
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 26, 2012
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES

SUBCHAPTER H. STRUCTURAL PEST CONTROL SERVICE

DIVISION 2. LICENSES

4 TAC §7.127

The Texas Department of Agriculture (the department) proposes amendments to §7.127, concerning fees for structural pest control applicants, licensees and continuing education providers. These amendments are necessary to comply with changes made to the structural pest control program by the 82nd Texas Legislature, which required that all of the costs of administering this program be entirely offset by revenue generated for the program, including other direct and indirect expenses, and has authorized the agency to collect fees accordingly. Since the last adoption of fees for structural pest control applicants, licensees and continuing education providers in September 2011, the department has conducted a cost recovery analysis and has determined that through continued cost cutting measures, reorganization of the department, and fiscal responsibility, the department has been able to reduce expenditures during fiscal year 2012 below the amount appropriated for Structural Pest Control licensing, inspection, and enforcement. As a direct result of this analysis, the department proposes amendments to §7.127 to decrease fees for structural pest control applicants, licensees and continuing education providers by an average of twenty percent.

The amendments to §7.127 decrease the fees for an original business license and renewal of a business license from $280 to $224; for an original certified applicator license from $135 to $108; for a renewal certified applicator license from $125 to $100; for an original technician license from $100 to $81; for a renewal technician license from $95 to $76; and for a continuing education course from $60 to $48.

David Kostroun, Chief Administrator for Agriculture and Consumer Protection, has determined for the first five-year period the proposed amendments are in effect, there will be fiscal implications for state government due to the decrease in fees collected. There will be a decrease in state revenue of $562,274 annually. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendments as proposed.

Mr. Kostroun has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated will be lower costs necessary to administer the department's Structural Pest Control Service. There is no anticipated additional cost to microbusinesses, small businesses, or persons required to comply with the proposed amendments.

Comments on the proposal may be submitted to David Kostroun, Chief Administrator for Agriculture and Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication on the proposal in the *Texas Register.*

The amendments to §7.127 are proposed under Occupations Code, §1951.201, which designates the department as the sole authority in the state for licensing persons engaged in the business of structural pest control, and provides the department with the authority to establish fees under Chapter 1951 in amounts reasonable and necessary to cover the costs of administering the department's programs and activities under Chapter 1951.

The code affected by the proposal is the Occupations Code, Chapter 1951.

§7.127. Fees.

Applicants, licensees and continuing education providers will be charged the following fees:

(1) $224 [~~$280~~] for an original business license;

(2) $224 [~~$280~~] for renewal of a business license;

(3) $108 [~~$135~~] for an original certified applicators license;

(4) $100 [~~$125~~] for renewal of a certified applicators license;

(5) $81 [~~$100~~] for an original technician license;

(6) $76 [~~$95~~] for an renewal of a technician license;

(7) - (11) (No change.)

(12) $48 [~~$60~~] for continuing education course.

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

Filed with the Office of the Secretary of State on July 16, 2012.

TRD-201203638
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 26, 2012
For further information, please call: (512) 463-4075

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.6

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

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, §1.6, concerning Historically Underutilized Businesses. The section is proposed for repeal because the Department is proposing a new §1.6 to specify the requirements for historically underutilized businesses in accordance with new Comptroller of Public Accounts historically underutilized business rules. The proposed new §1.6 is published concurrently with this repeal in this issue of the *Texas Register.*

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal of the section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal, and there will be no effect on local employment or a local economy as result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal of the section will be in effect, the public benefit anticipated as a result of the repeal will be allowing the proposal and adoption of a new HUB rule that is consistent with the current state rules regarding HUBs

as determined by the comptroller. There will be no economic cost to any individuals as a result of the proposed repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 27, 2012 to August 27, 2012 to receive input on the repeal. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: julie.dumbeck@tdhca.state.tx.us, or by fax to (512) 475-2672. ALL COMMENTS MUST BE RECEIVED BY AUGUST 27, 2012, 4:00 P.M.

STATUTORY AUTHORITY. The repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs, and Texas Government Code, §2161.003, which provides authority to agencies to adopt the Comptroller's HUB rules at 34 TAC §§20.10 - 20.28.

CROSS REFERENCE TO STATUTE. The proposed repeal affects no other code, article, or statute.

§1.6. Historically Underutilized Businesses.

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

Filed with the Office of the Secretary of State on July 13, 2012.

TRD-201203603
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 26, 2012
For further information, please call: (512) 475-3916

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10 TAC §1.6

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, §1.6, concerning Historically Underutilized Businesses. The purpose of this proposed new section is to incorporate the new policies contained in the most recent version of the Comptroller of Public Accounts historically underutilized businesses rules.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section will be in effect, the public benefit anticipated as a result of the new rule will be that the Department's HUB policy will be consistent with the state's rules as determined by the comptroller. There will be no economic cost to any individuals required to comply with the proposed new rule.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 27, 2012 to August 27, 2012 to receive input on the new section. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: julie.dumbeck@tdhca.state.tx.us, or by fax to (512) 475-2672. ALL COMMENTS MUST BE RECEIVED BY AUGUST 27, 2012, 4:00 P.M.

STATUTORY AUTHORITY. The new section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs and pursuant to the authority of Texas Government Code, §2161.003, which provides state agencies authority to adopt the Comptroller's HUB rules at 34 TAC §§20.10 - 20.28.

CROSS REFERENCE TO STATUTE. The proposed new section affects no other code, article, or statute.

§1.6. Historically Underutilized Businesses.

It is the policy of the Department to encourage the use of Historically Underutilized Businesses (HUB). The purpose of the HUB program is to promote full and equal business opportunities for all businesses in an effort to remedy disparity in state procurement and contracting in accordance with the HUB goals specified in the State of Texas Disparity Study. The Department and all its programs comply with the Texas Comptroller of Public Accounts HUB Program rules at 34 TAC §§20.10 - 20.28 (relating to Historically Underutilized Business Program) which describe the minimum steps and requirements to be undertaken by the comptroller and state agencies to fulfill the state's HUB policy and attain aspirational goals recommended by the Texas Disparity Study.

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

Filed with the Office of the Secretary of State on July 13, 2012.

TRD-201203604
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 26, 2012
For further information, please call: (512) 475-3916

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CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER J. HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)

10 TAC §5.1006, §5.1007

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 5, Subchapter J, §5.1006 and §5.1007, concerning the Homeless Housing and Services Program (HHSP). The purpose of the proposed new sections is to establish a mechanism for the Department to set performance and expenditure benchmarks and to redistribute HHSP funds.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections will be in effect, there will be no fiscal implications for state or lo-

cal government as a result of enforcing or administering the new sections, and there will be no effect on local employment or local economy as result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections will be in effect, the public benefit anticipated as a result of the new sections will be that assistance to eligible municipalities will enable them to provide facilities and/or services to address the issues presented by homelessness, thereby improving lives and strengthening communities. There will be no economic cost to any individuals as a result of the proposed new sections.

ECONOMIC IMPACT STATEMENT AND IMPACT ON SMALL AND MICRO BUSINESSES. The proposed new sections will have no negative effect on small businesses or persons; no anticipated economic cost to persons who are required to comply with the new section(s); will not negatively impact local employment; will not have an adverse economic affect on small businesses or micro-businesses; and will not negatively impact the local economy.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 27, 2012 to August 24, 2012 to receive input on the new sections. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: annette.cornier@tdhca.state.tx.us, or by fax to (512) 475-4624. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUGUST 24, 2012.

STATUTORY AUTHORITY. The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs, including specifically Texas Government Code §2306.2585, which authorizes the Department to adopt rules to govern the administration of the Homeless Housing and Services Program.

CROSS REFERENCE TO STATUTE. The proposed new sections are to implement the HHSP as established by Texas Government Code §2306.2585. To the extent that funding sources other than unrestricted funds are utilized, such as housing trust fund balances, any HHSP activities conducted with such funds may be subject to additional restrictions. The proposed new sections affect no other code, article, or statute.

§5.1006. Performance and Expenditure Benchmarks.

The Department will incorporate performance and expenditure benchmarks into each contract.

(1) All performance benchmarks will be based on Homeless Management Information Systems performance measures or other performance measures approved by the Department in writing before the start of the contract period. All performance benchmarks that are not based on Homeless Management Information System performance measures may not become effective unless the municipality in which they are to be employed has made available for fifteen (15) days an opportunity for citizen participation in accordance with its public comment process.

(2) Expenditure benchmarks will be:

(A) 10 percent of the contract amount must be expended by the end of the first quarter;

(B) 40 percent expended by the end of the second quarter;

(C) 75 percent expended by the end of the third quarter;

(D) 100 percent expended by the end of the contract period; and

(E) a municipality or entity administering a contract may ask for a different expenditure deadline before the start of the contract period and the Department staff will evaluate these requests. The Department may approve, reject, or approve with modifications in its sole discretion based on its assessment of the proposed activities, the legitimate need for alternative benchmarks, the risks of timely and compliant expenditure presented, and other relevant factors presented.

(3) Each such municipality or entity will have to submit a quarterly benchmark report to the Department no later than thirty (30) days after the end of each contract quarter and the Department will provide a letter within thirty (30) days if the municipality or entity is out of compliance with benchmarks giving notice of such noncompliance and setting forth any reasonable opportunity for corrective or curative action, the consequences of failure to correct or cure, and any opportunity for appeal of such consequences. If a municipality or entity is out of compliance with performance or expenditure benchmarks, the Department staff may deobligate all or a portion of any remaining funds under the contract.

(4) Each municipality or entity will be monitored annually by the Department either through a desk review or in-person monitoring review to determine contract compliance.

(5) In the monitoring process if non-compliant expenditures have been made and cannot be corrected or cured, the Department may recapture such funds. Recapture amounts are immediately due and payable to the Department in full.

§5.1007. Funding Redistribution.

If HHSP funds are remaining at the close of the contract period, are voluntarily or involuntarily deobligated by a municipality or entity, or are recaptured through a monitoring review, and statutory deadlines remain in which to spend the funds, the Department will reallocate funds in accordance with §5.1004 of this chapter (relating to Formula), except that any municipality or entity that has not met or did not meet its expenditure benchmarks for the contract period in which funds are being redistributed from or which is in material noncompliance will be ineligible for this funding redistribution.

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

Filed with the Office of the Secretary of State on July 16, 2012.

TRD-201203616
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 26, 2012
For further information, please call: (512) 475-3916

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §25.96

The Public Utility Commission of Texas (commission) proposes new §25.96, relating to Vegetation Management. The proposed new rule will provide the commission with information necessary to assess the distribution system vegetation management activities of electric utilities in determining their effectiveness in enhancing reliability and of cooperatives in protecting public safety. Project Number 38257 is assigned to this proceeding.

Jennifer Hubbs, Infrastructure Policy Analyst, Infrastructure & Reliability, has determined that for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Jennifer Hubbs has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be a better understanding of distribution system vegetation management activities and how they enhance electric reliability and secure the public safety. More frequent extreme weather in the state has heightened the commission's concern about vegetation management practices and their effects on reliability and public safety. By requiring utilities to conform, where applicable, to established minimum vegetation-related standards, collecting more detailed data on utility and cooperative plans, and reviewing the implementation of those vegetation management plans, the commission will be in a better position to assess the efficacy of these efforts. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There may be economic costs to persons who are required to comply with the proposed section. It is staff's understanding that most utilities in the state already generally conform to the ANSI and NESC standards, and it does not expect utilities to incur any costs associated with coming into compliance with that aspect of this rule. Utilities are already required to provide to the commission summaries of their vegetation management plans under §25.94 and §25.95. Staff anticipates minimal costs associated with conforming to the requirements of this rule. The costs associated with the preparation of these reports are likely to vary from business to business and are difficult to ascertain. However, it is believed that the benefits from implementation of the proposed section will outweigh these costs.

Jennifer Hubbs has also determined that for each year of the first five years the proposed section is in effect, there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, September 18, 2012. The request for a public hearing must be received by Tuesday, September 11, 2012.

Comments on the proposed new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Monday, August 27, 2012. Sixteen copies of comments to the proposed rule are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by Tuesday, September 11, 2012. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 38257.

The new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.001 (West 2007) (PURA), which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designed or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §37.151, which requires a certificate holder to provide continuous and adequate service in its area; §38.005(a) and (e), which require the commission to implement service quality and reliability standards relating to the delivery of electricity to customers by electric utilities and transmission and distribution utilities and allows the commission to require electric utilities and transmission and distribution utilities to supply data to assist the commission in developing reliability standards; §38.101, which requires an electric utility to submit to the commission a report describing the utilities' activities related to vegetation management; §41.004(5)(A), which grants the commission jurisdiction over an electric cooperative to require reports to the extent necessary to ensure the public safety; and §41.004(5)(B), which grants the commission jurisdiction over an electric cooperative to require reports to the extent necessary to enable the commission to satisfy its responsibilities relating to electric cooperatives under PURA Chapter 41, including the commission's regulation of certification to the extent provided in Chapter 37.

Cross Reference to Statutes: Public Utility Regulatory Act §14.001, §14.002, §37.151, §38.005(a) and (e), §38.101, and §41.004(5).

§25.96. Vegetation Management.

(a) Application. This subsection and subsections (b) - (f) of this section apply to an electric utility (utility) with distribution assets. Subsections (b) and (g) of this section apply to an electric cooperative (cooperative) with distribution assets.

(b) Definitions. The following terms when used in this section shall have the following meaning, unless the context indicates otherwise.

(1) Distribution assets--the utility or cooperative's facilities at less than 60 kilovolts (kV) for which the utility or cooperative needs to performs vegetation maintenance.

(2) Outage--any vegetation-caused event that affects the service of ten or more customers for more than five minutes.

(3) Reactive vegetation maintenance--unscheduled vegetation maintenance which can include, but is not limited to, customer-requested and utility-requested maintenance.

(4) Right-of-way--land on which electric lines are located and that the utility or cooperative has the right to access for the purpose of maintaining its distribution system and managing vegetation.

(5) Scheduled vegetation maintenance--the anticipated vegetation management activities a utility expects to conduct during a particular budget cycle, including trimming, spraying, and removal activities.

(6) Tree risk management--planning for, assessing, monitoring, and mitigating diseased, dead, or structurally infirm trees that threaten a utility or cooperative's distribution assets.

(c) Vegetation management requirements under other provisions. Compliance with this section fully satisfies the vegetation management planning and reporting requirements of §25.94(c)(2) of this title (relating to Report on Infrastructure Improvement and Maintenance) and §25.95(e)(2) of this title (relating to Electric Utility Infrastructure Storm Hardening).

(d) Utility conformance to standards of the industry.

(1) A utility shall make reasonable efforts to conform to the following standards, where applicable:

(A) American National Standards Institute (ANSI) Standard Z133.1, *Arboricultural Operations - Pruning,* or successor standard;

(B) ANSI Standard A300 (Part 1) - *Tree, Shrub, and Other Woody Plant Management - Standard Practices (Pruning);* (Part 7) - *Integrated Vegetation Management a. Utility Rights-of-way practices;* and (Part 9) - *Tree Risk Assessment a. Tree Structure Assessment;* or successor standards; and

(C) National Electrical Safety Code Section 218, or successor standard.

(2) For any mandatory provision of any standard specified in paragraph (1) of this subsection to which a utility's program does not conform, the utility shall provide a brief explanation for the deviation in its Vegetation Management Report.

(e) Vegetation Management Plan. Each utility shall maintain a Vegetation Management Plan (Plan) that describes the utility's objectives, practices, procedures, and work specifications for its distribution assets. A full copy of the Plan shall be provided to the commission or commission staff within ten days of receipt of the request. A utility shall review and update its Plan by November 1 of each year. The Plan shall include, at a minimum, a description of the utility's:

(1) tree pruning methodology, trimming clearances, and scheduling approach;

(2) vegetation mitigation methods used around applicable distribution assets;

(3) tree risk management program;

(4) participation in continuing education by the utility's vegetation management personnel;

(5) estimate of circuits to be trimmed or method for planning trimming work for the coming year;

(6) plan to remediate the worst ten percent of feeders system-wide as identified by the preceding calendar year's vegetation-specific System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI) scores; and

(7) customer education, notification, and outreach practices related to vegetation management.

(f) Vegetation Management Report. A utility shall file with the commission by February 1 of each year a Vegetation Management Report (Report) summarizing its Vegetation Management Plan for the current calendar year and its progress in implementing its Plan for the preceding calendar year. The Report filed in 2013 does not need to contain the information required by paragraph (2) of this subsection. The Report shall include, at a minimum, the following components:

(1) A Vegetation Management Plan summary including, at a minimum, a summary of the utility's:

(A) vegetation maintenance goals and the method the utility employs to measure its progress;

(B) trimming clearances and scheduling approach;

(C) plan to remediate the worst ten percent of feeders system-wide as identified by the preceding calendar year's vegetation-specific SAIDI and SAIFI scores;

(D) tree risk management program;

(E) approach to monitoring, preparing for, and responding to adverse environmental conditions such as drought and wildfire danger;

(F) total overhead distribution miles in its system, excluding service drops;

(G) total number of customers served;

(H) the amount of vegetation-related work it plans to accomplish next year to achieve its vegetation management goals described in subparagraph (A) of this paragraph; and

(I) vegetation management budget, divided into the categories listed below. The utility should, within the confines of its own budgeting practices, assign subcategories and list them under these categories where appropriate. If a utility does not budget amounts under any specific category, the utility shall provide a brief explanation of why it does not do so. The utility shall title the budget with the dates it covers and provide a total for each category or subcategory:

(i) Scheduled vegetation maintenance;

(ii) Reactive vegetation maintenance;

(iii) Tree risk management; and

(iv) Emergency and post-storm activities.

(2) An implementation summary for the preceding calendar year including, at a minimum, a description of:

(A) whether the utility met its vegetation maintenance goals and how its goals have changed for the coming calendar year based on the results;

(B) successes and challenges with the utility's strategy, including obstacles faced, such as property owner interference, and methods employed to overcome them;

(C) the progress and obstacles to remediating the worst ten percent of feeders system-wide identified by the utility's vegetation-specific SAIDI and SAIFI scores as submitted in the preceding year's Report;

(D) the number of continuing education hours logged for the utility's vegetation management personnel, if applicable;

(E) the amount of vegetation management work the utility accomplished to achieve its vegetation management goals described in paragraph (1)(A) of this subsection;

(F) the separate SAIDI and SAIFI scores for vegetation-caused outages for each month and averaged for the calendar year;

(G) the vegetation management budget, including, at a minimum:

(i) a single table with columns representing:

(I) the budget for each category and subcategory that the utility provided in the preceding year pursuant to paragraph (1)(I) of this subsection, with totals for each category and subcategory;

(II) the actual expenditures for each category and subcategory listed pursuant to subclause (I) of this clause, with totals for each category or subcategory;

(III) the percentage of actual expenditures over or under the budget for each category or subcategory listed pursuant to subclause (I) of this clause; and

(IV) the actual expenditures for the preceding reporting year for each category and subcategory listed pursuant to clause (I) of this subparagraph, with totals for each category or subcategory;

(ii) an explanation of the variation from the preceding year's vegetation management budget where actual expenditures in any category or subcategory fell below 98 percent or increased above 110 percent of the budget for that category;

(iii) the total vegetation management expenditures divided by the number of overhead distribution miles in the utility's system, excluding service drops;

(iv) the total vegetation management expenditures, including expenditures from the storm reserve, divided by the number of customers the utility served; and

(v) the vegetation management budget from the utility's last rate case;

(g) Vegetation management report for electric cooperatives.

(1) A cooperative shall file with the commission by February 1 of each year a Vegetation Management Report (Report) summarizing its Vegetation Management Plan for the current calendar year and its progress in implementing its Plan for the preceding calendar year.

(2) The Report filed in 2013 does not need to contain the information required by subparagraph (B) of this paragraph. The Report shall include, at a minimum, the following components:

(A) A Vegetation Management Plan summary including, at a minimum, a descriptive summary of the cooperative's:

(i) trimming clearances and scheduling approach;

(ii) tree risk management program;

(iii) approach to monitoring, preparing for, and responding to adverse environmental conditions such as drought and wildfire danger;

(iv) total overhead distribution miles in its system, excluding service drops;

(v) total number of customers served; and

(vi) vegetation management budget, divided into categories, if applicable, reflected in the cooperative's budgetary practices.

(B) An implementation summary for the preceding calendar year including, at a minimum, a description of:

(i) whether the cooperative met its vegetation maintenance goals and how its goals have changed for next year based on the results;

(ii) obstacles faced, such as property owner interference, and methods employed to overcome them;

(iii) the number of continuing education hours logged for the cooperative's vegetation management personnel, if applicable;

(iv) the vegetation management budget including, at a minimum:

(I) a single table with columns representing:

(-a-) the preceding year's budget for each category that the cooperative provided in the preceding year pursuant to subparagraph (A)(vi) of this paragraph, with totals;

(-b-) the actual expenditures for each category listed pursuant to item (-a-) of this subclause, with totals; and

(-c-) the percentage of actual expenditures over or under the budget for each category or subcategory listed pursuant to item (-a-) of this subclause;

(-d-) the actual expenditures for the preceding reporting year for each category listed pursuant to item (-a-) of this subclause, with totals for each category;

(II) an explanation of the variation from the preceding year's vegetation management budget where actual expenditures in any category fell below 98 percent or increased above 110 percent of the budget for that category;

(III) the total vegetation management expenditures divided by the number of overhead distribution miles in the cooperative's system, excluding service drops; and

(IV) the total vegetation management expenditures divided by the number of customers the cooperative served.

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

Filed with the Office of the Secretary of State on July 16, 2012.

TRD-201203618
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: August 26, 2012
For further information, please call: (512) 936-7208

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1021

The Texas Education Agency (TEA) proposes an amendment to §129.1021, concerning student attendance. The section describes the method of calculating average daily attendance in school districts with a significant migrant population. The proposed amendment would add provisions to reflect the agency's

current practice for determining full-time-equivalent (FTE) counts for special education, bilingual education, and career and technical education allotments for affected school districts and charter schools. The proposed amendment would also update the reference to the database for tracking migrant students.

The statutory authority for the rule, the Texas Education Code (TEC), §42.005(c), requires the commissioner of education to adjust the average daily attendance of school districts with a significant percentage of migrant students. The commissioner currently adjusts not only the average daily attendance but also the FTE counts used in calculating the special education, bilingual education, and career and technical education allotments for these school districts. The amendment would update the rule to reflect this practice by adding new subsection (b) for determining FTE counts.

The proposed amendment would also revise the rule to use a general reference to the current database for tracking migrant students instead of the specific name of an obsolete migrant student tracking database.

In addition, minor technical edits and changes in word usage would be made, and the section title would be changed for clarification.

The proposed amendment would have no procedural or reporting implications. The proposed amendment would have no locally maintained paperwork requirements.

Shirley Beaulieu, associate commissioner for finance/chief financial officer, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

Ms. Beaulieu 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 ensure that the rule reflects current agency practice with regard to calculation of Foundation School Program allocations and that the rule no longer references an obsolete migrant student tracking database. 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 27, 2012, and ends August 27, 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 27, 2012.

The amendment is proposed under the TEC, §42.005(c), which requires the commissioner of education to adjust the average daily attendance of school districts with a significant percentage of migrant students.

The amendment implements the TEC, §42.005(c).

§129.1021. Calculation of [~~Optional Method of Calculating~~] Average Daily Attendance and Full-Time Equivalents for School [~~in~~] Districts and Charter Schools with Significant Migrant Population.

(a) For each school district or charter school [~~Beginning in the 1991-1992 school year and each year thereafter, districts~~] in which the total [~~district~~] enrollment contains 5.0% or more students who have certificates of eligibility in the state's migrant student tracking database, the commissioner of education will calculate [~~migrant students record transfer system (MSRTS) shall have~~] the district's or charter school's annual average daily attendance (ADA) [~~calculated~~] by using the best four of the six-week [~~six-weeks~~] periods. In no case may [~~shall~~] the annual ADA calculated by using the best four of the six-week [~~six-weeks~~] periods exceed the sum of the number of students who have certificates of eligibility plus the ADA calculated by using all six six-week [~~six-weeks~~] periods.

(b) For each school district or charter school in which the total enrollment contains 5.0% or more students who have certificates of eligibility in the state's migrant student tracking database, the commissioner will calculate the district's or charter school's annual full-time equivalents (FTEs) as used in the calculation of the special education, bilingual education, and career and technical education allotments by using the best four of the six-week periods for each of the three FTE counts. In no case may the annual FTE count calculated by using the best four of the six-week periods exceed the sum of the number of students who have certificates of eligibility plus the FTEs calculated by using all six six-week periods.

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

Filed with the Office of the Secretary of State on July 16, 2012.

TRD-201203635
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: August 26, 2012
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §163.2, §163.5

The Texas Medical Board (Board) proposes amendments to §163.2, concerning Full Texas Medical License, and §163.5, concerning Licensure Documentation.

The amendment to §163.2 establishes employment requirements for licensure applicants who are not U.S. citizens or permanent residents, in accordance with Senate Bill 189 that was adopted during the 82nd Legislative Session.

The amendment to §163.5 establishes what documentation the Board will accept from applicants to establish U.S. or permanent residency.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to have laws consistent with statutory

enactments designed and to delineate specific acceptable documentation for applicants for licensure.

Mrs. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. The effect to individuals required to comply with the rules as proposed is undetermined as the Board does not know what fields of medical practice the affected physicians intend to practice, and how salaries for those fields compare when practiced in medically underserved areas or health professional shortage areas, as opposed to other areas in the state. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §155.0045, Texas Occupations Code.

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

§163.2. Full Texas Medical License.

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

(d) Applicants who are not U.S. citizens or permanent residents.

(1) An applicant for full licensure who is not a U.S. citizen or an alien lawfully admitted for permanent residence in the United States, must present proof satisfactory to the board that the applicant has practiced medicine full-time in Texas, in medically underserved areas and health professional shortage areas as designated by the U.S. Department of Health and Human Services, for at least three years, or has signed an agreement to practice medicine full-time in Texas, in medically underserved areas and health professional shortage areas (HPSAs) as designated by the U.S. Department of Health and Human Services, for at least three years. Full-time practice shall mean at least 20 hours per week for 40 weeks duration during a given year. Agreement to practice medicine for three years in qualifying HPSAs and MUAs may be evidenced by an Affidavit of Agreement submitted by the applicant to the Board.

(2) Upon completion of the requirements of paragraph (1) of this subsection, a physician must provide documentation that is acceptable to the Board to demonstrate compliance with paragraph (1) of this subsection. Documentation acceptable to the Board as proof of having completed the three-year service requirement includes:

(A) Individual Federal income tax returns, including copies of the International Medical Graduate's (IMG) W-2 forms and/or pay stubs covering the three-year period (showing employment in a qualifying underserved location);

(B) Letter(s) from the applicant's employer(s) attesting to the full-time medical service rendered during the required aggregate period; and

(C) If the applicant established his or her own practice, documents confirming establishment of the practice, e.g., documentation showing incorporation of the medical practice (if incorporated), the business license, and the business tax returns and tax withholding documents submitted for the entire three-year period.

(3) A physician licensed under this subsection, must notify any individual or entity with whom the physician contracts to practice medicine, that the physician is fulfilling a service requirement to practice full-time in Texas, in medically underserved areas and health professional shortage areas as designated by the U.S. Department of Health and Human Services, for at least three years.

(4) For the purpose of this subsection, federally designated underserved areas include Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) with facility HPSA designation.

(5) This subsection shall not be interpreted to apply to:

(A) applicants for full licensure under this chapter who are applying to practice medicine at an institution that maintains a graduate medical education program in this state;

(B) applicants for postgraduate training permits as described under Chapter 171 of this title (relating to Postgraduate Training Permits);

(C) applicants for temporary or limited licenses as described under Chapter 172 of this title (relating to Temporary and Limited Licenses);

(D) physicians who practiced medicine, prior to September 1, 2012, for at least one year under a postgraduate training permit, temporary license, or limited license; or

(E) physicians who submit or have submitted initial applications for full licensure under this chapter prior to September 1, 2012.

(6) Applicants determined exempt under paragraph (5)(B) of this subsection and who subsequently apply for full licensure are subject to the requirements of this subsection, and any employment completed under a postgraduate training permit shall not be applied toward the requirements set out in paragraph (1) of this subsection.

(7) Applicants determined exempt under paragraph (5)(A) of this subsection at time of application, but who subsequently discontinue employment before passage of three years from the date of issuance of a license, shall no longer be exempt from the requirements set out in this section. However, the applicant may count all employment obtained while practicing medicine under a full license or a temporary or limited license at an institution that maintains a graduate medication education program in this state toward the service requirement set out in paragraph (1) of this subsection.

(e) [~~(d)~~] Alternative License Procedure for Military Spouse.

(1) An applicant who is the spouse of a member of the armed forces of the United States assigned to a military unit headquartered in Texas may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.

(2) To be eligible, an applicant must be the spouse of a person serving on active duty as a member of the armed forces of the United States and meet one of the following requirements:

(A) holds an active unrestricted medical license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas medical license; or

(B) within the five years preceding the application date held a medical license in this state that expired and was cancelled for

nonpayment while the applicant lived in another state for at least six months.

(3) Applications for licensure from applicants qualifying under this subsection shall be expedited by the board's licensure division as if they meet the provisions of §163.13 of this title (relating to Expedited Licensure Process).

(4) Alternative Demonstrations of Competency Allowed. Applicants qualifying under this subsection:

(A) are not required to comply with §163.7 of this title (relating to Ten Year Rule); and

(B) in demonstrating compliance with §163.11(a) of this title (relating to Active Practice of Medicine), must only provide sufficient documentation to the board that the applicant has, on a full-time basis, actively diagnosed or treated persons or has been on the active teaching faculty of an acceptable approved medical school, within one of the last three years preceding receipt of an Application for licensure.

§163.5. Licensure Documentation.

(a) (No change.)

(b) Documentation required of all applicants for licensure.

(1) - (11) (No change.)

(12) Citizenship or Permanent Residence. Applicants who are U.S. citizens or permanent residents of the U.S. must document their status. Applicants who are not U.S. citizens or permanent residents of the U.S. must comply with §163.2(d) of this title (relating to Full Texas Medical License).

(A) Acceptable citizenship documentation:

(i) Copy of a U.S. passport;

(ii) Copy of Certification of Naturalization;

(iii) Copy of Certificate of U.S. Citizenship; or

(iv) Both a copy of a citizenship document and a copy of an identification document.

(I) Citizenship documents:

(-a-) Birth certificate;

(-b-) Report or Certification of Birth Abroad of a U.S. Citizen;

(-c-) U.S. Citizen I.D. Card;

(-d-) Adoption papers; or

(-e-) Military record if it shows birth place.

(II) Identification documents:

(-a-) Current driver's license or state identity card;

(-b-) School identification card;

(-c-) Federal, state or local government identification card; or

(-d-) U.S. military identification card.

(B) Acceptable evidence of Lawful Permanent Resident (LPR) status:

(i) Copy of a current Permanent Resident Card;

(ii) Form I-797 "Welcome Notice" indicating approval of Form I-485 (permanent residence application);

(iii) "I-551 stamp" in the applicant's passport, indicating temporary evidence of LPR status while waiting on issuance of the Permanent Residence card; or

(iv) Form I-797 Receipt Notice for Form I-751, when that notice is specifically endorsed as providing temporary evidence of LPR status.

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

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

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

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CHAPTER 177. BUSINESS ORGANIZATIONS SUBCHAPTER D. EMPLOYMENT OF PHYSICIANS

22 TAC §177.17

The Texas Medical Board (Board) proposes amendments to §177.17, concerning Exceptions to Corporate Practice of Medicine Doctrine.

The amendments provide an exception to doctrine for rural health clinics that meet the requirements of 42 CFR 491.8.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have board rules consistent with federal law.

Mrs. Leshikar has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§177.17. Exceptions to Corporate Practice of Medicine Doctrine.

(a) Corporate Practice of Medicine Doctrine. The corporate practice of medicine doctrine is a legal doctrine, which generally prohibits corporations, entities or non-physicians from practicing medicine. The prohibition on the corporate practice of medicine is based on numerous provisions of the Medical Practice Act, including §§155.001, 155.003, 157.001, 164.052(a)(8), (13), and 165.156. Section 165.156 of the Medical Practice Act makes it unlawful for any

individual, partnership, trust, association or corporation by use of any letters, words, or terms, as an affix on stationery or advertisements or in any other manner, to indicate the individual, partnership, trust, association or corporation is entitled to practice medicine if the individual or entity is not licensed to do so.

(b) Applicability. Upon satisfaction of the requirements of their physician employment enabling statute and to the extent authorized by their enabling statutes, the following entities may employ a physician and retain all or part of the professional income generated by the physician for medical services provided at:

(1) A hospital that primarily provides medical care to children younger than 18 years of age as provided under §311.061 of the Health and Safety Code, and that:

(A) Is owned or operated by a nonprofit fraternal organization; or

(B) Has a governing body the majority of members of which belong to a nonprofit fraternal organization.

(2) A hospital, including health care facilities owned or operated by the hospital, that is:

(A) designated as a critical access hospital under the authority of and in compliance with 42 U.S.C. §1395i-4 [~~Section 1395i-~~4];

(B) a sole community hospital, as that term is defined by 42 U.S.C. §1395ww(d)(5)(D)(iii); or

(C) located in a county with a population of 50,000 or less.

(3) Baylor County Hospital District (Texas Special District Code, §1005.063)

(4) Bexar County Hospital District (Texas Health and Safety Code, §281.0283)

(5) Burleson County Hospital District (Texas Special District Code, §1010.059)

(6) City of Amarillo Hospital District (Texas Special District Code, §1001.060)

(7) Dallam-Hartley Counties Hospital District (Texas Special District Code, §1018.061)

(8) Dallas County Hospital District (Texas Health and Safety Code, §281.0282)

(9) El Paso County Hospital District (Health and Safety Code, §281.0285)

(10) Frio Hospital District (Texas Special District Code, §1030.063)

(11) Harris County Hospital District (Texas Health and Safety Code, §281.0283)

(12) Jackson County Hospital District (Texas Special District Code, §1046.062)

(13) Martin County Hospital District (HB 4730, 81st session)

(14) Matagorda County Hospital District (Texas Special District Code, §1057.057)

(15) Mitchell County Hospital District (Texas Special District Code, §1062.060)

(16) Moore County Hospital District (Texas Special District Code, §1005.063)

(17) North Wheeler County Hospital District (Texas Special District Code, §1083.062)

(18) Ochiltree County Hospital District (Texas Special District Code, §1071.062)

(19) Travis County Healthcare District (Texas Health and Safety Code, §281.0281)

(20) Commissioners court of a county with a population of 3.3 million or more for the purpose of providing health care services to inmates in the custody of the sheriff

(21) U.S. Government and Military Forces

(22) Private non-profit medical school (Texas Occupations Code, Chapter 162)

(23) School districts (Texas Education Code, §33.208 and §38.016)

(24) State institutions:

(A) academic institution as defined under §172.8 of this title (relating to Faculty Temporary Permits);

(B) state hospitals as defined under Chapter 552 of the Texas Health and Safety Code; and

(C) prisons.

(25) Rural health clinics operated in accordance with 42 CFR 491.8 of the Rural Health Services Clinic Act.

(c) Reports to the Board. To the extent required by their enabling statutes, entities permitted to hire physicians, shall appoint or otherwise ensure that a physician is selected to be the chief medical officer or member of a hospital district medical executive board, and the chief medical officer or members of the hospital district medical executive board shall report to the Texas Medical Board any action of event that they reasonably and in good faith believe constitutes a compromise of the independent medical judgment of a physician in caring for a patient. The Texas Medical Board may provide such reports to the Department of State Health Services and other regulatory agencies as necessary.

(d) Discontinuation of Eligibility. If an entity no longer meets the criteria to employ physicians, the entity must change its contractual relationships with physicians in order to establish an independent contractor relationship with the physicians.

(e) Professional Liability Coverage. If a hospital provides professional liability coverage for a physician employed by the hospital, the physician shall have the following rights, to the extent required by the hospital's enabling statute:

(1) the physician may participate in the selection of the professional liability coverage;

(2) the physician has the right to an independent defense if the physician pays for that independent defense; and

(3) the physician shall retain the right to consent to the settlement of any action or proceeding brought against the physician.

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

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

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CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) proposes amendments to §187.18, concerning Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance, and §187.83, concerning Proceedings for Cease and Desist Orders.

The amendment to §187.18 deletes language relating to deadline requirements for submission of rebuttal materials that is in conflict with other provisions of the rule and the Medical Practice Act.

The amendment to §187.83 deletes language requiring a panel member to sign cease and desist order, as rule already provides for executive director to sign order.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are not inconsistent.

Mrs. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §187.18

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §165.052, Texas Occupations Code.

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

§187.18. Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance.

(a) After referral of an investigation to the agency's legal division, the Hearings Coordinator of the board shall schedule an ISC before an ISC Panel, composed of two or more board representatives to be held after proper notice to the licensee. One board representative must be a public member. If the matter is before the Medical Board, at least one board representative must be a physician member.

(b) Requests to reschedule the ISC by a licensee must be in writing and shall be referred to the Hearings Counsel for consideration. To avoid undue disruption of the ISC schedule, the Hearings Counsel should grant a request only after conferring with the Hearings Coordinator and strictly applying the following guidelines:

(1) A request by a licensee to reschedule an ISC must be in writing and may be granted only if the licensee provides satisfactory evidence of the following requirements:

(A) A request received by the agency within five business days after the licensee received notice of the date of the ISC, must provide details showing that:

(i) the licensee has a conflicting event that had been scheduled prior to receipt of notice of the ISC;

(ii) the licensee has made reasonable efforts to reschedule such event but a conflict cannot reasonably be avoided.

(B) A request received by the agency more than five business days after the licensee received notice of the date of the ISC must provide details showing that an extraordinary event or circumstance has arisen since receipt of the notice that will prevent the licensee from attending the ISC. The request must show that the request is made within five business days after the licensee first becomes aware of the event or circumstance.

(2) A request by a licensee to reschedule an ISC based on the failure of the agency to send timely notice before the date scheduled for the ISC, as required by §164.003 of the Act, shall be granted, provided the request is received by the agency within five business days after the late notice is received by the licensee.

(c) Prior to the ISC, the board representatives shall be provided with the information sent to the licensee by the board staff and all information timely received in response from the licensee. Information must be received from the licensee at least five business days prior to the ISC for complaints filed before September 1, 2011. For complaints filed with the board on or after September 1, 2011, the information must be received at least 15 days prior to the date of the ISC.

(d) An ISC may be conducted by only one panelist if:

(1) the ISC is related to an order of the board, such as to show compliance, a probation appearance, or a request for termination or modification, or

(2) the affected licensee waives the requirement that at least two panelists conduct the ISC. In such situations, the panelist may be either a physician, physician assistant, or acupuncturist (depending on the licensee involved) or a member who represents the public.

(e) The board representatives shall allow:

(1) the board staff to present a summary of the allegations and the facts that the board staff reasonably believes could be proven by competent evidence at a formal hearing;

(2) the licensee to reply to the board staff's presentation and present facts the licensee reasonably believes could be proven by competent evidence at a formal hearing;

(3) presentation of evidence by the board staff and the licensee, which may include medical and office records, x-rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials which in the discretion of the board representatives are relevant to the proceeding;

(4) representation of the licensee by an authorized representative;

(5) presentation of oral or written statements by the licensee or authorized representative;

(6) presentation of oral or written statements or testimony by witnesses;

(7) questioning of the witnesses in a manner prescribed by the panel;

(8) questioning of the licensee;

(9) closing statement by the licensee;

(10) closing statement by the board's staff; and

(11) upon request by board representatives, the board staff may propose appropriate disciplinary action and the licensee or authorized representative may respond.

(f) The board representatives, board staff, the licensee, and the licensee's authorized representative shall be present during the presentation of statements and testimony during the ISC.

(g) Notwithstanding subsection (f) of this section, the board representatives may allow a complainant or witness to testify outside the physical presence of the licensee to protect the person from harassment and/or undue embarrassment, for personal safety concerns, or for any other demonstrated and legitimate need. If such testimony is allowed, arrangements will be made to allow the licensee to listen to the testimony contemporaneously as it is given.

(h) [~~All evidence that a licensee wishes the board representatives to consider at the ISC must be received by the board at least five business days before the ISC.~~] The board representatives may refuse to consider any evidence not submitted in a timely manner without good cause. If the board representatives allow the licensee to submit late evidence, the representatives may reschedule and/or recommend an additional administrative penalty for the late submission.

(i) A board attorney, who has not been involved with the preparation of the case, shall be designated as the Hearings Counsel and shall be present during the ISC and the panel's deliberations to advise the panel on legal issues that arise during the ISC. The Hearings Counsel shall be permitted to ask questions of participants in the ISC to clarify any statement made by the participant. The Hearings Counsel shall provide to the ISC panel a historical perspective on comparable cases that have appeared before the board, keep the proceedings focused on the case being discussed, and ensure that the board's employees and the licensee have an opportunity to present information related to the case.

(j) At the ISC, the board representatives shall attempt to resolve disputed matters and the representatives may call upon the board staff at any time for assistance in conducting the ISC.

(k) The board representatives shall prohibit or limit access to the board's investigative file by the licensee, the licensee's authorized representative, the complainant(s), witnesses, and the public consistent with the Act, §164.007(c).

(l) On request by a licensee, the board shall make a recording of the ISC. Deliberations of the ISC panel shall be excluded from any such recording. The media format of the recording shall be determined by the board [~~Board~~]. The recording is part of the investigative file and may not be released to a third party unless authorized under the Act. The board may charge the licensee a fee to cover the cost of recording the proceeding. The licensee must provide payment 15 days prior to the date of the ISC and must submit payment with any written response to the ISC packets. Licensees and their representatives may not independently record an ISC.

(m) The ISC shall be informal and shall not follow the procedures established under this title for formal board proceedings.

(n) At the conclusion of the presentations, the board representatives shall deliberate in order to make recommendations for the disposition of the complaint or allegations. An employee of the board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected licensee, the licensee's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations. The Hearings Counsel may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the board.

(o) The board representatives may:

(1) make recommendations to dismiss the complaint or allegations. The dismissal of any matter is without prejudice to additional investigation and/or reconsideration of the matter at any time;

(2) make recommendations regarding an agreed order and propose resolution of the issues to the licensee to be reduced to writing and processed in accordance with §187.19 of this title (relating to Resolution by Agreed Order);

(3) defer the ISC, pending further investigation;

(4) direct that a formal Complaint be filed with SOAH;

(5) recommend to the President of the board that a Disciplinary Panel be convened to consider the temporary suspension or restriction of the licensee's license;

(6) recommend the imposition of an administrative penalty pursuant to §§187.75 - 187.82 of this chapter (relating to Procedural Rules); or

(7) recommend that a remedial plan be issued to resolve the complaint pursuant to §187.9 of this chapter (relating to Board Actions).

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

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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SUBCHAPTER I. PROCEEDINGS FOR CEASE AND DESIST ORDERS

22 TAC §187.83

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §165.052, Texas Occupations Code.

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

§187.83. Proceedings for Cease and Desist Orders.

(a) Purpose. The purpose of this subchapter is to establish procedures for the handling of complaints and proceedings regarding the unlicensed practice of medicine and other violations of the Medical Practice Act, a rule adopted by the board, or another statute relating to the practice of medicine by a person who is not licensed by the board, in accordance with Occupations Code, Title 3, Subtitle B, Chapter 165, Subchapters B, C, and D.

(b) Statutory Authority. Pursuant to the authority of §165.052 and §164.002(a) of the Act, the board may enter a cease and desist order. The board delegates to the Executive Director the authority to sign on behalf of the board, a Cease and Desist Order if directed to do so by a Cease and Desist Panel after the conclusion of a full adversarial evidentiary hearing. A panel shall be composed of two board representatives.

(c) Referrals to other Governmental Entities.

(1) Complaints to the board regarding the unlicensed practice of medicine and other violations of the Medical Practice Act, a rule adopted by the board, or another statute relating to the practice of medicine by a person who is not licensed by the board or the performance of any medical procedure without the required permit, registration, or license shall be routed to one or more of the following for appropriate handling including further investigation, cease and desist proceedings, criminal prosecution, and/or injunctive relief:

(A) the Investigation Division of the Board;

(B) the Office of the Attorney General;

(C) the Texas Department of Public Safety;

(D) the United States Drug Enforcement Administration;

(E) the Texas Department of State Health Services;

(F) the local district or county attorney's office with jurisdiction;

(G) the local law enforcement agency;

(H) any state or federal licensing board or other agency which maintains jurisdiction over a person who is the subject of the complaint.

(2) In any instance in which the board may have concurrent jurisdiction with another agency over the subject of a complaint under this section, the board may pursue further investigation and appropriate action before or after routing the complaint to another agency.

(3) The routing of a complaint to another agency as provided by this section shall be in writing unless to do so is likely to jeopardize any further investigation, prosecution, or injunctive relief.

(d) Investigation of Complaints.

(1) A complaint or information that a person has committed a violation under this Chapter shall be processed in a manner similar to a complaint against a licensee (see Chapter 178 of this title (relating to Complaints)).

(2) After sufficient information and evidence has been gathered a committee of board employees designated by the Executive Director, which may include the Executive Director, shall determine whether the information and evidence gathered makes a prima facie case that a violation has occurred.

(3) If the committee determines that the information and evidence gathered indicate that a prima facie case can be made that a violation has occurred, the complaint may be scheduled for a cease and desist hearing.

(e) Cease and Desist Hearing.

(1) Notice. Upon receipt of information that an individual has practiced medicine without a license, the board shall schedule a cease and desist hearing before a panel of board representatives at the earliest practicable time after providing the individual with at least 30 days notice. The notice to the individual will provide the date, time and location of a hearing to determine whether the individual should receive a cease and desist order. The notice shall also include all the evidence upon which Board staff will rely on to make its case for issuance of a cease and desist order.

(2) Convening a panel.

(A) The president of the board shall appoint a two-member panel upon a verbal or written request by board staff.

(B) The disciplinary panel shall be composed of two members of the board, at least one of whom must be a physician.

(C) In the event of the recusal of a panel member or the inability of a panel member to attend a cease and desist proceeding, an alternate board member may serve on the panel upon appointment by the president of the board.

(D) Notwithstanding the Open Meetings Act, Chapter 551, Texas Government Code, the panel may hold a meeting by telephone conference call if immediate action is required and the convening at one location of the disciplinary panel is inconvenient for any member of the disciplinary panel.

(E) A hearing before a panel shall constitute a public hearing before the board and shall be transcribed by a court reporter. The individual who is the subject of the hearing may request a copy of the transcription and is responsible for the costs of the copy. Payment shall be submitted to the board within 30 days receipt of notice of costs. If the individual fails to submit payment, the matter shall be referred to the Office of the Attorney General [~~Attorney General's Office~~] for collection.

(3) Charge of the panel.

(A) The panel shall determine from the evidence or information presented to it whether a person is practicing medicine without a license.

(B) If the panel determines that the individual has practiced medicine without a license, the panel shall direct the Executive Director to issue a cease and desist order, effective immediately, in accordance with §165.052 of the Act. [~~If the panel determines that a person is practicing medicine without a license, the panel shall issue a cease and desist order to be signed by either panel member.~~]

(4) Procedures before the panel.

(A) In accordance with the Act, §165.051, before a cease and desist order may be issued, the board must provide an individual with notice and opportunity for a hearing.

(B) To the extent practicable, the sequence of events will be as follows:

(i) Call to Order;

(ii) Roll Call;

(iii) Calling of the Case;

(iv) Recusal Statement;

(v) Introductions/Appearances on the Record;

(vi) Opening Statements by Board Staff and Respondent;

(vii) Presentation of evidence by Board Staff;

(viii) Presentation of evidence on behalf of Respondent;

(ix) Rebuttal by Board Staff and Respondent;

(x) Closing Arguments;

(I) Argument by Board Staff;

(II) Argument by Respondent;

(III) Final Argument by Board Staff;

(xi) Deliberations;

(xii) Announcement of Decision;

(xiii) Adjournment.

(C) A board attorney shall be designated as Counsel to the Panel and shall be present during the hearing and deliberations by the panel and shall advise the panel on all legal issues that arise during the hearing including objections to evidence and other evidentiary matters. The Counsel to the Panel shall be permitted to ask questions of witnesses, the board staff, the attorney for the licensee and other participants in the hearing.

(5) Evidence.

(A) In accordance with the Administrative Procedure Act (APA), §2001.081, the determination of the disciplinary panel may be based not only on evidence admissible under the Texas Rules of Evidence, but may be based on information of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs, necessary to ascertain facts not reasonably susceptive of proof under those rules, and not precluded by statute.

(B) Questioning of witnesses shall be permitted with due consideration being given to the need to obtain accurate information and prevent the harassment or undue embarrassment of witnesses.

(C) In receiving information on which to base its determination, the panel may accept the testimony of witnesses by telephone.

(D) Material to be presented by the individual at the cease and desist hearing must be filed with the board at least 10 calendar days prior to the date of the scheduled hearing.

(E) Documentary evidence must be submitted in electronic format in all cases where the Respondent has been provided notice that a panel member will be appearing by phone.

~~[(f) If the panel determines that the individual has practiced medicine without a license, the panel shall direct the Executive Director to issue a cease and desist order, effective immediately, in accordance with §165.052 of the Act.]~~

(f) ~~[(g)]~~ If after the issuance of a cease and desist order the individual wishes to appeal the entry of the order, the individual may file a petition at the Travis County District Court.

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

Filed with the Office of the Secretary of State on July 16, 2012.

TRD-201203626
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: August 26, 2012
For further information, please call: (512) 305-7016

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CHAPTER 189. COMPLIANCE PROGRAM

22 TAC §§189.1 - 189.3, 189.5 - 189.9, 189.11

The Texas Medical Board (Board) proposes amendments to §§189.1 - 189.3, 189.5 - 189.9 and 189.11, concerning Compliance Program.

The amendments to §189.1 - 189.3, 189.5, 189.6, 189.8 and 189.11 add language related to remedial plans to be consistent with provisions under Chapter 187.

The amendment to §189.7 adds language related to remedial plans to be consistent with provisions under Chapter 187, including that probationers may not request modification or termination of remedial plans unless specifically allowed under the terms of the probationer's remedial plan.

The amendment to §189.9 adds language related to remedial plans to be consistent with provisions under Chapter 187, including that automatic suspensions are permitted for violating terms of a remedial plan to include failure to pass SPEX or JP examinations.

Elsewhere in this issue of the *Texas Register,* the Board contemporaneously proposes the rule review for Chapter 189.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the proposal will be to have consistent rules and to delineate board procedures for remedial plans.

Mrs. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §164.0015, Texas Occupations Code.

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

§189.1. Purpose and Scope.

(a) Purpose. The purposes of this chapter are:

(1) to establish requirements and responsibilities for a probationer who is under an order or remedial plan of the board; and

(2) to establish a system of monitoring a probationer's compliance with the terms and conditions of an order or remedial plan of the board.

(b) Scope.

(1) This chapter shall govern the enforcement of all orders and remedial plans of the board.

(2) This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the board, board staff, or the substantive rights of any person.

(c) Authority. Pursuant to §164.010 of the Act, the Board is authorized to promulgate rules relating to the development of a program to monitor compliance of license holders who are subject to disciplinary action or remedial plans.

§189.2. Definitions.

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

(1) [~~(a)~~] Act--Title 3, Subtitle B, Chapters 151 - 165, Texas Occupations Code Annotated [~~Tex. Occ. Code Ann.~~] for physicians; Title 3, Subtitle C, Chapter 204, Texas Occupations Code Annotated [~~Tex. Occ. Code Ann.~~] for physician assistants; Title 3 Subtitle C, Chapter 206, Texas Occupations Code Annotated [~~Tex. Occ. Code Ann.~~] for surgical assistants; and Title 3, Subtitle C, Chapter 205, Texas Occupations Code Annotated [~~Tex. Occ. Code Ann.~~] for acupuncturists.

(2) [~~(b)~~] Address of record--The mailing address of each probationer as provided to the board pursuant to the Act.

(3) [~~(c)~~] Agency--The divisions, departments, and employees of the Texas Medical Board, the Texas Physician Assistant Board, and the Texas State Board of Acupuncture Examiners.

(4) [~~(d)~~] Agency representative--A compliance officer, other agency staff, board member, or agent of the agency.

(5) [~~(e)~~] APA--The Administrative Procedures Act, Texas Government [~~Tex. Govt.~~] Code, Chapter 2001 as amended.

(6) [~~(f)~~] Authorized representative--An attorney of record or any other person who has been designated in writing by a party to represent the party at a board proceeding.

(7) [~~(g)~~] Board--The appointed members of the Medical Board for physicians and surgical assistants, the Physician Assistant Board for physicians assistants, and the Board of Acupuncture for acupuncturists.

(8) [~~(h)~~] Board representative--A board member or district review committee member who sits on a panel at a proceeding to determine compliance with an order.

(9) [~~(i)~~] Compliance manager--The agency staff person who supervises the agency compliance program.

(10) [~~(j)~~] Compliance officer--An employee of the agency assigned to each probationer to investigate a probationer's compliance with the terms and conditions of an order.

(11) [~~(k)~~] Group practice--Any business entity including a partnership, professional association, professional limited liability company, or other entity allowed by state law and established for the purpose of practicing medicine in which two or more physicians licensed in Texas are members of the practice.

(12) [~~(l)~~] Institutional setting--A medical facility established by a governmental entity, non-profit organization, or educational institution that has a permanent staff, including full-time physician employees, by-laws, and an internal governing structure for the operation of the facility for the purpose of practicing medicine.

(13) [~~(m)~~] Licensee--A person to whom the board has issued a license, permit, certificate, approved registration, or similar form of permission authorized by law.

(14) [~~(n)~~] Modification/termination hearing--A hearing before board representatives conducted upon the written request of a probationer for the modification of one or more terms and conditions of an order, the termination of an order prior to the prescribed termination of an order, or the reinstatement of a license following a suspension.

(15) [~~(o)~~] Monitoring physician--A licensed Texas physician who meets the requirements as set out in §189.11 of this title (relating to Process for Approval of Physicians, Other Professionals, Group Practices and Institutional Settings) and who reviews a probationer's medical/billing records and/or conducts onsite reviews of a probationer's practice site on a periodic basis for the purpose of monitoring and educating a probationer, and periodically reports in writing to the board on the probationer's medical practice and practice of medicine as stipulated by an order or remedial plan.

(16) [~~(p)~~] Order--An agreed order, final order of the board, rehabilitation order, or other order approved by the board that requires an agency representative to monitor a probationer's compliance with the order's terms and conditions.

(17) [~~(q)~~] Probation appearance--An appearance by a probationer at an informal board proceeding before board representatives to discuss a probationer's compliance with an order or remedial plan.

(18) [~~(r)~~] Probationer--A licensee who is under an order or remedial plan.

(19) [~~(s)~~] Proctor--A licensed Texas physician who meets the requirements as set out in §189.11 of this title and who physically and actually works with and oversees a probationer's practice of medicine on a daily basis and periodically reports in writing to the board on the probationer's medical practice and practice of medicine as stipulated by an order.

(20) Remedial plan--A nondisciplinary settlement agreement entered into pursuant to §164.0015 of the Act.

(21) [~~(t)~~] SOAH--The State Office of Administrative Hearings.

(22) [~~(u)~~] Supervising physician--A licensed Texas physician who meets the requirements as set out in §189.11 of this title and who is physically present at a probationer's practice on a daily basis in order to evaluate, educate, and provide guidance regarding the probationer's practice of medicine; and periodically reports in writing to the board on probationer's medical practice and practice of medicine as stipulated by an order or remedial plan.

§189.3. Responsibilities of Probationers.

(a) Comply with Terms and Conditions of Order or Remedial Plan. A probationer must comply with all terms and conditions of his or her order or remedial plan. If a probationer fails to comply with the terms and conditions of an order or remedial plan, the probationer shall be subject to agency review and action for non-compliance as set out in §189.8 of the title (relating to Procedures Concerning Non-Compliance).

(b) Document Continuing Medical Education (CME).

(1) A probationer is solely responsible for providing acceptable documentation to demonstrate compliance with CME or other educational requirements under an order or remedial plan.

(2) The following documentation will be acceptable to demonstrate compliance with CME requirements under an order or remedial plan:

(A) a certificate of completion from any formal CME course taken as defined under §166.2(a)(1) of this title (relating to Continuing Medical Education);

(B) a letter from the presenter(s) on letterhead sent directly from the author of the letter to the agency; or

(C) a report of CME activities provided directly to the agency by a third party testing entity accredited by Accreditation Council for Continuing Medical Education and approved by the American Medical Association or American Osteopathic Association.

(3) The following documentation is not acceptable to demonstrate compliance with a CME or other educational requirement:

(A) a copy of attendance form;

(B) answers from tests taken;

(C) a letter sent by a probationer from an individual stating that the probationer was at a class; or

(D) a listing of CME/ethics courses taken.

(c) Ensure Submission of Third Party Reports.

(1) A probationer is solely responsible for ensuring that all reports are timely submitted to the agency by third parties.

(2) In order to avoid a finding of non-compliance, a probationer must present evidence that the probationer made good faith efforts to ensure the timely submission of reports to the agency from third parties. Evidence may include, but is not limited to:

(A) copies of certified letter(s) with proof of mail receipt, air-bill or shipping document receipt attached, which were sent directly to the third party requesting the report or document;

(B) a copy of a receipt of payments for services rendered by third parties; or

(C) objective evidence that the probationer has attempted to have a report submitted to the agency.

(3) If the agency does not receive reports after a probationer has made good faith efforts to ensure such documentation is submitted by an approved third party, the Executive Director of the agency has the authority to revoke approval of that third party.

(d) Content of Third Party Reports. Reports by third parties must be accurate, honest, and address all subjects that are required as set forth in a probationer's order or remedial plan.

§189.5. Compliance Visits and Communications.

(a) Agency representatives shall make random and unannounced visits with a probationer at a probationer's practice location, residence, or other location to investigate compliance with an order or remedial plan.

(b) Agency representatives shall determine the time, date, and location of all visits. A probationer must submit to random unannounced visits. A probationer or a probationer's authorized representative may not request to meet at specific times, dates, or locations.

(c) While agency representatives will focus on assuring the confidentiality of rehabilitation orders, agency representatives investigating a probationer's compliance with a rehabilitation order may communicate with third parties. Agency representatives shall not discuss the existence of an order, findings of fact, conclusions of law, or the terms and conditions of the order with persons to whom the order does not authorize disclosure. This does not preclude agency representatives from communicating that they are employees of the board.

§189.6. Probation Appearances.

(a) Written notice directing a probationer to appear for a probation appearance shall be mailed no less than 10 days before the scheduled probation appearance to the probationer's address of record.

(b) A probationer shall be required to make probation appearances as stipulated in an order or remedial plan unless waived by the board.

(c) Upon recommendation of the executive director, the board may, with just cause, waive probation appearances required under the terms and conditions of an order or remedial plan. Just cause includes, but is not limited to, a probationer being in full compliance with the terms and conditions set forth in an order or remedial plan since the last anniversary date of the order or remedial plan.

§189.7. Modification/Termination Hearings.

(a) A request for a modification/termination hearing or reinstatement hearing must be submitted in writing by the probationer. The writing must specifically detail the requested desired action.

(b) If a probationer is determined to be eligible for a hearing according to the order, §187.43 of this title (relating to Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders), and Chapter 167 of this title (relating to Reinstatement and Reissuance), a date and time for the hearing shall be set and the probationer shall be notified in writing.

(c) If the probationer desires to submit evidence for consideration by the board's representatives, the probationer must provide at least three copies of all evidence no less than ten calendar days prior to the hearing. The board's representatives may refuse to consider evidence not timely submitted.

(d) When considering a modification, termination, or reinstatement request, the board's representatives shall make a determination if the probationer is eligible for the request pursuant to §187.43(d) of this title [~~(relating to Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders)~~] and/or Chapter 167 of this title [~~(relating to Reinstatement and Reissuance)~~].

(e) When considering a modification, termination, or reinstatement request, the board's representatives may also consider:

(1) evidence presented by probationer;

(2) the existence of pending investigations;

(3) past compliance with the order;

(4) the existence of prior orders; and

(5) any information or evidence the board's representatives deem necessary to make an informed decision.

(f) If a probationer is requesting a reinstatement hearing, the probationer must submit evidence of completion of any required stipulations prior to the hearing being set.

(g) In addition to requirements, set forth in §167.2 of this title (relating to Procedure for [~~Informal Disposition of~~] Requests for Reinstatement) a probationer requesting reinstatement of a license must

prove that the probationer is mentally, physically, clinically, and otherwise competent to return to the practice of medicine.

(h) The decision to modify or terminate all or any part of an order is at the sole discretion of the board unless otherwise specified in the order.

(i) A probationer under a remedial plan may not request modification or termination of the remedial plan unless the plan specifically grants the probationer the right to request modification of termination of the remedial plan.

§189.8. Procedures Concerning Non-compliance.

(a) A finding that a probationer is in non-compliance with the terms and conditions of the probationer's order or remedial plan may be made by the board's representatives at the conclusion of a probation appearance or by the executive director.

(b) A finding of non-compliance shall be considered unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public and is a violation of the Act.

(c) Non-compliance includes, but is not limited to:

(1) Failure to comply with a term or condition in an order or remedial plan;

(2) Failure to cooperate with agency representatives;

(3) Failure to promptly respond to communications by agency representatives;

(4) Failure to comply with deadlines set forth in an order or remedial plan or as established by agency representatives for the purpose of enforcement of an order or remedial plan;

(5) Failure to timely submit documents required as a term or condition of an order or remedial plan;

(6) Failure to release documents as requested by agency representatives;

(7) Failure and/or refusal to meet with and discuss compliance matters with agency representatives during any compliance visit;

(8) Interference by probationer or agents of probationer that compromises and/or prevents agency representatives from fulfilling duties and responsibilities as set by an order, remedial plan, rule, or statute during a compliance visit; and

(9) Any expression by word or deed, either directly or indirectly, to agency representatives that a reasonable person would find as harassing, insulting, disrespectful, or rude.

(d) Upon a finding of non-compliance, due process will be extended to a probationer in accordance with the Act and the probationer shall be invited to attend a probationer show compliance proceeding as set forth in §187.44 of this title (relating to Probationer Show Compliance Proceedings).

(e) In lieu of a probationary show compliance proceeding and in order to resolve violations of an order or remedial plan, a probationer may waive his or her rights to a hearing as provided under the Act, §187.44 of this title [~~(relating to Probationer Show Compliance Proceedings)~~], and the APA, and accept a settlement agreement proposed by the compliance manager with the approval of the executive director.

§189.9. Grounds for Temporary Suspension or Automatic Suspension of Probationers.

(a) Certain violations of an order by a probationer are of such a nature that the continuation in practice by the probationer shall be considered a continuing threat to the public welfare. Such violation is grounds for a temporary suspension hearing as provided under Chapter 187, Subchapter F of this title (relating to Temporary Suspension and Restriction Proceedings) [~~§187.41 of this title (relating to Temporary Suspensions)~~] or for automatic suspension pursuant to terms and conditions of the probationer's order. Such violations include, but are not limited to:

(1) failure to pass the Special Purpose Examination within the required number of attempts;

(2) failure to pass the Medical Jurisprudence Examination within the required number of attempts;

(3) testing positive for a prohibited substance;

(4) failure to timely submit to a drug and/or alcohol screen;

(5) refusal to submit to a drug and/or alcohol screen; and

(6) any attempt to circumvent or tamper with the accuracy of a drug and/or alcohol screen.

(b) Violations of certain terms of a remedial plan may constitute grounds for automatic suspension as set out in the remedial plan. Such violations include, but are not limited to:

(1) failure to pass the Special Purpose Examination within the required number of attempts; or

(2) failure to pass the Medical Jurisprudence Examination within the required number of attempts.

§189.11. Process for Approval of Physicians, Other Professionals, Group Practices and Institutional Settings.

(a) Any approval of a physician or other professional to serve as a proctor, monitor, or supervisor or the approval of a group practice or institutional setting required by an order or remedial plan as applicable, shall be given by the executive director or his or her designee.

(b) Approval of a physician or other professional required by an order or remedial plan must meet all of the following criteria:

(1) board certification by a board certifying organization that meets the requirements of §164.4 of this title (relating to Board Certification);

(2) no economic relationship with probationer;

(3) no direct personal relationship with probationer;

(4) no more than three medical malpractice suits filed and/or pending against the physician or other professional within a five year period;

(5) no more than three resolved investigations by the board against the physician or other professional within a five year period; and

(6) no disciplinary history, pending investigations, or formal SOAH complaints with the board.

(c) The criteria for approval of a group practice or institutional setting required by an order may include a review of the physicians connected with the group practice or institutional setting utilizing the criteria set forth in subsection (b) of this section.

(d) The executive director or his or her designee may consider other factors in addition to those listed in subsection (b) of this section.

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

Filed with the Office of the Secretary of State on July 16, 2012.

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: August 26, 2012
For further information, please call: (512) 305-7016

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CHAPTER 192. OFFICE-BASED ANESTHESIA SERVICES

22 TAC §192.1, §192.2

The Texas Medical Board (Board) proposes amendments to §192.1, concerning Definitions, and §192.2, concerning Provision of Anesthesia Services in Outpatient Settings.

The amendment to §192.1 adds new definitions "ASA" and "tumescent anesthesia"; amends definitions for "analgesics", "anesthesia", "anesthesia services", and "anxiolytics"; and renumbers the existing definitions accordingly.

The amendment to §192.2 amends requirements for Level II and III services to address patient safety issues.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the proposal will be to have rules consistent with the accepted practice and standards by practicing anesthesiologists in Texas and to enhance safety standards for office-based procedures.

Mrs. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. The effect to individuals required to comply with the rules as proposed is undetermined but physicians who have to adjust their practices to meet the additional requirements will have costs. The effect on small or micro businesses is undetermined but group practices that provide office-based anesthesia and who will have to adjust their practices to meet the additional requirements will have additional costs.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by Texas Occupations Code, Chapter 162, Subchapter C.

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

§192.1. Definitions.
The following words and terms, when used in this chapter, shall have the following meanings, unless the contents indicate otherwise.

(1) ACLS--Advanced Cardiac Life Support, as defined by the AHA.

(2) AED--Automatic External Defibrillator.

(3) AHA--American Heart Association.

(4) ASHI--American Safety and Health Institute.

(5) ASA--American Society of Anesthesiologists.

(6) [~~(5)~~] Analgesics--Narcotic [~~Dangerous~~] or scheduled drugs that alleviate pain.

(7) [~~(6)~~] Anesthesia--The loss of feeling or sensation resulting from the use of narcotic [~~dangerous~~] or scheduled drugs to depress nerve function. [~~Anesthetics are scheduled or dangerous drugs used to induce anesthesia.~~]

(8) [~~(7)~~] Anesthesia Services--The use of [~~dangerous and scheduled drugs, including anesthetics,~~] analgesics, [~~and~~] anxiolytics, and local anesthetics that are used to achieve the effects of regional anesthesia or monitored anesthesia care for the performance of Level II - IV services.

(9) [~~(8)~~] Anxiolytics--Narcotic [~~Dangerous~~] or scheduled drugs used to treat episodes of anxiety.

(10) [~~(9)~~] Anesthesiologist assistant--A graduate of an approved anesthesiologist assistant training program.

(11) [~~(10)~~] Anesthesiology resident--A physician who is presently in an approved Texas anesthesiology residency program who is either licensed as a physician in Texas or holds a postgraduate resident permit issued by the Texas Medical Board.

(12) [~~(11)~~] BLS--Basic Life Support, as defined by the AHA.

(13) [~~(12)~~] Certified registered nurse anesthetist--A person licensed by the Texas Board of Nursing (TBN) as a registered professional nurse, authorized by the TBN as an advanced practice nurse in the role of nurse anesthetist, and certified by a national certifying body recognized by the TBN.

~~[(13) Dangerous drugs--Medications defined by the Texas Dangerous Drug Act, Chapter 483, Texas Health and Safety Code. Dangerous drugs require a prescription, but are not included in the list of scheduled drugs. A dangerous drug bears the legend "Caution: federal law prohibits dispensing without a prescription" or "Prescription Only."]~~

(14) Level I services--Delivery of analgesics or anxiolytics by mouth, as prescribed for the patient on order of a physician, at a dose level low enough to allow the patient to remain ambulatory.

(15) Level II services--The administration of tumescent anesthesia or the delivery of analgesics or anxiolytics by mouth in dosages greater than allowed at Level I, as prescribed for the patient on order of a physician.

(16) Level III services--Delivery of analgesics or anxiolytics other than by mouth, including intravenously, intramuscularly, or rectally.

(17) Level IV services--Delivery of general anesthetics, including regional anesthetics and monitored anesthesia care.

(18) Monitored anesthesia care--Situations where a patient undergoing a diagnostic or therapeutic procedure receives doses of medication that create a risk of loss of normal protective reflexes or loss of consciousness and the patient remains able to protect the airway during the procedure. If the patient is rendered unconscious and loses normal protective reflexes, then anesthesia care shall be considered a general anesthetic.

(19) Outpatient setting--Any facility, clinic, center, office, or other setting that is not a part of a licensed hospital or a licensed

ambulatory surgical center with the exception of all of the following listed in subparagraphs (A) - (D) of this paragraph:

(A) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. §479-1 or as listed under a successor federal statute or regulation;

(B) a facility maintained or operated by a state or governmental entity;

(C) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; and

(D) an outpatient setting accredited by either the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers, the American Association for the Accreditation of Ambulatory Surgery Facilities, or the Accreditation Association for Ambulatory Health Care.

(20) Board--The Texas Medical Board.

(21) PALS--Pediatric Advanced Life Support, as defined by the AHA.

(22) Physician--A person licensed by the Texas Medical Board as a medical doctor or doctor of osteopathic medicine who diagnoses, treats, or offers to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method or effects cures thereof and charges therefore, directly or indirectly, money or other compensation. "Physician" and "surgeon" shall be construed as synonymous.

(23) Scheduled Drugs--Medications defined by the Texas Controlled Substances Act, Chapter 481, Texas Health and Safety Code. This Act establishes five categories, or schedules of drugs, based on risk of abuse and addiction. (Schedule I includes drugs that carry an extremely high risk of abuse and addiction and have no legitimate medical use. Schedule V includes drugs that have the lowest abuse/addiction risk).

(24) Tumescent Anesthesia--The use of physiologic fluids and local anesthetics and agents to constrict blood vessels in the surgical area to facilitate the procedure and reduce bleeding.

§192.2. Provision of Anesthesia Services in Outpatient Settings.

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

(c) Standards for Anesthesia Services. The following standards are required for outpatient settings providing anesthesia services that are administered within two hours before an outpatient procedure. If personnel and equipment meet the requirements of a higher level, lower level anesthesia services may also be provided.

(1) Level I services:

(A) at least two personnel must be present, including the physician who must be currently certified by AHA or ASHI, at a minimum, in BLS; and

(B) the following age-appropriate equipment must be present:

(i) bag mask valve; and

(ii) oxygen.[;]

~~*(iii)* AED or other defibrillator; and~~]

~~*(iv)* epinephrine, atropine, adreno-corticoids, and antihistamines.~~]

(2) Level II services:

(A) at least two personnel must be present, including the physician who must be currently certified by AHA or ASHI, at a minimum, in ACLS or PALS, as appropriate;

(i) another person must be currently certified by AHA or ASHI, at a minimum, in BLS; and

(ii) a licensed health care provider, who may be one of the two required personnel, must attend the patient, until the patient is ready for discharge; and

(B) a crash cart must be present containing drugs and equipment necessary to carry out ACLS protocols, including, but not limited to, the following age-appropriate equipment:

(i) bag mask valve and appropriate airway maintenance devices;

(ii) oxygen;

(iii) AED or other defibrillator;

(iv) pre-measured doses of first line cardiac medications, including epinephrine, atropine, adreno-corticoids, and antihistamines;

(v) IV equipment;

(vi) pulse oximeter; and

(vii) EKG Monitor.

(C) performance of an airway evaluation; and

(D) performance of an ASA patient classification.

(3) Level III services:

(A) at least two personnel must be present, including the physician who must be currently certified by AHA or ASHI, at a minimum, in ACLS or PALS, as appropriate;

(i) another person must be currently certified by AHA or ASHI, at a minimum, in BLS;

(ii) a licensed health care provider, which may be either of the two required personnel, must attend the patient, until the patient is ready for discharge; and

(iii) a person, who may be either of the two required personnel, must be responsible for monitoring the patient during the procedure; and

(B) the same equipment required for Level II;[.]

(C) performance of an airway evaluation;

(D) performance of an ASA patient classification;

(E) establishment of a working intravenous feed;

(F) the presence of appropriate antagonists (i.e., Naloxone and Flumazenil); and

(G) Adherence to ASA guidelines for post-operative monitoring and care.

(4) Level IV services: Physicians who practice medicine in this state and who administer anesthesia or perform a procedure for which anesthesia services are provided in outpatient settings at Level IV shall follow current, applicable standards and guidelines as put forth by the American Society of Anesthesiologists (ASA) including, but not limited to, the following listed in subparagraphs (A) - (H) of this paragraph:

(A) Basic Standards for Preanesthesia Care;

(B) Standards for Basic Anesthetic Monitoring;

(C) Standards for Postanesthesia Care;

(D) Position on Monitored Anesthesia Care;

(E) The ASA Physical Status Classification System;

(F) Guidelines for Nonoperating Room Anesthetizing Locations;

(G) Guidelines for Ambulatory Anesthesia and Surgery; and

(H) Guidelines for Office-Based Anesthesia.

(d) - (l) (No change.)

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

Filed with the Office of the Secretary of State on July 16, 2012.

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Mari Robinson, J.D.
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Texas Medical Board
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For further information, please call: (512) 305-7016

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CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.13

The Texas Medical Board (Board) proposes new §193.13, concerning Nonsurgical Medical Cosmetic Procedures.

The new rule establishes requirements for physicians that delegate the performance of nonsurgical medical procedures to other personnel.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to establish requirements for the performance of nonsurgical medical procedures that ensure patient safety and are consistent with the delegation requirements under the Medical Practice Act.

Mrs. Leshikar has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. The effect to individuals required to comply with the rule as proposed is undetermined but there likely will be additional costs to physicians to meet the requirements under the rule. The effect on small or micro businesses is undetermined but there will likely be additional costs to medical practices that perform nonsurgical medical procedures.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The new rule is also authorized by Chapter 157, Texas Occupations Code.

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

§193.13. Nonsurgical Medical Cosmetic Procedures.

(a) Purpose. The purpose of this rule is to establish the duties and responsibilities of a physician who performs or who delegates the performance of a nonsurgical medical cosmetic procedure (hereafter referred to as "Procedure"). These procedures can result in complications and the performance of these procedures is the practice of medicine. This rule shall not be interpreted to allow individuals to perform procedures without either a physician or midlevel practitioner being onsite, or a physician being available for emergency consultation or appointment in the event of an adverse outcome.

(b) Definitions:

(1) Midlevel practitioner--A physician assistant or advanced practice nurse.

(2) Prescription medical device--A device that the federal Food and Drug Administration has designated as a prescription medical device, and can be sold only to persons with prescriptive authority in the state in which they reside.

(3) Procedure--A nonsurgical medical cosmetic procedure, including but not limited to the injection of medication or substances for cosmetic purposes, the administration of colonic irrigations, and the use of a prescription medical device for cosmetic purposes.

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

(1) Surgery as defined under Texas Occupations Code, §151.002(a)(14);

(2) The practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;

(3) The use of nonprescription devices;

(4) Intravenous therapy;

(5) Procedures performed by physicians or midlevel practitioners at a physician's primary practice site; or

(6) Laser hair removal procedures performed in accordance with Texas Health and Safety Code, Chapter 401, Subchapter M.

(d) Physician Responsibilities.

(1) A physician must be fully and appropriately trained, including hands-on training, in a Procedure prior to performing the Procedure or delegating the performance of a Procedure. The physician must keep a record of his or her training in the office and have it available for review upon request by a patient or a representative of the board.

(2) Prior to authorizing a Procedure, a physician, or a midlevel practitioner acting under the delegation of a physician, must:

(A) Take a history;

(B) Perform an appropriate physical examination;

(C) Make an appropriate diagnosis;

(D) Recommend appropriate treatment;

(E) Develop a detailed and written treatment plan;

(F) Obtain the patient's informed consent;

(G) Provide instructions for emergency and follow-up care;

(H) Prepare and maintain an appropriate medical record;

(I) Have signed and dated written protocols as described in paragraph (7) of this subsection that are detailed to a level of specificity that the person performing the Procedure may readily follow; and

(J) Have signed and dated written standing orders.

(K) The performance of the items listed in subparagraphs (A) - (J) of this paragraph must be documented in the patient's medical record.

(3) After a patient has been evaluated and diagnosed, as described in paragraph (2) of this subsection, qualified unlicensed personnel may perform a procedure only if:

(A) a physician or midlevel practitioner is onsite during the procedure; or

(B) a delegating physician is available for emergency consultation in the event of an adverse outcome, and if the physician considers it necessary, be able to conduct an emergency appointment with the patient. The physician shall have a primary practice site located within 75 miles of the site where the Procedure is performed.

(4) Regardless of who performs the Procedure, the physician is ultimately responsible for the safety of the patient and all aspects of the Procedure.

(5) Regardless of who performs the Procedure, the physician is responsible for ensuring that each Procedure is documented in the patient's medical record. A Procedure performed by unlicensed personnel must be timely co-signed by a supervising physician.

(6) The physician must ensure that the facility at which Procedures are performed, there is a quality assurance program pertaining to Procedures that includes the following:

(A) A mechanism to identify complications and untoward effects of treatment and to determine their cause;

(B) A mechanism to review the adherence to written protocols by all health care personnel;

(C) A mechanism to monitor the quality of treatments;

(D) A mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols; and

(E) Ongoing training to maintain and improve the quality of treatment and performance of Procedures by health care personnel.

(7) A physician may delegate Procedures only at a facility at which the physician has either:

(A) approved in writing the facility's written protocols pertaining to the Procedures; or

(B) developed his own protocols for the Procedures as described in paragraph (2)(H) of this subsection.

(8) The physician must ensure that a person performing a Procedure has appropriate training in, at a minimum:

(A) Techniques for each Procedure;

(B) Cosmetic or cutaneous medicine;

(C) Indications and contraindications for each Procedure;

(D) Preprocedural and postprocedural care;

(E) Recognition and acute management of potential complications that may result from the Procedure; and

(F) Infectious disease control involved with each treatment.

(9) The physician has a written office protocol for the person performing the Procedure to follow in performing Procedure delegated. A written office protocol must include, at a minimum, the following:

(A) The identity of the physician responsible for the delegation of the Procedure;

(B) Selection criteria to screen patients by the physician or midlevel practitioner for the appropriateness of treatment;

(C) A description of appropriate care and follow-up for common complications, serious injury, or emergencies;

(D) A statement of the activities, decision criteria, and plan the physician, or midlevel practitioner, shall follow when performing or delegating the performance of a Procedure, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician or midlevel practitioner concerning specific decisions made; and

(E) A description of what information must be documented by the person performing the Procedure.

(10) The physician ensures that each person performs each Procedure in accordance with the written office protocol.

(11) Each patient signs a consent form prior to treatment that lists foreseeable side effects and complications, and the identity and titles of the individual who will perform the Procedure.

(12) Each person performing a Procedure must be readily identified by a name tag or similar means that clearly delineates the identity and credentials of the person.

(13) Any time a Procedure is performed, at least one person trained in basic life support must be onsite.

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

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TITLE 28. INSURANCE

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

CHAPTER 180. MONITORING AND ENFORCEMENT
SUBCHAPTER C. MEDICAL QUALITY REVIEW PANEL

28 TAC §§180.60, 180.62, 180.64, 180.66, 180.68, 180.70, 180.72, 180.74, 180.76, 180.78

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes new Subchapter C, Medical Quality Review Panel (MQRP), §180.60, concerning Definitions; §180.62, concerning Medical Quality Review Panel; §180.64, concerning MQRP Application Process; §180.66, concerning Medical Case Review; §180.68, concerning Medical Quality Review Process; §180.70, concerning MQRP Training; §180.72, concerning Conflict of Interest; §180.74, concerning MQRP Notification of Case Status; §180.76, concerning Rights and Responsibilities of Persons Involved in the Medical Quality Review Process; and §180.78, concerning Effective Date.

Statutory Background

These new sections are proposed due to statutory amendments in House Bill 2605, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011 (HB 2605). HB 2605 added new Labor Code §§413.05115, 413.05121 and 413.05122 and amended Labor Code §413.0512 to clarify the composition and training requirements of the MQRP and establish the Quality Assurance Panel (QAP), which is a subset of the MQRP. Labor Code §413.0512 was amended to clarify that the medical advisor must notify the division if the medical advisor determines that a particular health care specialty field is no longer necessary for inclusion on the MQRP or if there is a need to include a particular health care specialty field that is not currently represented on the panel. This section was also amended to clarify that the division may enter into agreements with other state agencies, as necessary, to access particular health care expertise. HB 2605 added new Labor Code §413.05121 to require the establishment of a QAP within the MQRP to provide an additional level of evaluation in medical case reviews, assist the medical advisor and medical quality review panel, evaluate medical care and recommend enforcement actions to the medical advisor.

HB 2605 also added new Labor Code §413.05122 to require the Commissioner of Workers' Compensation (Commissioner) to adopt rules concerning the operation of the medical quality review panel, including rules that establish the qualifications necessary for a health care provider to serve on the MQRP, the composition of the MQRP, the number of members to be included on the panel and the health care specialty fields required to be represented by the members of the panel. The rules must also set the maximum length of time a health care provider may serve on the MQRP, a policy defining situations that constitute a conflict of interest for a member of the MQRP, and procedures and grounds for removing a member of the MQRP from the panel, including as a ground for removal that a member is repeatedly delinquent in conducting case reviews. Finally, the rules must also establish a procedure through which members of the MQRP review panel are notified concerning the status and enforcement outcomes of cases resulting from the MQRP quality review process and the training requirements for members of the MQRP.

The rules must ensure that panel members are fully aware of any requirements imposed by the Labor Code concerning the medical quality review process and the Division's goals concerning the process. The rules may require members to receive training on any topic determined by the Division or the Commissioner to be relevant to the operations of the panel and must require members of the panel to receive training concerning administrative violations that affect the delivery of appropriate medical care, the confidentiality requirements described by Labor Code §413.0513, the immunity from liability provided to members of the panel under Labor Code §413.054, and the medical quality review criteria adopted under Labor Code §413.05115.

The Division published an informal draft of the proposed new sections on the Division's website from May 6, 2012 until June 6, 2012, and received eight informal comments on the proposed rule. The Division made several changes to the proposal as a result of the informal comments.

Description of the Proposed New Sections

Proposed New §180.60.

Proposed new §180.60 defines the terms "doctor" and "medical case review" for purposes of this subchapter. The term "doctor" has the same definition as Labor Code §401.011(17), a doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who is licensed and authorized to practice. The term "Medical Case Review" is defined as a review of medical services or professionalism in a particular case by an MQRP member regarding the delivery of health care, or the quality of a health care practitioner's opinion, recommendation or report. Medical case review may include the review of a treating doctor, peer review doctor, designated doctor, another health care practitioner, an independent review organization, an insurance carrier, or a utilization review agent.

Proposed New §180.62.

Proposed new §180.62(a) provides that the purpose of the MQRP is to assist the medical advisor in the performance of the medical advisor's duties under Labor Code §413.0511 in accordance with the provisions of Labor Code §413.0512 and §413.05121.

Proposed new §180.62(b) provides that members of the MQRP who prepare reports for medical case review shall be known as MQRP Experts. This language mirrors Texas Medical Board rules and helps harmonize the procedures of the two regulatory agencies, Texas Medical Board and the Division.

Proposed new §180.62(c) provides that applicants for the MQRP may be selected and appointed to the MQRP at the discretion of the medical advisor and the Commissioner in accordance with §180.62.

The MQRP must have at least 25 members and must, at a minimum, have members in the health care specialty fields of orthopedic surgery, neurosurgery, chiropractic, occupational medicine and pain medicine.

The MQRP may have members that include other types of health care practitioners determined to be necessary by the medical advisor and the Commissioner.

Proposed new §180.62(d) provides that, to be eligible to serve on the MQRP, a health care practitioner must possess an unrestricted license to practice in Texas, be Board certified in a specialty or subspecialty, and have an active practice in Texas. "Active practice" means, within either of the last two calendar years, at the time of appointment to the MQRP, the applicant has actively diagnosed or treated persons at least 20 hours per

week for 40 weeks duration during a given calendar year; or performed administrative, leadership, or advisory roles in the practice of medicine. The medical advisor and the Commissioner may waive these requirements if needed to adequately perform medical case review.

Proposed new §180.62(e) provides that MQRP members shall be appointed for a term of two years. They shall serve until the expiration of their term, until their resignation, or until their removal from the MQRP. An MQRP member may not serve on the panel for more than 10 years. Years served prior to an appointment on or after September 1, 2013 do not count toward the 10-year limit. An MQRP member may resign from the MQRP at any time. An MQRP member may be removed from the MQRP for cause at any time on the order of the Commissioner for failure to maintain the eligibility requirements of this title, failure to timely inform the Division of conflicts of interest, repeated failure to timely review medical case review assignments or timely submit reports to the Division, repeated failure to prepare the reports in the prescribed format; or other issues deemed sufficient by the medical advisor or the commissioner.

Proposed new §180.62(f) provides that an MQRP member shall not use his or her position to influence an insurance carrier, agent, or other person or entity in connection with a personal or other insurance related matter beyond referring to their position to demonstrate qualifications except as otherwise provided by this subchapter.

Proposed new §180.62(g) provides that the medical advisor shall establish the Quality Assurance Panel (QAP) within the MQRP. All members of the QAP are members of the MQRP. They perform all of the duties of an MQRP member under Labor Code §413.0512 as well as the duties of a QAP member under Labor Code §413.05121. A member of the Quality Assurance Panel (QAP) shall also be known as an Arbiter. An Arbiter is a person empowered to judge and decide matters at issue. An Arbiter serves in an informal settlement conference to help determine a resolution of the case.

Arbiters may provide any services to the medical advisor provided by Labor Code §413.0512 and §413.05121, including, but not limited to serving as a representative for the medical advisor in informal settlement conferences, and serving as the chair to the quality assurance committee. When the medical advisor and associate medical advisor have both recused themselves from a specific case, the Commissioner may appoint an Arbiter to provide a final recommendation on enforcement action following the investigation of a case through the medical quality review process. Arbiters may serve as expert witnesses in enforcement actions, as appropriate, and provide an additional level of medical expertise and quality assurance to assist the medical advisor in the medical advisor's duties under Labor Code §413.0511.

Proposed New §180.64.

Proposed new §180.64(a) establishes the process to apply to be a member of the MQRP. To apply to the MQRP, a person must submit an application in the form and manner required by the Division demonstrating compliance with the required qualifications. The application must contain the information required by §180.64(b). The medical advisor and the Commissioner may select and appoint only qualified applicants to the Division's MQRP but are not required to accept all applicants who meet the requirements specified in this subchapter.

Proposed new §180.64(b) establishes the contents of the application form for the MQRP. The form must include, at a minimum, contact information for the health care practitioner, information about the health care practitioner's education, a description of the health care practitioner's license(s), certifications, and professional specialty, if any, a description of the health care practitioner's work history and hospital or other health care practitioner affiliations.

The form must also contain a description of any affiliations the health care practitioner has with a workers' compensation health care network certified under Chapter 1305 of the Insurance Code or a political subdivision as described in Labor Code §504.053(b)(2), identification of and a description of all current and past review affiliations, including but not limited to an independent review organization (IRO), utilization review agent (URA), licensing board, and insurance carrier.

In addition, the form must include information regarding the health care practitioner's current practice locations, disclosure regarding the health care practitioner's professional background, education, training, and fitness to perform the duties of an MQRP member. This must include disclosure of any disciplinary actions or other sanctions taken against the health care practitioner by any state licensing board, state or federal agency, and hospital or other health care institution, as well as disclosure of any voluntary relinquishments, drug and alcohol misuse, malpractice claims history and criminal history.

The form must include a description of all ownership interests or other financial arrangements, such as salaried or contract employment, involving a person or their agent subject to the Act or a rule, order, or decision of the commissioner. A share of ownership is ownership as well as total ownership including shares in ownership of facilities such as surgery centers.

The applicant must sign an authorization for third parties to release information relevant to the verification of the information provided on the application to the Division, an affirmation that all information provided in the application is accurate and complete to the best of the health care practitioner's knowledge; and an affirmation of understanding of the legal requirements, including confidentiality provisions, for MQRP members.

Proposed new §180.64(c) provides that a credentialing application for hospital credentialing may substitute for some items under subsection (b).

Proposed new §180.64(d) provides that the health care practitioner must inform the medical advisor of any changes to this information within 30 days after the change.

Proposed new §180.64(e) provides that the application shall be reviewed by the medical advisor.

Proposed new §180.64(f) provides that the medical advisor and the Commissioner have the discretion to select and appoint an applicant to the MQRP.

Proposed new §180.64(g) provides that membership in the MQRP is for a term of two years. The acceptance letter will include the effective date and expiration date.

Proposed new §180.64(h) provides that membership in the MQRP is not a guarantee of any number of assignments.

Proposed new §180.64(i) provides that MQRP members are entitled to compensation for work assigned by the medical advisor at the hourly rates specified in the rule. Doctors are entitled to $150 per hour for medical case reviews, ad hoc work groups, or special projects.

Non-doctors are entitled to $100 per hour for medical case reviews, ad hoc work groups or special projects.

An MQRP member is limited to billing a maximum of five hours for a medical case review of a single case, five hours for ad hoc work group or special project service, or 20 hours in a given calendar month, unless the medical advisor approves additional hours in writing upon review of a submitted narrative report or a report of an ad hoc work group.

Members are entitled to compensation for hearings or trial preparation. Doctors are entitled to $350 per hour for time spent in hearing or in trial preparation, in providing testimony in deposition, hearing or trial. Non-doctors are entitled to $175 per hour for time spent in hearing or in trial preparation, in providing testimony in deposition, hearing or trial. An MQRP member is not entitled to payment for more than eight hours per day for a deposition, a hearing, trial preparation or court testimony. If travel is required, the Division will pay the member for travel, lodging and per diem expenses in accordance with the Texas State Travel Management Program. The Division may vary the above reimbursement provisions if deemed by the Division to be in the best interests of the Division or the State of Texas.

Proposed new §180.64(j) provides that an MQRP member may not disclose a report or other documentation prepared by the MQRP member for the Division in accordance with Labor Code §§402.083 - 402.086, 402.091, 402.092 and 413.0513.

Proposed new §180.64(k) provides that all reports and related documents prepared by or furnished to the member for the MQRP are the sole property of the Division.

Proposed New §180.66.

Proposed new §180.66 provides that the MQRP may perform medical case review for the medical advisor. Medical case review may be performed for the purposes of the medical quality review process, designated doctor certification and recertification, performance based oversight, or any other medical case review necessary to assist in performing the medical advisor's duties under the Labor Code.

Proposed New §180.68.

Proposed new §180.68(a) provides that the medical quality review process is medical case review initiated on the basis of complaints, plan-based audits, or monitoring as a result of a consent order and performed in accordance with criteria adopted under Labor Code §413.05115. The medical quality review process does not include medical case review performed for the purpose of certification and recertification of designated doctors, performance based oversight, administrative violations that do not require an expert medical opinion, or complaints regarding professionalism that do not require an expert medical opinion.

Proposed new §180.68(b) provides that a complaint must be documented in accordance with the provisions of 28 TAC §180.2.

Proposed new §180.68(c) provides that nothing in this subchapter prevents referrals of complaints to another licensing or law enforcement authority.

Proposed New §180.70.

Proposed new §180.70 provides that an MQRP member must receive training by the Division prior to any assignments and at least every two years thereafter on the requirements of the medical quality review process under §180.68, the Division's goals regarding the medical quality review process, administrative violations that affect the delivery of appropriate medical care, confidentiality requirements of Labor Code §§402.083, 402.092 and 413.0513, immunity from liability under Labor Code §413.054, the medical quality review criteria adopted under Labor Code §413.05115, the current Division adopted edition of the AMA Guides to the Evaluation of Permanent Impairment and the Division's adopted treatment and return-to-work guidelines and other topics as determined by the medical advisor and Commissioner.

Proposed New §180.72.

Proposed new §180.72(a) sets forth the procedures for dealing with MQRP members' conflicts of interest. If the selected MQRP member has a conflict of interest, that member may not review the case, except as provided herein. If all MQRP members in a particular health care specialty field as the subject of a medical case review have conflicts of interest in a case under medical case review, and the Division is unable to enter into an interagency agreement, then the Division may refer the case to the appropriate licensing authority.

Proposed new §180.72(b) provides that a conflict of interest exists if the selected MQRP member has a familial relationship within the third degree of affinity with any party or witness related to the case, has a relationship with the subject beyond a mere acquaintance, has ever treated the injured employee whose records are being reviewed, or has a financial interest in a matter as set forth in §180.24 of this title (relating to Financial Disclosure). Further, a conflict of interest exists if the selected MQRP member is a medical director for an Insurance Carrier, Utilization Review Agent, or a workers' compensation health care network certified under Chapter 1305 of the Insurance Code or a political subdivision as described in Labor Code §504.053(b)(2). Medical directors can perform all functions of the MQRP and the QAP except performing individual medical case reviews or serving as Arbiters in a informal settlement conference (ISC). A conflict also exists if the selected MQRP member has other issues deemed to be a conflict of interest by the medical advisor.

Proposed new §180.72(c) provides that if an MQRP member selected for a medical case review has a conflict of interest, the member must notify the medical advisor of the conflict before taking any further action on the case.

Proposed new §180.72(d) provides that, if the medical advisor has a conflict of interest in a case, the medical advisor must recuse himself from the case and appoint the associate medical advisor to perform the role of the medical advisor in the case, including enforcement decisions and recommendations. If the associate medical advisor also has a conflict of interest in the case, the Commissioner shall delegate the duties of the medical advisor, including enforcement decisions and recommendations, for that particular case, to a member of the QAP.

Proposed new §180.72(e) provides that the Division may enter into agreements with other state agencies to access, as necessary, expertise in health care specialty fields as determined by the medical advisor.

Proposed New §180.74.

Proposed new §180.74 provides that the Division shall notify MQRP panel members in writing at least quarterly of the status of and enforcement outcomes resulting from cases in the medical quality review process. It also sets forth that a MQRP panel member shall comply with all confidentiality laws that apply

to information provided under this section including Labor Code §§402.083 - 402.086, 402.091,402.092 and 413.0513.

Proposed New §180.76.

Proposed new §180.76 specifies rights and responsibilities of persons involved in the Medical Quality Review Process. The person subject to the medical quality review process has the right to be notified that the person has been selected for a review, to be notified of the disposition of the medical quality review process, and to communicate with the office of the medical advisor at any time during the medical quality review process.

The person also has a right to an informal settlement conference (ISC) in accordance with the provisions of §180.76 as well as a right to be represented by legal counsel. The ISC provides a person subject to the Medical Quality Review Process an opportunity to discuss and resolve their medical case review with MQRP Experts. The case must have been referred to enforcement, the request for an ISC must be in writing, the Division will notify the requestor of the scheduled date of the ISC, the requestor has the right to receive all documents given to the QAP members for review for that particular case, all information the requestor wishes the QAP members to consider at the ISC must be received by the Division no later than 15 days before the ISC, and the QAP members may refuse to consider any information not timely received by the Division.

The ISC requestor may request to reschedule the scheduled date of the ISC for good cause shown, in writing, as determined by an attorney from the Division's office of general counsel. Good cause means circumstances beyond the control of the requestor that reasonably prevent the requestor from attending the ISC or from requesting the rescheduling any sooner.

If a requestor fails to attend an ISC as scheduled, the requestor forfeits his right to an ISC but does not preclude him from discussing his case with the medical advisor, from entering a Consent Order, or from defending his enforcement case at the State Office of Administrative Hearings.

Proposed new §180.76(b) specifies responsibilities. A person subject to a medical case review must provide records and information requested from the office of the medical advisor in the format and manner specified by the Division, provide the records and information within the time period specified in the request, and attach an accurate and completed business records affidavit to the request for records and information.

Proposed New §180.78.

Proposed new §180.78 provides that this subchapter is effective on January 1, 2013. Existing members of the MQRP on that date shall continue to serve through the terms of their contracts. New terms of membership after January 1, 2013 shall be established through the process in this subchapter.

Donald Patrick, M.D., J.D., the Division's medical advisor, has determined that for each year of the first five years the proposed new sections will be in effect there will be minimal new fiscal implications to state or local government as a result of enforcing or administering the proposed new sections. There will be no measurable fiscal effect on local employment or the local economy as a result of the proposed new sections.

The MQRP program has historically operated through a Request for Qualifications/Contract system with MQRP members. The compensation for MQRP members has been determined by contracts with the Division and funded by the Division. Now, the compensation for MQRP members will be set by rule. The compensation rates for MQRP members in these rules do not differ from the compensation rates currently used by the Division for these contracts so the cost of the MQRP program is not being increased when compared to the current RFQ/Contract system as a result of these rules.

These rules will increase some costs to the Division in terms of the administration of the MQRP and the QAP. These increased costs may include expenses associated with the preparation of training materials and presentation of training programs for MQRP members and division staff. However, the training program is required by statute and not solely because of these new rules. Dr. Patrick has determined that all duties and responsibilities associated with implementing the proposed new sections can be accomplished by utilizing existing agency resources.

Local Government and State Government as a Covered Entity.

Local government and state government as a covered regulated entity will be impacted in the same manner as persons required to comply with the proposed new sections as described later in the preamble.

Dr. Patrick has also determined that for each year of the first five years the proposed new sections will be in effect the public benefit anticipated as a result of enforcing the new sections will be clarity in the procedures for reviewing complaints and audits of medical care in the workers' compensation system. It is anticipated that the proposed sections will promote more effective enforcement of quality of care issues in the Texas workers' compensation system by enabling the Division to expand its access to clinical expertise.

As required by the Government Code §2006.002(c), the Division has determined that the proposal will not have an adverse economic effect on the small and micro-businesses that may be required to comply with the proposed new sections. The cost of compliance with the proposal will not vary between large businesses and small or micro-businesses, and the Division's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses. Although there will be some cost incurred in submitting an application to be on the MQRP, this cost is voluntary, is not significant and will not adversely impact small or micro-businesses. Since the Division has determined that the rule will have no adverse economic effect on small or micro-businesses preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Government Code §2006.002, is not required.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on Monday, August 27, 2012. Comments may be submitted via the internet through the Division's internet website at http://www.tdi.texas.gov/wc/rules/proposedrules/index.html, by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

A public hearing on this proposal will be held on August 13, 2012 at 1:30 p.m. CST in the Tippy Foster Conference Room of the Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Austin, Texas 78744-1645. The Division provides reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require accommodations in order to attend the hearing please contact Idalia Salazar at (512) 804-4403 at least two business days prior to the confirmed hearing date.

The hearing will also be audio streamed; to listen to the audio stream access the Public Outreach Events/Training Calendar website at http://www.tdi.texas.gov/wc/events/index.html and then click on the "Broadcast" link for the hearing. Media Player 7 (or new version) or RealPlayer 10 (or newer version) are required to hear the audio stream. Audio streaming will begin approximately five minutes before the scheduled time of the hearing.

The public hearing date, time, and location should be confirmed by those interested in attending or listening via audio stream; the hearing may be confirmed by visiting the Division's Public Outreach Events/Training Calendar website at http://www.tdi.texas.gov/wc/events/index.html. Written and oral comments presented at the hearing will be considered.

These new rules are proposed under the Labor Code §§402.00116, 402.00111, 402.061, 402.00128, 413.0511, 413.05115, 413.0512, 413.05121, 413.05122 413.0513, 413.0514, 413.0515 and 415.021. Labor Code §402.00116 grants the powers and duties of chief executive and administrative officer to the Commissioner and the authority to enforce the Labor Code, Title 5, and other laws applicable to the Division or Commissioner. Section 402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under the Labor Code, Title 5. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Workers' Compensation Act. Section 402.00128 vests general operational powers to the Commissioner including the authority to delegate, and assess and enforce penalties as authorized by the Labor Code, Title 5.

Section 413.0511 requires the Division to employ or contract with a medical advisor as that term is defined by Labor Code §401.011, such person to make recommendations regarding rules adoption and policies to implement the Texas Workers' Compensation Act and the imposition of sanctions. Section 413.05115 requires the Division to develop and the Commissioner to adopt criteria concerning the medical case review process with input from potentially affected parties including health care providers and insurance carriers. The criteria developed and adopted must establish process or processes for handling complaint-based medical case reviews and through which the Division selects health care providers or other entities for compliance audit or review. The Division shall make the criteria developed and adopted available on the Division website.

Section 413.0512 provides that the medical advisor shall establish a MQRP of health care providers to assist the medical advisor in performing the duties required under Labor Code §413.0511. The panel is not subject to Chapter 2110, Government Code. The medical advisor shall notify the Division if he or she determines that it is no longer necessary for the panel to include a member that practices in a particular health care specialty field; or there is a need for the panel to include a member that practices in a particular health care specialty field not represented on the panel. Further, if the Division receives notice from the medical advisor of the latter situation, the Division may enter into agreements with other state agencies to access, as necessary, expertise in that health care specialty field.

Section 413.05121 requires the establishment of a QAP within the MQRP to provide an additional level of evaluation in medical case reviews, assist the medical advisor and MQRP, evaluate medical care and recommend enforcement actions to the medical advisor.

Section 413.05122 requires the Commissioner to adopt rules concerning the operation of the MQRP, including rules that establish the qualifications necessary for a health care provider to serve on the MQRP and the composition of the MQRP, including the number of members to be included on the panel and the health care specialty fields required to be represented.

Section 413.0513 provides that information collected, assembled, or maintained by or on behalf of the Division under §413.0511 or §413.0512 constitutes an investigation file for purposes of §402.092 and may not be disclosed under §413.0511 or §413.0512 except as provided by that section.

Section 413.0514 allows for information sharing with occupational licensing boards and applies to information held by or for the Division, the Texas State Board of Medical Examiners, and the Texas Board of Chiropractic Examiners that relates to a person who is licensed or otherwise regulated by any of those state agencies. This section provides sharing and access to otherwise confidential information. Information received by the Division remains confidential, and may not be disclosed by the Division except as necessary to further the investigation, and shall be exempt from disclosure under §402.092 and §413.0513.

Section 413.0515 sets forth that the Division shall report physician and chiropractic violations to the Texas State Board of Medical Examiners and the Texas Board of Chiropractic Examiners if the Division or either Board discovers an act or omission by a physician or chiropractor that may constitute a felony, misdemeanor involving fraud or abuse under Medicare or Medicare or controlled substance law or a violation under the Labor Code, Title 5.

Section 415.021 provides for assessment of administrative penalties if a person violates, fails to comply with, or refuses to comply with a rule or the Texas Workers' Compensation Act.

The following statutes are affected by this proposal: Labor Code §§402.00111, 402.00116, 402.00128, 402.061, 413.05121, 413.05122 and 415.021.

§180.60. Definitions.

The following terms, when used in this subchapter, shall have the following meanings:

(1) Doctor--As defined by Labor Code §401.011(17), a doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who is licensed and authorized to practice.

(2) Medical Case Review--A review of a particular case by a Medical Quality Review Panel (MQRP) member regarding professional medical services, delivery of health care, or the quality of a health care practitioner's opinion, recommendation or report. Medical case review includes but it is not limited to review of a treating doctor, peer review doctor, designated doctor, another health care practitioner,

an independent review organization, an insurance carrier, or a utilization review agent.

§180.62. Medical Quality Review Panel.

(a) The purpose of the Medical Quality Review Panel (MQRP) is to assist the medical advisor in the performance of the medical advisor's duties under Labor Code §413.0511 in accordance with the provisions of Labor Code §413.0512 and §413.05121.

(b) Members of the MQRP who prepare reports for medical case review shall be known as MQRP Experts.

(c) Applicants may be selected and appointed to the MQRP at the discretion of the medical advisor and the commissioner of workers' compensation (commissioner) in accordance with this section. The MQRP shall be composed of health care practitioners appointed by the medical advisor and the commissioner in accordance with this section.

(1) The MQRP must have at least 25 members.

(2) The MQRP must, at a minimum, have members in the following health care specialty fields:

(A) Orthopedic Surgery--A medical doctor (MD) or a doctor of osteopathy (DO) with board certification in orthopedic surgery.

(B) Neurosurgery--An MD or a DO with board certification in neurological surgery.

(C) Chiropractic--A licensed doctor of chiropractic.

(D) Occupational Medicine--An MD or a DO with board certification in occupational medicine.

(E) Pain Medicine--An MD or a DO with a board certification in a subspecialty of anesthesiology, neurology or physical medicine.

(3) The MQRP may have members that include other types of health care practitioners determined to be necessary by the medical advisor and the commissioner.

(d) To be eligible to serve on the MQRP, a health care practitioner must meet the following criteria, as applicable:

(1) Possess an unrestricted license to practice in Texas with the appropriate credentials, as defined by §180.1 of this title (relating to Definitions);

(2) Board certified in a specialty or subspecialty. An MD or DO is board certified in a specialty or subspecialty if the MD or DO holds:

(A) a general certificate in the specialty or a subspecialty certificate from one of the member boards of the American Board of Medical Specialties (ABMS); or

(B) a primary certificate in the specialty and:

(i) a certificate of special qualifications from the American Osteopathic Association Bureau of Osteopathic Specialists (AOABOS); or

(ii) a certificate of added qualifications in the subspecialty from the AOABOS.

(3) An active practice in Texas. "Active practice" means, within either of the last two calendar years, at the time of appointment to the MQRP, the applicant has:

(A) actively diagnosed or treated persons at least 20 hours per week for 40 weeks duration during a given calendar year; or

(B) performed administrative, leadership, or advisory roles in the practice of medicine.

(4) The medical advisor and the commissioner may waive the requirements of paragraphs (2) and (3) of this section if needed to adequately perform medical case review.

(e) Term; Resignation; Removal.

(1) MQRP members shall be appointed for a term of two years. They shall serve until the expiration of their term, until their resignation, or until their removal from the MQRP.

(2) An MQRP member may not serve on the panel for more than 10 years. Years served prior to an appointment on or after September 1, 2013 do not count toward the 10 year limit.

(3) An MQRP member may resign from the MQRP at any time.

(4) An MQRP member may be removed from the MQRP for cause at any time on immediately upon notice to the MQRP member, or at such later date as the division may establish in such notice upon the occurrence of any of the following:

(A) Failure to maintain the eligibility requirements of this subchapter;

(B) Failure to timely inform the division of conflicts of interest;

(C) Repeated failure to timely review medical case review assignments or timely submit reports to the division;

(D) Repeated failure to prepare the reports in the prescribed format; or

(E) Other issues deemed sufficient by the medical advisor or commissioner.

(f) An MQRP member shall not use his or her position to influence an insurance carrier, agent, or other person or entity in connection with a personal or other insurance related matter beyond referring to their position to demonstrate qualifications except as otherwise provided by this subchapter.

(g) Quality Assurance Panel.

(1) The medical advisor shall establish the Quality Assurance Panel (QAP) within the MQRP. All members of the QAP are members of the MQRP. They perform all of the duties of an MQRP member under Labor Code §413.0512 as well as the duties of a QAP member under Labor Code §413.05121.

(2) A member of the QAP shall also be known as an Arbiter.

(3) QAP members may provide any services to the medical advisor provided by Labor Code §413.0512 and §413.05121, including, but not limited to:

(A) serve as the chair to the quality assurance committee;

(B) serve as expert witnesses in enforcement actions as appropriate;

(C) provide an additional level of medical expertise and quality assurance to assist the medical advisor in the medical advisor's duties under Labor Code §413.0511; and

(D) perform medical case review if no other MQRP member is available in a specific area of expertise. In this case the

Arbiter would be ineligible from sitting on the ISC for the subject the Arbiter reviewed.

§180.64. MQRP Application Process.

(a) To apply to the MQRP, a person must submit an application in the form and manner required by the division demonstrating compliance with the required qualifications. The application must contain complete information as provided by subsection (b) of this section. The medical advisor may select and appoint only qualified applicants to the division's MQRP but are not required to accept all applicants who meet the requirements specified in this subchapter.

(b) The division's required application form for the MQRP, at a minimum, shall include:

(1) contact information for the health care practitioner;

(2) information about the health care practitioner's education;

(3) a description of the health care practitioner's license(s), certifications, and professional specialty, if any;

(4) a description of the health care practitioner's work history and hospital or other health care practitioner affiliations;

(5) a description of any affiliations the health care practitioner has with a workers' compensation health care network certified under Chapter 1305 of the Insurance Code or a political subdivision as described in Labor Code §504.053(b)(2);

(6) identification of and a description of all current and past medical review affiliations, including but not limited to an independent review organization (IRO), utilization review agent (URA), licensing board, and insurance carrier;

(7) information regarding the health care practitioner's current practice locations;

(8) disclosure regarding the health care practitioner's professional background, education, training, and fitness to perform the duties of an MQRP member, including disclosure of any disciplinary actions or other sanctions taken against the health care practitioner by any state licensing board, state or federal agency, and hospital or other health care institution, as well as disclosure of any voluntary relinquishments, drug and alcohol misuse, malpractice claims history and criminal history;

(9) a description of all ownership interests or other financial arrangements, such as salaried or contract employment, involving a person or their agent subject to the Act or a rule, order, or decision of the commissioner;

(10) an authorization for third parties to release information relevant to the verification of the information provided on the application to the division;

(11) an affirmation that all information provided in the application is accurate and complete to the best of the health care practitioner's knowledge; and

(12) an affirmation of understanding of the legal requirements, including confidentiality provisions, for MQRP members.

(c) A credentialing application for hospital credentialing may substitute for some items under subsection (b) of this section.

(d) The health care practitioner must inform the medical advisor of any changes to this information within 30 days after the change.

(e) The application shall be reviewed by the medical advisor.

(f) The medical advisor and the commissioner have the discretion to select and appoint an applicant to the MQRP.

(g) Membership in the MQRP is for a term of two years. The acceptance letter will include the effective date and expiration date.

(h) Membership in the MQRP is not a guarantee of any number of assignments.

(i) MQRP members shall be entitled to compensation for work assigned by the medical advisor at the following hourly rates:

(1) Doctors - Medical case reviews, ad hoc work groups, or special projects: $150 per hour.

(2) Non-Doctors - Medical case reviews, ad hoc work groups or special projects: $100 per hour.

(3) Limits on hours. A member shall not be paid for more than:

(A) five hours for a medical case review of a single case;

(B) five hours for ad hoc work group or special project service; or

(C) 20 hours in a given calendar month.

(4) The medical advisor may approve additional hours in writing upon review of a submitted narrative report or a report of an ad hoc work group.

(5) Hearings or trial preparation.

(A) Doctors - Payment for time spent in hearing or in trial preparation, in providing testimony in deposition, hearing or trial: $350 per hour.

(B) Non-doctors - Payment for time spent in hearing or in trial preparation, in providing testimony in deposition, hearing or trial: $175 per hour.

(C) An MQRP member shall not be paid for more than eight hours per day for a deposition, a hearing, trial preparation or court testimony. If travel is required, the division will pay the member for travel, lodging and per diem expenses in accordance with the Texas State Travel Management Program, 34 TAC §20.301 et seq.

(6) The division may vary the above reimbursement provisions if deemed by the division to be in the best interests of the division or the State of Texas.

(j) In accordance with Labor Code §§402.083 - 402.086, 402.091, 402.092, and 413.0513, an MQRP member may not disclose a report or other documentation prepared by the MQRP member for the division.

(k) All reports and related documents, including electronic and non-electronic data, prepared by or furnished to the member for the MQRP, are the sole property of the division.

§180.66. Medical Case Review.

The MQRP may perform medical case review for the medical advisor. Medical case review may be performed for the purposes of the medical quality review process, designated doctor certification and recertification, performance based oversight, or any other medical case review necessary to assist in performing the medical advisor's duties under the Labor Code.

§180.68. Medical Quality Review Process.

(a) The medical quality review process is medical case review initiated on the basis of complaints, plan-based audits, or monitoring

as a result of a consent order and performed in accordance with criteria adopted under Labor Code §413.05115. The medical quality review process does not include medical case review performed for the purpose of:

(1) certification and recertification of designated doctors;

(2) performance based oversight;

(3) administrative violations that do not require an expert medical opinion; or

(4) complaints regarding professionalism that do not require an expert medical opinion.

(b) A complaint must be documented in accordance with the provisions of §180.2 of this title (relating to Filing a Complaint).

(c) Nothing in this subchapter prevents referrals of complaints to another licensing or law enforcement authority.

§180.70. MQRP Training.

An MQRP member must receive training by the division prior to any assignments and at least every two years thereafter on the following topics:

(1) The requirements of this subchapter concerning the medical quality review process under §180.68 of this title (relating to Medical Quality Review Process);

(2) The division's goals regarding the medical quality review process;

(3) Administrative violations that affect the delivery of appropriate medical care;

(4) Confidentiality requirements of Labor Code §§402.083, 402.092 and 413.0513;

(5) Immunity from liability under Labor Code §413.054;

(6) The medical quality review criteria adopted under Labor Code §413.05115;

(7) The current division adopted edition of the AMA Guides to the Evaluation of Permanent Impairment and the division's adopted treatment and return-to-work guidelines; and

(8) Other topics as determined by the medical advisor and commissioner.

§180.72. Conflict of Interest.

(a) If the selected MQRP member has a conflict of interest, that member may not review the case. If all MQRP members in a particular health care specialty field as the subject of a medical case review have conflicts of interest in a case under medical case review, and the division is unable to enter into an interagency agreement pursuant to subsection (d) of this section, then the division may refer the case to the appropriate licensing authority.

(b) A conflict of interest exists if the selected MQRP member:

(1) has a familial relationship within the third degree of affinity with any party or witness related to the case;

(2) has a relationship with the subject beyond a mere acquaintance;

(3) has ever treated the injured employee whose records are being reviewed;

(4) has a financial interest in a matter as set forth in §180.24 of this title (relating to Financial Disclosure);

(5) is a medical director for an Insurance Carrier, Utilization Review Agent, or a workers' compensation health care network certified under Chapter 1305 of the Insurance Code or a political subdivision as described in Labor Code §504.053(b)(2). Medical directors can perform all functions of the MQRP and the QAP except performing individual medical case reviews or serving as Arbiters in a informal settlement conference (ISC); or

(6) has other issues deemed to be a conflict of interest by the medical advisor.

(c) If an MQRP member selected for a medical case review has a conflict of interest, the member must notify the medical advisor of the conflict before taking any further action on the case.

(d) If the medical advisor has a conflict of interest in a case, the medical advisor must recuse himself from the case and appoint the associate medical advisor to perform the role of the medical advisor in the case, including enforcement decisions and recommendations. If the associate medical advisor also has a conflict of interest in the case, the commissioner shall delegate the duties of the medical advisor, including enforcement decisions and recommendations, for that particular case, to an Arbiter.

(e) The division may enter into agreements with other state agencies to access, as necessary, expertise in health care specialty fields as determined by the medical advisor.

§180.74. MQRP Notification of Case Status.

The division shall notify MQRP panel members in writing at least quarterly of the status of and enforcement outcomes resulting from cases in the medical quality review process. A MQRP panel member shall comply with all confidentiality laws that apply to information provided under this section including Labor Code §§402.083 - 402.086, 402.091, 402.092 and 413.0513.

§180.76. Rights and Responsibilities of Persons Involved in the Medical Quality Review Process.

(a) The person subject to the medical quality review process has the right:

(1) to be notified that the person has been selected for the medical quality review process;

(2) to be notified of the disposition of the medical quality review process;

(3) to communicate with the office of the medical advisor at any time during the medical quality review process;

(4) to be represented by legal counsel, including legal counsel at the informal settlement process (ISC); and

(5) to an ISC in accordance with the provisions of this section. The ISC provides a person subject to the medical quality review process an opportunity to discuss and resolve their medical case review with Arbiters. An ISC is available under the following conditions:

(A) The case has been referred to enforcement.

(B) The request for an ISC must be in writing.

(C) The division will notify the requestor of the scheduled date of the ISC.

(D) The requestor has the right to receive all documents given to the Arbiters for review for that particular case.

(E) All information the requestor wishes the Arbiters to consider at the ISC must be received by the division no later than 15 days before the ISC. The Arbiters may refuse to consider any information not timely received by the division.

(F) The requestor may request to reschedule the scheduled date of the ISC for good cause shown, in writing, as determined by an attorney from the division's office of general counsel. Good cause means circumstances beyond the control of the requestor that reasonably prevent the requestor from attending the ISC and requesting that the ISC be rescheduled any sooner.

(G) If a requestor fails to attend an ISC as scheduled, the requestor forfeits his right to an ISC, but it does not preclude the requestor from discussing the requestor's case with the medical advisor as set forth in paragraph (3) of this subsection, from entering into a Consent Order with the division, or from defending an enforcement case at the State Office of Administrative Hearings.

(b) A person subject to a medical case review must:

(1) provide records and information requested from the office of the medical advisor in the format and manner specified by the division;

(2) provide the records and information within the time period specified in the request; and

(3) attach an accurate and completed business records affidavit to the request for records and information.

§180.78. Effective Date.

This subchapter is effective on January 1, 2013. Existing members of the MQRP on that date shall continue to serve through the terms of their contracts. New terms of membership after January 1, 2013 shall be established through the process in this subchapter.

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

Filed with the Office of the Secretary of State on July 16, 2012.

TRD-201203621
Marisa Lopez-Wagley
Assistant General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: August 26, 2012
For further information, please call: (512) 804-4703

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER D. EDUCATION

31 TAC §51.81

The Texas Parks and Wildlife Department (department) proposes an amendment to §51.81, concerning Mandatory Boater Education.

In 1997, the 75th Texas Legislature enacted House Bill (HB) 966, which amended Parks and Wildlife Code, Chapter 31 (commonly referred to as the Texas Water Safety Act) by adding §31.109, which required all boat operators born after September 1, 1984 to successfully complete an approved boater education course before operating certain vessels (vessels powered by a motor of 10 horsepower or more; windblown vessels of over 14 feet in length, personal watercraft) on public waters. HB 966 also amended the Water Safety Act by adding §31.110, which stipulated that a person is not required to comply with the mandatory boater education requirements of §31.109 if, among other things, that person is at least 18 years of age or was exempt by rule of the commission.

In 2009 the 81st Texas Legislature enacted HB 3108, which mandated the creation of an advisory panel to "study the current state of recreation safety on public waters in Texas and to make recommendations to the governor, the lieutenant governor, and the speaker of the house of representatives for improving safety." In 2010 the advisory panel submitted the required report. In this report, the panel found, among other things, that watercraft operator education will help to better prepare the operator to have a safe and successful experience on the water, that education will improve the safety of all passengers in the craft, and that with a more educated operator, passengers will be more directed to safety by the informed operator. The panel also recommended that the legislature "continue the current Texas mandatory program," but "remove the 18 years of age exemption" and "reset the born-on-date to September 1, 1993, which permits an ongoing phase-in corresponding to the current 17 year-old cap, and avoids significant state expenditures to catch up previously exempted age groups." In addition, the panel recommended that the legislature grant authority to the department to "establish an integrated temporary free deferral program for liveries, new boat sales, and dealer business purposes (show, demonstrate, and test)."

Following the submission of the interim report, the 82nd Texas Legislature in 2011 enacted HB 1395, which amended several provisions of the Water Safety Act. Section 31.109, as amended by HB 1395, provides that, no person born on or after September 1, 1993 may operate a personal watercraft or motorboat powered by a motor of greater than 15 horsepower, or a windblown vessel over 14 feet in length on public waters unless that person possesses evidence of successful completion of a boater education course approved by the department or "proof of completion of the requirements to obtain a vessel operator's license issued by the United States Coast Guard." HB 1395 also eliminated the exemption from the boater education requirements for persons who are at least 18 years of age. Persons born prior to September 1, 1993 (generally persons who are older than 19 year of age as of September 1, 2012), would not be subject to the boater education requirements of §31.110.

HB 1395 also amended §31.110, to list five situations in which a person who would otherwise be subject to the mandatory boater education requirement is not required to comply with the mandatory boater education requirements of §31.109. Two of the five situations in which a person is exempt from the boater education requirements apply only if authorized by a rule enacted by the Texas Parks and Wildlife Commission (the commission). Specifically, a person may be exempt from the boater education requirements if that person is exempt by rules of the commission as a customer of a business engaged in renting, showing, demonstrating, or testing boats, or if that person is otherwise exempt by rule of the commission.

HB 1395 also amended §31.110 to require the department by rule to establish a boater education deferral program. The boater education deferral program must be available at no cost to boat dealers, manufacturers, and distributors. Therefore, the propose amendment establishes a deferral program and a temporary exemption from the boater education requirements for persons who

have obtained the boater education deferral, and provide an exemption for persons engaged in showing, testing, or demonstrating a boat, which will result in an exemption for boat dealers, manufacturers, and distributors.

The proposed amendment would establish a one-time, three-consecutive-day (from the day of purchase through midnight of the third day following purchase) deferral of the boater education requirements of Parks and Wildlife Code, §31.109 (regarding mandatory boater education), available for a fee of $10, to persons who are 18 years of age or older. The proposed rulemaking to establish the fee is published elsewhere in this issue of the *Texas Register.* The department intends to make the deferral available for purchase through the department's license sales system. As a result, a deferral could be purchased at any of approximately 1,700 locations statewide, or through the department's website (www.tpwd.state.tx.us). In addition, a deferral could be purchased by telephone during business hours.

In developing the proposed rule, the department considered that the word "deferral" means a delay or postponement, as opposed to an exemption. The panel recommendation also referenced a "temporary" deferral program. In addition, the department considered that the purpose of boater education is to make public waters safer for all persons who use them. On that basis, the department is proposing a boater education deferral that is a one-time opportunity that will extend for no more than three days. The proposal is designed to provide a deferral program while also preserving the public safety benefits of boater education. The three-day duration of the boater education deferral will cover three consecutive days, since weekends, especially three-day holiday weekends, are typically the times of heaviest water recreation.

The proposed amendment would make the deferral available only to persons who are 18 years of age or older. The age requirement is intended to provide for a minimum level of maturity for persons who obtain the boater education deferral. A person who is 18 years of age is considered an adult for most purposes.

Additionally, the proposed amendment would prohibit a person who has purchased a boater-education deferral from supervising the operation of a vessel by another person. Under Parks and Wildlife Code, §31.110(2), a person who meets certain criteria may supervise another person who has not completed boater education. The department does not believe that a person who is required to complete boater education, but is authorized to operate a vessel as a result of the deferral, should be allowed to supervise another operator.

The proposed amendment also provides an exception from the mandatory boater education requirement for persons on a vessel that is being shown, tested, or demonstrated under a dealer's, distributor's, or manufacturer's license. As noted above, Parks and Wildlife Code, §31.110(a)(4) provides that a person may be exempt from the boater education requirements if that person is exempt by rule of the commission as a customer of a business engaged in renting, showing, demonstrating, or testing boats. Under the proposed rule, a person who is renting a boat would not be exempt from the boater education requirements, but would able to purchase a deferral. However, under the proposed rule, a person engaged in showing, demonstrating, or testing boats (including a customer and/or employee of the boat dealer, distributor, or manufacturer) would be exempt from the mandatory boater education requirements.

Parks and Wildlife Code, §31.041(d) provides for the use of the license of a boat dealer, distributor and/or manufacturer when showing, demonstrating or testing a boat. Since a customer of a business who is showing, testing or demonstrating a boat is generally under the supervision of a representative of the dealer, distributor or manufacturer, there are fewer safety concerns. Department boating accident records indicate that during the period from 2007 to the current time, there were 12 accidents involving vessels with an "AA" registration. (Vessels being shown, tested, or demonstrated have a special registration, which is also valid for 15 days following the sale of a vessel by a dealer.) These 12 accidents resulted in 13 injuries and one fatality. The department has determined that because of the low accident rate, customers involved in the show, test, or demonstration of boats should therefore be exempt from boater education requirements while engaged in those activities.

The proposed rule requires all persons other than those involved in the show, test, or demonstration of vessels to either complete the mandatory boater education course or obtain the one-time deferral. This includes persons who rent vessels from a vessel livery. The department has determined, based on water safety data, that to be consistent with the legislative directive to improve boating safety, it is necessary to require persons who rent vessels to either have obtained boater education certification or the one-time boater education deferral. There are 602,729 registered vessels in Texas, 940 of which are registered as livery vessels; therefore, rental vessels comprise 155% of all registered vessels in the state. Boating safety statistics indicate that during the period from 2007 to the current time, rented vessels were involved in 263 of 1220 (22%) of reported boating accidents, 126 of 665 (19%) of reported accident-related injuries, and 11 of 225 (5%) of boating-accident fatalities. Department statistics for the last five years also indicate that out of 263 boating accidents involving rented vessels, only three (1%) involved operators who had completed a department-approved boating education class. Although Parks and Wildlife Code, §31.111, requires vessel liveries to provide some safety instruction to customers (to include the provisions of the Water Safety Act, the operational characteristics of the rented vessel, and boating regulations that apply in the area where the rented or leased vessel will be operated), the department concludes that requiring persons who rent vessels to either complete a department-approved boater education class or obtain the proposed deferral would result in increased water safety. The proposed three-day deferral is a reasonable balance between the legislative requirement to provide a deferral and the department's obligations under both the Water Safety Act and the legislature's instructions under HB 3108 to improve water safety in the state.

Tim Spice, Boater Education Coordinator, has determined that for each year of the first five years that the rule as proposed is in effect, there will be fiscal implications to state government as a result of enforcing or administering the rule. Those implications will be positive for the state, since the proposed rule in conjunction with the proposed rulemaking to establish the fee, published elsewhere in this issue of the *Texas Register,* requires anyone who wishes to obtain a boater education deferral to purchase it at a cost of $10. The $10 fee amount was selected because it is identical to the fee amount for hunter education deferral provided in 31 TAC §53.50(b)(2).

Since the boater education deferral program is a new program, the department is unable to accurately predict the number of persons who will purchase the boater education deferral in each year of the next five years. As a result, the department is unable

to accurately predict the revenue increase associated with the proposed rule. Over the previous five fiscal years (FY 2007-FY 2011), between 8,200 and 10,900 persons per year have taken boater education courses in Texas, with a five-year average of 9,573 persons per year. Not all persons who took boater education courses were required to take the courses in order to operate a vessel. Also, not all persons who took boater education courses would be eligible for the deferral.

By comparison, the hunter education deferral has been available since 2004. During that period, the number of persons who have obtained the hunter education deferral represents about 34% of the persons who have taken hunter education. Applying that ratio to the average number of person who have taken boater education (34% of 9,573), would result in an estimate of 3,255. If 3,255 persons obtain a boater education deferral at a cost of $10/each, the total revenue to the state would be $32,550. However, as noted above, it is impossible to accurately predict the number of persons who will obtain a boater education deferral. A number of factors may also influence this number, including, but not limited to weather conditions.

There will be no fiscal implications for other units of state or local government.

Mr. Spice also has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be rules that are in compliance with the requirements of Parks and Wildlife Code.

There will be an adverse economic effect on persons required to comply with the rule as proposed; namely, the fee of $10 for the purchase of a boater education deferral.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The proposal impacts individuals who may wish to operate a motor boat or personal water craft, but would not have a direct impact on small or micro-businesses, although businesses that sell or rent motor boats and personal watercraft could see an indirect positive since the proposal could result in more persons being eligible to operate vessels. Since the proposed rule does not directly affect small businesses or micro-businesses, the department has determined that the proposed amendment will not impose any direct adverse economic effects on small businesses or micro-businesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006. There will be no fiscal implications for persons required to comply with the rule as proposed.

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

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

Comments on the proposed amendment may be submitted to Tim Spice, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8141 (e-mail: tim.spice@tpwd.state.tx.us).

The amendment is proposed under the authority of Parks and Wildlife Code, §31.110, which requires the commission to establish a boater education deferral program by rule and allows the commission to exempt from the boater education requirement a customer of a business engaged in testing, showing, or demonstrating boats.

The proposed amendment affects Parks and Wildlife Code, Chapter 31.

§51.81. Mandatory Boater Education.

(a) - (g) (No change.)

(h) A person 18 years of age or older may obtain a one-time deferral from the boater-education requirements of Parks and Wildlife Code, §31.109, after paying the fee established in §53.50 of this title (relating to Training and Certification Fees) to the department.

(1) A deferral under this subsection does not authorize any person to supervise the operation of a vessel by any other person.

(2) A boater education deferral is valid for three consecutive days beginning on the date of purchase and ending at midnight of the third day following purchase.

(i) A person engaged in showing, testing, or demonstrating boats under Parks and Wildlife Code, §31.041(d) is exempt from the boater education course requirement while showing, testing, or demonstrating a boat.

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

Filed with the Office of the Secretary of State on July 16, 2012.

TRD-201203631
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: August 26, 2012
For further information, please call: (512) 389-4775

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CHAPTER 53. FINANCE
SUBCHAPTER A. FEES
DIVISION 3. TRAINING AND CERTIFICATION FEES

31 TAC §53.50

The Texas Parks and Wildlife Department (department) proposes an amendment to §53.50, concerning Training and Certification Fees. The proposed amendment would establish a fee of $10 for a one-time deferral of boater education course requirements.

Under Parks and Wildlife Code, §31.109, no person born on or after September 1, 1993 may operate a personal watercraft or motorboat powered by a motor of greater than 15 horsepower, or a windblown vessel over 14 feet in length on public waters unless that person possesses evidence of successful completion of a boater education course approved by the department or "proof of completion of the requirements to obtain a vessel operator's license issued by the United States Coast Guard." Under the provisions of House Bill 1395, enacted by the 82nd Texas Legislature, Regular Session (2011), Parks and Wildlife Code, §31.110, was amended to require the department to establish a boater education deferral program by rule. The proposed rulemaking to establish the boater education deferral program, published elsewhere in this issue of the *Texas Register,* would allow a person to purchase a deferral of boater education requirements. This proposed amendment would establish the fee of $10 for the deferral. The department intends to make the deferral available for purchase through the department's license sales system. As a result, a deferral could be purchased at any of approximately 1,700 locations statewide, or through the department's website (www.tpwd.state.tx.us). In addition, a deferral could be purchased by telephone during business hours.

Tim Spice, Boater Education Coordinator, has determined that for each year of the first five years that the rule as proposed is in effect, there will be fiscal implications to state government as a result of enforcing or administering the rule. Those implications will be positive for the state, since the proposed rule in conjunction with the proposed rulemaking to establish the deferral option, published elsewhere in this issue of the *Texas Register,* requires anyone who wishes to obtain a boater education deferral to purchase it at a cost of $10. The $10 fee amount was selected because it is identical to the fee amount for hunter education deferral provided in subsection (b)(2).

Since the boater education deferral program is a new program, the department is unable to accurately predict the number of persons who will purchase the boater education deferral in each year of the next five years. As a result, the department is unable to accurately predict the revenue increase associated with the proposed rule. Over the previous five fiscal years (FY 2007 - FY 2011), between 8,200 and 10,900 persons per year have taken boater education courses in Texas, with a five-year average of 9,573 persons per year. Not all persons who took boater education courses were required to take the courses in order to operate a vessel. Also, not all persons who took boater education courses would be eligible for the deferral. By comparison, the hunter education deferral has been available since 2004. During that period, the number of persons who have obtained the hunter education deferral represents about 34% of the persons who have taken hunter education. Applying that ratio to the average number of person who have taken boater education (34% of 9,573), would result in an estimate of 3,255. If 3,255 persons obtain a boater education deferral at a cost of $10 each, the total revenue to the state would be $32,550. However, as noted above, it is impossible to accurately predict the number of persons who will obtain a boater education deferral. A number of factors may also influence this number, including, but not limited to weather conditions.

There will be no fiscal implications for other units of state or local government.

Mr. Spice also has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be accurate rules with respect to fee amounts.

There will be an adverse economic effect on persons required to comply with the rule as proposed; namely, the fee of $10 for the purchase of a boater education deferral.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The proposal impacts individuals who may wish to operate a motor boat or personal water craft, but would not have a direct impact on small or micro-businesses, although businesses that sell or rent motor boats and personal watercraft could see an indirect positive since the proposal could result in more persons being eligible to operate vessels. Since the proposed rule does not affect small businesses or micro-businesses, the department has determined that the proposed amendment will not impose any direct adverse economic effects on small businesses or micro-businesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006. There will be no fiscal implications for persons required to comply with the rule as proposed.

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

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

Comments on the proposed amendment may be submitted to Tim Spice, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8141 (e-mail: tim.spice@tpwd.state.tx.us).

The amendment is proposed under the authority of Parks and Wildlife Code, §31.110, which requires the commission to establish a boater education deferral program by rule.

The proposed amendment affects Parks and Wildlife Code, Chapter 31.

§53.50. Training and Certification Fees.

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

(c) Boater education fees.

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

(6) The fee for obtaining a boater education deferral is $10.

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

Filed with the Office of the Secretary of State on July 16, 2012.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: August 26, 2012
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

31 TAC §§65.80 - 65.85

The Texas Parks and Wildlife Department (department) proposes new §§65.80 - 65.85, concerning Chronic Wasting Disease (CWD). The proposed new rules, if adopted, will be in new Subchapter B within Chapter 65, concerning Disease Detection and Response. On July 10, 2012, the department confirmed the first known cases of susceptible species of wildlife infected with CWD in the state of Texas. Texas now joins 19 other states and two Canadian provinces where CWD has been detected. The proposed new rules are a result of cooperation between the department and the Texas Animal Health Commission (TAHC) to protect susceptible species of exotic and native wildlife from CWD. TAHC is the state agency charged with disease management in livestock and exotic species. The rules proposed by TAHC were published in the July 6, 2012, issue of the *Texas Register* (37 TexReg 5061).

In general, in order to minimize the risk of CWD expanding beyond the area(s) in which it currently exists, the department's proposed new rules: (1) define geographic areas the department has determined, using the best available science and data, where the detection of CWD in Texas has occurred or is probable (Containment Zones (CZ)), or there is an elevated possibility of detection (High Risk Zones (HRZ)); (2) increase disease monitoring requirements and/or restrict activities conducted under any permit authorizing the capture, release, or possession of live cervid species (cervids are a family of animals including deer, elk, moose, and caribou) regulated by the department (white-tailed deer and mule deer) in a CZ or HRZ; and (3) authorize the department's executive director to declare other geographic areas that meet the regulatory definition as a CZ or HRZ.

CWD is a fatal neurodegenerative disorder that affects cervid species such as white-tailed deer, mule deer, elk, and others (susceptible species). It is classified as a transmissible spongiform encephalopathy, a family of diseases that includes scrapie (found in sheep) and Bovine Spongiform Encephalopathy (BSE, found in cattle and commonly known as Mad Cow Disease). Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. What is known is that CWD is invariably fatal, and can be and is passed directly from deer to deer and indirectly through environmental contamination. Moreover, a high prevalence of the disease in wild populations correlates with significant deer population declines and there is evidence that hunters tend to avoid areas of high CWD prevalence. The implications of CWD for Texas and its multi-billion dollar ranching, hunting, and wildlife management economies are significant.

The department has been concerned for over a decade about the possible emergence of CWD in wild and captive deer populations in Texas. Since 2002, the department has tested more than 26,500 wild deer in Texas for CWD, and cervid producers have submitted more than 7,400 test results to the department. The department closed the Texas border in 2005 to the entry of out-of-state captive white-tailed and mule deer and has increased regulatory requirements regarding disease monitoring and record keeping. 31 TAC §65.611. (In 2010, the department clarified that the border closure was also to prevent the spread of other diseases, such as bluetongue virus, Epizootic Hemorrhagic Disease Virus, Malignant Catarrhal Fever, and Adenovirus Hemorrhagic Disease (35 TexReg 252)).

In February of 2012, the department's concern about the emergence of CWD in Texas escalated when the New Mexico Game and Fish Department notified the department that CWD had been detected in three mule deer taken by hunters in the Hueco Mountains within two miles of the Texas border. Mule deer movements in the Trans Pecos area of Texas can be 25-30 linear miles or more for an individual animal, creating the possibility that the CWD-positive mule deer reported by New Mexico may have been in Texas or had contact with mule deer now in Texas. Therefore, the department and TAHC reconstituted the CWD Task Force. This advisory group, comprised of wildlife-health professionals and cervid producers, recommended that the department take specific actions, including the designating a CZ and a HRZ surrounding the geographical points where CWD has been detected, requiring elevated disease monitoring, and the restricting of deer-management practices within those zones. The department and TAHC concurred and the department developed the proposed rules. The department will also implement mandatory check stations in CZs and voluntary check stations in HRZs for hunter-killed deer under authority of 31 TAC §65.33, concerning Mandatory Check Stations.

Concurrent with the development of the proposed new rules, the department, with the assistance and cooperation of landowners and other governmental entities, including TAHC, increased CWD surveillance and detection efforts, including the collection of 31 mule deer samples along the Texas side of the New Mexico border. On July 10, 2012, the department confirmed that two deer taken in the Hueco Mountains tested positive for CWD.

Under Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1, the department regulates the possession of white-tailed deer and mule deer for various purposes by permit. Subchapter E governs Triple T activities (trap, transport and transplant), in which game animals or game birds are captured and relocated to adjust populations. Subchapter E also governs activities similar to Triple T activities, such as Urban White-tailed Deer Removal Permits and Permits to Trap, Transport, and Process Surplus White-tailed Deer. Subchapter L governs Deer Breeder Permit (DBP) activities, which include, among other things, retention of captive-raised deer within a facility for breeding purposes and release of such deer into the wild. Subchapters R and R-1 govern Deer Management Permit (DMP) activities for white-tailed deer and mule deer, respectively, in which deer are captured and temporarily retained for breeding purposes. (The department notes that although DMPs for mule deer were authorized by the Legislature in 2011, no DMPs for mule deer have been issued because the department has deferred promulgation of regulations pending acquisition of requisite data to develop bi-

ologically defensible rules and address disease threats, including CWD.)

Triple T, DBP and DMP all authorize release of deer into the wild under certain circumstances following some period of confinement, and the regulations governing Triple T and DBP contain requirements for disease monitoring that must be met before deer can be acquired, transported, or released. Additionally, Parks and Wildlife Code, Chapter 43, Subchapter C, governs the issuance of permits for scientific research, zoological collection, rehabilitation, and educational display of protected wildlife (including cervids), any of which can include permit conditions for release to the wild.

From an epidemiological point of view, the higher the density of susceptible organisms, the more likely disease transmission is to occur. Obviously, deer kept in circumstances (facilities, pens, trailers, etc.) in which densities are many times higher than what occurs naturally are more likely to both manifest and spread communicable diseases at a higher rate or in greater numbers than would occur in the wild. Therefore, the proposed new rules are designed and intended to provide reasonable assurance that once CWD is detected it is quickly isolated and not spread as a result of deer movements under permits issued by the department.

Proposed new §65.80, concerning Definitions, sets forth the meanings of words and terms used in the subchapter, which is necessary to ensure that specialized terms are unambiguously defined for purposes of compliance and enforcement.

Proposed new §65.80(1) would define the term "Containment Zone" as "A department-defined geographic area in this state within which CWD has been detected or the department has determined, using the best available science and data, CWD detection is probable." The CWD Task Force determined that the most efficacious response to the detection of CWD or a heightened expectation of detection of CWD would be the creation of a two-tiered geographical area around the detection site (the specific geographical location where CWD is detected). The area immediately surrounding or in closest proximity to the detection site would be a "containment zone," within which the department would restrict the movement and release of susceptible species held under permits administered by the department. As explained below in connection with proposed new §§65.81 - 65.83, the proposed rules would establish an initial CZ and HRZ and would authorize the department's executive director to establish additional CZs or HRZs and modify existing zones.

The extent of a CZ is determined by using epidemiologic models correlated to the behavior and life history of the particular susceptible species. For example, as noted above, in February 2012 CWD was detected just across the New Mexico border. Since the movement of the desert mule deer can be as much as 25-30 linear miles, there was more than strong scientific possibility that infected mule deer were present in Texas, which, as noted earlier in this preamble, was recently confirmed. The department notes that white-tailed deer home ranges are much smaller than for mule deer and that any CZ and HRZ created in response to a positive CWD test result in white-tailed deer located in Texas (which has not occurred) would be based on epidemiologic models correlated to the behavior and life history of white-tailed deer.

Proposed new §65.80(2) would define "eligible mortality" as "any lawfully possessed deer aged 16 months or older that has died." Under the provisions of proposed new §65.81 and §65.82, the department would condition the acquisition, movement, transfer, or release of deer under a DBP by requiring the permittee to comply with certain disease testing requirements and results. Because of the long incubation period of the CWD infectious agent, deer in a DBP facility must be monitored for an extended period of time to determine if CWD is present. For the same reason, there is a low probability that CWD will be detected in deer of less than 16 months in age, even though such deer could be infected. Therefore, the department's disease testing requirements for DBP facilities require that deer mortalities be tested, but not if the mortality involves a deer younger than 16 months of age.

Proposed new §65.80(3) would define the term "High Risk Zone" as "A department-defined geographic area in this state adjacent to a CZ, within which the department has determined, using the best available science and data, that there is an elevated possibility of CWD being detected." As noted earlier in the discussion of proposed new §65.80(1), regarding the definition of "containment zone," the CWD Task Force determined that the most efficacious response to the detection of CWD or a heightened expectation of detection of CWD would be the creation of a two-tiered geographical area around the detection site or area of heightened expectation of discovery. The area immediately surrounding the detection site would be a "containment zone," which would in turn be contiguous with a "high risk zone," within which the department would restrict the movement and release of susceptible species held under permits administered by the department. In the same fashion as used in the determination of a CZ, the department would determine the extent of a HRZ by using epidemiologic models correlated to the behavior and life history of the susceptible species.

Proposed new §65.80(4) would define "susceptible species" as "any species of wildlife resource that is susceptible to CWD." The definition is necessary to provide a convenient term for ease of reference, rather than repeating the list of susceptible species throughout the rules.

Proposed new §65.81, concerning Containment Zones; Restrictions, would establish the physical boundaries of CZs and articulate the specific requirements for permit holders to conduct activities within the CZ. The proposed new section would create an initial CZ in the area of West Texas where CWD has been discovered and additional CWD detection is probable: portions of Culberson, El Paso, and Hudspeth counties. Additional CZs may be added elsewhere in the state if necessary, and existing CZs may be modified. Proposed new §65.81(2) sets forth the restrictions that apply within the CZ to holders of permits issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, and R-1.

Proposed new §65.81(2)(A) would prohibit any person within a CZ from conducting any activity involving a susceptible species under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, R, or R-1 without express written authorization from the department to conduct the activity within a CZ. (Activities under permits issued under Chapter 43, Subchapter L regarding DBPs are not included because they are addressed in proposed §65.81(2)(B)). For instance, Triple T permits authorize the trapping of deer for transplantation elsewhere. In a CZ, where the probability of CWD is high, allowing the trapping and movement of deer to other areas of the state would be ill-advised. Similarly, allowing the release of Triple T deer and rehabilitated deer or allowing the concentration of wild deer in close confinement as a result of DMP activities carry elevated risks. The department concludes that prohibiting all

such activity is the most prudent and effective method to ensure that susceptible species with elevated risk are not artificially concentrated or moved within or beyond a CZ.

With respect to DBP activities, proposed new §65.81(2)(B) would prohibit any person from removing, authorizing the removal of, or causing the removal of a live breeder deer from a facility permitted under Parks and Wildlife Code, Chapter 43, Subchapter L, that is located within a CZ unless the facility has a record of test results of "not detected" for all eligible deer that died within the facility in the immediately preceding five-year period and holds at least a Level C herd status with the TAHC (4 TAC §40.3). In addition, the facility must be considered "movement qualified" pursuant to 31 TAC Chapter 65, Subchapter T, which governs SBP activities. Allowing deer held under a DBP at a facility within a CZ to be moved outside of the CZ creates a potential for spreading CWD. However, the department recognizes that a DBP facility that has tested 100% of eligible mortalities with results of "not detected" and that has achieved a Level "C" status from TAHC is, from an epidemiological point of view, not likely a reservoir for CWD. TAHC designates Level C status for captive herds that have a minimum of four years of test results indicating the absence of CWD, which is less stringent than the standard established in proposed new §65.81(2), but requires an inventory verification to be performed annually by an accredited veterinarian and stipulates that additions of animals from lower herd-certification statuses causes an equivalent lowering of status for the receiving herd. Therefore, the effect of the proposed new provisions is to ensure that in order for a breeder deer to be moved from a DBP facility within a CZ, the department must have confidence that no deer within the facility have been infected with CWD. Permittees would be able to introduce breeder deer to an existing DBP facility within a CZ, but could not consequently move breeder deer out of the facility unless the requirements of the proposed new section had been met. Proposed new §65.81(2)(C) would prohibit the liberation of susceptible species into the wild within a CZ. The proposed new provision is necessary to avoid creating additional disease reservoirs. Proposed new §65.81(2)(D) would stipulate that if the department receives an application for a deer breeder permit for a new facility that is to be located within an area designated as a CZ, the department will issue the permit but will not authorize the possession of deer within the facility so long as the CZ designation exists. Parks and Wildlife Code, §43.352 requires the department to issue a DBP to an applicant who meets the statutory and regulatory requirements for permit issuance; however, the commission's rulemaking authority under Parks and Wildlife Code, §43.357(b) authorizes the promulgation of rules governing the possession of breeder deer. The department recognizes that the likelihood that a person will desire to locate a new DBP facility in an area where CWD has been confirmed is remote; however, the possibility must be addressed. CWD is transmitted not only by direct contact but also indirectly through environmental contamination. Thus, the area within a CZ must itself be treated as if it were a vehicle for transmission of CWD. It follows that if a deer breeder facility were to be built in a CZ, any deer introduced into the facility would become potential reservoirs for CWD, a situation that should be avoided.

Proposed new §65.82, concerning High Risk Zones; Restrictions, would establish the physical boundaries of HRZs and articulate the specific requirements regarding activities of permit holders within the HRZ. The proposed new section would create an initial HRZ in portions of Culberson, Jeff Davis, and Reeves counties. HRZs may be added or modified as necessary. The HRZ created by the proposed new section comprises an area that abuts the CZ, defined in proposed new §65.81(1), where CWD has been detected. The department, using the best available science and data, has determined that there is an increased likelihood that CWD may be detected within the HRZ described in proposed §65.82(1).

Proposed new §65.82(2) sets forth the restrictions that apply within the HRZ to holders of permits issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, and R-1. Proposed new §65.82(2)(A) would prohibit the trapping of susceptible species within the HRZ unless a minimum of 300 white-tailed deer or mule deer at least 16 months of age from the prospective trap site have been tested for CWD and test results of "not detected" have been returned. The department has selected the sample size of 300 because it represents the minimum number of test results that are necessary to provide 95% confidence that CWD will be detected if at least one in 100 deer at the trap site are infected. Because CWD can be transmitted by direct or indirect contact with an infected animal as well as through environmental contamination of a trap site (for example, a shared water source), the HRZ restrictions are designed to prohibit any activity that has the potential to spread CWD beyond the HRZ.

With respect to DBP activities, proposed new §65.82(2)(B) would prohibit any person from removing, authorizing the removal, or causing the removal of a live breeder deer from a facility permitted under Parks and Wildlife Code, Chapter 43, Subchapter L, that is located within a HRZ unless the facility has a record of test results of "not detected" for all eligible mortalities within the facility in the immediately preceding five-year period and holds at least a Level C herd status with the TAHC. In addition, the facility must be considered "movement qualified" pursuant to 31 TAC Chapter 65, Subchapter T, which governs DBP activities. As noted earlier in the discussion of CZs, allowing deer held under a DBP at a facility within a HRZ to be moved outside of the HRZ creates a potential for spreading CWD. However, the department recognizes that a DBP facility that has tested 100% of eligible mortalities with results of "not detected" and that has achieved a Level "C" status from TAHC is, from an epidemiological point of view, not a likely reservoir for CWD. TAHC designates Level C status for herds that have a minimum of four years of test results indicating the absence of CWD, which is less stringent than the standard established in proposed new §65.82(2)(B), but requires an inventory verification to be performed annually by an accredited veterinarian and stipulates that additions of animals from lower herd-certification statuses causes an equivalent lowering for the receiving herd. Therefore, the effect of the proposed new provisions is to ensure that in order for a deer to be moved from a DBP facility within a HRZ, the department must have sufficient confidence that no deer within the facility have been infected with CWD. Such facilities would therefore be authorized to conduct normal activities under the DBP. Qualified permittees would be able to introduce breeder deer to DBP facility within a HRZ, but could not consequently move deer out of the facility unless the requirements of the proposed new section had been met. Proposed new §65.82(2)(C) would prohibit the liberation of deer into the wild within a HRZ, except for wild-trapped deer being liberated from a DMP pen. The proposed new provision is necessary to avoid creating additional disease reservoirs. Proposed new §65.82(2)(D) would prevent any person from introducing deer held under a permit issued under Parks and Wildlife Code, Chapter 43, Subchapter L, into a DMP pen that is within a HRZ. The proposed new provision is necessary because deer

trapped under a DMP are free-ranging deer that are not subject to herd monitoring. Thus, the originating DBP facility could not accept the breeder deer following DMP activities without losing its "movement qualified" status. Furthermore, the release of susceptible species itself would potentially create another vector.

Figure: 31 TAC Chapter 65--Preamble

Proposed new §65.83, concerning Powers and Duties of the Executive Director, would set forth the obligations and limitations of the executive director with respect to the subchapter. Proposed new §65.83(a) would authorize the executive director to designate any geographic area of this state meeting the definition of a CZ or a HRZ as a CZ or HRZ. The proposed new provision is intended to provide the department with a method of responding quickly to scientific information indicating that CWD is present in the state or that there is an elevated possibility of finding CWD in the state. Being able to immediately impose movement and release restrictions is critical to preventing the spread of CWD. Proposed new §65.83(b) would require the executive director to notify the presiding officer of the commission prior to taking any action under the provisions of proposed new subsection (a). Proposed new subsection (c) would set forth public notice provisions, which is necessary because of the importance of letting landowners, hunters, permit holders, and other interested or affected persons know about department actions that might affect them. Proposed new subsection (d) would establish that designations of CZs and HRZs are effective immediately and applicable to all permits issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, and R-1. In order to provide the greatest possible protection to native wildlife, it is imperative that the department be able to act immediately to isolate CWD and prevent it from being spread by any department-permitted activity. Proposed new subsection (e) would require the department to initiate rulemaking to adopt all CZs and HRZs by rule as soon as practicable. Although the department believes that being able to make CZs and HRZs immediately effective is crucial to being able to contain CWD, it also believes that there should be an additional rulemaking process following the provisions of the Administrative Procedure Act to add CZs and HRZs to the department's codified rules.

Proposed new §65.84, concerning Preemption, would make it clear that to the extent that a provision of the proposed new subchapter conflicts with a provision of another subchapter in Chapter 65, the provisions of Subchapter B would control. The proposed new section is necessary to eliminate potential regulatory confusion.

Proposed new §65.85, concerning Penalties, would state the statutory penalties for violations of the proposed new rules for ease of reference.

Mitch Lockwood, Big Game Program Director, has determined that for each year of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules as proposed, as department personnel currently allocated to the administration and enforcement of the permit programs affected will administer and enforce the rules as part of their current job duties.

Mr. Lockwood also has determined that for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the protection of wild, native deer from communicable diseases, thus ensuring the public of continued enjoyment of the resource and also ensuring the continued economic impacts of hunting in Texas. Additionally, the protection of native deer herds will have the simultaneous collateral benefit of protecting captive herds, and maintaining the economic viability of deer breeding operations.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. These guidelines state that "[g]enerally, there is no need to examine the indirect effects of a proposed rule on entities outside of an agency's regulatory jurisdiction." The guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The guidelines also list examples of the types of costs that may result in a "direct economic impact." Such costs may include costs associated with additional recordkeeping or reporting requirements; new taxes or fees; lost sales or profits; changes in market competition; or the need to purchase or modify equipment or services. As explained in more detail below, the department has determined that except for DBPs, the proposed rules will not have an adverse impact on small or micro-businesses.

The department recognizes that Triple T and DMP holders in many cases obtain such permits as part of an effort to enhance the quality of a deer herd located on a specific property. In turn, such landowners may seek to obtain a higher fee for hunting opportunities based on the perception of a higher quality hunting experience. However, adverse economic impacts to the pricing structure of hunting opportunity as a result of the proposed new rules, if they occur, are indirect at best. The rules do not directly impact a landowner's ability to charge a fee for a hunting opportunity on the landowner's property. In addition, any deer that are introduced to a property as a result of a Triple T or DMP continue to be a public resource.

Scientific Educational, Zoological, and Rehabilitation Permits

There will be no adverse economic impacts to persons holding permits issued under Parks and Wildlife Code, Chapter 43, Subchapter C (permits for rehabilitation, scientific collection, educational display, and zoological display). Current rules (31 TAC §69.44(b) and §69.302) prohibit the sale of protected wildlife held under those permits. Since persons possessing these permits undertake permitted activities on a non-profit basis, any person or entity involved in permitted activities would not be engaged in such activities for the purpose of making a profit and would thus not be considered a small or micro-business as defined in Government Code, §2006.001.

Triple T Permits

There will be no adverse economic effects to holders of Triple T permits. Triple T permits authorize only the trapping, transporting, and transplantation of a public resource. As a result, wildlife trapped under a Triple T may not be sold, bartered, or exchanged for anything of value. (Parks and Wildlife Code, §1.011; 31 TAC §65.117(a)(6)). Therefore, persons engaged in such activities would not suffer a direct adverse economic effect from the proposed rules. Current department rules governing Triple T permit issuance provide for the denial of a permit if the de-

partment determines that release of a game animal or game bird may detrimentally affect existing populations or systems (31 TAC §65.103(c)(3)). The rules as proposed would further clarify this authority by prohibiting the trapping of susceptible species from within a CZ. Such trapping and release activities would have the potential to detrimentally affect other populations of deer by exposure to animals possibly infected with CWD. The proposed new rules would allow the trapping of deer from an HRZ if disease-testing requirements have been met.

Deer Management Permits

There will be no adverse economic impact to holders of DMPs. As noted previously, the department has not promulgated rules governing DMPs for mule deer; therefore, the only DMP activities affected by the proposed new rules would be DMPs issued for white-tailed deer. The purpose of the DMP is to allow landowners and land managers to conduct selective breeding of wild deer trapped under a department-approved deer management plan. A DMP authorizes the permittee to temporarily detain wild white-tailed deer for breeding purposes, including deer introduced to the DMP pen via Triple T permit and/or DBP. (A discussion of the impact of the proposed rules on DMP and Triple T permits is contained elsewhere in this preamble.) Except for DBP deer, which may be returned to a DBP facility (but if liberated cease to be DBP deer), deer held pursuant to a DMP must be released into the wild following breeding activities in a DMP pen and may not be sold (Parks and Wildlife Code, §1.011, §43.621; 31 TAC §65.133(g)). As a result, persons engaged in such activities would not suffer a direct small or micro-business adverse economic effect from the proposed rules.

Deer Breeder Permits

Parks and Wildlife Code §43.357(a) authorizes a person to whom a DBP has been issued to "engage in the business of breeding breeder deer in the immediate locality for which the permit was issued" and to "sell, transfer to another person, or hold in captivity live breeder deer for the purpose of propagation." As a result, unlike the other permits impacted by the proposed rules, DBPs authorize persons to engage in a business.

Government Code, §2006.001(1) defines a small or micro-business as a legal entity "formed for the purpose of making a profit" and "independently owned and operated." A micro-business is a business with 20 or fewer employees. A small business is defined as a business with fewer than 100 employees, or less than $6 million in annual gross receipts. Although the department does not require holders of DBPs to file financial information with the department, the department believes that most of the persons holding DBPs would qualify as a small or micro-business. Since the rules as proposed would impact the ability of a DBP to engage in certain activities undertaken to generate a profit, the proposed rules may have an adverse impact on persons with DBPs.

The department has determined that if adopted, the proposed new rules would result in immediate adverse economic impacts to one permittee, who holds a DBP for a facility within the initial proposed HRZ. No other small or micro-businesses or persons required to comply would incur any immediate direct adverse economic impacts; however, if additional CZs or HRZs are created, additional small and micro-businesses could be affected. Therefore, this analysis will address the potential fiscal impacts to all deer breeders in the state should additional CZs and HRZs be necessary.

The proposed new rules would allow DBP activities to continue within a CZ or HRZ only if a DBP facility has test results for all eligible mortalities of "not detected" for CWD within the immediately preceding five-year period, has at least a TAHC Level C herd status and is considered "movement qualified." Department records indicate that there are currently 1,252 persons who hold a DBP in the state, and 36 of them have both TAHC Level C herd status or higher and a five-year history of CWD test results of "not detected" and no CWD results of "detected." These 36 permittees, assuming they remain in compliance, will not be affected by the proposed new rules, because they meet the movement requirements of the proposed new rules.

The proposed new rules could, however, result in adverse economic impacts for DBP holders in CZs or HRZs who do not have a five-year history of "not detected" results, are not Class C status or higher from TAHC, and are not movement qualified under department rules. There are currently 1,216 DBP holders who do not meet the movement requirements of the proposed new rules and could be directly impacted by proposed new rules, depending on the location of any future CZs or HRZs. However, it should be noted that this number assumes that the entire state would be designated as a CZ or HRZ, which is not likely. In addition, the variety of business models utilized by permittees makes meaningful estimates of potential adverse economic impacts difficult to accurately quantify. Although a DBP gives the DBP holder the privilege to buy and sell breeder deer and many DBP holders participate in a market for breeder deer, other DBP holders are interested only in breeding and liberating deer on their own property for hunting opportunity. Once a breeder deer is liberated, it cannot be returned to a DBP facility and assumes the same legal status as all other wild deer. Thus, if the DBP holder is engaged primarily in buying and selling deer, the potential adverse economic impact is greater than that for a DBP holder who engages in DBP activities primarily for purposes of release onto that person's property. The department does not require DBP holders to report the buying or selling prices of deer. However, publicly available information indicates that sale prices, especially for buck deer, may be significant. The sale price for a single deer may range from thousands of dollars to hundreds of thousands of dollars.

Although the rules as proposed would cause an adverse economic impact to DBP holders in CZs or HRZs who do not meet the disease-testing and TAHC herd level requirements to continue otherwise permitted activities, the rules do provide for DBP holders to continue permitted activities in either a CZ or HRZ if they have met the disease-testing and herd-status requirements of the rules. As a result, DBP holders may incur costs related to testing and monitoring.

Under current rules (31 TAC Chapter 65, Subchapter T), a DBP facility is not considered "movement qualified" and the DBP holder may not remove, authorize, or cause the removal of a live breeder deer from a facility unless the facility is certified by TAHC as having a CWD Monitored Herd Status of Level A or higher; less than five eligible breeder deer mortalities have occurred within the facility as of May 23, 2006; or CWD test results of not detected have been returned from an accredited test facility on a minimum of 20% of all eligible breeder deer mortalities occurring within the facility as of May 23, 2006. Under TAHC rules (4 TAC §40.3), Level A herd status is achieved with one full year of participation without CWD being confirmed.

Under current TAHC rules at 4 TAC §40.3, Level C status is achieved with "four to five" years of herd monitoring with no con-

firmation of CWD. In addition, the herd must be inspected annually by an accredited veterinarian. If animals from a source with a lower or no herd status are added, the herd status reverts to the level of the source herd. Therefore, for any given DBP within a CZ or HRZ that is currently qualified to move or release deer, compliance with the proposed new rules could be achieved in five years or less and at the additional direct economic cost of CWD testing of all eligible mortalities and the cost of the annual inventory by an accredited veterinarian.

The department cannot predict the number of mortalities that will occur in any given facility in a year; however, mortality data annually reported to the department for the last five years indicates that the average number of eligible mortalities per DBP facility per year is 4.256. The cost of a CWD test administered by the Texas Veterinary Medicine Diagnostic Lab (TVMDL) on a sample collected and submitted by the DBP holder is minimum of $42, consisting of a $36 test fee per prepared sample plus a $6 submission fee (which may cover multiple samples submitted at the same time). The maximum CWD test fee is $82, consisting of $36 per unprepared sample, a $6 submission fee, a $20 fee to remove the sample from the head, and a $20 head-disposal fee. The cost of an annual inventory by an accredited veterinarian is estimated by TAHC to be approximately $250.

Using the eligible mortality data (rounded up from 4.256 to five eligible mortalities per facility per year), the department estimates that the direct economic impact of testing in order to become "movement qualified" under the proposed new rules would be between $460 and $660 per year for each permittee who desires to meet to criteria for moving deer under the proposed new rules. If the sample is collected, fixed, and submitted by a private veterinarian, the cost could be higher.

As a result, the difference between the current rules and the proposed new rules would be the requirement to test all eligible mortalities (rather than 20%, as currently required) for whatever additional time is required in order to achieve the Level C status, and the cost of an annual inventory conducted by an accredited veterinarian. Such costs would be necessary only if a DBP holder wishes to engage in activities involving movement of deer described in the proposed rules.

The department notes that because CWD has been proven to be transmissible by direct contact (including through fences) and via environmental contamination, there may be adverse economic impacts unrelated to the proposed new rules in the event that CWD is confirmed near a DBP facility due to the possible reluctance of potential customers to purchase deer from a facility in an area where CWD has been confirmed. Additionally, in the absence of the proposed new rules, if CWD is detected within a DBP facility, there could be lost revenue to the permittee since potential purchasers who are aware of the potential of CWD would likely refrain from purchasing deer from such a facility. Therefore, the proposed new rules, by providing a mechanism to minimize the spread of CWD, could also protect the economic interests of the regulated community.

The department considered several alternatives to achieve the goals of the proposed new rules while reducing potential adverse impacts on small and micro-businesses and persons required to comply. The department considered proposing no rules. The department recognizes that many of the restrictions imposed by the rules could be achieved under current rules and statutes. This alternative was rejected because a regulation that clearly sets out the restrictions on the regulated community is more likely to achieve the desired result of stemming the spread of CWD. The department concluded that the need to protect the wildlife resources that sustain the state's multi-billion-dollar hunting industry outweighs the temporary adverse impacts to small and micro-businesses and persons required to comply.

The department also considered, in lieu of a regulatory response, the alternative of attempting to eliminate CWD in an area by conducting a depopulation event, that is, killing every deer possible inside a certain perimeter in the hopes of eliminating the reservoir for the disease. This alternative was rejected at this time because to be effective, the geographical extent of the disease must be known. Furthermore, removing every animal that exists within an affected area does not remove prions (the infectious agent that causes CWD), which can infect susceptible animals introduced to or inhabiting the environment. The department notes that depopulation has proven to be successful in rare instances; however, in most circumstances, removal of all animals, even when the distribution of the disease is known, has proven to be difficult or impossible to achieve in free-ranging populations.

The department also considered imposing less stringent testing requirements in order to allow DBP holders to continue moving and/or releasing breeder deer. This alternative was rejected because the testing requirements in the proposed new rules reflect mathematical models aimed at producing high confidence that CWD is or is not present. Less stringent testing requirements would reduce confidence and therefore frustrate the ability of the department to respond in the event that CWD actually is present. The department also believes that rigorous testing assures the hunting public and the regulated community that wildlife resources are safe and reliable.

Another alternative considered was a CZ or HRZ that is more narrowly drawn. This alternative was rejected because the size of a CZ or HRZ is biologically determined by the range of the resource and is being used by both TAHC and the department. If the department chose to implement a smaller CZ or HRZ area, it would increase the risk of spreading CWD and introduce regulatory confusion.

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

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules. Any impacts resulting from the discovery of CWD in or near private real property would be the result of the discovery of CWD and not the proposed rules.

Comments on the proposed rules may be submitted to Mitch Lockwood, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (830) 792-9677 (e-mail: mitch.lockwood@tpwd.state.tx.us); or via the department's website at www.tpwd.state.tx.us.

The new rules are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make

regulations governing the possession of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; and Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure. (Although as noted previously, the department has not yet established the DMP program for mule deer authorized by Subchapter R-1.)

The proposed new rules affect Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, and R-1.

§65.80. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words in this subchapter shall have the meanings assigned by Parks and Wildlife Code.

(1) Containment Zone (CZ)--A department-defined geographic area in this state within which CWD has been detected or the department has determined, using the best available science and data, CWD detection is probable.

(2) Eligible mortality--Any lawfully possessed deer aged 16 months or older that has died.

(3) High-Risk Zone (HRZ)--A department-defined geographic area in this state adjacent to a CZ, within which the department has determined, using the best available science and data, that there is an elevated possibility of CWD being detected.

(4) Susceptible species--Any species of wildlife resource that is susceptible to CWD.

§65.81. Containment Zones; Restrictions.

The areas described in paragraph (1) of this section are CZs.

(1) Containment Zones.

(A) Containment Zone 1: That portion of the state within the boundaries of a line beginning in Culberson County where State Highway (S.H.) 62-180 enters from the State of New Mexico, thence southwest along S.H. 62-180 to the intersection with S.H. 54, thence south along S.H. 54 to Interstate Highway (IH) 10; thence west along IH 10 to S.H. 20, thence northwest along to S.H. 20 to Farm Road 1088, thence south along Farm Road 1088 to the Rio Grande, thence northwest along the Rio Grande to the Texas/New Mexico border.

(B) Existing CZs may be modified and additional CZs may be designated as necessary by the executive director as provided in §65.83 of this title (relating to Powers and Duties of the Executive Director).

(2) Restrictions.

(A) No person within a CZ may conduct any activity involving a susceptible species under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, R, or R-1 without express written authorization from the department to conduct the activity within a CZ.

(B) No person shall remove, authorize the removal of, or cause the removal of a live susceptible species from a facility permitted under Parks and Wildlife Code, Chapter 43, Subchapter L, that is located within a Containment Zone, unless:

(i) CWD test results of "not detected" have been returned from an accredited test facility on all eligible mortalities that occurred within the facility within the five-year period immediately preceding the removal; and

(ii) the facility:

(I) has obtained Level "C" status as defined by 4 TAC §40.3 (relating to Herd Status Plans for Cervidae); and

(II) the facility is considered movement qualified pursuant to Subchapter T of this chapter (relating to Deer Breeder Permits).

(C) No person shall liberate a susceptible species into the wild within a CZ.

(D) If the department receives an application for a deer breeder permit for a new facility that is to be located within an area designated as a CZ, the department will issue the permit but will not authorize the possession of susceptible species within the facility so long as the CZ designation exists.

§65.82. High Risk Zones; Restrictions.

The areas described in paragraph (1) of this section are HRZs

(1) High Risk Zones.

(A) High-Risk Zone 1: That portion of the state lying within a line beginning in Reeves County where the Pecos River enters from New Mexico, thence southeast along the Pecos River to Interstate Highway (IH) 20, thence west along IH 20 to IH 10, thence west to State Highway (S.H.) 54, thence northwest along S.H. 54 to S.H. 62-180, thence northeast along S.H. 62-180 to the Texas/New Mexico border.

(B) Existing HRZs may be modified and additional HRZs may be designated as necessary by the executive director as provided in §65.83 of this title (relating to Powers and Duties of the Executive Director).

(2) Restrictions.

(A) The department will not authorize the trapping of susceptible species in a HRZ unless:

(i) a minimum of 300 CWD test results of "not detected" have been returned from an accredited test facility for eligible mortalities of susceptible species obtained from the trap site; and

(ii) zero CWD test results of "detected" have been returned from an accredited test facility.

(B) No person shall remove, or authorize, or cause the removal of a live susceptible species from a deer breeder facility permitted under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L, that is located in a HRZ unless:

(i) CWD test results of "not detected" have been returned from an accredited test facility on all eligible mortalities that occurred within the facility within the preceding five-year period;

(ii) the facility:

(I) has obtained Level "C" status as defined by 4 TAC §40.3 (relating to Herd Status Plans for Cervidae); and

(II) the facility is considered movement qualified pursuant to Subchapter T of this chapter (relating to Deer Breeder Permits).

(C) Except for wild-trapped deer being liberated from a DMP pen, no person shall liberate a susceptible species into the wild within a HRZ.

(D) No person may introduce deer held under a permit issued under Parks and Wildlife Code, Chapter 43, Subchapter L, into a DMP pen that is within a HRZ.

§65.83. Powers and Duties of the Executive Director.

(a) The executive director may designate any geographic area in this state a CZ or HRZ if the area meets the applicable definition set forth in §65.80 of this title (relating to Definitions).

(b) The executive director shall notify the presiding officer of the commission prior to taking any action under the provisions of subsection (a) of this section.

(c) The executive director shall ensure that the department makes a reasonable effort to provide public notice in the event that a CZ or HRZ is declared.

(d) The designation of a CZ or HRZ under the provisions of subsection (a) of this section is:

(1) effective immediately; and

(2) applicable to all permits issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, and R-1.

(e) The department shall initiate rulemaking to adopt any CZ and HRZ designated by the executive director as soon as practicable.

§65.84. Preemption.

To the extent a provision of this subchapter conflicts with a provision of another subchapter of this chapter, this subchapter controls.

§65.85. Penalties.

A person who violates any provision of this subchapter commits an offense and is subject to the penalties prescribed by Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R or R-1, as applicable.

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

Filed with the Office of the Secretary of State on July 16, 2012.

TRD-201203633
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: August 26, 2012
For further information, please call: (512) 389-4775

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER J. HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)

10 TAC §5.1005

The Texas Department of Housing and Community Affairs withdraws the proposed new §5.1005 which appeared in the April 27, 2012, issue of the *Texas Register* (37 TexReg 2933).

Filed with the Office of the Secretary of State on July 16, 2012.

TRD-201203615
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: July 16, 2012
For further information, please call: (512) 475-3916

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER O. FOSTER AND ADOPTIVE HOME DEVELOPMENT

40 TAC §700.1502

The Department of Family and Protective Services withdraws the proposed amendment to §700.1502 which appeared in the May 18, 2012, issue of the *Texas Register* (37 TexReg 3680).

Filed with the Office of the Secretary of State on July 12, 2012.

TRD-2012003592
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: July 12, 2012
For further information, please call: (512) 438-3437

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SUBCHAPTER Q. PURCHASED PROTECTIVE SERVICES

40 TAC §700.1718, §700.1726

The Department of Family and Protective Services withdraws the proposed amendments to §700.1718, and §700.1726 which appeared in the May 18, 2012, issue of the *Texas Register* (37 TexReg 3680).

Filed with the Office of the Secretary of State on July 12, 2012.

TRD-2012003593
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: July 12, 2012
For further information, please call: (512) 438-3437

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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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER J. HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)

10 TAC §§5.1001 - 5.1004

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 5, Subchapter J, §§5.1001 - 5.1004, concerning the Homeless Housing and Services Program (HHSP), with changes to the proposed text as published in the April 27, 2012, issue of the *Texas Register* (37 TexReg 2933). Section 5.1005 has been withdrawn as a result of substantial public comment in opposition to the section as proposed.

JUSTIFICATION FOR RULE ACTION. The rule is adopted to set forth requirements on how the Department will provide HHSP funds to eligible municipalities in order provide funds to support facilities and/or services to address the issues presented by homelessness, thereby improving lives and strengthening communities. Section 5.1005 is withdrawn based on substantial public comment opposed to the new rule.

SUMMARY OF COMMENTS. Comments were accepted from April 27, 2012 through May 29, 2012, with comments received from: (1) Arlington Housing Authority, (2) Bread of Life, Inc., (3) Child Crisis Center of El Paso, (4) City of Corpus Christi, (5) City of Dallas, (6) City of Fort Worth, (7) Haven for Hope, (8) Mother Teresa Shelter, Inc., (9) SEARCH Homeless Services in Houston, and (10) the YWCA of El Paso.

NOTE: The proposed rule posted on the Department's website included a typographical error wherein a zero was omitted from the section numbers. Commenters referenced the incorrect numbering in their comments; however, it was clear to staff the rule number they were actually referencing.

With regard to §§5.1001 - 5.1003, staff made a clerical correction to the citation to the Texas Government Code in order to provide for greater consistency with the manner of citation in the Texas Administrative Code in general.

§5.1002. Distribution of Funds.

STAFF RESPONSE: No comments received. Based on the withdrawal of §5.1005, staff removed language that referenced §5.1005.

§5.1003(c)(2). General Homeless Housing and Services Program (HHSP) Requirements.

STAFF RESPONSE: No comments received. However, in response to other comments to §5.1005 from commenter 7 that allocations should be subject to a highly standardized system of performance goals and expenditure benchmarks, staff recommends deletion of the word "performance" to make clear that the term "benchmarks" refers to all benchmarks.

§5.1004. Formula.

STAFF RESPONSE: No comments received with the exceptions stated herein. Based on the withdrawal of proposed §5.1005, staff removed language that referenced §5.1005. Staff corrected a typographical error in §5.1004(b), where "(a)(1) - (4)" has been revised to read "(a)(1) - (5)". Staff also made a clerical correction of the use of the "%" symbol in order to use the term "percentage" to be consistent with terminology used in the Texas Administrative Code. Staff further added §5.1004(a)(5) in response to the ten commenters providing comments on §5.1005 who commented that the formula used should remain the same as previously presented. The components of the formula, as presented to and approved by the Board at the September, 2011 Board meeting, included the component "Homeless Point in Time Count." This addition of §5.1004(a)(5) in response to these commenters clarifies that the formula includes the population of homeless persons, defined as that percentage of the municipality's population comprised of homeless persons, based on the most recently available Point-In-Time Counts prepared by the Continuums of Care in Texas.

§5.1005. Innovative Programs to Reduce Homelessness.

COMMENT SUMMARY: All ten organizations who submitted comments recommended deletion of §5.1005 and stated that the competitive process would impact the ability of the cities to plan programs which meet their local needs and address the needs in their local plan to end chronic homelessness.

STAFF RESPONSE: Staff agrees with the concerns expressed by the commenters and recommends withdrawal of §5.1005.

BOARD RESPONSE: On July 10, 2012, the Board approved staff recommendations and approved the final order adopting §§5.1001 - 5.1004 as revised, the withdrawal of §5.1005, and such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

STATUTORY AUTHORITY: The new sections are adopted pursuant to the authority of the Texas Government Code Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs, including specifically Texas Government Code §2306.2585, which authorizes the Department to adopt rules

to govern the administration of the Homeless Housing and Services Program. To the extent that funding sources other than unrestricted funds are utilized, such as housing trust fund balances, any HHSP activities conducted with such funds may be subject to additional restrictions. The adoption affects no other code, article, or statute.

§5.1001. Purpose.

In accordance with Texas Government Code §2306.2585, the purpose of the Homeless Housing and Services Program (HHSP) is to provide for the construction, development, or procurement of housing for homeless persons, and to provide local programs to prevent and eliminate homelessness.

§5.1002. Distribution of Funds.

Pursuant to the authority of Texas Government Code §2306.2585, the Homeless Housing and Services Program (HHSP) is available to any municipality in Texas with a population of 285,500 or more. Whenever HHSP funds are made available to any of those municipalities they shall, subject to the requirements of this rule and be distributed in accordance with the formula set forth in §5.1004 of this chapter (relating to Formula).

§5.1003. General Homeless Housing and Services Program (HHSP) Requirements.

(a) Each municipality or entity that had in effect as of January 1, 2012, a contract with the Texas Department of Housing and Community Affairs (the "Department") to administer HHSP funds will remain a designated entity to receive HHSP funds in its municipality, whether that entity is the municipality itself or another entity. The Department may add to or change those entities in its discretion based on consideration of the factors enumerated in paragraphs (1) - (4) of this subsection. If the Department proposes to add or change any such entity(ies) it will publish notice thereof on its website at least twenty (20) days prior to such addition or change. If the proposal is to add an entity, the notice will include any proposed sharing of funding with other HHSP providers in the affected municipality:

(1) whether an entity to be removed and replaced was compliantly and efficiently administering its contract;

(2) the specific plans of any new entity to build facilities to provide shelter or services to homeless populations, and/or to provide any specific programs to serve the homeless;

(3) the capacity of any new entity to deliver its planned activities; and

(4) any public comment and comment by state or local elected officials.

(b) The final decision to add or change entities will be approved by the Texas Department of Housing and Community Affairs Governing Board (the "Board").

(c) A municipality or entity receiving HHSP funds may not:

(1) be in material noncompliance under the Department's rules;

(2) have failed to comply with any benchmarks with respect to any previous HHSP award(s); or

(3) be in breach, after notice and a reasonable opportunity to cure, of any contract or agreement with the Department.

(d) A municipality or entity receiving HHSP funds must enter into an agreement with the Department governing the use of such funds. If the source of funds for HHSP is funding under another specific Department program, such as the Housing Trust Fund, as authorized by Texas Government Code §2306.2585(c), the agreement will incorporate any requirements applicable to such funding source.

(e) Any agreement for HHSP funds will include the following benchmarks:

(1) any funds used for general operations will be expended within twelve (12) months;

(2) any funds used for operation of training, recovery, or other programs will be expended within eighteen (18) months;

(3) any funds used for construction, development, or procurement of housing for homeless persons of facilities will be expended within twenty-four (24) months; and

(4) funds for any other use will be expended within twenty-four (24) months.

(f) Benchmarks may be extended for good cause by the Board.

§5.1004. Formula.

(a) Any funds made available for the Homeless Housing and Services Program (HHSP) that are distributed to eligible municipalities shall be distributed in accordance with a formula that takes into account:

(1) population of the municipality, as determined by the most recent available census data;

(2) poverty, defined as the number of persons in the municipality's population with incomes at or below the federal poverty level;

(3) veteran populations, defined as that percentage of the municipality's population comprised of veterans, based on the data most recently published by the Texas Veterans Commission;

(4) population of persons with disabilities, defined as that percentage of the municipality's population comprised of persons with disabilities, based on the data most recently available from the U.S. Census Bureau; and

(5) population of homeless persons, defined as that percentage of the municipality's population comprised of homeless persons, based on the most recently available Point-In-Time Counts prepared by the Continuums of Care in Texas.

(b) The factors enumerated in subsection (a)(1) - (5) of this section shall be used to calculate distribution percentages for each municipality based on the following formula:

(1) 20 percent weight for the percentage of population;

(2) 25 percent weight for poverty populations;

(3) 25 percent weight for veteran populations;

(4) 5 percent weight for population of persons with disabilities; and

(5) 25 percent weight for the homeless population, based on the results of the most recently available Point-In-Time Counts prepared by the Continuums of Care in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 16, 2012.

TRD-201203617

Timothy K. Irvine
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Texas Department of Housing and Community Affairs
Effective date: August 5, 2012
Proposal publication date: April 27, 2012
For further information, please call: (512) 475-3916

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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

16 TAC §26.415

The Public Utility Commission of Texas (commission) adopts amendments to §26.415, relating to Specialized Telecommunications Assistance Program (STAP), without changes to the proposed text as published in the April 6, 2012, issue of the *Texas Register* (37 TexReg 2298). The amendments delete the paragraph related to the responsibilities of the Texas Department of Assistive and Rehabilitative Services, Division for Rehabilitation Services, Office for Deaf and Hard of Hearing Services (DHHS); change references from DHHS to Department of Assistive Rehabilitative Services (DARS); amend the description of who can sign for proof of delivery of equipment or services to allow spouses to sign; amend the description of how vendors can obtain reimbursement to specify that the STAP administrator will not authorize reimbursement of any voucher more than 120 days after the exchange date or the proof of delivery; and make other non-substantive changes. These amendments are adopted under Project Number 40176.

The commission received no comments or replies on the proposed amendments and no request for a hearing.

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007), which provides authority to the commission to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §56.151, which requires the commission and the Texas Commission for the Deaf and Hard of Hearing to establish the STAP; §56.154(a), which requires the commission to pay the vendor or service provider, using monies from the universal service fund, within 45 days after receiving a voucher issued pursuant to the STAP; and §56.154(b), which authorizes the commission to investigate whether a voucher represents a valid transaction.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 56.151, and 56.154(a) and (b).

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 July 12, 2012.

TRD-201203601
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TITLE 28. INSURANCE

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

CHAPTER 110. REQUIRED NOTICES OF COVERAGE

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts amendments to §110.1 and §110.101 of this title (relating to Insurance Carrier Requirements for Notifying the Division of Insurance Coverage and Covered and Non-Covered Employer Notices to Employees, respectively) and adopts new §110.7 of this title (relating to Self-Insured Political Subdivision Requirements for Notifying the Division of Election to Provide Medical Benefits), §110.103 of this title (Employer Requirements for Notifying the Division of Non-Coverage), and §110.105 of this title (Employer Requirements for Notifying the Division of Termination of Coverage) of this title. The amendments to §110.1 and new §110.103 are adopted with changes to the proposed text published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1130) as corrected in the March 16, 2012, issue of the *Texas Register* (37 TexReg 1938). The amendments to §110.101 and new §110.7 and §110.105 are adopted with changes to the proposed text published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1130). These changes, however, do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

In accordance with Government Code §2001.033, the Division's reasoned justification for these new and amended rules is set out in this order, which includes the preamble, which in turn includes the rules. The reasoned justification is contained throughout the preamble, including the reasons why the new and amended rules are necessary; the factual, policy and legal bases for the new and amended rules; a summary of comments received from interested parties, names of the entities that commented and whether they were in support of or in opposition to the adoption of the rules, and the reasons why the Division agrees or disagrees with the comments and recommendations.

The Division published an informal draft of these new and amended rules on the Division's website for informal comment on November 8, 2011. The Division received five informal comments. The public comment period for these new and amended rules ended on March 26, 2012. The Division received eight public comments. No public hearing was requested or held for this proposal.

Simultaneous with the adoption of these new and amended rules, the Division has adopted new §160.1 and amendments to §160.2 and §160.3 of this title. These other new and amended

rules relate to employer reports of injury to the Division and are published elsewhere in this issue of the *Texas Register.*

New §110.103 and §110.105 and the amendments to §110.1 and §110.101 concern the following reporting requirements the Texas Workers' Compensation Act (Act) places upon employers: (1) the requirement to notify the Division when the employer elects not to obtain workers' compensation insurance coverage (Labor Code §406.004); (2) the requirement to notify the Division when the employer terminates workers' compensation insurance coverage (Labor Code §406.007); and (3) the requirement to notify each employee on whether or not the employer has workers' compensation insurance coverage (Labor Code §406.005). These new and amended rules reorganize, update, and clarify the language and requirements associated with these reporting requirements and are necessary in order to ensure that the Division and employees obtain timely and accurate workers' compensation insurance coverage information from employers. These new and amended rules are also necessary to improve system participant understanding and provide consistency with current practices concerning these reporting requirements. These changes do not substantively affect or otherwise change any reporting requirements in Labor Code Chapter 406 and associated Division rules that apply to insurance carriers.

Additionally, this adoption also adds new §110.7, requiring a self-insured political subdivision that provides medical benefits to its employees in accordance with Labor Code §504.053(b)(2) to notify the Division when it elects to provide medical benefits in that manner. This requirement streamlines the collection of this medical benefit delivery information with other proof of coverage information already reported by political subdivisions to the Division.

Finally, other amendments are adopted to correct non-substantive typographical, grammatical, and punctuation errors in the current rule text; to re-letter and renumber rule text; and to make nonsubstantive updates in terminology such as changing "commission" to "division."

§110.1.

Prior to the adoption of the amendments to §110.1, this rule governed various reporting requirements placed upon insurance carriers and employers. The adopted amendments to §110.1 primarily remove provisions from this rule relating to an employer's notice to the Division of non-subscriber status and when an employer terminates workers' compensation insurance coverage. These employer duties are now recodified in Subchapter B of this chapter as new §110.103 and §110.105. This recodification of these two employer reporting requirements into their own respective rules is necessary in order to more clearly delineate these reporting requirements. Additionally, these rules are better located in Subchapter B of Chapter 110, which is titled "Employer Notices." The Division also amended these recodified rules which are more fully discussed below. The remaining provisions in §110.1 will continue to govern various reporting requirements placed upon insurance carriers such as proof of coverage reporting and notice of cancellation or nonrenewal by an insurance company.

Other amendments to §110.1 are adopted for the purpose of updating and clarifying the terminology used in this rule. The adopted amendments to §110.1(a) and throughout this section add the language "workers' compensation" before "insurance policy." These adopted amendments are necessary in order to clarify that the term "insurance policy" means a workers' compensation insurance policy as opposed to any other type of insurance policy.

The adopted amendments to §110.1(b) add the language "workers' compensation" to the defined term "insurance coverage information." These adopted amendments are necessary in order to clarify that the term "insurance coverage information" means workers' compensation insurance coverage information as opposed to any other type of insurance coverage information.

The adopted amendments to §110.1(c) provide that this rule applies to an insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision. These adopted amendments are necessary in order to clarify what entities are subject to the reporting requirements in this rule. Additionally, the adopted amendments to this subsection clarify that: certified self-insurers are also subject to Chapter 114 of this title (relating to Self-Insurance), self-insurance groups are also subject to Chapter 5, Subchapter G, Division 2 of this title (relating to Group Self-Insurance Coverage), and self-insured political subdivisions are also subject to §110.7 of this title (relating to Self-Insured Political Subdivision Requirements for Notifying the Division of Election to Provide Medical Benefits). These adopted amendments are necessary to provide clarification of the applicability of other requirements, accomplished through specifically referencing other Division rules.

The adopted amendments in §110.1(d) state that an insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision shall submit to the Division, or its designee, workers' compensation insurance coverage information in the form and manner prescribed by the Division. These adopted amendments are necessary in order to clarify what information entities are required to submit to the Division.

The adopted amendments in §110.1(e) set out the specific entities that are subject to the notice of coverage and notice of cancellation or nonrenewal of coverage requirements currently in this subsection. These adopted amendments are necessary in order to update and harmonize the rule with the statutory language in Labor Code Chapter 406, Subchapter A. Specifically, the adopted amendments to §110.1(e)(1) clarify that an insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision are required to report workers' compensation coverage information to the Division within 10 days after the effective date of coverage and annually thereafter no later than 10 days after the anniversary date of coverage. This paragraph is intended to include coverage reporting when a political subdivision moves from self-insurance to a policy, or from a policy to self-insurance, and when a political subdivision moves from individual self-insurance to a pool, or vice-versa. This amended paragraph is consistent with current reporting practices under §110.1(e), except for reporting by political subdivisions, which will now have to report no later than 10 days after the coverage change, instead of current practice of 30 days prior to any change in coverage. This change is necessary to give political subdivisions additional time to report changes, and the Division believes extending this reporting time will not change the effectiveness or efficiency of the Division's information collection and utility to interested parties.

The adopted amendments to §110.1(e)(2) - (4) govern insurance company reporting requirements in Labor Code §406.008 when the company cancels or does not renew coverage. The adopted

amendments clarify that this obligation is placed upon insurance companies as opposed to insurance carriers in general. These adopted amendments are also necessary to update and harmonize terminology in this rule with the statutory language in Labor Code §406.008.

The adopted amendments in §110.1(f) are necessary to clarify that these provisions apply in situations involving an insurance company's cancellation or non-renewal of a policy. Similar provisions regarding effective date of a termination of a policy are recodified in §110.105(c), which applies in situations involving an employer's termination of a policy. There may be situations where both of these provisions are implicated; and in such cases, the party that terminates or cancels the policy first controls.

The adopted amendments in §110.1(g) replace the term "insurance carrier" with "insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, or political subdivision." This adopted amendment sets out the specific types of entities that are subject the notice of claim administration contact information requirements in this subsection. These adopted amendments are necessary in order to update and harmonize the terminology in this rule with statutory language in Labor Code §406.006.

The adopted amendments in §110.1(h) replace the term "insurance carrier" with "insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, or political subdivision." These adopted amendments are necessary in order to clarify the types of insurance carrier entities that may utilize a servicing agent when processing and filing coverage information under this rule.

Adopted §110.1(j) provides a January 1, 2013 effective date for this rule. This adopted amendment is necessary in order to provide additional time to those affected by the changes to implement these changes.

§110.7.

Adopted new §110.7 delineates specific reporting requirements for a self-insured political subdivision to notify the Division when it elects, in accordance with Labor Code §504.053(b)(2), to provide medical benefits to its injured employees or the injured employees of the members of the pool by directly contracting with health care providers or by contracting through a health benefits pool established under Local Government Code Chapter 172. Section 110.7(a) adds a definition of health plan for clarity of term usage in this rule. Section 110.7(b) provides applicability of this rule to self-insured political subdivisions electing to provide medical benefits pursuant to Labor Code §504.053(b)(2). Section 110.7(c) states the notice of method of providing employee benefits required by subsection (b) of the section shall be filed in writing or electronically, in the form and manner prescribed by the Division, and lists relevant data elements that the notice shall include. Section 110.7(d) provides a December 31, 2012 reporting deadline for self-insured political subdivisions that provide medical benefits in accordance with Labor Code §504.053(b)(2) as of the effective date of this rule. Section 110.7(e) provides a reporting deadline of not later than the 30th day after the date the political subdivision begins to provide medical benefits for political subdivisions providing medical benefits in the manner described by Labor Code §504.053(b)(2) after the effective date of this rule. Section 110.7(f) provides a self-insured political subdivision shall notify the Division of any change in the information required by this section not later than the 30th day after the date of the change.

This new rule is necessary in order to provide a process that will allow the Division to effectively gather information concerning the method by which self-insured political subdivisions provide medical benefits in accordance with Labor Code §504.053(b)(2). Labor Code §504.018(a) requires a political subdivision to notify the Division of the method by which its employees will receive benefits, the approximate number of employees covered, and the estimated amount of payroll. Much of the information required under Labor Code §504.053(b)(2) is already reported to the Division. This new rule requires only the information required by §504.018(a) that is not already reported to the Division.

§110.101.

The adopted amendments to §110.101 relate to employer notice requirements under Labor Code §406.005. Labor Code §406.005 requires an employer to notify each employee as required by that section whether or not the employer has workers' compensation insurance coverage. This statute requires the employer to notify a new employee of the existence or absence of workers' compensation insurance coverage at the time the employee is hired. This statute also requires an employer to post a notice in the workplace of whether the employer has workers' compensation insurance coverage. The Commissioner is authorized by this section to adopt rules relating to the form and content of the notice.

The adopted amendments to §110.101(a) are necessary to track statutory language, eliminating the terms "covered" and "non-covered" from the text of the rule and replacing the terms with a directional pointer to the definition of an employer in Labor Code §406.001 as it applies to this chapter.

The adopted amendments to §110.101(a)(2) - (3) are necessary to conform the time deadlines for employers to provide notice to employees with the Labor Code requirements under §406.005(d). Specifically, §110.101(a)(2) provides that employers whose workers' compensation insurance coverage is terminated or cancelled shall provide notice to employees of their workers' compensation status not later than the 15th day after the date on which the termination or cancellation takes effect. Section 110.101(a)(3) provides that employers who obtain workers' compensation insurance coverage shall provide notice to employees of their workers' compensation status not later than the 15th day after the date on which the coverage takes effect. These changes to timing requirements are necessary to harmonize rule language and related requirements with statutory language and timing requirements in Labor Code §406.005(d).

The adopted amendments to §110.101(a)(5) replace "certified self-insurer" with "self-insurance as provided by the Texas Workers' Compensation Act" to clarify that this rule covers both certified self-insureds and employers in a self-insurance group; accordingly these terms are subsequently updated through the remainder of this rule. Labor Code Chapter 407A which allows for group self-insurance coverage by employers was added to the Act after the initial adoption of §110.101. Therefore, these adopted amendments are necessary to update this rule and clarify that employers in a self-insurance group are subject to the requirements of Labor Code §406.005 and this rule. The adopted amendments to §110.101(a)(5) also insert "workers' compensation insurance" before "coverage" in order to clarify that coverage refers to workers' compensation insurance coverage as opposed to other types of coverage.

The adopted amendments to §110.101(b)(2) recodify and clarify former requirements contained in former §110.101(b)(2) and (3) to provide one subsection prescribing when employers terminating workers' compensation insurance coverage must post required notice to employees. Amendments to §110.101(b)(2) replace previous language concerning opting out of coverage and cancellation of coverage with language concerning terminating and termination of coverage. These amendments are necessary to track applicable statutory requirements and language. The adopted amendments also change the time when an employer who terminates workers' compensation insurance coverage must post the required notice that reflects the change in coverage status. The previous rule required the new posted notice to be provided at the time the employer notifies the insurance carrier of the termination. The adopted amendments require the new posted notice to be provided at the time the termination of coverage takes effect. This adopted amendment is necessary because it will ensure that the posted notices will at all times provide the employees with accurate information regarding the employer's workers' compensation insurance coverage status. This adopted amendment is also necessary in order to more closely align this rule with Labor Code §406.005 which requires an employer to revise the notice when the information contained in the notice is changed.

The adopted amendments to §110.101(b)(3) remove employer notice requirements, now contained in §110.103(b)(2), and provide posted notice requirements for self-insurers who withdraw from self-insurance. The adopted amendments require an employer who withdraws from self-insurance to post a notice reflecting the change in coverage status at the time the withdrawal takes effect. This adopted amendment is necessary because it will ensure that the posted notices will at all times provide the employees with accurate information regarding the employer's workers' compensation insurance coverage status. This adopted amendment is also necessary in order to more closely align this rule with Labor Code §406.005 which requires an employer to revise the notice when the information contained in the notice is changed.

The adopted amendments to §110.101(c) provide that on or after effective date of the rule, which under subsection (g) of this rule is January 1, 2013, notices shall contain the specific text in this rule. This adopted amendment is necessary in order to provide a clear transition date for employers to comply with the changes this rule makes to the contents of the personal and posted notices required by this rule.

The adopted amendments to §110.101(d) insert "workers' compensation insurance" before "coverage" in order to clarify that coverage refers to workers' compensation insurance coverage as opposed to other types of coverage.

The adopted amendments to §110.101(e) update the language in the statutorily mandated employee notices. In order to maintain consistency between previous and new posting notices and to minimize costs associated with updating posted notices, the Division instituted a moderate reduction in the mandated font size to ensure that the new information on the posted notice may be contained on 8.5 x 11 piece of paper. The adopted amendments to paragraphs (1) and (2) of this subsection update the required notices for employers insured through a commercial insurance company and those employers who become certified self-insurers under Labor Code Chapter 407. The adopted amendments to paragraph (4) of this subsection update the notice for employers not covered by workers' compensation insurance coverage. The notice updates for paragraphs (1), (2), and (4) of this subsection include: (1) the removal of the undefined term illness from the posting notice and replacing it with occupational disease, a term defined in Labor Code §401.011, which is necessary to provide increased accuracy of information communicated to employees through the posting notices; (2) contact information for the Division and the Office of Injured Employee Counsel, which is necessary to provide more updated information; and (3) the removal of unnecessary terminology such as "protect." The adopted amendments also enact a new paragraph (3) which provides a new employee notice posting for use by employers who are members of a self-insurance group. The notice in paragraph (3) provides notice to employees that the employer provides workers' compensation insurance coverage as a member of a self-insurance group under Labor Code Chapter 407A and provides the same information as the notices prescribed in paragraphs (1) and (2). As stated, Labor Code Chapter 407A was added to the Act after the original adoption of this rule; thus, this amendment is necessary to update this rule to allow for a posting notice tailored for use by employers in a self-insurance group.

The adopted amendments to §110.101(f) update administrative violation language to conform to current statutory language and to be consistent with other similar provisions throughout Division rules.

New §110.101(g) provides a January 1, 2013 effective date for this rule. This adopted amendment is necessary in order to provide additional time to those affected by the changes to implement these changes.

§110.103.

Adopted new §110.103 relates to required notices by non-subscribing employers under Labor Code §406.004. Labor Code §406.004 requires an employer who does not obtain workers' compensation insurance coverage to notify the Division in writing, in the time and as prescribed by Commissioner rule, that the employer elects not to obtain coverage. This statute provides that the Commissioner shall prescribe forms to be used for the employer notification and shall require the employer to provide reasonable information to the Division about the employer's business. Labor Code §406.004(d) requires this notice to be filed with the Division in accordance with Labor Code §406.009 which authorizes the Commissioner to adopt rules as necessary to enforce Labor Code Chapter 406, Subchapter A, and to establish the form, manner, and procedure for the transmission of information to the Division.

Section 110.103 encompasses statutorily mandated reporting requirements for non-subscribing employers and is primarily a recodification of rule language removed from §110.1. In addition to a recodification, the Division amended this rule, a principal new element of which is the provision of new reporting timelines in response to employer requests for more clarity and ease in complying with the statutorily mandated notification of non-coverage.

Section 110.103(a) recodifies former §110.1(c) - (d) and requires employers electing not to obtain workers' compensation insurance coverage (non-subscribers) to provide the Division with notice of non-coverage in the form and manner prescribed by the Division. Section 110.103(a)(1) and (2) are a recodification of former §110.1(e)(1)(A) and (B) and set out the frequency and reporting triggers of when an employer must provide notice of non-coverage to the Division. The reporting procedures in sub-

section (a) will apply to notices by non-subscribing employers submitted before January 1, 2013.

Section 110.103(b) prescribes the applicability of this subsection and delineates the new reporting timelines for non-subscribers, which will apply to a notice submitted on or after January 1, 2013. The delayed effective date for the new reporting timelines by the Division is based on non-subscriber input given during the development of these rules. The delayed effective date is necessary to facilitate the transition to statutory compliance by non-subscribing employers and is anticipated to allow non-subscribers ample time to alter business practices or develop business practices that ensure their compliance with this statutorily mandated reporting duty.

Section 110.103(b)(1) provides a new annual reporting period for notices of non-coverage to the Division, to be annually between February 1st and not later than April 30th of each calendar year. Additionally, §110.103(b)(1) defines that notice provided by April 30th satisfies the reporting requirement under this subsection from May 1st of the same year through April 30th of the subsequent year. This new static reporting period for all non-subscribers coupled with delineated notice period is in response to non-subscriber comment received by the Division during the development of these rules. Prior to rule proposal, multiple stakeholders expressed a desire for a change from the current annual notice requirement based on the original filing date or hiring a new employee subject to the Act. Instead, non-subscribers requested both a static reporting period and a defined period covered by the notice to provide ease of compliance with this statutorily mandated reporting requirement. Under this new annual reporting requirement some non-subscribing employers may have to file twice in short succession, having a filing remaining before the end of 2012 under the current filing timeline in §110.103(a) for notices submitted to the Division before January 1, 2013, and having a new filing due to meet the February 1 - April 30th deadline contained in the new filing timeline in §110.103(b). Once these employers make their annual filing under the new filing timeline, they will be on the new §110.103(b) annual schedule thereafter.

Section 110.103(b)(2) provides that a non-subscriber must also submit notice to the Division of non-coverage status not later than the 30th day after the date the non-subscriber hired its first employee subject to the Act, unless this due date is covered by the notice provided in new §110.103(b)(1) and the employer submits the notice within that time period. This provision is necessary in order to provide the Division with non-subscribing data regarding new employers that elect to non-subscribe. Additionally, §110.103(b)(2) partially removes, recodifies, and expands former §110.1(e)(3), now providing that all non-subscribers shall provide a notice of non-coverage not later than the 10th day, instead of within 30 days as formerly required, after receipt of a Division request for the information. This new, shortened response time provides one clear, consistent response deadline for all non-subscribers.

Section 110.103(b)(3) provides notice of filing with the Division in writing or electronically and delineates specific information required in the notice to provide clarity to non-subscribers as to the specific notice content required in compliance with this statutorily mandated reporting requirement. The data elements in this rule are consistent with data elements non-subscribers already report to the Division on current Division forms. Delineating the required data elements in this rule is also necessary in order to ensure that the Division receives all the information in an employer report.

Section 110.103(c) requires employers to accurately file notices, and this section also explains that a notice is considered filed with the Division when the notice contains all the data elements specified under subsection (c), and is received by the Division. This adopted rule is necessary in order to ensure that the Division obtains timely and accurate notices.

§110.105.

Adopted new §110.105 relates to required notices of termination of coverage by employers under Labor Code §406.007. Labor Code §406.007 requires an employer who terminates workers' compensation insurance coverage to file a written notice with the Division by certified mail not later than the 10th day after the date on which the employer notified the insurance carrier to terminate the coverage. This notice must include a statement certifying the date that notice was provided or will be provided to affected employees under Labor Code §406.005. Labor Code §406.007(b) requires the notice to be filed with the Division in accordance with Labor Code §406.009 which authorizes the Commissioner to adopt rules as necessary to enforce Labor Code, Chapter 406, Subchapter A, and to establish the form, manner, and procedure for the transmission of information to the Division.

Section 110.105 is largely a recodification of requirements deleted from former §110.1, with these provisions consistent with practices under the previous rule and providing clarity in the manner in which these reports may be provided to the Division.

Section §110.105(a) requires an employer who terminates workers' compensation insurance to file written notice of the termination with the Division not later than the 10th day on which the employer notified the insurance carrier under Labor Code §406.007.

Section §110.105(b) provides the employer shall file notice of termination required by subsection (a) by certified mail or electronically on the form prescribed by the Division and also delineates the specific data elements that must be in the notice, replacing former "form and manner" language from former §110.1(d). This new rule is necessary in order to specify the manner in which an employer may submit this notice to the Division. This new rule also delineates the data elements that must be included in the notice which is necessary in order to ensure that the Division obtains all the required information in a report from an employer.

Subsection (c) provides the effective date of termination when an employer terminates coverage and is consistent with Labor Code §406.007.

Subsection (d) updates language to ensure all system participants are cognizant of the fact that workers' compensation insurance coverage shall be extended until the date on which the termination of coverage takes effect and that the employer remains obligated for premiums due for that period. This provision is also consistent with Labor Code §406.007.

Subsection (e), a recodification of previous §110.1(l), specifies (1) that in the event of an employer switching workers' compensation insurance carriers, the original policy is considered cancelled as of the date the new coverage takes effect; and (2) requires employers to notify the prior insurance carrier of the original policy's cancellation date in writing within 10 days of the effective date. This is a provision concerning original policy cancellation dates when an employer switches workers' compensation insurance carriers. This recodification is to maintain applicability

to both insurance carriers and employers now that related requirements are in separate rules.

New §110.105(f) provides a January 1, 2013 effective date for this rule. This adopted amendment is necessary in order to provide additional time to those affected by the changes to implement these changes.

The Division has adopted these new and amended rules with changes to the text as originally proposed, most of which were made in response to public comment on the proposal. First, the Division made several changes in §110.1. In response to comment, the Division changed the language in §110.1(b) from "and, if so, information about the means of workers' compensation insurance coverage used" to "and, if so, information about the method of workers' compensation insurance coverage used." This change makes rule text consistent with terminology in Labor Code §406.003 which is titled "Methods of Obtaining Coverage." The Division also added new §110.1(j) which provides a January 1, 2013 effective date for this rule. This adopted amendment is necessary in order to provide additional time to those affected by the changes to implement these changes.

The Division also made several changes in §110.7 in response to public comment. First, the Division in §110.7(a) added a definition of "health plan" as "a political subdivision contracting with health care providers under Labor Code §504.053(b)(2)" to provide clarity of the term as used and in anticipation of future related inquiries. The Division in response to comment also removed the July 1, 2012 effective date for this rule and deleted former §110.7(c) which read "A self-insured political subdivision that provides medical benefits to its injured employees in the manner described by Labor Code §504.053(b)(2) as of the effective date of this section shall provide the notice required by this section not later than the 30th day after the effective date of this section." The Division replaced the deleted text with "A self-insured political subdivision that provides medical benefits to its injured employees in the manner described by Labor Code §504.053(b)(2) as of the effective date of this section shall provide the notice required by this section not later than December 31, 2012." Also, deleting the July 1, 2012 effective date will cause this rule to be effective 20 days after it is filed with the Secretary of State. These changes will provide a longer and more manageable implementation window for affected self-insured political subdivisions. The Division also re-lettered §110.7 to reflect these changes.

The Division also made several changes to the text in §110.101 as proposed. In response to comment, the Division changed language in §110.101(b)(2) from "by the employer who is terminating workers' compensation insurance coverage, at the time the employer notifies the insurance carrier of the termination" to "by the employer who is terminating workers' compensation insurance coverage, at the time the employer's termination of coverage takes effect. . ." In addition, the Division in tandem also changed text in §110.101(b)(3) from "by the self-insurer as provided by the Act, who is withdrawing from self-insurance, at the time the division is notified of the withdrawal" to "by the self-insurer as provided by the Act, who is withdrawing from self-insurance, at the time the withdrawal takes effect." The Division made these changes to ensure that employees obtain the most accurate and up-to-date information regarding their employer's workers' compensation insurance coverage status and to more closely align this rule with Labor Code §406.005(c) which requires an employer to revise the notice when the information contained in the notice is changed.

Additionally, the Division, in response to comment, updated the posting notices contained in §110.101(e)(1) - (3) from "You can obtain OIEC's assistance by contacting your local Division field office or by calling 1-866-EZE-OIEC (1-866-393-6432)" to "You can obtain OIEC's assistance by contacting an OIEC customer service representative in your local Division field office or by calling 1-866-EZE-OIEC (1-866-393-6432)." The Division amended this language for clarity but notes that under either language draft, an injured employee will be contacting and connecting with the same resources.

Also in response to comment, the Division modified the text in §110.101(c) to state that on or after the effective date of this rule, notices shall contain the specific text required by this rule. The Division also added new §110.101(g), providing a January 1, 2013 effective date for this rule. This adopted amendment is necessary in order to provide additional time to those affected by the changes to implement these changes.

The Division also made changes in the text of §110.103. Specifically, the Division proposed subsection (c) as follows ". . . required by this section is considered timely filed with the division only when it contains all of the data elements specified under subsection (b) of this section, contains accurate information, and is received by the division." The Division changed this language to read as follows ". . . required by this section is considered filed with the division only when it accurately contains all of the data elements specified under subsection (b) of this section and is received by the division." The adopted non-substantive amendments prevent any potential for confusion as to when a report of injury must be filed by the employer.

Finally, the Division made changes to §110.105 that were not in response to comment. Specifically, the Division added §110.105(f), adding a January 1, 2013 effective date for this rule. This adopted amendment is necessary in order to provide additional time to those affected by the changes to implement these changes and is also consistent with the effective date of amended §110.1 which previously contained the reporting requirements for employers who terminate a workers' compensation insurance policy.

Section 110.1

Section 110.1 updates requirements for an insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision to notify the Division of Workers' Compensation insurance coverage information. This section contains detailed explanations of commonly used terminology in the section, including approved workers' compensation insurance policy, workers' compensation insurance coverage information, and claim administration contact. This section requires an insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision to submit to the Division, or its designee, workers' compensation insurance coverage information in the form and manner prescribed by the Division.

This section prescribes specific provisions for when workers' compensation insurance coverage information shall be provided to the Division, for specific covered groups: by an insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision within 10 days after the effective date of coverage and annually thereafter no later than 10 days after the anniversary date of coverage; by the insurance company, 30

days prior to the date on which cancellation or non-renewal becomes effective if the insurance company cancels the workers' compensation insurance coverage, does not renew the workers' compensation insurance coverage on the anniversary date, or cancels a binder before it issues a workers' compensation insurance policy; by the insurance company, 10 days prior to the date on which the cancellation becomes effective if the insurance company cancels an employer's workers' compensation insurance coverage in accordance with Labor Code §406.008(a)(2); or by the insurance company within 10 days after receiving notice of the effective date of termination from the covered employer because the employer switched workers' compensation insurance carriers. This also sets out when a cancellation or non-renewal of a workers' compensation insurance policy by an insurance company will take effect.

This section also requires an insurance company, a certified self-insurer, a workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision to file a notice with the division of their designated claim administration contact not later than the 10th day after the date on which the coverage or claim administration agreement takes effect.

Finally, this section provides that an insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision may elect to have a servicing agent process and file all coverage information, but the insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, or political subdivision remains responsible for meeting all filing requirements of this rule.

Section 110.7

Section 110.7 provides notice requirements to the Division for self-insured political subdivisions electing to provide medical benefits pursuant to Labor Code §504.053(b)(2). This section adds a definition of a health plan and delineates the applicability of this rule to self-insured political subdivisions electing to provide medical benefits pursuant to Labor Code §504.053(b)(2). Additionally, the notice required under this rule must be filed in writing or electronically, in the form and manner prescribed by the Division, and include all the data elements listed in §110.7(c). This section provides a compliance date of December 31, 2012 for political subdivisions that provide medical benefits in accordance with Labor Code §504.053(b)(2) as of the section's effective date. This section provides a compliance date of not later than the 30th day after the date a political subdivision, subject to this rule, begins to provide the medical benefits in accordance with Labor Code §504.053(b)(2) after the effective date of this section. Finally, this section requires a self-insured political subdivision to notify the Division of any change in the information required by this section not later than the 30th day after the date of the change.

Section 110.101

Section 110.101 requires an employer, as defined by Labor Code §406.001, to provide to each employee written notice of workers' compensation insurance coverage status. This notice must be provided to an employee at the time of hire. This section also requires an employer whose workers' compensation insurance coverage is terminated or cancelled to provide each employee with written notice of the coverage status not later than the 15th day after the date on which the termination or cancellation takes effect. An employer who obtains workers' compensation insurance coverage shall provide each employee with written notice of coverage status not later than the 15th day after the date on which the coverage takes effect. This subsection prescribes the content that must be in each notice.

Section 110.101 also requires employers to post notices in the workplace to inform employees about the employer's workers' compensation insurance coverage status. This section specifies the locations within the workplace in which these notices must be posted and when the notice must be posted. This section also provides the specific text that must be in the posted notice for employers insured through a commercial insurance company, employers who self-insure, and employers who do not have workers' compensation insurance coverage.

Section 110.103

Section 110.103 covers employer requirements for notifying the Division of non-coverage. For notices of non-coverage submitted before January 1, 2013, this section requires the notice to be provided the earlier of the following: (1) 30 days after receiving a Division request for the filing of a notice of non-coverage and annually thereafter on the anniversary date of the original filing; or (2) 30 days after hiring an employee who is subject to coverage under the Act, and annually thereafter on the anniversary date of the original filing. These notices must be filed in the form and manner prescribed by the Division.

For notices of non-coverage required to be submitted on or after January 1, 2013, this section requires a notice of non-coverage to be filed annually between February 1st and not later than April 30th of each calendar year, covering a reporting period requirement from May 1st of the same year through April 30th of the subsequent year. A notice of non-coverage shall also be provided not later than the 30th day after the date the non-subscriber hired its first employee subject to the Act, unless this due date is covered by the aforementioned annual notice requirement and the employer submits the notice within that time period. Additionally, this section provides that a non-subscriber shall provide notice of non-coverage not later than the 10th day after receipt of a Division request for the information. This section provides that these notices may be provided in writing or electronically and lists the specific information required to be in the notice. Finally, this section requires employers to accurately file reports, and this section also explains that a notice is considered filed with the Division when the notice contains all the data elements specified under subsection (b), and is received by the Division.

Section 110.105

Section 110.105 covers employer requirements for notifying the Division of termination of coverage. This section provides that an employer who terminates workers' compensation insurance coverage shall file written notice of the termination with the Division not later than the 10th day after the date on which the employer notified the insurance carrier to terminate coverage. Additionally, this notice may be filed by certified mail or electronically, on the form prescribed by the Division, and shall contain all data elements listed in §110.105(b). This section provides termination of coverage by an employer takes effect on the later of: (1) the 30th day after the date of filing the notice with the Division under this section; or (2) the cancellation date of the policy. This section provides that coverage shall be extended until the date on which the termination of coverage takes effect and the employer is obligated for premiums due for that period. Finally, notwithstanding the other provisions of this section, if an employer switches workers' compensation insurance carriers, the original policy is considered canceled as of the date the new coverage takes ef-

fect and employers shall notify the prior insurance carrier of the cancellation date of the original policy, in writing, within 10 days of the effective date.

SUMMARY OF COMMENTS AND AGENCY'S RESPONSE.

General: Commenters support the Division's proposed rules and note their appreciation of the opportunity to discuss these rules prior to adoption.

Agency Response: The Division appreciates the supportive comments.

General: A commenter suggests amending the rule so that a filing is deemed received timely if all information is considered accurate by the Texas Department of Insurance, allowing consideration for non-material filing errors.

Agency Response: The Division disagrees with the recommended change to permit filings to be considered timely with inaccurate required data. Although the Division disagrees with the comments, it has made the clarifying changes by moving the placement of the word "accurately" to earlier in this section and removing the word "timely" from the second sentence to clarify employers must meet the timeliness requirement under these rules as well as the accuracy requirement. The Division notes that the adopted language and policy continues to prohibit all filing errors for required information. No required information is immaterial. Parties subject to Division rules are responsible for accurately reporting to ensure the Division receives quality data.

§110.1(b): A commenter suggests that it would be clearer if the language in §110.1(b) were changed from "and, if so, information about the means of workers' compensation insurance coverage used" to "and, if so, the type of workers' compensation that is provided."

Agency Response: The Division agrees that the aforementioned language could be clearer but disagrees with the commenter's suggested text. To make this language consistent with the title of Labor Code §406.003, Method of Obtaining Coverage, the Division has changed subsection (b) as proposed to the following: "and, if so, information about the method of workers' compensation insurance coverage used."

§110.7: A commenter suggests that the effective date of July 1, 2012 to begin filing the DWC-20SI is not compatible with the majority of their membership fund coverage dates, which begin and renew on September 1st annually. The commenter subsequently requests an extension of the effective date or a waiver until October 1, 2012 to avoid filing hundreds of coverage documents twice and to ensure system technicians have time to perfect the form population process.

Another commenter states the submission requirements of this rule are burdensome as it requires political subdivision pools to file a DWC 20SI form within 30 days after the effective date of the rule, July 31, 2012, solely for purposes of identification and to re-file a DWC 20SI form when each pool member is renewed. The commenter requests that the rule not require the additional paper filing of numerous DWC 20SIs within 30 days of the effective date, and that the rule be changed to add a transition for including the information on the DWC 20SI. The commenter suggests three options to accomplish this. First, allow a political subdivision using the Labor Code §504.053(b)(2) to include the direct contracting entity information on the DWC 20SI provided at the next renewal date. Second, add a one-time electronic transition form that would simply include the new Labor Code §504.053(b)(2) contact information within 30 days of effective date. Third, create a one-time form for political subdivisions, including the carrier name and the name and contact information of the entity directly contracting under Labor Code §504.053(b)(2). A political subdivision in existence as of the effective date of this rule would file this form within 30 days of the effective date of the rule. A political subdivision not in existence as of the effective of the rule would file this form within 30 days of existence. Thereafter a filing would only be made as the result of any changes.

Agency Response: The Division agrees additional time is needed to phase in these new requirements. The Division also agrees with the commenters that this new reporting process should not result in political subdivisions subject to the new rule having to file two notices in a short period of time as described by the commenters. The Division has deleted the July 1, 2012 effective date from this rule which will cause the rule to be effective 20 days after it is filed with the Secretary of State. The Division also has changed subsection (d) to read as follows: "A self-insured political subdivision that provides medical benefits to its injured employees in the manner described by Labor Code §504.053(b)(2) as of the effective date of this section shall provide the notice required by this section not later than December 31, 2012." This effective date and extended compliance date provides additional time for procedural implementation and will allow political subdivisions described by the commenters to avoid having to file two notices within a short period of time.

§110.7: A commenter suggests that subsection (d) should be changed to require a self-insured political subdivision subject to this rule to provide notice not later than the 30th day before the political subdivision begins to provide benefits. Commenter believes that this approach is consistent with statute and would result in a smooth transition for political subdivisions providing medical benefits.

Agency Response: The Division disagrees with the commenter's recommendation. This rule is designed to provide the Division with information as to the method the political subdivision uses to provide medical benefits to its injured employees so that the Division may use this information to process official action requests (e.g., requests to change treating doctors, requests for Required Medical or Designated Doctor examinations, etc.) on individual claims and resolve claim disputes. This rule is not intended to implement or affect continuity of treatment of injured workers under Labor Code §504.053(d)(4).

§110.7: A commenter agrees with the Division's need to obtain contact information on political subdivisions electing to provide benefits under Labor Code §504.053(b)(2); however, the commenter believes the simplest way to get this information is on a single form filed once, preferably electronically. The commenter suggests this form would only be updated when changes in the health plan occur, similar to what is done with trading partners.

Agency Response: The Division disagrees with using a single form for collecting contact information for the entity directly contracting for health care services under Labor Code §504.053(b)(2) in a manner similar to what is done with trading partners. The Division has adopted the form used by self-insured political subdivisions to report proof of coverage information under §110.1 of this title to be used for reporting the information required under this rule because self-insured political subdivisions already utilize this form and that form already gathers information required under this adopted rule such as the name, address, and federal employer identification number of the political subdivision, and the political subdivision's contact information. Additionally, the Division notes that it is continu-

ally working towards utilizing the most updated technological methods for collecting information electronically; however, at this time the Division does not have the capacity for this type of electronic reporting. The rule has been changed to allow for the Division to specify the form and manner for this information to be reported to the Division either in writing or electronically so that if the Division becomes able to accept this information electronically in the future, additional rulemaking would not be necessary to implement electronic reporting of this information. The Division also notes that this rule provides an initial filing date of December 31, 2012 for political subdivisions providing medical benefits in accordance with Labor Code §504.053(b)(2) as of the effective date and a 30-day filing deadline for political subdivisions that begin to provide medical benefits in that manner after the effective date of this rule. The Division also notes that this rule requires a self-insured political subdivision to report any changes in the reported information not later than the 30th day after the date of the change.

§110.7: A commenter notes that the use of "health plan" is confusing and is used in the Texas Insurance Code generally in reference to group health insurance. The commenter adds that this term is used nowhere in Labor Code Chapter 504, the underlying statutory authority for this rule, and suggests replacement with the following language: "entity contracting with health care providers." The commenter requests if the Division chooses to use the term "health plan," the Division provide a definition clarifying this term as the name and contract information for the entity directly contracting under Labor Code §504.053(b)(2) or the Local Government Chapter 172 pool.

Agency response: The Division disagrees with the commenter to replace the term "health plan" with "entity contracting with health care providers." However, the Division agrees with commenter that adding a definition of the term "health plan" will add clarity to this rule. The Division therefore has added the following language in adopted subsection (a), "A health plan, for purposes of this section, is defined as a political subdivision contracting with health care providers under Labor Code §504.053(b)(2)." The Division does not need the name and contact information for the entity to be included in the definition of a health plan because this information is required under §110.7(c)(3) and (4).

§110.101(a): A commenter suggests that a subsection (a)(2) be added, to require an employer to notify their employees of coverage status in writing whenever an employee reports an injury or the employer has actual knowledge of a potential claim, to read as follows: "shall be provided at the time an employee reports an injury to the employer or at the time an employer has actual knowledge of a potential claim."

Agency Response: The Division declines to make this suggested change and points the commenter to the various types of notices already mandated by Labor Code §406.005 and this rule that provide employees with information about the employers workers' compensation insurance status. Labor Code §406.005 enumerates the statutory requirements for providing notice of coverage status to an employee. Under the statute and this rule, employees are personally notified at the time of hire and of any subsequent changes within 15 days of a change in coverage status. Additionally, the statute and this rule requires employers to post notices at conspicuous locations in the employer's place of business as necessary to provide reasonable notice to the employees of the employer's workers' compensation insurance coverage status. Employers are also required to revise these posted notices when the information contained therein has changed.

§110.101(b)(2): A commenter recommends §110.101(b)(2) be amended to include that the notice must be provided at the time the employer notifies the insurance carrier of the termination or no later than 10 days prior to the policy termination or cancellation effective date. The commenter explains this would allow for those employers who, for some reason, have to delay the anticipated date of termination or cancellation of their policy and/or may have provided a significant lead time/notice to the carrier. The commenter adds that allowing for notice to be posted 10 days prior to the cancellation or termination of a policy would cause less confusion to the employees.

Agency Response: The Division disagrees with the recommendation because the posted notices are not designed to be predictive; rather the posted notices are designed to provide an employer's current workers' compensation coverage status. The Division notes that in response to other comments the Division did change this section to require an employer who terminates a workers' compensation insurance policy to provide the new posted notice at the time the termination takes effect.

§110.101(b)(2) and (3): A commenter states that the proposed rule partially addresses a previous concern regarding personal notice to employees. The proposed rule addresses this concern by requiring an employer to notify employees in writing of the termination of coverage not later than the 15th day after the date on which the termination or cancellation of coverage takes effect. The commenter notes the proposed rule also requires notice to be posted when coverage is terminated and recommends this posting requirement be amended to be consistent with the personal notice requirement, allowing notice to be posted not later than the 15th day after the date the termination or cancellation takes place.

Agency Response: The Division disagrees with the commenter that the proposed rule required notice to be posted when coverage is terminated. The proposal included existing rule language which required notice to be posted upon notification, which was prior to termination or cancellation. Additionally, the Division also disagrees with adopting the 15-day posting notice requirement recommended by commenter. However, the Division agrees notices should not be required to be posted prior to the effective date of the termination of coverage. The Division has therefore changed the text in §110.101(b)(2) and (3) to require an employer who terminates a workers' compensation policy or withdraws from self-insurance to post the applicable notice at the time the termination or withdrawal, as applicable, takes effect. This adopted rule ensures that employees will receive accurate and up-to-date information regarding the employer's current workers' compensation coverage status. The adopted rule also more closely aligns with statutory requirements contained in Labor Code §406.005(c) which requires an employer to revise the posted notice when the information contained in the notice is changed.

§110.101(c): A commenter opines that some deadline should be added for replacing notices posted prior to July 1, 2012 and for updating notices when the information regarding coverage status, insurance carrier information, safety violations hotline number or third party administrator changes should be provided. Without the addition of a deadline, the commenter adds this rule does not seem to be enforceable.

Agency Response: The Division agrees that clarification is necessary with regard the deadline for replacing posted notices required under the previous rule with the new posted notices. The Division therefore has added an effective date of January 1, 2013 for this rule and has modified the text in §110.101(c) to state that "on or after the effective date of this rule, notices shall contain the specific text required by this rule." Thus, effective January 1, 2013, employers must begin using the notices required by this rule. The Division, however, disagrees that a deadline does not exist for employers to update notices when the information regarding coverage status, insurance carrier information, or third party administrator changes should be provided. This rule clearly requires that notices shall be updated to reflect current information. Additionally, Labor Code §406.005(c) provides clear guidance on this issue, requiring an employer to revise notices when the information contained therein is changed. The Division notes that this adoption removes "safety violation hotline information" from §110.101(c) because this hotline number is prescribed in §110.101(e).

§110.101(e)(1): A commenter suggests that the work-related injury is the critical element of the notice and should be mentioned first, recommending the following language be added: "In the event of a work related injury or occupation disease [name of employer] has workers' compensation insurance coverage from [name of commercial insurance company]."

Agency response: The Division disagrees with this recommendation, as it would not substantially improve the notice for employees. The "Coverage" section of the notice is intended to inform all employees of the employer's status regarding workers' compensation insurance coverage.

§110.101(e)(1) - (3): A commenter disagrees with the deletion of the phrase "and assist in resolving disputes about a claim" from the text of the notices. The commenter notes that the Office of Injured Employee Counsel's (OIEC) duties to injured employees are greater than merely explaining their rights and responsibilities under the worker' compensation system. The commenter states OIEC's statutory responsibilities are to assist and advocate on behalf of Texas' injured employees.

Agency response: The Division agrees that OIEC's statutory responsibilities are to advocate on behalf of injured employees as a class and to assist individual injured employees as set forth in Labor Code §404.101. However, the Division disagrees with the recommendation as it is not necessary to be included in the posted notice. The Division clarifies that injured employees are provided a separate notice relaying an injured worker's rights and responsibilities in the Texas workers' compensation system under the requirement in §120.2 with more detailed information concerning OIEC's mission and statutory responsibilities.

§110.101(e)(1), (2), and (3): A commenter believes that the last sentence under "EMPLOYEE ASSISTANCE" should be changed to read as follows, "You can obtain OIEC's assistance by contacting an OIEC customer service representative in your local field office by calling 1-866-EZE-OIEC (1-866-393-6432)." The commenter further states this will add clarity that the Division and OIEC are separate agencies and eliminate the step of calling the Division to contact OIEC.

Agency response: The Division agrees to add the suggested language for clarity, with a slight modification in the suggested language by adding "or" after "office", but notes that this does not eliminate an extra step in the injured employee's process, as injured employees will be calling the same number in either scenario, thus reaching the same resources.

§110.101(e)(4): A commenter suggests for clarity changing the sentence that reads: "In addition, you may have rights under the common law of Texas should you have an on the job injury or occupational disease" to read "In addition, you may have rights under the common law of Texas if you have an injury or occupational disease that is work related."

Agency response: The Division disagrees to make the suggested change because the commenter's suggestion does not provide any additional clarity to this employer notice, but rather simply substitutes "on the job injury or occupational disease" with "injury or occupational disease that is work related."

§110.103: A commenter states that the rules appear to identify numerous, overlapping triggers for the filing of a notice of non-coverage that do not appear to be "or" dates, but rather would require more than one annual filing.

Agency Response: The Division disagrees. Under these rules subsection (a) is a continuation of the previous non-subscriber rule for notices submitted to the Division before January 1, 2013. Subsection (b) is the revised rule for notices submitted by non-subscribing employers to the Division on or after January 1, 2013. Under adopted subsection (b)(1), each non-subscribing employer whose employees are not exempt from workers' compensation insurance coverage under the Act shall submit a notice of non-coverage to the Division annually between February 1st and April 30th of each calendar year. Under adopted subsection (b)(2), a non-subscribing employer shall submit a notice of non-coverage not later than the 30th day after the date the employer hired its first employee subject to the Act, unless this due date falls within the same period described by subsection (b)(1) and the employer submits the notice within that period. Adopted subsection (b) also includes an additional reporting requirement which is not later than the 10th day after receipt of a Division request for the information. Under this new annual reporting requirement some non-subscribing employers may have to file twice in short succession, having a filing remaining before the end of 2012 under the current filing timeline in §110.103(a) for notices submitted to the Division before January 1, 2013, and having a new filing due to meet the February 1st - April 30th deadline contained in the new filing timeline in §110.103(b). Once these employers make their annual filing under the new filing timeline, they will be on the new §110.103(b) annual schedule thereafter.

§110.103: A commenter expresses their concern about the enforceability of §110.103 and suggests the following language be added to §110.103(d) to ensure the enforceability of this rule: "Failure to provide notice as required in this rule is an administrative violation."

Agency Response: The Division disagrees and declines to make this change. This language and authority for related administrative violations is provided in Labor Code §406.005(e) which states that "an employer commits an administrative violation if the employer fails to comply with this section." Additionally, under Labor Code §415.021 the Commissioner has authority to enforce refusal to comply with a rule through assessment of administrative penalties. Therefore, the commenter's suggested provision is not necessary.

§110.103 and §110.105: A commenter suggests that the Division actively pursue coordinating its awareness and/or notice efforts with other Texas government agencies. This will

decrease non-subscriber compliance reporting problems and increase Texas employer awareness of reporting responsibilities. The commenter suggests government agencies, such as the Texas Workforce Commission and Comptroller of Public Accounts, as examples of agencies with which the Division could coordinate.

Agency Response: The Division agrees that coordinating awareness efforts with other state agencies, to the extent possible and practicable, is a crucial and necessary step to fully inform all Texas employers of reporting responsibilities. The Division has already reached out to several agencies and associated websites, including the Texas Workforce Commission, Office of the Governor, Texas Comptroller, the Official Website of the State of Texas (texas.gov), and Secretary of State in its information dissemination efforts related to these rules. These agencies have already updated their websites to direct employers to TDI-DWC and information regarding employer reporting requirements.

§110.105: A commenter expresses their concern about the enforceability of §110.105 and suggests that the following language be added as §110.105(f) to ensure its enforceability: "Failure to provide notice as required in this rule is an administrative violation."

Agency Response: The Division disagrees and declines to make this change. This language and authority for related administrative violations is provided in Texas Labor Code §406.009(e) which states that "an employer commits an administrative violation if that person fails to comply with Subsection (d)." Additionally, under Labor Code §415.021 the Commissioner has authority to enforce refusal to comply with a rule through assessment of administrative penalties. Therefore, the commenter's suggested provision is not necessary.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For, with changes: Insurance Council of Texas, Texas Healthcare Foundation, Texas Alliance of Responsible Nonsubscribers, Texas Association of School Boards, Inc., an individual.

Neither for nor against, with changes: Texas Alliance of Nonsubscribers and Office of Injured Employee Counsel, an individual.

SUBCHAPTER A. CARRIER NOTICES

28 TAC §110.1

The amendments are adopted under Labor Code §§406.006, 406.008, 406.009, 504.018, 504.053(b)(2), 401.024, 406.001, 504.001, 402.00128(b)(10), 402.00128(b)(12), and under the general authority of §402.061.

Labor Code §406.006 provides, in relevant part, that an insurance company from which an employer has obtained workers' compensation insurance coverage, a certified self-insurer, a workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision shall file notice of coverage and claim administration contact information with the Division not later than the 10th day after the date on which the coverage or claim administration agreement takes place, unless the Commissioner adopts a rule establishing a later date for filing. Labor Code §406.008 provides timelines for when an insurance company that cancels or does not renew a policy of workers' compensation must deliver notice of the cancellation or nonrenewal to the employer and the Division. Additionally, Labor Code §406.008 requires the notice required under this section to be filed with the Division and determines failure of the insurance company to give notice as required by this section extends the policy until the date on which the required notice is provided to the employer and the Division. Labor Code §406.009 requires the Division to collect and maintain the information required under Labor Code Chapter 406, Subchapter A, adopt rules as necessary to enforce that subchapter, and monitor compliance with the requirements contained therein. Labor Code §504.018 requires a political subdivision to notify the Division of the method by which its employees will receive benefits, the approximate number of employees covered, and the estimated amount of payroll, and to notify its employees of the method by which the employees will receive benefits and the effective date of the coverage. Labor Code §504.053(b)(2) authorizes a self-insured political subdivision that does not provide medical benefits through a workers' compensation health care network certified under Insurance Code Chapter 1305 to provide medical benefits to its employees by directly contracting with health care providers or by contracting through a health benefits pool established under Chapter 172, Local Government Code. Labor Code §401.024 provides the Commissioner the authority to permit or require the use of electronic transmission to transmit information. Labor Code §406.001 provides the definition of employer, for purposes of Labor Code Chapter 406, Subchapter A as a person who employs one or more employees. Labor Code §504.001 provides the definition of a political subdivision. Labor Code §402.00128(b)(10) authorizes the Commissioner or the Commissioner's designee to prescribe the form, manner, and procedure for the transmission of information to the Division. Labor Code §402.00128(b)(12) authorizes the Commissioner or the Commissioner's designee to exercise other powers and perform other duties as necessary to implement and enforce Labor Code Title 5. Labor Code §402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of Labor Code Title 5, Subtitle A.

§110.1. Insurance Carrier Requirements for Notifying the Division of Insurance Coverage.

(a) An approved workers' compensation insurance policy, as referenced in Labor Code §401.011(44)(A), includes a binder, which serves as evidence of a temporary agreement that legally provides workers' compensation insurance coverage until the approved insurance policy is issued or the binder is canceled.

(b) As used in this section, "workers' compensation insurance coverage information" includes information regarding whether or not an employer has workers' compensation insurance coverage and, if so, information about the method of workers' compensation insurance coverage used.

(c) This rule applies to an insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision. Certified Self-Insurers are also subject to requirements specified in Chapter 114 of this title (relating to Self-Insurance). Self-Insurance Groups are also subject to requirements specified in Chapter 5, Subchapter G, Division 2 of this title (relating to Group Self-Insurance Coverage). Self-insured political subdivisions are also subject to requirements specified in §110.7 of this title (relating to Self-Insured Political Subdivision Requirements for Notifying the Division of Election to Provide Medical Benefits).

(d) An insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision shall submit to the division, or its designee, workers' compensation insurance coverage information in the form and manner prescribed by the division. The division may designate

and contract with a data collection agency to collect and maintain insurance coverage information.

(e) Workers' compensation insurance coverage information for insured Texas employers shall be provided to the division in accordance with subsection (d) of this rule as follows:

(1) by the insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and political subdivision, within 10 days after the effective date of coverage or endorsement and annually thereafter no later than 10 days after the anniversary date of coverage;

(2) by the insurance company, 30 days prior to the date on which cancellation or non-renewal becomes effective if the insurance company cancels the workers' compensation insurance coverage, does not renew the workers' compensation insurance coverage on the anniversary date, or cancels a binder before it issues a workers' compensation insurance policy;

(3) by the insurance company, 10 days prior to the date on which the cancellation becomes effective if the insurance company cancels an employer's workers' compensation insurance coverage in accordance with Labor Code, §406.008(a)(2); or

(4) by the insurance company, within 10 days after receiving notice of the effective date of termination from the covered employer because the employer switched workers' compensation insurance carriers.

(f) Cancellation or non-renewal of a workers' compensation insurance policy by an insurance company takes effect on the later of:

(1) the end of the workers' compensation insurance policy period; or

(2) the date the division and the employer receive the notification from the insurance company of coverage cancellation or non-renewal and the later of:

(A) the date 30 days after receipt of the notice required by Labor Code, §406.008(a)(1);

(B) the date 10 days after receipt of the notice required by Labor Code, §406.008(a)(2); or

(C) the effective date of the cancellation if later than the date in paragraph (1) or (2) of this subsection.

(g) "Claim administration contact" as it applies to this chapter is the person responsible for identifying or confirming an employer's coverage information with the division. An insurance company, a certified self-insurer, a workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision shall file a notice with the division of their designated claim administration contact not later than the 10th day after the date on which the coverage or claim administration agreement takes effect. A single administration address for the purpose of identifying or confirming an employer's coverage status shall be provided. If the single claims administration contact address changes, the new address shall be provided to the division at least 30 days in advance of the change taking effect. This information shall be filed in the form and manner prescribed by the division.

(h) An insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision may elect to have a servicing agent process and file all coverage information, but the insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, or political subdivision remains responsible for meeting all filing requirements of this rule.

(i) Notwithstanding the other provisions of this section, if an employer switches workers' compensation insurance carriers, the original policy is considered canceled as of the date the new coverage takes effect. Employers shall notify the prior insurance carrier of the cancellation date of the original policy, in writing, within 10 days of the effective date.

(j) This section is effective January 1, 2013.

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 July 16, 2012.

TRD-201203619
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: January 1, 2013
Proposal publication date: February 24, 2012
For further information, please call: (512) 804-4703

28 TAC §110.7

The new rule is adopted under Labor Code §§406.006, 406.008, 406.009, 504.018, 504.053(b)(2), 401.024, 406.001, 504.001, 402.00128(b)(10), 402.00128(b)(12), and under the general authority of §402.061.

Labor Code §406.006 provides, in relevant part, that an insurance company from which an employer has obtained workers' compensation insurance coverage, a certified self-insurer, a workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision shall file notice of coverage and claim administration contact information with the Division not later than the 10th day after the date on which the coverage or claim administration agreement takes place, unless the Commissioner adopts a rule establishing a later date for filing. Labor Code §406.008 provides timelines for when an insurance company that cancels or does not renew a policy of workers' compensation must deliver notice of the cancellation or nonrenewal to the employer and the Division. Additionally, Labor Code §406.008 requires the notice required under this section to be filed with the Division and determines failure of the insurance company to give notice as required by this section extends the policy until the date on which the required notice is provided to the employer and the Division. Labor Code §406.009 requires the Division to collect and maintain the information required under Labor Code Chapter 406, Subchapter A, adopt rules as necessary to enforce that subchapter, and monitor compliance with the requirements contained therein. Labor Code §504.018 requires a political subdivision to notify the Division of the method by which its employees will receive benefits, the approximate number of employees covered, and the estimated amount of payroll, and to notify its employees of the method by which the employees will receive benefits and the effective date of the coverage. Labor Code §504.053(b)(2) authorizes a self-insured political subdivision that does not provide medical benefits through a workers' compensation health care network certified under Insurance Code Chapter 1305 to provide medical benefits to its employees by directly contracting with health care providers or by contracting through a health benefits pool established under Chapter 172, Local Government Code. Labor Code §401.024 provides the Com-

missioner the authority to permit or require the use of electronic transmission to transmit information. Labor Code §406.001 provides the definition of employer, for purposes of Labor Code Chapter 406, Subchapter A as a person who employs one or more employees. Labor Code §504.001 provides the definition of a political subdivision. Labor Code §402.00128(b)(10) authorizes the Commissioner or the Commissioner's designee to prescribe the form, manner, and procedure for the transmission of information to the Division. Labor Code §402.00128(b)(12) authorizes the Commissioner or the Commissioner's designee to exercise other powers and perform other duties as necessary to implement and enforce Labor Code Title 5. Labor Code §402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of Labor Code Title 5, Subtitle A.

§110.7. Self-Insured Political Subdivision Requirements for Notifying the Division of Election to Provide Medical Benefits.

(a) A health plan, for purposes of this section, is defined as a political subdivision contracting with health care providers under Labor Code §504.053(b)(2).

(b) A political subdivision as defined by Labor Code §504.001(3) that self-insures either individually or collectively and that pursuant to Labor Code §504.053(b)(2) elects to provide medical benefits to its injured employees by directly contracting with health care providers or by contracting through a health benefits pool established under Local Government Code Chapter 172 shall provide to the division notice of the method by which its employees will receive medical benefits. Political subdivisions are also subject to requirements specified in §110.1 of this title (relating to Insurance Carrier Requirements for Notifying the Division of Insurance Coverage).

(c) The notice of the method by which its employees will receive medical benefits required by subsection (b) of this section shall be filed with the division in writing or electronically and in the form and manner prescribed by the division. The notice shall include:

(1) the name, address, and the federal employer identification number (FEIN) of the political subdivision;

(2) the political subdivision's contact information;

(3) the name of the health plan elected under Labor Code §504.053(b)(2) for the political subdivision;

(4) the contact information for the health plan elected under Labor Code §504.053(b)(2); and

(5) the beginning and ending date(s) of the election under subsection (b) of this section, as applicable.

(d) A self-insured political subdivision that provides medical benefits to its injured employees in the manner described by Labor Code §504.053(b)(2) as of the effective date of this section shall provide the notice required by this section not later than December 31, 2012.

(e) A self-insured political subdivision that begins to provide medical benefits to its injured employees in the manner described by Labor Code §504.053(b)(2) after the effective date of this section shall provide the notice required by this section not later than the 30th day after the date the political subdivision begins to provide the medical benefits in that manner.

(f) A self-insured political subdivision shall notify the division of any change in any information required by this section not later than the 30th day after the date of the change.

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 July 13, 2012.

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Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: August 2, 2012
Proposal publication date: February 24, 2012
For further information, please call: (512) 804-4703

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SUBCHAPTER B. EMPLOYER NOTICES

28 TAC §110.101, §110.105

The amendments and new rule are adopted under Labor Code §§406.004, 406.005, 406.007, 406.008, 406.009, 411.081, 401.024, 406.001, 402.00128(b)(10), 402.00128(b)(12), and under the general authority of §402.061.

Labor Code §406.004 provides notification requirements for employers who do not obtain workers' compensation insurance coverage. Labor Code §406.005 requires an employer to post coverage information at the employer's place of business to provide reasonable notice to employees. Additionally this section requires employers to notify each employee as to their workers' compensation status, specifically requiring new employees to be notified of the existence or absence of workers' compensation insurance coverage at the time the employee is hired. Labor Code §406.007 requires an employer who terminates workers' compensation insurance coverage obtained under the Texas Workers' Compensation Act to file a written notice with the Division by certified mail not later than the 10th day after the date on which the employer notified the insurance carrier to terminate the coverage. Labor Code §406.008 provides timelines for when an insurance company that cancels or does not renew a policy of workers' compensation must deliver notice of the cancellation or nonrenewal to the employer and the Division. Additionally, Labor Code §406.008 requires the notice required under this section to be filed with the Division and determines failure of the insurance company to give notice as required by that section extends the policy until the date on which the required notice is provided to the employer and the Division. Labor Code §406.009 requires the Division to collect and maintain the information required under Labor Code Chapter 406, Subchapter A, adopt rules as necessary to enforce that subchapter, and monitor compliance with the requirements contained therein. Labor Code §411.081 requires employers to provide posted notice of the telephone hotline in the manner prescribed by the Division. Labor Code §401.024 provides the Commissioner the authority to permit or require the use of electronic transmission to transmit information. Labor Code §406.001 provides the definition of employer, for purposes of Labor Code Chapter 406, Subchapter A as a person who employs one or more employees. Labor Code §402.00128(b)(10) authorizes the Commissioner or the Commissioner's designee to prescribe the form, manner, and procedure for the transmission of information to the Division. Labor Code §402.00128(b)(12) authorizes the Commissioner or the Commissioner's designee to exercise other powers and perform other duties as necessary to implement and enforce Labor Code Title 5. Labor Code §402.061 provides that the Commissioner

shall adopt rules as necessary for the implementation and enforcement of Labor Code Title 5, Subtitle A.

§110.101. Covered and Non-Covered Employer Notices to Employees.

(a) In addition to the posted notice required by subsection (e) of this section, employers, as defined by Labor Code §406.001, shall notify their employees of workers' compensation insurance coverage status, in writing. This additional notice:

(1) shall be provided at the time an employee is hired, meaning when the employee is required by federal law to complete both a W-4 form and an I-9 form or when a break in service has occurred and the employee is required by federal law to complete a W-4 form on the first day the employee reports back to duty;

(2) shall be provided to each employee, by an employer whose workers' compensation insurance coverage is terminated or cancelled, not later than the 15th day after the date on which the termination or cancellation of coverage takes effect;

(3) shall be provided to each employee, by an employer who obtains workers' compensation insurance coverage, not later than the 15th day after the date on which coverage takes effect, as necessary to allow the employee to elect to retain common law rights under Labor Code Chapter 406;

(4) shall include the text required in the posted notice; and

(5) if the employer is covered by workers' compensation insurance (subscriber) or becomes covered, whether by commercial insurance or through self-insurance as provided by the Texas Workers' Compensation Act (Act), shall include the following statement: "You may elect to retain your common law right of action if, no later than five days after you begin employment or within five days after receiving written notice from the employer that the employer has obtained workers' compensation insurance coverage, you notify your employer in writing that you wish to retain your common law right to recover damages for personal injury. If you elect to retain your common law right of action, you cannot obtain workers' compensation income or medical benefits if you are injured."

(b) Notices required to be posted by this rule shall be posted:

(1) by the non-subscribing employer as provided in subsection (c) of this section;

(2) by the employer who is terminating workers' compensation insurance coverage, at the time the employer's termination of coverage takes effect, unless a new policy will maintain continuous coverage in which case the employees will be notified at the time the new workers' compensation insurance policy takes effect;

(3) by the self-insurer as provided by the Act, who is withdrawing from self-insurance, at the time the withdrawal takes effect;

(4) by the employer who becomes covered either by a workers' compensation insurance policy or through self-insurance as provided by the Act, at the time coverage or certification takes effect; and

(5) by the employer whose workers' compensation insurance policy is canceled by the insurance carrier, at the time the cancellation becomes effective if no new workers' compensation insurance policy is obtained.

(c) On or after the effective date of this rule, notices shall contain the specific text required by this rule. Any time the information regarding workers' compensation insurance coverage status, insurance carrier, or third party administrator changes, the notice shall be updated to reflect current information.

(d) An employer who recruits an employee in Texas to perform services outside of Texas, actually hires outside of Texas, and has notices of workers' compensation insurance coverage posted conspicuously at the place of hire and at the business location where the employee will perform services, is not required to provide the additional notice required in subsection (a) of this section to the employee.

(e) Employers shall post notices in the workplace to inform employees about workers' compensation issues as required by this rule. These notices shall be posted in the personnel office, if the employer has a personnel office, and in the workplace where each employee is likely to see the notice on a regular basis. The notices shall be printed with a title in at least 26 point bold type, subject in at least 18 point bold type, and text in at least 16 point normal type, and shall include ENGLISH, SPANISH, and any other LANGUAGE common to the employer's employee population. The text for the notices shall be the text provided by the division on the sample notice without any additional words or changes.

(1) Employers insured through a commercial insurance company shall post the following notice:
Figure: 28 TAC §110.101(e)(1)

(2) Employers who become certified self-insurers under Labor Code Chapter 407 shall post the following notice:
Figure: 28 TAC §110.101(e)(2)

(3) Employers who are a member of a self-insurance group under Labor Code Chapter 407A shall post the following notice:
Figure: 28 TAC §110.101(e)(3)

(4) Employers who are not covered by workers' compensation (non-subscriber) shall post the following notice:
Figure: 28 TAC §110.101(e)(4)

(f) Failure to post or to provide notice as required in this rule is an administrative violation.

(g) This section is effective January 1, 2013.

§110.105. Employer Requirements for Notifying the Division of Termination of Coverage.

(a) An employer, as defined by Labor Code §406.001, who terminates workers' compensation insurance coverage shall file written notice of the termination of coverage with the division not later than the 10th day after the date on which the employer notified the insurance carrier under Labor Code §406.007 to terminate the coverage.

(b) The employer shall file the notice of termination required by subsection (a) of this section by certified mail or electronically on the form prescribed by the division. The notice shall contain:

(1) a statement of no workers' compensation insurance coverage, including policy termination effective date, policy number, insurance company name, date the termination notice was sent to the insurance company, and date employees were or will be notified;

(2) a statement of whether the employer had a death, injuries that resulted in the injured employee's absence from work for more than one day, or knowledge of an occupational disease since the last report of no coverage;

(3) the employer business name;

(4) the federal employer identification number (FEIN);

(5) the employer's business mailing address;

(6) the employer's business type;

(7) the employer's North American Industry Classification System (NAICS) code;

(8) additional business locations (including name, FEIN, and address concerning each additional location); and

(9) the signature date and the name, title, telephone number, email address, and signature of the person providing the information required by this subsection.

(c) Termination of coverage by an employer takes effect on the later of:

(1) the 30th day after the date of filing the notice with the division under this section; or

(2) the cancellation date of the policy.

(d) Coverage shall be extended until the date on which the termination of coverage takes effect and the employer is obligated for premiums due for that period.

(e) Notwithstanding the other provisions of this section, if an employer switches workers' compensation insurance carriers, the original policy is considered canceled as of the date the new coverage takes effect. Employers shall notify the prior insurance carrier of the cancellation date of the original policy, in writing, within 10 days of the effective date.

(f) This section is effective January 1, 2013.

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.

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Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4703

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28 TAC §110.103

The new rule is adopted under Labor Code §§406.004, 406.005, 406.007, 406.008, 406.009, 411.081, 401.024, 406.001, 402.00128(b)(10), 402.00128(b)(12), and under the general authority of §402.061.

Labor Code §406.004 provides notification requirements for employers who do not obtain workers' compensation insurance coverage. Labor Code §406.005 requires an employer to post coverage information at the employer's place of business to provide reasonable notice to employees. Additionally this section requires employers to notify each employee as to their workers' compensation status, specifically requiring new employees to be notified of the existence or absence of workers' compensation insurance coverage at the time the employee is hired. Labor Code §406.007 requires an employer who terminates workers' compensation insurance coverage obtained under the Texas Workers' Compensation Act to file a written notice with the Division by certified mail not later than the 10th day after the date on which the employer notified the insurance carrier to terminate the coverage. Labor Code §406.008 provides timelines for when an insurance company that cancels or does not renew a policy of workers' compensation must deliver notice of the cancellation or nonrenewal to the employer and the Division. Additionally, Labor Code §406.008 requires the notice required under this section to be filed with the Division and determines failure of the insurance company to give notice as required by that section extends the policy until the date on which the required notice is provided to the employer and the Division. Labor Code §406.009 requires the Division to collect and maintain the information required under Labor Code Chapter 406, Subchapter A, adopt rules as necessary to enforce that subchapter, and monitor compliance with the requirements contained therein. Labor Code §411.081 requires employers to provide posted notice of the telephone hotline in the manner prescribed by the Division. Labor Code §401.024 provides the Commissioner the authority to permit or require the use of electronic transmission to transmit information. Labor Code §406.001 provides the definition of employer, for purposes of Labor Code Chapter 406, Subchapter A as a person who employs one or more employees. Labor Code §402.00128(b)(10) authorizes the Commissioner or the Commissioner's designee to prescribe the form, manner, and procedure for the transmission of information to the Division. Labor Code §402.00128(b)(12) authorizes the Commissioner or the Commissioner's designee to exercise other powers and perform other duties as necessary to implement and enforce Labor Code Title 5. Labor Code §402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of Labor Code Title 5, Subtitle A.

§110.103. Employer Requirements for Notifying the Division of Non-Coverage.

(a) Applicability. This subsection applies to notices required to be submitted by non-subscribing employers to the division before January 1, 2013. An employer, as defined by Labor Code §406.001, that does not have workers' compensation insurance coverage (non-subscriber) and whose employees are not exempt from coverage under the Workers' Compensation Act (Act) shall provide the division a notice of non-coverage, in the form and manner prescribed by the division. The notice required by this subsection shall be provided, the earlier of the following:

(1) 30 days after receiving a division request for the filing of a notice of non-coverage and annually thereafter on the anniversary date of the original filing; or

(2) 30 days after hiring an employee who is subject to coverage under the Act, and annually thereafter on the anniversary date of the original filing.

(b) Applicability. This subsection applies to notices required to be submitted by non-subscribing employers to the division on or after January 1, 2013.

(1) A non-subscriber whose employees are not exempt from workers' compensation insurance coverage under the Act shall submit a notice of non-coverage to the division annually between February 1st and not later than April 30th of each calendar year. The period of the notice shall cover from May 1st of the same year the notice is submitted through the end of April of the subsequent year.

(2) In addition to the notice required by paragraph (1) of this subsection, a non-subscriber shall submit to the division a notice of non-coverage not later than the 30th day after the date the employer hired its first employee who is subject to coverage under the Act, unless this due date falls within the same time period described by paragraph (1) of this subsection and the employer submits the notice within that time period. A non-subscriber shall also provide the division with a notice of non-coverage not later than the 10th day after receipt of a division request for the information.

(3) The notices required by paragraphs (1) and (2) of this subsection shall be filed with the division in writing or electronically in the form and manner prescribed by the division and shall contain:

(A) a statement that the employer does not have workers' compensation insurance coverage;

(B) a statement of whether the employer had a death, injuries that resulted in the injured employee's absence from work for more than one day, or knowledge of an occupational disease since the last report of no coverage;

(C) the employer's business name;

(D) the federal employer identification number (FEIN);

(E) the employer's business mailing address;

(F) the employer's business type;

(G) the employer's North American Industry Classification System (NAICS) code(s);

(H) additional business locations (including name, FEIN, and address concerning each additional location); and

(I) the date the form was completed and the name, title, telephone number, email address, and signature of the person providing the information required by this subsection.

(c) Employers are responsible for timely and accurate notice under this section. A notice required by this section is considered filed with the division only when it accurately contains all of the data elements specified under subsection (b) of this section and is received by the division.

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.

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Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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CHAPTER 160. REPORTS OF INJURY AND OCCUPATIONAL DISEASE--GENERAL PROVISIONS

28 TAC §§160.1 - 160.3

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts amendments to §160.2 and §160.3 of this title (relating to Non-Subscribing Employer's Report of Injury and Subscribing Employer's Report of Injury, respectively) and new §160.1 of this title (relating to Applicability) regarding reports of injury and occupational disease by employers. Sections 160.1 - 160.3 implement certain statutory provisions in Labor Code Chapter 411, Subchapter C, specifically Labor Code §411.032 that require an employer to file with the Division a report for certain on-the-job injuries and occupational diseases. New §160.1 and the amendments to §160.2 and §160.3 are adopted with changes to the proposed text published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1166). These changes, however, do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

In accordance with Government Code §2001.033, the Division's reasoned justification for these amendments and new rule is set out in this order, which includes the preamble, which in turn includes the rules. The reasoned justification is contained throughout the preamble, including the reasons why the new and amended rules are necessary; the factual, policy and legal bases for the new and amended rules; a summary of comments received from interested parties, names of the entities that commented and whether they were in support of or in opposition to the adoption of the rules, and the reasons why the Division agrees or disagrees with the comments and recommendations.

The Division published an informal draft of these proposed amendments and new rule on the Division's website for informal comment on November 8, 2011. The Division received five informal comments. The public comment period for these proposed new and amended rules ended on March 26, 2012. The Division received eight public comments. No public hearing was requested or held for this proposal.

Simultaneous with the adoption of these amendments and new rule, the Division has adopted amendments to §110.1 and §110.101 and new §§110.7, 110.103, and 110.105 of this title. These other adopted amendments and new rules relate to other reporting requirements placed upon employers and are published elsewhere in this issue of the *Texas Register.*

The adopted amendments to §160.2 and §160.3 and adopted new §160.1 concern reports of injury by employers pursuant to requirements in Labor Code §411.032. Labor Code §411.032(a) requires an employer to file with the Division a report of each: (1) on-the-job injury that results in the employee's absence from work for more than one day; and (2) occupational disease of which the employer has knowledge. In accordance with Labor Code §411.002, employers subject to these reporting requirements are: (1) employers who obtain workers' compensation insurance coverage; and (2) employers who are not required to and do not obtain workers' compensation insurance coverage and who employ five or more employees not exempt from workers' compensation insurance coverage. Additionally, Labor Code §411.001 defines "employer" for purposes of Labor Code Chapter 411, including Labor Code §411.032, as "a person who makes a contract of hire." Labor Code §411.032(b) specifies that the Commissioner of Workers' Compensation (Commissioner) shall adopt rules and prescribe the form and manner of employer reports of injury and occupational disease filed under Labor Code §411.032.

Information reported to the Division by employers in accordance with Labor Code §411.032 is included in the job safety information system and associated data base mandated by Labor Code §411.031 and §411.033. These statutes require the Division to maintain a job safety information system which includes a comprehensive data base that incorporates all pertinent information relating to each injury reported under Labor Code §411.032. This information must include the age, sex, wage level, occupation, and insurance company payroll classification code of the injured employee; the nature, source, and severity of the injury; the reported cause of the injury; the part of the body affected; any equipment involved in the injury; the number of prior workers' compensation claims by the employee; the prior loss history of

the employer; the standard industrial classification code of the employer; the classification code of the employer; and any other information considered useful for statistical analysis.

The adopted amendments and new rule, which are more fully described below, update and clarify existing Division rules that implement the employer report of injury requirements in Labor Code §411.032. This adoption includes a new rule which defines the applicability of the rules in Chapter 160. This adoption also includes amendments to existing Division rules in §160.2 and §160.3 that specify the form and manner in which subscribing and non-subscribing employers are to submit to the Division the reports of injury required by Labor Code §411.032. Finally, other adopted amendments correct non-substantive typographical, grammatical, and punctuation errors in the current rule text; re-letter and renumber rule text; and update the term "Commission" to "division."

This adoption first amends the title of Chapter 160 to read "Reports of Injury and Occupational Disease--General Provisions." This adopted amendment is necessary in order to conform to current statutory nomenclature in Labor Code §411.032 and to more accurately describe the contents of this chapter.

Adopted new §160.1 provides that Chapter 160 applies to an employer as defined by Labor Code §411.001(2) and that is subject to Labor Code Chapter 411, Subchapter C. Adopted new §160.1 is necessary to clarify the applicability of this chapter to an employer, as defined in Labor Code §411.001(2). This definition was previously contained within §160.2(a).

Section 160.2 governs reports of injury by non-subscribing employers who employ five or more employees not exempt from workers' compensation insurance coverage. Adopted amendments to §160.2(a) clarify the use of the term "non-subscriber" and replace the statutory reference to Labor Code §411.001(2), specifically describing a non-subscriber as an employer who does not have workers' compensation insurance coverage. This adopted amendment is necessary in order to clarify the use of the term "non-subscriber" in this rule. The adopted amendment to subsection (a) also reorders the injuries that must be reported in a manner that is consistent with the ordering in Labor Code §411.032(a). Finally, the adopted amendments to subsection (a) clarify that employers are required to report each occupational disease of which they have knowledge. This adopted amendment is necessary to make this rule consistent with Labor Code §411.032(a)(2) which requires an employer to file a report with the Division of each "occupational disease of which the employer has knowledge."

The adopted amendments to §160.2(b) harmonize rule language with Labor Code §411.032, which requires an employer to file with the Division a report of each on-the-job injury that results in the employee's absence from work for more than one day and occupational disease of which the employer has knowledge. This alignment of this rule with the statutory language of §411.032 is necessary to provide clarity and transparency in employer reporting requirements under this section. The adopted amendments to §160.2(b) reorder and clarify when a non-subscribing employer shall file a report with the Division, specifically, that a report must be filed with the Division not later than the seventh day of the month following the month in which, as applicable, the death occurred, the employee was absent from work for more than one day as a result of an on-the-job injury, or the employer acquired knowledge of the occupational disease. These amendments are not designed to substantively change current Division policies and procedures concerning employer injury and occupational disease reporting requirements. Instead, these amendments provide rule consistency with statutory language and requirements, for example, adding "on-the-job" to describe injury and "employer knowledge" of the occupational disease. The adopted amendments are also necessary to resolve any existing confusion of system participants as to when and what information is to be reported under these rules.

The adopted amendments to §160.2(c) clarify and codify current Division procedures which allow a report to be submitted to the Division in writing or electronically. These amendments are necessary to incorporate more current methods of information submission and to conform terminology in this rule to terminology in §102.5 concerning the electronic transmission of information. Finally, the adopted amendments to subsection (c) clarify and delineate, by rule, the specific data elements an employer must include in a report of injury. These amendments are necessary in order to ensure that the Division receives all the relevant and required data in an employer's report of injury, which is necessary to maintain the job safety data base required under Labor Code §411.033. Additionally, these adopted amendments align the types of data elements included in an employer report of injury between subscribing and non-subscribing employers to the extent possible. Required information under Labor Code §411.033, included in rule text, includes, for example, the age, sex, wage level, and occupation of the injured employee, the reported cause of the injury, the equipment involved in the injury, and the standard industrial classification code of the employer. In addition, the Division requires the reporting of certain data elements based on their relevancy to injury and occupational disease reporting to the Division, as applicable under Labor Code §411.033(10) concerning other information that is considered useful for statistical analysis. This other information considered useful for statistical analysis under Labor Code §411.033(10) provides the Division insight into, for example, the average length of employment prior to injury, the safety record of an employer, and injury analysis based on age.

Adopted new subsection (d) states that employers are responsible for timely and accurate filing of reports under this section. It further provides that a report required by this section is considered filed with the division only when it accurately contains all of the data elements specified under subsection (c) of this section and is received by the division. This adopted rule is necessary in order to ensure that the Division obtains timely and accurate reports of injury.

Section 160.3 governs reports of injury and occupational disease by subscribing employers. The adopted amendments to subsection (a) clarify the definition of a subscriber as an employer who does have workers' compensation insurance coverage and adds a statutory reference to Labor Code §411.032, concerning injury reporting requirements. Additional amendments to subsection (a) are non-substantive and continue to provide direction to subscribing employers on what satisfies a report of injury in respect to a covered employee under the Labor Code.

Adopted new subsection (b) sets forth the form and manner in which a subscribing employer is to report deaths, injuries, and occupational diseases incurred by their employees who have waived workers' compensation insurance coverage under Labor Code §406.034. Prior to these adopted amendments, this rule did not clearly prescribe the form and manner for subscribing employers to report injuries and occupational diseases incurred by employees who opt out of coverage under Labor Code

§406.034. As stated, subscribing employers are required to report injuries and occupational injuries to the Division under Labor Code §411.032. The adopted amendments establish a reporting process that is consistent with the process used by non-subscribing employers when filing a report of injury. Specifically, a subscribing employer subject to this subsection must file with the Division a report of each death, on-the-job injury that results in more than one day's absence from work for the injured employee, and occupational disease of which the employer has knowledge. Adopted subsection (c) requires these reports of injury to be submitted in the form, manner, and timeframes prescribed by §160.2(b) and §160.2(c).

Adopted new subsection (d) states that employers are responsible for timely and accurate filing of reports under this section. It further provides that a report required by this section is considered filed with the division only when it accurately contains all of the data elements specified under subsection (c) of this section and is received by the division. This adopted rule is necessary in order to ensure that the Division obtains timely and accurate reports of injury.

The Division has made changes to the text as proposed in §160.2(d) and §160.3(d) in response to comment. Specifically, the Division proposed subsection (d) of as follows ". . . required by this section is considered timely filed with the division only when it contains all of the data elements specified under subsection (c) of this section, contains accurate information, and is received by the division." The Division changed this language to read as follows ". . . required by this section is considered filed with the division only when it accurately contains all of the data elements specified under subsection (c) of this section and is received by the division." The adopted non-substantive amendments prevent any potential for confusion as to when a report of injury must be filed by the employer.

Finally, the Division added a January 1, 2013 effective date to §§160.1 - 160.3. The adopted amendments will apply to each: death, on-the-job injury that results in more than one day's absence from work for the injured employee, and occupational disease of which the employer has knowledge occurring on or after this effective date. This adopted amendment is necessary in order to provide additional time to those affected by the changes to implement these changes.

The adopted amendments and new rule set forth a framework within which subscribing and non-subscribing employers will report injuries.

Section 160.1 provides an applicability section, defining an employer as defined by Labor Code §411.001(2) and that is subject to Labor Code Chapter 411, Subchapter C.

Section 160.2 provides that an employer that employs five or more employees and does not have workers' compensation insurance coverage, a non-subscriber, shall file a report of injury with the Division for each: death, on-the-job injury that results in more than one day's absence for the injured employee, and occupational disease of which the employer has knowledge. This section requires a report to be filed under this section not later than the seventh day of the month following the month in which: the death occurred, the employee was absent from work for more than one day as a result of an on-the-job injury, or the employer acquired knowledge of the occupational disease, as applicable. Additionally, this report must be filed in writing or electronically, in the form and manner prescribed by the Division, and include all data elements listed in §160.2(c). Finally, this section requires employers to accurately file reports, and this section also explains that a report is considered filed with the Division when the report contains all the data elements specified under subsection (c), and is received by the Division.

Section 160.3 provides that an employer that has workers' compensation insurance coverage, a subscriber, and shall file a report of injury with the Division pursuant to Labor Code §411.032. This section provides that an employer fulfills this requirement by filing a report of injury in accordance with Labor Code §409.005 and applicable Division rules, unless the Division requests that the employer file a report with the Division for a specific injury. Section 160.3 further provides reporting requirements for employers covered by workers' compensation insurance, whether by commercial insurance or through self-insurance, regarding an employee who has waived workers' compensation insurance coverage in accordance with Labor Code §406.034. For injuries and occupational diseases incurred by employees who have waived coverage, the employer shall file a report of injury with the Division of each death, on-the-job injury that results in more than one day's absence from work for the injured employee, and occupational disease of which the employer has knowledge. This report is required to be filed in the form, manner, and timeframes prescribed by the Division in §160.2(b) and (c) and include a statement that the injured employee waived workers' compensation insurance coverage in accordance with Labor Code §406.034. This section requires employers to accurately file reports, and this section also explains that a report is considered filed with the Division when the report contains all the data elements specified under subsection (c), and is received by the Division.

SUMMARY OF COMMENTS AND AGENCY'S RESPONSE.

General: Commenters support the Division's proposed rules and note their appreciation of the opportunity to discuss these rules prior to adoption.

Agency Response: The Division appreciates the supportive comments.

General: A commenter suggests amending the rule so that a filing is deemed received timely if all information is considered accurate by the Texas Department of Insurance, allowing consideration for non-material filing errors.

Agency Response: The Division disagrees with the recommended change to permit filings to be considered timely with inaccurate required data. Although the Division disagrees with the comments, it has made the clarifying changes by moving the placement of the word "accurately" to earlier in this section and removing the word "timely" from the second sentence to clarify employers must meet the timeliness requirement under these rules as well as the accuracy requirement. The Division notes that the adopted language and policy continues to prohibit all filing errors for required information. No required information is immaterial. Parties subject to Division rules are responsible for accurately reporting to ensure the Division receives quality data.

General: A commenter notes their lack of support of the addition of data elements to be reported on the DWC-7, including employee's wage, date of hire, first day absent from work and return-to-work date or expected date.

Agency Response: The Division disagrees with this comment and clarifies that the aforementioned data elements are purposely included in an attempt by the Division to align the injury reporting requirements for non-subscribing and subscribing

employers. The Division clarifies that employee wage information is specifically required to be collected for reported injuries under Labor Code §411.033 and notes that the following data elements: employee date of hire, first day absent from work, and return-to-work date or expected date are collected under Labor Code §411.033(10) as other information considered useful for statistical analysis. This data is statistically useful to the Division because the length of time from hire to reported injury, first day of absence from work, and return or expected return date can assist the Division in observing and monitoring system-wide return-to-work and workplace safety trends.

General: A commenter states if given the timeframe to report the information required for the DWC-7, the cause of the injury could be still under investigation and inquires if it is possible for the employer to indicate that the investigation is still ongoing on the report.

Agency Response: The Division disagrees with allowing an employer to indicate on a report of injury that an investigation of the cause of injury is ongoing. The Division adds that further time to investigate the information required for the DWC-7 is not necessary to provide accurate information to the Division, as adopted §160.2(c)(23) requires the report of injury to include "the reported cause of injury." This data is required to be included in the job safety data base under Labor Code §411.033 and refers to only the cause of the injury reported to the employer. Therefore, the commenter's recommendation is not necessary.

§160.2: One commenter expresses their concern about the enforceability of §160.2 and suggests the following language be added as §160.2(e): "Failure to file a report of injury as required by this rule is an administrative violation."

Agency Response: The Division disagrees and declines to make this change. This language and authority for related administrative violations is provided in Labor Code §411.032(c) which states that "an employer commits an administrative violation if the employer fails to report to the division as required under Subsection (a) unless good cause exists, as determined by the commissioner, for the failure." Additionally, under Labor Code §415.021 the Commissioner has authority to enforce refusal to comply with a rule through assessment of administrative penalties. Therefore, the commenter's suggested provision is not necessary.

§160.2(b): A commenter suggests modifying the requirements of §160.2(b) to include the following language: "An employer shall file a report of injury required by subsection (a) with the division not later than 30 days following: (1) death; (2) the employer acquired knowledge of an occupational disease; or (3) the employee lost more than one day from work as a result of an on the job injury." The commenter states filing a report of injury by the seventh day of the month is difficult at times because there are often claims that occur during the first week of the month with a date of injury from the end of the prior month. These claims are hard to timely review and get related information from the client/insured to the Division. The commenter explains that employers filing timely under the current proposed rule may do so without verifying that they meet the requisite criteria, which will result in giving the Division inaccurate information and misfiling of a DWC-7.

Agency Response: The Division disagrees with this recommendation and explains that these rule amendments are to clarify previously existing language regarding reports of injury. The Division further explains there is no situation under these rules where a non-subscribing employer will have less than seven days to provide the Division with the information requested, which is consistent with the current reporting requirements in place for injuries covered by workers' compensation under Labor Code §409.005. Additionally, the Division states that the adopted filing requirements support a simplified procedure by requiring one consistent filing timeline, monthly, for a non-subscribing employer to report injury information to the Division.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For: Texas Association of Responsible Nonsubscribers.

For, with changes: Insurance Council of Texas.

Neither for nor against, with changes: Texas Alliance of Nonsubscribers, an individual, and Office of Injured Employee Counsel.

The new rule and amendments are adopted under Labor Code §§411.032, 411.001, 411.002, 411.033, 406.034, 401.024, 409.005, 504.002(a)(5), 504.002(a)(7) and under the general authority of §402.061.

Labor Code §411.032 requires an employer to file with the Division a report of each: (1) on-the-job injury that results in the employee's absence from work for more than one day; and (2) occupational disease of which the employer has knowledge. Labor Code §411.032 also charges the Commissioner to adopt rules to prescribe the form and manner of reports filed under this section. Labor Code §411.001 defines "employer" for purposes of Labor Code Chapter 411 to mean "a person who makes a contract of hire." Labor Code §411.002 provides that an employer who obtains workers' compensation insurance coverage is subject to Labor Code Chapter 411. Labor Code §411.002 also provides that an employer is subject to Labor Code Chapter 411 if the employer is not required to and does not obtain workers' compensation insurance coverage, and employs five or more employees not exempt from workers' compensation insurance coverage. Labor Code §411.033 lists required data elements relating to each injury reported under Labor Code §411.032 which must be included in the job safety information maintained by the Division. Labor Code §406.034 outlines the right of an employee to retain the common-law right of action to recover damages for personal injuries or death. Labor Code §401.024 provides the Commissioner the authority to permit or require the use of electronic transmission to transmit information. Labor Code §409.005 delineates a procedure for a subscribing employer's filing of a report of injury and the format to be used. Labor Code §504.002(a)(5) provides that Labor Code §406.034 is not included in Labor Code Chapter 504. Labor Code §504.002(7) provides that Labor Code Chapter 411 applies to and is included in Labor Code Chapter 504. Labor Code §402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of this subtitle.

§160.1. Applicability.

(a) This chapter applies to an employer as defined by Labor Code §411.001(2) and that is subject to Labor Code Chapter 411, Subchapter C.

(b) This section is effective January 1, 2013.

§160.2. Non-Subscribing Employer's Report of Injury.

(a) An employer that does not have workers' compensation insurance coverage (non-subscriber) and employs five or more employees not exempt from workers' compensation insurance coverage shall file with the division a report of each:

(1) death;

(2) on-the-job injury that results in more than one day's absence from work for the injured employee; and

(3) occupational disease of which the employer has knowledge.

(b) An employer shall file a report required by subsection (a) of this section with the division not later than the seventh day of the month following the month in which:

(1) the death occurred;

(2) the employee was absent from work for more than one day as a result of the on-the-job injury; or

(3) the employer acquired knowledge of the occupational disease.

(c) A report shall be filed in writing or electronically and shall be in the form and manner prescribed by the division. A report must include:

(1) the employer's business name;

(2) the employer's North American Industry Classification System (NAICS) codes;

(3) the employer's business mailing address;

(4) the employer's physical address (if different from mailing address);

(5) the employer's telephone number;

(6) the employer's federal employer identification number (FEIN);

(7) the name, title, telephone number, signature, and date of signature of the person completing the report for the employer;

(8) the reporting period;

(9) the injured employee's name;

(10) the employee's social security number;

(11) the employee's date of birth;

(12) the employee's date of hire;

(13) the employee's sex;

(14) the employee's occupation;

(15) the employee's hourly wage;

(16) the employee's NAICS code;

(17) the employee's race/ethnic identification;

(18) the address where injury or occupational disease occurred;

(19) the type of location of where injury or occupational disease occurred;

(20) the date of injury or occupational disease;

(21) the date reported by employee;

(22) the return-to-work date or expected date;

(23) the reported cause of injury;

(24) the nature of injury or occupational disease;

(25) any equipment involved in the injury;

(26) body part(s) affected;

(27) the first day of absence from work;

(28) the number of days absent from work;

(29) whether the injury is an occupational disease;

(30) whether the injury resulted in death; and

(31) a description of incident.

(d) Employers are responsible for timely and accurate filing of reports under this section. A report required by this section is considered filed with the division only when it accurately contains all of the data elements specified under subsection (c) of this section and is received by the division.

(e) This section is effective January 1, 2013.

§160.3. Subscribing Employer's Report of Injury.

(a) An employer that has workers' compensation insurance coverage (subscriber) shall file a report of injury with the division pursuant to Labor Code §411.032. A subscribing employer's report of injury filed in accordance with Labor Code §409.005 and applicable division rules satisfies that employer's requirement to file a report of injury under Labor Code §411.032, unless the division requests that the employer file a report with the division for a specific injury.

(b) For an employee who has waived workers' compensation insurance coverage in accordance with Labor Code §406.034, an employer covered by workers' compensation insurance, whether by commercial insurance or through self-insurance as provided by the Texas Workers' Compensation Act, shall file with the division a report of each:

(1) death;

(2) on-the-job injury that results in more than one day's absence from work for the injured employee; and

(3) occupational disease of which the employer has knowledge.

(c) The report of injury required by subsection (b) of this section shall be filed in the form, manner, and timeframes prescribed by the division in §160.2(b) and (c) of this title (relating to Non-Subscribing Employer's Report of Injury) and shall include a statement that the injured employee has waived workers' compensation coverage in accordance with Labor Code §406.034.

(d) Employers are responsible for timely and accurate filing of reports under this section. A report required by this section is considered filed with the division only when it accurately contains all of the data elements specified under subsection (c) of this section and is received by the division.

(e) This section is effective January 1, 2013.

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.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board ("TWDB" or "Board") adopts amendments to 31 TAC Chapter 363, §363.2, concerning Definitions of Terms; §363.33, concerning Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects; §363.42, concerning Loan Closing; §363.43, concerning Release of Funds; §363.931, concerning Requirements for Loan Closing; §363.932, concerning Release of Funds; and §363.935, concerning Interest Rate. Sections 363.33, 363.42, 363.43, 363.932, and 363.935 are adopted without changes to the proposed text as published in the June 1, 2012, issue of the *Texas Register* (37 TexReg 3984). Section 363.2 and §363.931 are adopted with changes to the proposed text as published. In §363.2(12), the change was indicated in a correction of error notice published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4469). In §363.931(a)(2)(L), the words "political subdivision" are changed to "rural community."

Related amendments to §384.41, concerning Loan Closing; and §384.43, concerning Release of Funds, are adopted elsewhere in this issue of the *Texas Register.*

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENTS

Loan Closings and Release of Funds.

Section 363.2 contains definitions of terms that are used in §363.42(a)(2)(A) and §384.41(a)(2)(A) regarding requirements for the recipient's escrow account in which TWDB financial assistance funds are held pending release to the recipient's construction account. The TWDB is concurrently adopting amendments to §§371.1, 371.70, 371.71, 375.1, and 375.91, concerning the Drinking Water State Revolving Fund and the Clean Water State Revolving Fund regarding the same requirements for the closing of loans into escrow and the release of funds for financial assistance provided through those programs. The adopted revisions to §§363.2, 363.42, 363.43, 363.931, 363.932, 363.935, 384.41, and 384.43 will clarify the TWDB's practices.

Interest Rates.

Section 363.33 and §363.935 each contain a requirement that the Delphis Hanover Corporation (Delphis) scale be used to determine interest rates. The Delphis has closed its business, so the TWDB amends these two sections to set interest rates according to the Municipal Market Data (MMD) scale, which is provided by Thomson Reuters.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS

§363.2. Definitions of Terms.

Section 363.2(1), the definition of "Applicant" is revised to better describe the entities that may apply for financial assistance.

Section 363.2(4), the definition of "Certification of trust" is added to define the term as used in Chapters 363 and 384. The remainder of the paragraphs are renumbered accordingly.

Section 363.2(6) (adopted as §363.2(7)), the definition of "Commitment" is revised to better describe the action of the Board when it approves an application for financial assistance.

Section 363.2(8), the definition of "Construction account" is added to define the term consistent with the use of the term as used in Chapters 363 and 384. The remainder of the paragraphs are renumbered accordingly.

Section 363.2(10) (adopted as §363.2(12)), the definition of "Escrow" is changed to "Escrow account." It is not necessary to define the term "escrow" because the term is used in the ordinary sense of the word in the rules. The term "Escrow account" provides that the escrow account must be maintained by an eligible escrow agent and that the funds shall be held in escrow until they are eligible for release to the construction account.

Section 363.2(11) (adopted as §363.2(13)), the definition of "Escrow agent" is revised to require that the escrow agent must be one of the following as approved by the executive administrator: (A) a state or national bank designated by the comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C; (B) a custodian of collateral as designated in accordance with Texas Government Code, Chapter 404, Subchapter D; or (C) a municipal official responsible for managing the fiscal affairs of a home-rule municipality in accordance with Local Government Code, Chapter 104. By limiting the entities that may act as escrow agent to entities that meet these criteria, the TWDB is assured at least a minimum level of due diligence regarding the safeguarding of the assets at the time the funds are released to the financial assistance participant.

Section 363.2(12), the definition of "Escrow agent bank" is deleted because it is unnecessary since the definition of "escrow agent" is adopted in paragraph (13) to specify the types of entity that qualify as an escrow agent. The remainder of the paragraphs are renumbered accordingly.

Section 363.2(21), the definition of "Trust agent" is deleted because it is unnecessary, as a trust entity may be eligible to be an "escrow agent" as that term is defined in §363.2(13). The remainder of the paragraphs are renumbered accordingly.

§363.33. Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects.

Section 363.33(a)(3) contains a requirement that the Delphis scale be used to determine interest rates. The Delphis has closed its business, so the TWDB amends this paragraph to set interest rates according to the Municipal Market Data scale.

§363.42. Loan Closing.

Section 363.42(a)(1) is revised to clarify that, if an applicant is closing under the pre-design funding option, permits and authorizations are not required for closing because under the pre-design funding option the TWDB will be funding the planning and design activities that will result in the permits and authorizations.

Section 363.42(a)(2) is revised to clarify that the loan closing requirements apply not only to bonds, but also to a loan closed with a promissory note and loan agreement.

Section 363.42(a)(2)(A) is revised to clarify that an escrow account must be held separate from all other accounts and funds.

Section 363.42(a)(2)(A)(i) is revised to require that the escrow agent must meet the criteria in the definition of "escrow agent," as defined in §363.2(13). By limiting the eligible escrow agents to those that meet the criteria, the TWDB is assured a minimum level of due diligence regarding the security of funds at the time they are transferred from TWDB to the financial assistance participant.

Section 363.42(a)(2)(A)(iii) is revised to require that escrow account statements be submitted to the executive administrator upon request rather than monthly as previously required.

Section 363.42(a)(2)(A)(iv) is revised to require that the investment of loan funds comply with the Public Funds Investment Act.

Section 363.42(a)(2)(A)(v) is added to require that the loan funds be collateralized in compliance with the Public Funds Collateral Act.

Section 363.42(a)(2)(B) is amended to require that a loan recipient's construction account be separate from all other accounts.

Section 363.42(a)(2)(C) is amended to require that the political subdivision submit a final accounting within 60 days of the completion of the project.

Section 363.42(a)(2)(F) is amended to clarify that the loan recipient must adopt and implement an approved water conservation program for the life of the loan.

Section 363.42(a)(2)(G) is amended to clarify that the political subdivision's accounting records must be kept in accordance with generally accepted accounting principles.

Section 363.42(a)(2)(J) is added to require that all payments shall be made to the TWDB via wire transfer at no cost to the TWDB.

Section 363.42(a)(2)(K) is added to require that the partial redemption of bonds or other authorized securities be made in inverse order of maturity.

Section 363.42(a)(2)(L) is added to require that insurance coverage be obtained and maintained in an amount sufficient to protect the TWDB's interest in the project. This addition is consistent with the current requirement in §363.42(a)(2)(E) that the political subdivision shall fix and maintain rates and collect charges to provide adequate operation, maintenance and insurance coverage on the project in an amount sufficient to protect the TWDB's interest.

Section 363.42(a)(2)(M) is added to require that the political subdivision shall establish a dedicated source of revenue for repayment.

Section 363.42(a)(2)(N) is added to require any other recitals mandated by the executive administrator.

Section 363.42(a)(3) is amended to clarify that, instead of providing two copies of its water conservation program, the political subdivision is required to provide evidence that it has adopted a water conservation program in accordance with 31 TAC §363.15.

Section 363.42(a)(6) is amended to remove references to an "escrow agent bank," a "trust agreement" and a "trust agent" because the definition of "escrow agent" under §363.2 specifies the eligible entities that may hold loan funds, and any agreement with an escrow agent is considered an escrow agreement.

Section 363.42(b) is amended to delete the word "bond" before "transcript" because a borrower is required to submit a transcript whether it closes a loan with bonds or with a promissory note and loan agreement.

Section 363.42(c) is amended to clarify that, in addition to the other requirements of §363.42, the requirements of this subsection apply to the issuance of bonds and other securities. The amendments add the requirement that the political subdivision provide a private placement memorandum regarding the issuance of bonds to the TWDB that is acceptable to the executive administrator.

§363.43. Release of Funds.

Section 363.43(a)(4) is revised to clarify that, if an applicant is closing under the pre-design funding option, permits and authorizations are not required for the release of funds for planning and design activities because under the pre-design funding option the TWDB will be funding the planning and design activities that will result in the permits and authorizations.

Section 363.43(b) is revised to delete references to "escrow agent bank" and "trust agent" because the definition of "escrow agent" under §363.2 specifies the eligible entities that may hold loan funds.

§363.931. Requirements for Loan Closing.

Section 363.931(a)(1) is revised to clarify that, if an applicant is closing under the pre-design funding option, permits and authorizations are not required for closing because under the pre-design funding option the TWDB will be funding the planning and design activities that will result in the permits and authorizations.

Section 363.931(a)(2) is revised to clarify that the loan closing requirements apply not only to bonds, but also to a loan closed with a promissory note and loan agreement.

Section 363.931(a)(2)(A) is revised to clarify that an escrow account must be held separate from all other accounts and funds.

Section 363.931(a)(2)(A)(i) is revised to require that the escrow agent must meet the criteria in the definition of "escrow agent," as defined in §363.2(13). By defining the criteria of an eligible escrow agent, the TWDB is assured a minimum level of due diligence regarding the security of the funds at the time of delivery to the financial assistance participant.

Section 363.931(a)(2)(A)(iii) is revised to require that escrow account statements be submitted to the executive administrator upon request rather than monthly as previously required.

Section 363.931(a)(2)(A)(iv) is revised to require that the investment of loan funds must comply with the Public Funds Investment Act.

Section 363.931(a)(2)(A)(v) is added to require that the loan funds be collateralized in compliance with the Public Funds Collateral Act.

Section 363.931(a)(2)(B) is amended to require that a loan recipient's construction account be separate from all other accounts.

Section 363.931(a)(2)(C) is amended to require that the rural community submit a final accounting within 60 days of the completion of the project.

Section 363.931(a)(2)(F) is amended to clarify that the rural community's accounting records must be kept in accordance with generally accepted accounting principles.

Section 363.931(a)(2)(I) is added to require that all payments shall be made to the TWDB via wire transfer at no cost to the TWDB.

Section 363.931(a)(2)(J) is added to require that the partial redemption of bonds or other authorized securities be made in inverse order of maturity.

Section 363.931(a)(2)(K) is added to require that insurance coverage be obtained and maintained in an amount sufficient to protect the TWDB's interest in the project. This addition is consistent with the current requirement in §363.931(a)(2)(E) that the rural community shall fix and maintain rates and collect charges to provide adequate operation, maintenance and insurance coverage on the project in an amount sufficient to protect the TWDB's interest.

Section 363.931(a)(2)(L) is added to require that the rural community shall establish a dedicated source of revenue for repayment.

Section 363.931(a)(2)(M) is added to require any other recitals mandated by the executive administrator.

Section 363.931(a)(5) is amended to remove references to an "escrow agent bank," a "trust agreement," and a "trust agent" because the definition of "escrow agent" under §363.2 specifies the eligible entities that may hold loan funds, and any agreement with an escrow agent is considered an escrow agreement.

Section 363.931(b)(3) is amended to require that a final accounting be provided within 60 days of the completion of a project and that any surplus funds be used in a manner as approved by the executive administrator.

Section 363.931(b)(8) is amended to clarify that the rural community's accounting records must be kept in accordance with generally accepted accounting principles.

§363.932. Release of Funds.

Section 363.932(a)(4) is amended to clarify that, if an applicant is closing under the pre-design funding option, permits and authorizations are not required for the release of funds for planning and design activities because under the pre-design funding option the TWDB will be funding the planning and design activities that will result in the permits and authorizations.

Section 363.932(b) is revised to delete references to "escrow agent bank" and "trust agent" because the definition of "escrow agent" under §363.2 specifies the eligible entities that may hold loan funds.

§363.935. Interest Rate.

Section 363.935 contains a requirement that the Delphis scale be used to determine interest rates. The Delphis Hanover Corporation has closed its business, so the TWDB amends this section to set interest rates according to the Municipal Market Data scale.

PUBLIC COMMENTS

No comments were received on the proposed rulemaking.

SUBCHAPTER A. GENERAL PROVISIONS
DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §363.2

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code, §6.101, which authorizes the Texas Water Development Board to adopt rules necessary to carry out the powers and duties of the Texas Water Development Board.

The amendments affect Texas Water Code, Chapters 15, 16, and 17.

§363.2. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1) Applicant--The entity applying for financial assistance, including the entity that receives the financial assistance, the entity that owns the project funded under this chapter, or an entity authorized to act on behalf of the applicant.

(2) Board--Texas Water Development Board.

(3) Building--Erecting, building, acquiring, altering, remodeling, improving, or extending a water supply project, treatment works, or flood control measures.

(4) Certification of trust--An instrument executed by a home-rule municipality pursuant to Chapter 104, Local Government Code, governing the management of the loan proceeds in accordance with §114.086, Texas Property Code.

(5) Closing--The time at which the requirements for loan closing have been completed under §363.42 of this title (relating to Loan Closing) and an exchange of debt for delivery of funds to either the applicant, an escrow agent bank, or a trust agent has occurred.

(6) Commission--Texas Commission on Environmental Quality.

(7) Commitment--An offer by the board to provide financial assistance to an applicant who timely fulfills the conditions required in a board resolution.

(8) Construction account--A separate account created and maintained for the deposit of loan funds and utilized by the applicant to pay eligible expenses of the project.

(9) Corporation--A nonprofit water supply corporation created and operating under Texas Water Code, Chapter 67.

(10) Debt--All bonds, notes, certificates, book-entry obligations, and other obligations authorized to be issued by any political subdivision.

(11) Department--Texas Department of State Health Services.

(12) Escrow account--A separate account maintained by an escrow agent for the board's deposit of escrowed funds until such funds are eligible for release to the construction account.

(13) Escrow agent--Any of the following:

(A) a state or national bank designated by the comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C;

(B) a custodian of collateral as designated in accordance with Texas Government Code, Chapter 404, Subchapter D; or

(C) a municipal official responsible for managing the fiscal affairs of a home-rule municipality in accordance with Local Government Code, Chapter 104.

(14) Executive administrator--The executive administrator of the board or a designated representative.

(15) Financial assistance--Loans, grants, or state acquisition of facilities by the board pursuant to the Texas Water Code, Chapters 15, Subchapters B, C, E, O, P and Q; Chapter 16, Subchapters E and F; Chapter 17, Subchapters D, F, G, I, K, and L; and Chapter 36, Subchapter L.

(16) Grants--Financial assistance provided by the board for which repayment is not required.

(17) Innovative technology--Nonconventional methods of treatment such as rock reed, root zone, ponding, irrigation or other technologies which represent a significant advance in the state of the art.

(18) Legislative Designation--A designation made by the legislature in accordance with §16.051(f) and (g), Texas Water Code.

(19) Municipal use in gallons per capita per day--The total average daily amount of water diverted or pumped for treatment for potable use by a public water supply system. The calculation is made by dividing the water diverted or pumped for treatment for potable use by population served. Indirect reuse volumes shall be credited against total diversion volumes for the purpose of calculating gallons per capita per day for targets and goals developed pursuant to a water conservation plan.

(20) Pre-design commitment--A commitment by the board prior to completion of planning or design pursuant to §363.16 of this title (relating to Pre-design Funding Option).

(21) Private placement memorandum--A document functionally similar to an official statement used in connection with an offering of municipal securities in a private placement.

(22) Release--The time at which funds are made available to the loan or grant recipient or to a state participation recipient pursuant to a master agreement.

(23) Water Plan--The current state water plan prepared and adopted in accordance with Texas Water Code, §16.051.

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 July 10, 2012.

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Kenneth L. Petersen
General Counsel
Texas Water Development Board
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DIVISION 3. FORMAL ACTION BY THE BOARD

31 TAC §363.33

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code, §6.101, which authorizes the Texas Water Development Board to adopt rules necessary to carry out the powers and duties of the Texas Water Development Board.

The amendments affect Texas Water Code, Chapters 15, 16, and 17.

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.

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DIVISION 4. PREREQUISITES TO RELEASE OF STATE FUNDS

31 TAC §363.42, §363.43

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code, §6.101, which authorizes the Texas Water Development Board to adopt rules necessary to carry out the powers and duties of the Texas Water Development Board.

The amendments affect Texas Water Code, Chapters 15, 16, and 17.

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SUBCHAPTER I. PILOT PROGRAM FOR WATER AND WASTEWATER LOANS TO RURAL COMMUNITIES

DIVISION 3. CLOSING AND RELEASE OF FUNDS

31 TAC §§363.931, 363.932, 363.935

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code, §6.101, which authorizes the Texas Water Development Board to adopt rules necessary to carry out the powers and duties of the Texas Water Development Board.

The amendments affect Texas Water Code, Chapters 15, 16, and 17.

§363.931. Requirements for Loan Closing.

(a) Instruments needed for closing. The documents which shall be required at the time of closing shall include the following:

(1) if not closing under the pre-design funding option, evidence that requirements and regulations of all identified local, state and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) a certified copy of the bond ordinance, order or resolution adopted by the governing body authorizing the issuance of debt to be sold to the board, or an executed promissory note and loan agreement, that is acceptable to the executive administrator and which shall have sections providing as follows:

(A) if loan proceeds are to be deposited into an escrow account at the closing on all or a portion of the loan, then an escrow account shall be created that shall be separate from all other accounts and funds, as follows:

(i) the account shall be maintained by an escrow agent as defined in §363.2 of this title (relating to Definitions of Terms);

(ii) funds shall not be released from the escrow account without written approval by the executive administrator;

(iii) upon request of the executive administrator, the escrow account statements shall be provided to the executive administrator;

(iv) the investment of any loan or grant proceeds deposited into an approved escrow account shall be handled in a manner that complies with the Public Funds Investment Act, Texas Government Code, Chapter 2256; and

(v) the escrow account shall be adequately collateralized in a manner sufficient to protect the board's interest in the project and that complies with the Public Funds Collateral Act, Texas Government Code, Chapter 2257;

(B) that a construction account shall be created which shall be separate from all other accounts and funds of the applicant;

(C) that a final accounting be made to the board of the total sources and authorized use of project funds within 60 days of the completion of the project and that any surplus loan funds be used in a manner as approved by the executive administrator;

(D) that an annual audit of the rural community, prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant be provided annually to the executive administrator;

(E) that the rural community shall fix and maintain rates and collect charges to provide adequate operation, maintenance and insurance coverage on the project in an amount sufficient to protect the board's interest;

(F) that the rural community shall maintain current, accurate and complete records and accounts in accordance with generally accepted accounting principles necessary to demonstrate compliance with financial assistance related legal and contractual provisions;

(G) that the rural community covenants to abide by the board's rules and relevant statutes, including the Texas Water Code, Chapters 15, 16, and 17;

(H) that the rural community, or an obligated person for whom financial or operating data is presented, will undertake, either individually or in combination with other issuers of the rural community's obligations or obligated persons, in a written agreement or contract to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the board were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the board and the beneficial owner of the rural community's obligations, if the board sells or otherwise transfers such obligations, and the beneficial owners of the board's bonds if the rural community is an obligated person with respect to such bonds under rule 15c2-12;

(I) that all payments shall be made to the board via wire transfer at no cost to the board;

(J) that the partial redemption of bonds or other authorized securities be made in inverse order of maturity;

(K) that insurance coverage be obtained and maintained in an amount sufficient to protect the board's interest in the project;

(L) that the rural community shall establish a dedicated source of revenue for repayment; and

(M) any other recitals mandated by the executive administrator;

(3) unqualified approving opinions of the attorney general of Texas and if bonds are issued, a certification from the comptroller of public accounts that such debt has been registered in that office;

(4) if bonds are issued, an unqualified approving opinion by a recognized bond attorney acceptable to the executive administrator, or if a promissory note and loan agreement is used, an opinion from the rural community's attorney which is acceptable to the executive administrator;

(5) executed escrow agreement entered into by the entity and an escrow agent satisfactory to the executive administrator, in the event that funds are escrowed, or a certificate of trust as defined in §363.2 of this title, if applicable;

(6) other or additional data and information, if deemed necessary by the executive administrator.

(b) Loan agreement and promissory note. The loan agreement and promissory note shall be executed at the time of closing. The loan agreement shall provide for the following:

(1) the term of the loan and a schedule for repayment of principal and interest;

(2) that an annual audit of the rural community, prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant, be provided annually to the executive administrator for the term of the loan;

(3) that a final accounting be made to the executive administrator of the total sources and authorized use of project funds within 60 days of the completion of the project and that any surplus loan funds be used in a manner as approved by the executive administrator;

(4) that the rural community shall fix and maintain rates and collect taxes and/or charges to provide:

(A) adequate operation, maintenance and insurance coverage on the project in an amount sufficient to protect the board's interest; and

(B) adequate revenue to pay principal and interest on the loan as it comes due;

(5) that the rural community covenants to abide by the board's rules and relevant statutes, including the Texas Water Code, Chapter 15;

(6) that the rural community covenants to comply with all applicable state and federal environmental requirements prior to the initiation of construction and any mitigation which might be required after construction;

(7) that the rural community will apply any unused funds to the repayment of loan principal; in inverse order of maturity or in a manner as approved by the executive administrator;

(8) that the rural community shall maintain current, accurate and complete records and accounts in accordance with generally accepted accounting principles necessary to demonstrate compliance with financial assistance related legal and contractual provisions; and

(9) any additional conditions that may be imposed by the board or requested by the executive administrator.

(c) Bonds. If bonds are issued, the documents which shall be submitted by the time of closing shall comply with the requirements of §363.42 of this title (relating to Loan Closing).

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.

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CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (TWDB) adopts amendments to 31 TAC Chapter 371, concerning the Drinking Water State Revolving Fund. Specifically, the TWDB adopts amendments to §371.1, concerning Definitions; §371.13, concerning Pre-Design Funding Option; §371.14, concerning Lending Rates; §371.15, concerning Fees of Financial Assistance; §371.16, concerning Term of Loan; §371.18, concerning Financial Guarantees for Political Subdivision Bonds; §371.21, concerning Rating Process; §371.22, concerning Public Notice; §371.23, concerning Criteria and Methods for Distribution of Funds; the addition of §371.24, concerning Changes to Project; §371.30, concerning Pre-Application Conferences; §371.31, concerning Timeliness of Application and Required Application Information; §371.33, concerning Review of Applications to Refinance Existing Debt; §371.35, concerning Board Approval of Funding; §371.40, concerning Definitions; §371.41, concerning Environmental Review Process; §371.46, concerning Types of Environmental Determinations: Record of Decision; §371.47, concerning Environmental Impact Statements; §371.48, concerning Environmental Impact Statement: Applicant Requirements; §371.60, concerning Engineering Feasibility Report; §371.61, concerning Contract Documents: Review and Approval; §371.62, concerning Advertising and Awarding Construction Contracts; §371.70, concerning Loans Secured by Bonds or Other Authorized Securities; §371.71, concerning Loans Secured by Promissory Note and Deeds of Trust; §371.72, concerning Disbursement of Funds; §371.73, concerning Surplus Funds; §371.81, concerning Alterations During Construction; §371.83, concerning As Built Plans; §371.85, concerning Final Accounting; §371.88, concerning Responsibilities of Applicant; and §371.89, concerning Authority of the Executive Administrator. Sections 371.13, 371.15, 371.16, 371.18, 371.21, 371.24, 371.30, 371.35, 371.40, 371.46, 371.48, 371.61, 371.62, 371.73, 371.81, 371.83, 371.85, 371.88, and 371.89 are adopted without changes to the proposed text as published in the June 1, 2012, issue of the *Texas Register* (37 TexReg 3991). Sections 371.1, 371.14, 371.22, 371.23, 371.31, 371.33, 371.41, 371.47, 371.60, and 371.70 - 371.72 are adopted with changes outlined in a correction of error notice published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4469).

DISCUSSION OF THE ADOPTED AMENDMENTS

The TWDB adopts these amendments to modify the existing financial assistance application invitation process, clarify limits for project cost increases, modify definitions for escrow accounts, revise requirements for interest rate setting, and to provide consistency with 31 TAC Chapter 375, concerning the Clean Water State Revolving Fund, where appropriate.

Criteria and Methods for Distribution of Funds and Changes to Project

The TWDB adopts the amendment to §371.23 in order to expand the pool of potential applicants and alter the existing timeframes allowing the submission of applications for financial assistance. Changes to the invitation process will utilize an Invited Projects List (IPL) which will allow project funding requests to exceed the amount of funds available, eliminate the 30-day period for intent to apply for funds, and allow entities on the IPL to submit applications on a first-come first-serve basis until all available funds are committed. Applications that are administratively complete and have all components necessary for review will be processed for commitment as funds are available. Because the application process will be competitive, applicants will be encouraged to proceed efficiently through the application process to receive incentives such as additional subsidy before funds are exhausted. The amendment will help TWDB reduce processing time for invitations and loan commitments in an effort to distribute funds more expeditiously and ensures that funds are awarded to applicants that are fully prepared and ready to proceed.

The amendment to §371.24 describes the 10% limit on increases in the project costs listed in the adopted IUP that an applicant may request and provides the Executive Administrator discretion to waive the 10% limit for project cost increases that incorporate additional effective management elements for the project.

Financial Assistance Secured by Bonds or Other Authorized Securities and Lending Rates

The amendments to Chapter 371 also include modifications regarding requirements for escrow accounts in which TWDB financial assistance funds are deposited in escrow. Furthermore, the TWDB adopts the amendment to §371.14 allowing interest rates to be set according to the Municipal Market Data (MMD) scale, which is provided by Thomson Reuters.

Consistency

Furthermore, the amendments are adopted to update and revise terminology for clarity and consistency across 31 TAC Chapter 371 and Chapter 375.

PUBLIC COMMENTS

No comments were received regarding the proposed amendments.

SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

31 TAC §371.1

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code, §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and also under the authority of Texas Water Code, §15.6041.

This rulemaking affects Texas Water Code, Chapter 15.

§371.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in Chapter 15 of the Texas Water Code and not defined here shall have the meanings provided by Chapter 15.

(1) Act--The Federal Safe Drinking Water Act, 42 U.S.C. §§300f et seq.

(2) Applicant--The entity applying for financial assistance from the DWSRF including the entity that receives the financial assistance, and the entity that owns the project funded under this chapter, or an entity authorized to act on behalf of the Applicant.

(3) Application--The forms provided by the executive administrator that must be completed for consideration for financial assistance from the DWSRF.

(4) Authorized representative--The signatory agent of the Applicant authorized and directed by the Applicant's governing body to file the application and to sign documents relating to the project, on behalf of the Applicant.

(5) Board--The Texas Water Development Board.

(6) Bonds--All bonds, notes, certificates of obligation, and book-entry obligations authorized to be issued by any political subdivision.

(7) Bypass--The selection of a project for funding independent of ranking based on factors delineated in the applicable IUP.

(8) Capitalization grant--The federal grant funds awarded annually by the EPA to the State for capitalization of the DWSRF.

(9) Certification of Trust--An instrument executed by a home-rule municipality pursuant to Chapter 104, Local Government Code, governing the management of the financial assistance proceeds in accordance with §114.086, Texas Property Code.

(10) Closing--The exchange of the Applicant's approved debt instruments for DWSRF financial assistance.

(11) Commission--The Texas Commission on Environmental Quality.

(12) Commitment--An offer by the Board to provide financial assistance to an Applicant who timely fulfills the conditions in a Board resolution.

(13) Commitment term--The amount of time, after the Board commitment, within which the commitment for financial assistance must be closed.

(14) Community water system--A public water system that:

(A) serves at least 15 service connections used by year-round residents of the area served by the system; or

(B) regularly serves at least 25 year-round residents.

(15) Consolidation--Any one of the following activities:

(A) a public water system acquiring another public water system;

(B) a public water system providing retail service to another public water system; or

(C) a public water system providing wholesale service, which may include operation of the system, to another public water system.

(16) Construction--The erection, acquisition, alteration, remodeling, rehabilitation, improvement, extension or other man-made change necessary for an eligible project or activity.

(17) Construction account--A separate account created and maintained for the deposit of financial assistance and utilized by the Applicant to pay eligible expenses for the project.

(18) Contaminant--Any physical, chemical, biological, or radiological substance present in water.

(19) Contract documents--The engineering documentation relating to the project including engineering drawings, maps, technical specifications, design reports, instructions and other contract conditions and forms that are in sufficient detail to allow contractors to bid on the work.

(20) Corporation--A nonprofit water supply corporation created and operating under Chapter 67 of the Texas Water Code.

(21) Davis-Bacon Act--The federal statute at 40 U.S.C. §§3141 et seq. and in conformance with the U.S. Department of Labor regulations at 29 CFR Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction) and 29 CFR Part 3 (Contractors and Subcontractors on Public Work Financed in Whole or in Part by Loans or Grants from the United States).

(22) Debt--All bonds or other documents issued or to be issued by any political subdivision or eligible Applicant pledging repayment of the Board's financial assistance.

(23) Design--The project phase during which the Applicant prepares the project design documents including design surveys, plans, working drawings, specifications, and any procedures and protocols to be used during the construction of the project.

(24) Disadvantaged community--The service area or portion of a service area that has an adjusted median household income that is no more than 75% of the State median household income for the most recent year for which statistics are available; and if the service area is only charged for one type of service, water or sewer with a household cost factor for water or sewer rates that is greater than or equal to one percent; or if the service area is charged for both water and sewer services with a combined household cost factor for water and sewer rates that is greater than or equal to two percent. The Board may provide financial assistance to an entity that cannot otherwise afford financial assistance under the DWSRF based on considerations other than household cost factors if such considerations clearly warrant financial assistance.

(25) Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, vol-

canic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, other public calamity requiring emergency action, or energy emergency as defined in Texas Government Code §418.004.

(26) Drinking Water State Revolving Fund (DWSRF)--The financial assistance program authorized by Texas Water Code, Chapter 15, Subchapter J in accordance with the Act.

(27) Eligible Applicant--Any of the following entities:

(A) a nonprofit noncommunity water system;

(B) a nonprofit community water system;

(C) a political subdivision that is a municipality, intermunicipal, interstate or state agency, or a nonprofit water supply corporation created and operating under Chapter 67 of the Texas Water Code; or

(D) any other entity eligible under federal law to receive funds from the DWSRF.

(28) Engineering feasibility report--Those necessary plans and studies that directly relate to the project and that are needed in order to assure compliance with the enforceable requirements of the Act and state statutes.

(29) Environmental affirmation--The Board's acceptance of the environmental determination made prior to the release of funds for design or construction for a project receiving pre-design financial assistance.

(30) EPA--The United States Environmental Protection Agency or a designated representative.

(31) Escrow account--A separate account maintained by an escrow agent until such funds are eligible for release to the construction account.

(32) Escrow agent--Any of the following:

(A) a state or national bank designated by the comptroller as a state depository institution in accordance with Government Code, Chapter 404, Subchapter C;

(B) a custodian of collateral as designated in accordance with Government Code, Chapter 404, Subchapter D; or

(C) a municipal official responsible for managing the fiscal affairs of a home-rule municipality in accordance with Local Government Code, Chapter 104.

(33) Executive administrator--The executive administrator of the Board or a designated representative.

(34) Financial assistance--Loan funds, including principal forgiveness and negative interest loans, provided to eligible Applicants.

(35) Force majeure--Acts of god, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, breakage or damage to machinery, pipelines or canals, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

(36) Green project--A project or components of a project that, when implemented, will result in energy efficiency, water efficiency, green infrastructure, or environmental innovation that are characterized as green projects either categorically or by utilizing a business case as approved by the executive administrator.

(37) Green project reserve--A federal directive requiring a specified portion of the capitalization grant to be used for green projects.

(38) Intended use plan (IUP)--A document prepared annually by the Board, after public review and comment, which identifies the intended uses of all DWSRF program funds and describes how those uses support the overall goals of the DWSRF program.

(39) Invited Projects List--That portion of the IUP listing eligible projects ranked according to their rating which will be invited to submit applications in accordance with procedures and deadlines as detailed in the applicable IUP.

(40) Lending rate--The rate of interest applicable to a particular financial assistance under the DWSRF.

(41) Market interest rates--Interest rates comparable to those attained for municipal securities in an open market offering.

(42) Municipality--A city, town, or other public body created by or pursuant to state law.

(43) Nonprofit organization--Any legal entity that is recognized as a tax exempt organization by the Texas Comptroller of Public Accounts pursuant to 34 Texas Administrative Code, Part 1, Chapter 3, Subchapter O (relating to State Sales and Use Tax).

(44) Nonprofit noncommunity (NPNC) water system--A public water system that is not a community water system and that is owned and operated by a nonprofit organization.

(45) Outlay report--The Board's form used to report costs incurred on the project.

(46) Permit--Any permit, license, registration and other legal document required from any local, regional, state or federal government for construction of the project.

(47) Person--An individual, corporation, partnership, association, State, municipality, commission or political subdivision of the State, or any interstate body.

(48) Political subdivision--A municipality, intermunicipal, interstate, or state agency, any other public entity eligible for assistance, or a nonprofit water supply corporation created and operating under Texas Water Code Chapter 67.

(49) Population--The number of people who reside within the territorial boundaries of or receive wholesale or retail water service from the Applicant based upon data that is acceptable to the executive administrator and which includes the following:

(A) acceptable demographic projections or other information in the engineering feasibility report or the latest official census for an incorporated city; or

(B) information on the population for which the project is designed, where the Applicant is not an incorporated city or town.

(50) Primary drinking water regulation--Regulations promulgated by EPA which:

(A) apply to public and private water systems;

(B) specify contaminants which, in the judgment of the administrator, may have any adverse effect on the health of persons;

(C) specify for each such contaminant either:

(i) a maximum contaminant level if, in the judgment of the administrator, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems; or

(ii) if, in the judgment of the administrator, it is not economically or technologically feasible to so ascertain the level of such contaminant, each treatment technique known to the administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of the Act; and

(D) contain criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels including quality control and testing procedures to insure compliance with such levels and to ensure the proper operation and maintenance of the system, and requirements as to:

(i) the minimum quality of water which may be taken into the system; and

(ii) the siting of new facilities for public water systems.

(51) Private Placement Memorandum (PPM)--A document functionally similar to an official statement used in connection with an offering of municipal securities in a private placement.

(52) Project--The planning, acquisition of land, water rights and permits, environmental review, design, construction and other activities eligible for funding under the Act.

(53) Project engineer--The engineer retained by the Applicant to provide professional engineering services during any phase of a project.

(54) Project information form--The form that must be submitted by Applicants for rating and ranking on an IUP.

(55) Project Priority List--That portion of the IUP listing eligible projects ranked according to their rating and that may be further prioritized as described in the applicable IUP.

(56) Public water system--

(A) In General. A system that provides water to the public for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes:

(i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and

(ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(B) Connections. A connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if:

(i) the water is used exclusively for purposes other than residential use (consisting of drinking, bathing, cooking, or other similar uses);

(ii) the administrator or the Commission determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or

(iii) the administrator or the Commission determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

(C) Irrigation districts. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar uses shall not be considered to be a public water system if the system or the residential or similar users of the system comply with subparagraph (B)(ii) and (iii) of this paragraph.

(D) Transition period. A water supplier that would be a public water system only as a result of modifications made shall not be considered a public water system until two years after August 6, 1996. If a water supplier does not serve 15 service connections or 25 people at any time after the conclusion of the two-year period, the water supplier shall not be considered a public water system.

(57) Ready to proceed--A project that has completed design and obtained all permits, all legally required authorizations, and all land and water rights, and has complied with all engineering and environmental planning review requirements, along with other Board requirements as applicable.

(58) Release of funds--The sequence and timing for Applicant's release of financial assistance funds from the escrow account to the construction account.

(59) Secondary drinking water regulation--Regulations promulgated by EPA which apply to public water systems and which specify the maximum contaminant levels which, in the judgment of the administrator, are necessary to protect the public welfare. Such regulations may vary according to geographic and other circumstances and may apply to any contaminant in drinking water:

(A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use; or

(B) which may otherwise adversely affect the public welfare.

(60) Small water system--A system that serves ten thousand persons or fewer.

(61) State--The State of Texas.

(62) Subsidy--Any special financial terms and conditions available including loan forgiveness, negative interest rates, or other financial incentives as detailed in an IUP.

(63) Water conservation plan--A report outlining the methods and means by which water conservation may be achieved within a particular facilities planning area.

(64) Water conservation program--A comprehensive description and schedule of the methods and means to implement and enforce a water conservation plan.

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.

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Kenneth L. Petersen
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SUBCHAPTER B. FINANCIAL ASSISTANCE

31 TAC §§371.13 - 371.16, 371.18

STATUTORY AUTHORITY

The amendments are adopted under the authority of Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §15.6041.

This rulemaking affects Water Code, Chapter 15.

§371.14. Lending Rates.

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

(1) Average life--The number determined by dividing the sum of the payment periods of all maturities of a loan by the total number of maturities.

(2) Borrower--Each eligible Applicant receiving a loan from the Board.

(3) Loan interest rate--The individual interest rate for each maturity of a loan as identified by the executive administrator under this chapter.

(4) Market rate--The individual interest rate for each maturity of a loan payment that is the borrower's market cost of funds based on the MMD scale for the borrower as identified under subsection (c)(1) of this section.

(5) MMD--Thomson Municipal Market Data Range of Yield Curve Scales.

(6) Payment period--The number determined by multiplying the total principal amount due for an individual maturity as set forth in the loan by the standard period for the loan.

(7) Standard period--The number identified by determining the number of days between the date of delivery of the funds to a borrower and the date of the maturity of a bond or loan payment pursuant to which the funds were provided calculated on the basis of a 360-day year composed of twelve 30-day periods and dividing that number by 360.

(b) Procedure for setting fixed interest rates. The interest rates will be determined by this section and as described in an IUP.

(1) The executive administrator will set fixed rates for loans on a date that is:

(A) five business days prior to the adoption of the political subdivision's bond ordinance or resolution or the execution of a loan agreement; and

(B) not more than 45 days before the anticipated closing of the loan from the Board.

(2) After 45 days from the assignment of the interest rate on the loan, rates may be extended only with the executive administrator's approval.

(c) Fixed rates. The fixed interest rates for financial assistance under this chapter will be determined as provided in this subsection. The executive administrator will identify the market rate for the borrower, determine the amount of adjustment from the market interest rate appropriate for the borrower pursuant to paragraph (2) of this subsection, apply the identified interest rate adjustment to the market rate for the borrower to determine the loan interest rate, and apply the loan interest rate to the proposed principal schedule, as more fully set forth in this subsection.

(1) To identify the market rate:

(A) for borrowers that have a rating by a recognized bond rating entity and will not have bond insurance, the executive administrator will rely on the higher of the MMD scale for the current bond rating of the borrower or the MMD BAA scale;

(B) for borrowers with no rating by a recognized bond rating entity or for borrowers with a rating that is less than investment grade as determined by the executive administrator, the executive administrator will rely on the MMD BAA scale; or

(C) for borrowers that are rated by a recognized rating entity with bond insurance or for borrowers with no rating by a recognized bond rating entity with insurance, the executive administrator will rely on the higher of the borrower's uninsured fixed rate scale or the insurer's fixed rate scale.

(2) The program is designed to provide a 125 basis point reduction from the market rate based on a level debt service schedule. Notwithstanding the foregoing, in no event shall the loan interest rate as determined under this section be less than zero.

(3) To determine the loan interest rate, the following procedures will apply:

(A) Unless otherwise requested by the borrower under subparagraph (B) of this paragraph, the loan interest rate will be determined based on a debt service schedule that provides interest only to be paid in the first year of the debt service schedule and in which the remaining annual debt service payments are level, as determined by the executive administrator. The executive administrator will identify the appropriate MMD scale for the borrower and identify the market rate for the maturity due in the year preceding the year in which the average life is reached. The executive administrator will reduce that market rate by the number of basis points applicable according to paragraph (2) of this subsection and thereby identify a proposed loan interest rate. The proposed loan interest rate will be applied to the proposed principal repayment schedule. If the resulting debt service schedule is level to the satisfaction of the executive administrator, then the proposed loan interest rate will be the loan interest rate for the loan. If the resulting debt service schedule is not level to the satisfaction of the executive administrator, then the executive administrator may adjust the interest rate for any or all of the maturities to identify the loan interest rate that as closely as possible achieves the interest savings applicable according to paragraph (2) of this subsection while maintaining the principal schedule proposed by the borrower.

(B) A borrower may request a debt service schedule in which the annual debt service payments are not level through the term of the loan, as determined by the executive administrator. In this event, the executive administrator will approximate a level debt service schedule for the loan amount and identify a proposed loan interest rate that provides for annual debt service payments that are level for the term of the loan following the procedures set forth in paragraph (1)(A) of this

subsection. From the level debt service schedule, the executive administrator will determine the amount of the subsidy that would have been provided if the annual debt service payments had been level. The executive administrator will then identify the loan interest rate that as closely as possible provides the borrower the identified subsidy amount for the principal schedule requested by the borrower.

(d) Variable rates. The interest rate for DWSRF variable rate loans under this chapter will be set at a rate equal to the actual interest cost paid by the Board on its outstanding variable rate debt plus the cost of maintaining the variable rate debt in the DWSRF. Variable rate loans are required to be converted to long-term fixed rate loans within 90 days of project completion unless an extension is approved in writing by the executive administrator. Within the time limits set forward in this subdivision, borrowers may request to convert to a long-term fixed rate at any time, upon notification to the executive administrator and submittal of a resolution requesting such conversion. The fixed lending rate will be calculated under the procedures and requirements of subsections (b) and (c) of this section.

(e) Private and taxable borrowers. The interest rate for loan agreements for those borrowers receiving financial assistance who are determined to be private or taxable issuers will be:

(1) for borrowers that have a rating by a recognized bond rating entity and will not have bond insurance, the executive administrator will rely on the higher of the MMD taxable scale for the current bond rating of the borrower or the MMD BAA taxable scale;

(2) for borrowers with no rating by a recognized bond rating entity or for borrowers with a rating that is less than investment grade as determined by the executive administrator, the executive administrator will rely on the MMD BAA taxable scale; or

(3) for borrowers that are rated by a recognized bond rating entity with bond insurance or for borrowers with no rating by a recognized bond rating entity with bond insurance, the executive administrator will rely on the higher of the borrower's uninsured fixed rate taxable scale or the insurer's fixed rate taxable scale.

(f) NPNC borrowers. NPNC borrowers that issue tax-exempt obligations and that operate community/non-community water systems will receive interest rates pursuant to subsections (b) - (d) of this section.

(g) Adjustments. The executive administrator may adjust a borrower's interest rate at any time prior to closing as a result of a change in the borrower's credit rating.

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.

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Kenneth L. Petersen
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SUBCHAPTER C. INTENDED USE PLAN

31 TAC §§371.21 - 371.24

STATUTORY AUTHORITY

The amendments and new section are adopted under the authority of Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §15.6041.

This rulemaking affects Water Code, Chapter 15.

§371.22. Public Notice.

(a) In accordance with the Act, the Board shall hold public hearings and allow a period for public review and comment before considering the adoption and approval of the IUP and the Project Priority List.

(b) For any amendments thereto, the Board shall hold a public hearing and allow a period of public review and comment in accordance with the Act.

§371.23. Criteria and Methods for Distribution of Funds.

(a) Amount of available funds. Annually, the executive administrator will determine the amount of funds available for water system improvements and other projects for the fiscal year.

(b) Subsidy limits. The total amount of subsidies in any fiscal year may not exceed the percentages established by federal law or by the capitalization grant.

(c) Project Priority List. Available program funds will be applied to the list of projects designated to receive funding. The methods used for ranking include:

(1) Project costs. Project costs will be determined by cost estimates contained in the project information form if the executive administrator deems those costs reasonable and acceptable; the costs will also be reflected in the applicable IUP.

(2) Tie-breakers. If two or more projects receive the same rating, then the executive administrator will use the tie-breaker procedures listed in the applicable IUP.

(3) Bypass procedure. The executive administrator may bypass higher rated and ranked projects if:

(A) an incomplete application is submitted as described in §371.31 of this title (relating to Timeliness of Application and Required Application Information); or

(B) a bypass is necessary to fund certain types of projects as detailed in the applicable IUP or as required by capitalization grant conditions.

(d) Small water systems. Projects with identical combined rating scores, including rating scores of zero, will be listed in order of population. Projects serving smaller populations will be listed above those projects serving larger populations.

(1) To the extent eligible Applicants are available, a minimum of 15% of the funds will be made available to small communities.

(2) If small community projects listed in priority order on the Invited Projects List are less than 15%, then the executive administrator may bypass projects for systems serving larger populations to ensure inclusion of small community projects for at least 15% of available funds.

(e) Projects submitted for financing will be screened for eligibility, scored, ranked and listed on a Project Priority List. Applicants with projects on the Invited Projects List will be invited to submit applications in accordance with the procedures and deadlines as detailed

in the applicable IUP. The project selection is subject to subsections (a) - (d) of this section. The Invited Projects List will be reviewed periodically and additional invitations will be extended until all of the annual DWSRF funding amount is committed.

(f) Utilization of remaining funds. If there are insufficient applications for financial assistance to obligate available funds for the funding year, then the executive administrator shall utilize the remaining funds during the next funding year or at any time in combination with other Board financial assistance programs.

(g) Fund shortages. When the amount of funds required to fund all complete applications for financial assistance exceeds the amount of funds available in the funding year, a shortage of funds exists. In such an instance, the Board will fund Applicants until all funds have been utilized. The Board shall fund projects prioritized by the date and time of receipt of a complete application and the project's ability to proceed to commitment.

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.

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SUBCHAPTER D. APPLICATION FOR ASSISTANCE

31 TAC §§371.30, 371.31, 371.33, 371.35

STATUTORY AUTHORITY

The amendments are adopted under the authority of Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §15.6041.

This rulemaking affects Water Code, Chapter 15.

§371.31. Timeliness of Application and Required Application Information.

(a) Time to submit applications. Applications and required additional data or information must be submitted in a timely basis. The failure to timely submit the application, the information necessary to complete the application or additional requested information will result in the bypass of the project on the Invited Projects List.

(1) Deadline to submit application. Applicants shall submit a complete application by the deadlines established by the Board as detailed in the applicable IUP or the project will be ineligible for funding. The Applicant will be notified when an application is administratively complete.

(2) Incomplete applications. An Applicant shall cure any deficiency in an application upon request from the executive administrator and shall submit all requested information within fourteen days from receipt of the notice of a deficiency.

(3) Additional information. The Applicant shall submit any additional or modified information or data required by the executive administrator within fourteen days of the request for same, regardless of the expiration of other applicable deadlines in this section.

(4) Extension of time. The executive administrator may grant an extension of time to complete the application or to receive additional information and data if the Applicant can show good cause for the delay or if the delay is caused by an event of force majeure. The executive administrator exercises sole discretion in determining whether and to what extent to grant a time extension.

(b) Required application information. For eligible public Applicants and eligible NPNC Applicants that are also eligible public Applicants, an application shall be in the form and numbers prescribed by the executive administrator and, in addition to any other information that may be required by the executive administrator or the Board, the Applicant shall provide at a minimum the following documentation:

(1) a resolution from its governing body that shall:

(A) request financial assistance, identifying the amount of requested assistance;

(B) designate the authorized representative to act on behalf of the governing body; and

(C) authorize the representative to execute the application, appear before the Board on behalf of the Applicant, and submit such other documentation as may be required by the executive;

(2) a notarized affidavit from the authorized representative stating that:

(A) the decision to request financial assistance from the Board was made in a public meeting held in accordance with the Open Meetings Act (Government Code, Chapter 551) and after providing all such notice as is required by the Open Meetings Act or, for a corporation, that the decision to request financial assistance from the Board was made in a meeting open to all customers after providing all customers written notice at least 72 hours prior to such meeting;

(B) the information submitted in the application is true and correct according to best knowledge and belief of the representative;

(C) the Applicant has no outstanding judgments, orders, fines, penalties, taxes, assessment or other enforcement or compliance issues of any kind or nature by EPA, the Commission, Texas Comptroller of Public Accounts, Texas Office of the Secretary of State, or any other federal, state or local government, that would materially affect the Applicant's ability to repay its debt, or identifying such judgments, orders, fines, penalties, taxes, assessment or other enforcement or compliance issue as may be outstanding for the Applicant;

(D) the Applicant warrants compliance with the representations made in the application in the event that the Board provides the financial assistance; and

(E) the Applicant will comply with all applicable federal laws, rules, and regulations as well as the laws of this State and the rules and regulations of the Board;

(3) copies of the following project documents:

(A) any draft or executed contracts for consulting services to be used by the Applicant in applying for financial assistance or constructing the proposed project, including but not limited to, financial advisor, engineer, and bond counsel; and

(B) contracts for engineering services should include the scope of services, level of effort, costs, project schedules, and other information necessary for adequate review by the executive administrator. A project schedule shall be provided with the contract; the schedule must provide firm timelines for the completion of each phase of a project and note the milestones within the phase of the project;

(4) a citation to the specific legal authority in the Texas Constitution and statutes under which the Applicant is authorized to provide the service for which the Applicant is receiving financial assistance as well as the legal documentation identifying and establishing the legal existence of the Applicant;

(5) if the Applicant provides or will provide water supply or treatment service to another service provider, or receives such service from another service provider, the proposed agreement, contract, or other documentation which legally establishes such service relationship, with the final and binding agreements provided prior to closing;

(6) documentation of the ownership interest, with supporting legal documentation, for the property on which proposed project shall be located, or if the property is to be acquired, certification that the Applicant has the necessary legal power and authority to acquire the property;

(7) if financing of the project will require a contractual loan agreement or the sale of bonds to the Board payable either wholly or in part from revenues of contracts with others, a copy of any actual or proposed contracts under which Applicant's gross income is expected to accrue. Before financial assistance is closed, an Applicant shall submit executed copies of such contracts to the executive administrator;

(8) if the bonds to be sold to the Board are revenue bonds secured by a subordinate lien, a copy of the authorizing instrument of the governing body for all prior and outstanding bonds shall be furnished;

(9) if a bond election is required by law to authorize the issuance of bonds to finance the project, the executive administrator may require Applicant to provide the election date and election results necessary for the issuance of the bonds as part of the application or prior to closing;

(10) an audit of the Applicant for the preceding year prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant; and

(11) if additional funds are necessary to complete the project, or if the applicant has applied for and/or received a commitment from any other source for the project or any aspect of the project, a listing of those sources, including total project costs, financing terms, and current status of the funding requests.

(c) For eligible private Applicants and eligible NPNC Applicants that are not also eligible public Applicants, an application shall be in the form and numbers prescribed by the executive administrator, and, in addition to any other information that may be required by the executive administrator or the Board, such Applicant shall provide:

(1) the legal documentation identifying and establishing the legal existence of the Applicant, including articles of incorporation with certificate of good standing or partnership agreements;

(2) the documentation identifying and establishing full legal and equitable ownership interests of the real and personal property that constitute the water system held by the Applicant;

(3) if the documentation of ownership indicates that the Applicant is a legal entity other than a sole proprietorship, the Applicant shall provide:

(A) identification of any affiliated interests or affiliates; and

(B) a notarized statement from each entity holding an ownership interest:

(i) identifying an individual whom may act as the representative on behalf of each legal entity which has been identified as maintaining an ownership interest in the Applicant;

(ii) authorizing such representative to submit an application and such other documentation as may be required by the executive administrator;

(4) identification of the authority to provide the service for which the assistance is requested which shall include:

(A) a map of the area served acceptable to the executive administrator;

(B) if the Applicant provides or will provide water supply or treatment service to another service provider, or receives such service from another service provider, the proposed agreement, contract, or other documentation which legally establishes such service relationship, with the final and binding agreements provided prior to closing; and

(C) for utilities, as defined pursuant to Commission rules, the Certificate of Public Convenience and Necessity number and a service area map;

(5) a notarized affidavit by the designated representative of the Applicant:

(A) for eligible private Applicants, stating that the decision to request financial assistance from the Board was made in a meeting open to all customers and after providing all customers written notice at least 72 hours prior to the meeting that a decision to request public assistance would be made during such meeting;

(B) requesting financial assistance and identifying the amount of requested assistance;

(C) stating that the information submitted in the application is true and correct according to belief and knowledge of the representative;

(D) stating that the Applicant or any of its affiliates or affiliated interests has no outstanding judgments, orders, fines, penalties, taxes, assessment or other enforcement or compliance issue of any kind or nature by EPA, the Commission, Texas Comptroller of Public Accounts, Texas Office of the Secretary of State, or any other federal, state or local government, that would materially affect the Applicant's ability to repay its debt, or identifying such judgments, orders, fines, penalties, taxes, assessment or other enforcement or compliance issue as may be outstanding against the Applicant or any of its affiliates or affiliated interests;

(E) stating that each entity with an ownership interest warrants compliance with representations made in the application in the event that the Board provides the financial assistance; and

(F) assuring compliance with all applicable federal laws, rules, and regulations as well as the laws of this State and the rules and regulations of the Board;

(6) copies of the following project documents:

(A) any draft or executed contracts for consulting services to be used by the Applicant in applying for financial assistance or constructing the proposed project, to include, but not limited to, financial advisor, engineer, and bond counsel; and

(B) contracts for engineering services should include the scope of services, level of effort, costs, project schedules, and other information necessary for adequate review by the executive administrator. A project schedule shall be provided with the contract; the schedule must provide firm timelines for the completion of each phase of a project and note the milestones within the phase of the project;

(7) a business plan that:

(A) identifies by month for the next 18 months, or for the time period of project construction, whichever is longer, anticipated revenues, including any anticipated rate increases, and anticipated expenditures; and

(B) provides five year historical data on system revenue and expenditures;

(8) copies of the federal income tax returns for Applicant for the two previous tax years;

(9) documentation of any bankruptcy proceedings for the Applicant or any affiliated interests or affiliates for the preceding five years or a sworn statement that the Applicant or any affiliated interests or affiliates has not been a party to a bankruptcy proceeding for the preceding five years;

(10) if any part of the community water system has been pledged or otherwise used as security for any other indebtedness of the Applicant or an affiliate or affiliated interest, a copy of the outstanding indebtedness;

(11) if financing of the project will require a contractual loan agreement or the sale of bonds to the Board payable either wholly or in part from revenues of contracts with others, a copy of any actual or proposed contracts under which Applicant's gross income is expected to accrue. Before the financial assistance is closed, an Applicant shall submit executed copies of such contracts to the executive administrator;

(12) if the Applicant is required to utilize a surcharge or otherwise intends to rely on an increase in the rate that it is charging in order to repay the requested financial assistance, a copy of the acknowledgment from the Commission that the proposed rate change filing has been received;

(13) an audit of the Applicant for the preceding year prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant; and

(14) if additional funds are necessary to complete the project, or if the Applicant has applied for and/or received a commitment from any other source for the project or any aspect of the project, a listing of those sources, including total project costs, financing terms, and current status of the funding requests.

§371.33. Refinancing.

(a) An application to refinance existing debt for eligible projects may be accepted by the executive administrator when sufficient funds are available to provide refinancing. If refinancing funds are available in an IUP, then the eligible Applicant shall describe the need for the eligible project and provide other specific information detailed in the project information form or otherwise requested by the executive administrator.

(b) An application for refinancing of existing debt shall be the same as an application for financial assistance under this chapter. The executive administrator may consider an application for refinancing when:

(1) the project meets all of the requirements under this chapter, including information evidencing that the environmental review and engineering criteria meets the criteria required under law and this chapter for the same or similar projects; and

(2) the federal tax regulations allow such refinancing.

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.

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SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS

31 TAC §§371.40, 371.41, 371.46 - 371.48

STATUTORY AUTHORITY

The amendments are adopted under the authority of Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §15.6041.

This rulemaking affects Water Code, Chapter 15.

§371.41. Environmental Review Process.

(a) Policy and purpose. This subchapter governs the environmental review of projects funded in whole or in part by the DWSRF. Environmental review of all proposed infrastructure projects is a condition of the use of DWSRF financial assistance. This subchapter follows the procedures established by EPA for implementing the NEPA set forth at 40 CFR Part 6. The environmental review process described in this subchapter applies to the maximum extent legally and practicably feasible. However, the environmental review process may be modified due to an emergency condition as described in §371.40(7) of this title (relating to Definitions). The environmental review must be completed prior to the release of financial assistance for design and construction and the review is subject to public comment. The Applicant, at all times throughout the design, construction, and operation of the project, shall comply with the determinations resulting from the environmental review.

(b) Types of environmental determinations. An environmental determination is issued by the executive administrator at the culmination of the process described in this subchapter. After gathering and reviewing relevant information and data, soliciting comments from state and federal agencies and receiving and analyzing public comments, the executive administrator will issue one of the following determinations:

(1) a Categorical Exclusion, based on submission of information from the Applicant;

(2) a Finding of No Significant Impact, based on review of the Applicant's Environmental Information Document and the Board's Environmental Assessment; or

(3) a Record of Decision, based on an Environmental Impact Statement.

(c) General review by executive administrator.

(1) The executive administrator shall conduct an inter-disciplinary, inter-agency and public review consistent with the NEPA. The purpose of this review is to ensure that the proposed project will comply with the applicable local, state, and federal laws and regulations relating to the identification of the environmental impacts of a proposed project and the necessary steps required to avoid, minimize and, if necessary, mitigate such impacts. The scope of the environmental review will depend upon the type of proposed action, the reasonable alternatives and the type of environmental impacts.

(2) For all environmental determinations that are five years old or older, and for which the proposed infrastructure project has not yet been implemented, the executive administrator must re-evaluate the proposed financial assistance application as well as the environmental conditions and public comment to determine whether to conduct a supplemental environmental review in compliance with the NEPA, or to reaffirm the original determination. If there has been substantial change in the proposed infrastructure project that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns, the executive administrator must conduct a supplemental environmental review and complete an appropriate determination in compliance with the NEPA. The executive administrator may consider environmental determinations issued by other entities.

§371.47. Environmental Impact Statements.

(a) Purpose and applicability. An EIS examines impacts from the proposed project that are significantly affecting the human environment, requires close coordination with the Board and other agencies and results in the issuance of a Record of Decision.

(b) Required EIS. An EIS shall be prepared for:

(1) new regional water supply systems for a community with a population greater than 100,000;

(2) actions likely to have a significant adverse effect on:

(A) local ambient air quality;

(B) local ambient noise levels;

(C) surface water reservoirs or navigation projects;

(D) the environment due to the releases of radioactive, hazardous or toxic substances or biota;

(E) federal or state natural landmarks or any property eligible for the national or state register of historic places; or

(F) environmentally important natural resources such as wetland, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers and significant fish or wildlife habitat;

(3) actions inconsistent with federal, state, local or Indian tribe environmental, resources protection or land use laws or approved land use plans or regulations;

(4) actions likely to significantly affect the pattern and type of land use or growth and distribution of population including altering the character of residential areas;

(5) actions that in conjunction with federal, state, local or Indian tribe projects likely to produce significant cumulative impacts; and

(6) actions with uncertain environmental effects or highly unique environmental risks that are likely to be significant.

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.

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Kenneth L. Petersen
General Counsel
Texas Water Development Board
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SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

31 TAC §§371.60 - 371.62

STATUTORY AUTHORITY

The amendments are adopted under the authority of Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §15.6041.

This rulemaking affects Water Code, Chapter 15.

§371.60. Engineering Feasibility Report.

(a) Applicant shall submit an engineering feasibility report signed and sealed by a professional engineer registered in the State. The report, based on guidelines provided by the executive administrator, shall provide:

(1) a description and purpose of the project;

(2) the names of the entities to be served, along with the current and future population;

(3) the cost of the project;

(4) a description of the alternatives considered and reasons for selection of the project proposed;

(5) sufficient information to evaluate the engineering feasibility;

(6) maps and drawings as necessary to locate and describe the project area;

(7) sufficient detail to document that the project will remedy the drinking water issues and problems that were evaluated for rating on the IUP;

(8) information showing that the project is cost effective; and for projects that implement new systems or significantly alter current systems, a detailed cost-effective analysis, including detailed operation and maintenance costs, may be requested to document program eligibility;

(9) a detailed project schedule with timelines for each phase of the project and the milestones within each phase of the project; and

(10) any other information or data necessary to evaluate the proposed project. The Applicant must submit any additional information requested by the executive administrator to document the project's eligibility for funding by the program.

(b) Approval of engineering feasibility report. The executive administrator will approve the engineering feasibility report when:

(1) the items listed in subsection (a) of this section have been completed, including requests for additional information or data;

(2) the appropriate environmental determinations have been completed in accordance with this chapter and the Applicant has agreed to incorporate into project documents, including contracts, all mitigation measures as a result of the environmental review; and

(3) the project and alternatives to the project have been analyzed and the proposed project is cost effective.

(c) Request for project amendment. A request for an amendment, after the approval of the engineering feasibility report, to a project shall be granted only if implementation of the amendment does not affect the original purpose of the project. The implementation of a project amendment must remedy the problems and issues identified in the Applicant's original project information form. Significant amendments to a project require previous approval by the executive administrator. The Applicant shall:

(1) provide a description of and the need for an amendment;

(2) submit additional engineering or environmental information as requested by the executive administrator;

(3) provide an estimate of any increase or decrease in total project costs resulting from the proposed amendment; and

(4) certify that the proposed amendment will not significantly alter the purpose of the project.

(d) Alternative methods of project delivery. Design build, construction manager at-risk and other alternative methods of project delivery are eligible for available financial assistance, including combinations of planning, design and construction funding, in accordance with programmatic requirements. The executive administrator will provide written guidance regarding modifications of the type of financial assistance, and the review, approval and release of funds processes for alternative delivery projects. The Board may specify special conditions in the commitment as appropriate to accommodate an alternative method of project delivery.

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.

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SUBCHAPTER G. LOAN CLOSINGS AND AVAILABILITY OF FUNDS

31 TAC §§371.70 - 371.73

STATUTORY AUTHORITY

The amendments are adopted under the authority of Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §15.6041.

This rulemaking affects Water Code, Chapter 15.

§371.70. Financial Assistance Secured by Bonds or Other Authorized Securities.

(a) Applicability and required documents. This section applies to closings for financial assistance with entities issuing bonds or other authorized securities. The following documents are required for closing financial assistance secured by bonds or other authorized securities:

(1) evidence that applicable requirements and regulations of all identified local, state and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) a certified copy of the ordinance or resolution adopted by the governing body authorizing the issuance of debt to be sold to the Board that is acceptable to the executive administrator. The ordinance or resolution shall have sections providing as follows:

(A) if financial assistance proceeds are to be deposited into an escrow account at the time of closing then an escrow account shall be created that shall be separate from all other accounts and funds, as follows:

(i) the account shall be maintained by an escrow agent as defined in §371.1 of this title (relating to Definitions);

(ii) funds shall not be released from the escrow account without prior written approval from the executive administrator who shall issue written authorization for the release of funds;

(iii) upon request of the executive administrator, escrow account statements shall be provided to the executive administrator;

(iv) the investment of any financial assistance proceeds deposited into an approved escrow account shall be handled in a manner that complies with the Public Funds Investment Act, Government Code, Chapter 2256; and

(v) the escrow account shall be adequately collateralized in a manner sufficient to protect the Board's interest in the project and that complies with the Public Funds Collateral Act, Government Code, Chapter 2257;

(B) that the Applicant shall fix and maintain rates, in accordance with state law, and collect charges to provide adequate operation and maintenance of the project;

(C) that a construction account shall be created which shall be kept separate from all other accounts and funds of the Applicant;

(D) that bonds shall be closed in book-entry-only form;

(E) the use of a paying agent/registrar that is a Depository Trust Company (DTC) participant;

(F) that the payment of all DTC closing fees assessed by the Board's custodian bank be directed to the Board's custodian bank by the Applicant;

(G) evidence that one fully registered bond has been sent to the DTC or to the Applicant's paying agent/registrar prior to closing;

(H) that all payments are made to the Board via wire transfer at no cost to the Board;

(I) that the partial redemption of bonds or other authorized securities be made in inverse order of maturity;

(J) that insurance coverage be obtained and maintained in an amount sufficient to protect the Board's interest in the project;

(K) that the Applicant, or an obligated person for whom financial or operating data is presented, will undertake, either individually or in combination with other issuers of the Applicant's obligations or obligated persons, in a written agreement or contract to comply with requirements for continuing disclosure on an ongoing basis as required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the Board were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the Board and the beneficial owner of the political subdivision's obligations, if the Board sells or otherwise transfers such obligations, and the beneficial owners of the Board's bonds if the political subdivision is an obligated person with respect to such bonds under rule 15c2-12. The ordinance or resolution shall also contain any other requirements of the SEC or the IRS relating to arbitrage, private activity bonds or other relevant requirements regarding the securities held by the Board;

(L) the maintenance of current, accurate and complete records and accounts in accordance with generally accepted accounting principles to demonstrate compliance with requirements in the financial assistance documents;

(M) that the Applicant shall annually submit an audit, prepared by a certified public accountant in accordance with generally accepted auditing standards;

(N) that the Applicant shall submit a final accounting within 60 days of the completion of the project;

(O) that the Applicant shall document the adoption and implementation of an approved water conservation program for the duration of the financial assistance;

(P) that the Applicant's agreement to comply with special environmental conditions specified in the Board's environmental determination as well as with any applicable Board laws or rules relating to use of the financial assistance;

(Q) that the Applicant shall establish a dedicated source of revenue for repayment of the financial assistance;

(R) that interest payments shall commence no later than one year after the date of closing and annual principal payments will commence no later than one year after completion of project construction; and

(S) any other recitals mandated by the executive administrator;

(3) unqualified approving opinions of the attorney general of Texas and, if bonds or other authorized securities are issued, a certification from the comptroller of public accounts that such debt has been registered in that office;

(4) an unqualified approving opinion by a recognized bond attorney;

(5) assurances that the Applicant will comply with any special conditions specified by the Board's environmental determination until all financial obligations to the State have been discharged;

(6) if the project will result in the development of surface water or groundwater resources, the Applicant shall provide information showing that it has the legal right to use the water that the project will provide. Upon receipt of the information, the executive administrator shall prepare a finding that the Applicant has a reasonable expectation of obtaining the water rights to the water that the project will provide prior to any release of funds for planning, land acquisition and design activities. Prior to the release of funds for construction, a written water rights certification shall be prepared by the executive administrator. The certification shall be based upon the Applicant's information showing the necessary water rights have been acquired;

(7) evidence that the Applicant has the technical, managerial, and financial capacity to maintain the system unless the use of the funds will be to ensure that the system has the technical, managerial, and financial capacity to comply with the national primary or applicable state drinking water regulations over the long term;

(8) a Private Placement Memorandum containing a detailed description of the issuance of the debt to be sold to the Board. The Applicant shall submit a draft Private Placement Memorandum at least 30 days prior to the closing of the financial assistance; a final electronic version of the Memorandum shall be submitted no later than seven days before closing;

(9) when any portion of the financial assistance is to be held in an escrow account, the Applicant shall execute an escrow agreement, approved as to form and substance by the executive administrator;

(10) if applicable, a home rule municipality pursuant to Chapter 104, Local Government Code, shall execute a Certification of Trust as defined in §371.1 of this title (relating to Definitions); and

(11) any additional information specified in writing by the executive administrator.

(b) Certified bond transcript. Within sixty (60) days of closing the financial assistance, the Applicant shall submit a transcript of proceedings relating to the debt purchased by the Board which shall contain those instruments normally furnished by a purchaser of debt.

(c) Phased closing. The executive administrator may determine that closing the financial assistance in phases is appropriate when:

(1) the project has distinct phases for planning, design, acquisition and for construction or if any one of the phases can be logically and practically divided into discrete sections;

(2) the project utilizes the design-build or construction manager-at-risk process or any process wherein there is simultaneous design and construction;

(3) there are limitations on the availability of funds;

(4) additional oversight is required due to the financial condition of the Applicant or the complexity of the project; or

(5) due to any unique facts arising from the particular transaction.

§371.71. Financial Assistance Secured by Promissory Notes and Deeds of Trust.

(a) Applicability. This section contains closing requirements for a water supply corporation, an eligible NPNC, or an eligible private Applicant or other Applicant who is not authorized to issue bonds or other securities. This section applies to financial assistance for either pre-design or construction funding.

(b) Use of consultants. The executive administrator may recommend, but not require, that the entity engage the services of a financial adviser or other consultant to ensure the appropriateness of the proposed debt and to provide advice to the entity.

(c) Documents required for closing. The executive administrator shall ensure that the following documents have been submitted prior to closing financial assistance secured by promissory notes and deeds of trust:

(1) evidence that applicable requirements and regulations of all identified local, state and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) an executed promissory note and loan agreement in a form approved by the executive administrator;

(3) a Deed of Trust and Security Agreement that shall contain a first mortgage lien evidenced by a deed of trust on all the real and personal property of the water system;

(4) an owner's title insurance policy for the benefit of the Board covering all the real property identified in the deed of trust;

(5) evidence that the rates on which the Applicant intends to rely for repayment of the financial assistance have received final and binding approval from the Commission and, for Applicants required to utilize a surcharge account, evidence that the approval of the Commission was conditioned on the creation of a surcharge account;

(6) a certified copy of the resolution adopted by the governing body authorizing the indebtedness and a certificate from the secretary of the governing body attesting to adoption of the resolution in accordance with the by-laws or rules of the governing body and in compliance with the Open Meetings Act, if applicable;

(7) a legal opinion from Applicant's counsel that provides:

(A) that the entity has the legal authority to enter into the loan agreement and to execute a promissory note;

(B) that the entity is not in breach or default of any state or federal order, judgment, decree or other instrument which would have a material effect on the loan transaction;

(C) that there is no pending suit, action, proceeding or investigation by a public entity that would materially adversely affect the enforceability or validity of the required financial assistance documents;

(D) evidence that the entity is in good standing with the Texas Office of the Secretary of State; and

(E) a statement relating to any other issues deemed relevant by the executive administrator.

(8) evidence that an approved water conservation plan has been adopted and will be implemented through the life of the project;

(9) evidence of the Applicant's agreement to comply with special environmental conditions contained in the Board's environmental determination;

(10) evidence that the Applicant has adopted final water rates and charges that are not subject to appeal to the Commission;

(11) copies of executed service and revenue contracts;

(12) evidence that the Applicant has the technical, managerial, and financial capacity to maintain the system unless the use of the funds will be to ensure that the system has the technical, managerial, and financial capacity to comply with the national primary or applicable state drinking water regulations over the long term;

(13) if the project will result in the development of surface or groundwater resources, the Applicant shall demonstrate that it has the right to use the quantity of water necessary for project effectiveness and efficiency. Upon receipt of the information, the executive administrator shall prepare a finding that the Applicant has a reasonable expectation of obtaining the water rights necessary for project implementation prior to any release of funds for planning, land acquisition and design activities. A written water rights certification must be prepared by the executive administrator before funds can be released for construction activities based upon a showing by the Applicant that the necessary water rights have been acquired;

(14) when any portion of the financial assistance is to be held in an escrow account, the Applicant shall execute an escrow agreement, approved as to form and substance by the executive administrator; and

(15) any other documents relevant to the particular transaction.

(d) if in the event that financial assistance proceeds are to be deposited into an escrow account at the time of closing the financial assistance, then an escrow account shall be created that shall be separate from all other accounts and funds, as follows:

(1) the account shall be maintained by an escrow agent as defined in §371.1 of this title (relating to Definitions);

(2) funds shall not be released from the escrow account without prior written approval of the executive administrator who shall issue written authorization for the release of funds;

(3) upon request of the executive administrator, escrow account statements shall be provided on a monthly basis to the executive administrator;

(4) the investment of any financial assistance proceeds deposited into an approved escrow account, shall be handled in a manner that complies with the Public Funds Investment Act, Government Code, Chapter 2256; and

(5) the escrow account shall be adequately collateralized in a manner sufficient to protect the Board's interest in the project and that complies with the Public Funds Collateral Act, Government Code, Chapter 2257.

(e) Construction account. A construction account shall be created which shall be kept separate from all other accounts and funds of the Applicant.

(f) Phased closing. The executive administrator may determine that closing the financial assistance in phases is appropriate when:

(1) the project has distinct phases for planning, design, acquisition and for construction or if any one of the phases can be logically and practically divided into discrete sections;

(2) the project utilizes the design-build or construction manager-at-risk process or any process wherein there is simultaneous design and construction;

(3) there are limitations on the availability of funds;

(4) additional oversight is required due to the financial condition of the Applicant or the complexity of the project; or

(5) due to any unique facts arising from the particular transaction.

§371.72. Disbursement of Funds.

(a) Escrow of funds. The executive administrator may deposit funds into an escrow account at the time of closing of the financial assistance. Releases from an escrow account shall occur sequentially as described in subsection (c) of this section or in accordance with phasing required for the applicable project. The Applicant shall submit outlays for all expenses incurred.

(b) Reimbursement method of accessing funds. DWSRF financial assistance is available for disbursement under a reimbursement method unless the executive administrator approves the deposit of funds into an escrow account at the closing of the financial assistance, as appropriate. The executive administrator shall reimburse the Applicants' expenditures upon the receipt of an outlay report supported by detailed invoices of expenditures or the executive administrator may issue a written authorization for the release of funds from an escrow account based on the receipt of outlay reports supported by detailed invoices of expenditures. The outlays and the releases from an escrow account shall be consistent with the approved project schedule.

(c) Sequence of availability of funds. Financial assistance shall be available for disbursement in the following sequence:

(1) for planning and permitting costs, after receipt of executed contracts for the planning or permitting phase, and after approval of a water conservation plan;

(2) for design costs, after receipt of executed contracts for design, after approval of an engineering feasibility report and after the Board's approval of the environmental review; and

(3) for construction costs, after issuance of any applicable permits, after contract documents, including plans and specifications are approved and executed construction documents are contingently awarded.

(d) Outlay reports. Applicants shall submit outlay reports supported by detailed invoices for incurred costs as the project progresses in accordance with the project schedule. Applicants shall submit outlay reports, in a form determined by the executive administrator, as follows:

(1) for financial assistance for planning, acquisition and design, quarterly; and

(2) for financial assistance for construction, monthly.

(e) Environmental affirmation. Prior to the executive administrator's approval of the release of financial assistance for design, acquisition, and construction or for a pre-design funding option project, the executive administrator shall summarize the project's environmental review and inform the Board of any environmentally related mitigation measures recommended for the project. The Board may elect to affirm or alter the conditions of the original commitment or withdraw the commitment to the Applicant based upon the environmental review and mitigation measures. The executive administrator may withhold or limit the release of financial assistance pending satisfactory completion of the project's environmental review.

(f) Consistency for project schedules and outlays. The executive administrator shall require that projects proceed in accordance with approved project schedules as closely as possible, and that outlays are submitted as required in subsection (d) of this section.

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.

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SUBCHAPTER H. CONSTRUCTION AND POST-CONSTRUCTION REQUIREMENTS

31 TAC §§371.81, 371.83, 371.85, 371.88, 371.89

STATUTORY AUTHORITY

The amendments are adopted under the authority of Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §15.6041.

This rulemaking affects Water Code, Chapter 15.

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.

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board (TWDB) adopts amendments to 31 TAC Chapter 375, concerning the Clean Water State Revolving Fund. Specifically, the TWDB adopts amendments to §375.1, concerning Definitions; §375.2, concerning Entities and Activities Eligible for Assistance; §375.11, concerning Refinancing; §375.12, concerning Planning, Acquisition, and Design Funding; §375.14, concerning Pre-Design Funding; §375.15, concerning Lending Rates; §375.16, concerning Fees of Financial Assistance; §375.19, concerning Financial Guarantees for Political Subdivision Bonds; §375.31, concerning Rating Process; §375.32, concerning Public Notice; §375.33, concerning Criteria and Methods for Distribution of Funds; §375.40, concerning Pre-application Conferences; §375.41, concerning Timeliness of Application and Required Application Information; §375.44, concerning Board Approval of Funding; §375.50, concerning Definitions for State Funded Projects; §375.55, concerning Environmental Determinations Affected by Proposed Project Alterations; §375.56, concerning Use of Environmental Determinations Prepared by Other Entities; §375.60, concerning Definitions for Federally Funded Projects; §375.61, concerning Environmental Review Process; §375.66, concerning Types of Environmental Determinations: Record of Decision; §375.67, concerning Environmental Impact Statements; §375.68, concerning Environmental Impact Statement: Applicant Requirements; §375.80, concerning Applicability; §375.81, concerning Engineering Feasibility Report; §375.82, concerning Contract Documents: Review and Approval; §375.83, concerning Advertising and Awarding Construction Contracts; §375.90, concerning Applicability; §375.91, concerning Loans Secured by Bonds or Other Authorized Securities; §375.92, concerning Disbursement of Funds; §375.93,

concerning Surplus Funds; §375.100, concerning Applicability; §375.106, concerning Final Accounting; §375.108, concerning Release of Retainage; §375.109, concerning Responsibilities of Applicant; and §375.110, concerning Authority of the Executive Administrator. TWDB also adopts new §375.34, concerning Changes to Project. Sections 375.14, 375.19, 375.34, 375.40, 375.44, 375.50, 375.56, 375.66 - 375.68, 375.80, 375.82, 375.90, 375.92, 375.93, 375.100, 375.109, and 375.110 are adopted without changes as published in the June 1, 2012, issue of the *Texas Register* (37 TexReg 4013). Sections 375.1, 375.2, 375.11, 375.12, 375.15, 375.16, 375.31 - 375.33, 375.41, 375.55, 375.60, 375.61, 375.81, 375.83, 375.91, 375.106, and 375.108 are adopted with changes outlined in a correction of error notice published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4469).

DISCUSSION OF THE ADOPTED AMENDMENTS AND NEW SECTION.

The TWDB adopts the amendments and new section to modify the existing financial assistance application invitation process, clarify limits for project cost increases, modify definitions for escrow accounts, revise requirements for interest rate setting, and to provide consistency with 31 TAC Chapter 371, concerning the Drinking Water State Revolving Fund, where appropriate.

Criteria and Methods for Distribution of Funds and Changes to Project.

The TWDB adopts the amendment to §375.33 in order to expand the pool of potential applicants and alter the existing timeframes allowing the submittal of applications for financial assistance. Changes to the invitation process will utilize an Invited Projects List (IPL) which will allow project funding requests to exceed the amount of funds available, eliminate the 30-day period for intent to apply for funds, and allow entities on the IPL to submit applications on a first-come first-serve basis until all available funds are committed. Applications that are administratively complete and have all components necessary for review will be processed for commitment as funds are available. Because the application process will be competitive, applicants will be encouraged to proceed efficiently through the application process to receive incentives such as additional subsidy before funds are exhausted. The amendment will help TWDB reduce processing time for invitations and loan commitments in an effort to distribute funds more expeditiously and ensures that funds are awarded to applicants that are fully prepared and ready to proceed.

New §375.34 describes the 10% limit on increases to the project costs listed in the adopted IUP that an applicant may provide the Executive Administrator discretion to waive the 10% limit for project cost increases that incorporate additional effective management elements of the project.

Financial Assistance Secured by Bonds or Other Authorized Securities and Lending Rates.

The amendments to Chapter 375 also include modifications regarding requirements for escrow accounts in which TWDB financial assistance funds are deposited in escrow. Furthermore, the TWDB adopts the amendment to §375.15 allowing interest rates to be set according to the Municipal Market Data (MMD) scale, which is provided by Thomson Reuters.

Consistency.

Furthermore, the amendments are adopted to update and revise terminology for clarity and consistency across 31 TAC Chapter 371 and Chapter 375.

PUBLIC COMMENTS

No comments were received regarding the proposed amendments or new section.

SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

31 TAC §375.1, §375.2

STATUTORY AUTHORITY

The amendments are adopted under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State; and also under the authority of the Texas Water Code, §15.604.

The amendments affect the Texas Water Code, Chapter 15.

§375.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in Chapter 15 of the Texas Water Code and not defined here shall have the meanings provided by Chapter 15.

(1) Act--The Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq.

(2) Applicant--The entity applying for financial assistance from the CWSRF including the entity that receives the financial assistance, the entity that owns the project funded under this chapter or an entity authorized to act on behalf of another eligible Applicant.

(3) Application--The forms provided by the executive administrator that must be completed for consideration for financial assistance from the CWSRF.

(4) Authorized representative--The signatory agent of the Applicant authorized and directed by the Applicant's governing body to file the application and to sign documents relating to the project, on behalf of the Applicant.

(5) Board--The Texas Water Development Board.

(6) Bonds--All bonds, notes, certificates of obligation, and book-entry obligations authorized to be issued by any political subdivision.

(7) Bypass--The selection of a project for funding independent of the project's ranking based on factors delineated in the applicable IUP.

(8) Capitalization grant--The federal grant funds awarded annually by the EPA to the State for capitalization of the CWSRF.

(9) Certification of Trust--An instrument executed by a home rule municipality pursuant to Chapter 104, Local Government Code, governing the management of the financial assistance proceeds in accordance with §114.086, Texas Property Code.

(10) Clean Water State Revolving Fund (CWSRF)--The financial assistance program authorized by Texas Water Code, Chapter 15, Subchapter J in accordance with the Act.

(11) Closing--The exchange of the Applicant's approved debt instruments for CWSRF financial assistance.

(12) Commission--The Texas Commission on Environmental Quality.

(13) Commitment--An offer by the Board to provide financial assistance to an Applicant who timely fulfills the conditions in a Board resolution.

(14) Commitment term--The amount of time, after the Board commitment, within which the commitment for financial assistance must be closed.

(15) Construction--The erection, acquisition, alteration, remodel, rehabilitation, improvement, extension or other man-made change necessary for an eligible project or activity.

(16) Construction account--A separate account created and maintained for the deposit of financial assistance and utilized by the Applicant to pay eligible expenses of the project.

(17) Contract documents--The engineering documentation relating to the project including engineering drawings, maps, technical specifications, design reports, instructions and other contract conditions and forms that are in sufficient detail to allow contractors to bid on the work.

(18) Davis Bacon Act--The federal statute at 40 U.S.C. §§3141 et seq. and in conformance with the U.S. Department of Labor regulations at 29 CFR Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction) and 29 CFR Part 3 (Contractors and Subcontractors on Public Work Financed in Whole or in Part by Loans or Grants from the United States).

(19) Debt--All bonds or other documents issued or to be issued by any political subdivision or eligible Applicant pledging repayment of the Board's financial assistance.

(20) Design--The project phase during which the Applicant prepares the project design documents including design surveys, plans, working drawings, specifications and any procedures and protocols to be used during the construction of the project.

(21) Disadvantaged community--The service area or portion of a service area that has an adjusted median household income that is no more than 75% of the State median household income for the most recent year for which statistics are available; and if the service area is only charged for one type of service, water or sewer, with a household cost factor for water or sewer rates that is greater than or equal to one percent; or if the service area is charged for both water and sewer services, with a combined household cost factor for water and sewer rates that is greater than or equal to two percent. The Board may provide financial assistance to an entity that cannot otherwise afford financial assistance under the CWSRF based on considerations other than household cost factors if such considerations clearly warrant financial assistance.

(22) Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, other public calamity requiring emergency action, or energy emergency as defined in Texas Government Code, §418.004.

(23) Eligible Applicant--Any of the following entities:

(A) a waste treatment management agency including any interstate agencies, or any city, commission, county, district, river authority, or other public body created by or pursuant to state law that has authority to dispose of sewage, industrial wastes, or other waste;

(B) an authorized Indian tribal organization;

(C) any person applying for financial assistance to build a nonpoint source pollution control project pursuant to the Act, §319; or

(D) any person applying for financial assistance for an estuary management project pursuant to the Act, §320.

(24) Engineering feasibility report--Those necessary plans and studies that directly relate to the project and that are needed in order to assure compliance with the enforceable requirements of the Act and state statutes.

(25) Environmental affirmation--The Board's acceptance of the environmental determination made prior to the release of funds for design or construction for an equivalency project receiving pre-design financial assistance.

(26) EPA--The United States Environmental Protection Agency or a designated representative.

(27) Equivalency projects--Those projects funded from financial assistance in an equivalent amount of the annual federal capitalization grant and match that must follow all federal cross cutter requirements.

(28) Escrow account--A separate account maintained by an escrow agent until such funds are eligible for release to the construction account.

(29) Escrow agent--Any of the following:

(A) a state or national bank designated by the comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C;

(B) a custodian of collateral in accordance with the Texas Government Code, Chapter 404, Subchapter D; or

(C) a municipal official responsible for managing the fiscal affairs of a home-rule municipality in accordance with Local Government Code, Chapter 104.

(30) Estuary management plan--A plan for the conservation and management of an estuary of national significance as described in the Act, §320.

(31) Estuary management project--A project to develop or implement an estuary management plan.

(32) Executive administrator--The executive administrator of the Board or a designated representative.

(33) Financial assistance--Loan funds, including principal forgiveness and negative interest loans, provided to eligible Applicants.

(34) Force majeure--Acts of god, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, breakage or damage to machinery, pipelines or canals, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

(35) Green project--A project or components of a project that, when implemented, will result in energy efficiency, water efficiency, green infrastructure or environmental innovation and that are

characterized as green projects either categorically or by utilizing a business case as approved by the executive administrator.

(36) Green project reserve--A federal directive requiring a specified portion of the capitalization grant to be used for green projects.

(37) Intended use plan (IUP)--A document prepared annually by the Board, after public review and comment, which identifies the intended uses of all CWSRF program funds and describes how those uses support the overall goals of the CWSRF.

(38) Invited Projects List--That portion of the IUP listing eligible projects ranked according to their rating which will be invited to submit applications in accordance with procedures and deadlines as detailed in the applicable IUP.

(39) Lending rate--The rate of interest applicable to a particular financial assistance under the CWSRF.

(40) Market interest rate--Interest rates comparable to those attained for municipal securities in an open market offering.

(41) Municipality--A city, town, or other public body created by or pursuant to state law.

(42) Non-equivalency projects--Those projects funded from financial assistance that follow all state requirements and are not subject to compliance with applicable federal cross cutter requirements.

(43) Nonpoint source pollution plan--A plan for managing nonpoint source pollution as described in the Act, §319. Nonpoint source pollution is any source of water pollution that does not enter water from a point source and includes pollution generally resulting from land runoff, precipitation, atmospheric deposition, drainage, seepage or hydrologic modification.

(44) Nonpoint source pollution project--A project implemented pursuant to a nonpoint source pollution plan.

(45) Outlay report--The Board's form used to report costs incurred on the project.

(46) Permit--Any permit, license, registration and other legal document required from any local, regional, state or federal government for construction of the project.

(47) Person--An individual, corporation, partnership, association, State, municipality, commission or political subdivision of the State, or any interstate body.

(48) Point source--Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

(49) Political subdivision--A municipality, intermunicipal, interstate, or state agency, or any other public entity eligible for assistance.

(50) Population--The number of people who reside within the territorial boundaries of or receive wholesale or retail wastewater service from the Applicant based upon data that is acceptable to the executive administrator and which includes the following:

(A) acceptable demographic projections or other information in the engineering feasibility report or the latest official census for an incorporated city; or

(B) information on the population for which the project is designed, where the Applicant is not an incorporated city or town.

(51) Private Placement Memorandum (PPM)--A document functionally similar to an official statement used in connection with an offering of municipal securities in a private placement.

(52) Project--The planning, acquisition of land and permits, environmental review, design, construction and other activities designed to improve, extend, rehabilitate and construct wastewater treatment facilities and nonpoint source or national estuary program projects eligible for funding under the Act.

(53) Project engineer--The engineer retained by the Applicant to provide professional engineering services during any phase of a project.

(54) Project information form--The form that must be submitted by Applicants for rating and ranking in an IUP.

(55) Project Priority List--That portion of the IUP listing eligible projects ranked according to their rating and that may be further prioritized as described in the applicable IUP.

(56) Ready to proceed--A project that has completed design and obtained all permits, all legally required authorizations and all land, and has complied with all engineering and environmental planning review requirements, along with other Board requirements as applicable.

(57) Release of funds--The sequence and timing for Applicant's release of financial assistance funds from the escrow account to the construction account.

(58) Small systems--Those systems that serve a population of not more than ten thousand individuals.

(59) State--The State of Texas.

(60) Subsidy--Any special financial terms and conditions available including loan forgiveness, negative interest rates, or other financial incentives as detailed in an IUP.

(61) Treatment works--Any devices, facilities and systems that are used in the storage, treatment, recycling, and reclamation of waste or that are necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of, or used in connection with, the treatment process (including land used for the storage of treated water in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment; or facilities to provide for the collection, control, and disposal of waste. The term also means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff; and waste combined in storm water and sanitary sewer systems, the type of projects that often arise in response to emergency events.

(62) Water conservation plan--A report outlining the methods and means by which water conservation may be achieved within a particular facilities planning area.

(63) Water conservation program--A comprehensive description and schedule of the methods and means to implement and enforce a water conservation plan.

(64) Water quality management plan--A plan prepared and updated annually by the State and approved by the Environmental Protection Agency that determines the nature, extent, and causes of water quality problems in various areas of the State and identifies cost-effective and locally acceptable facility and nonpoint measures to meet and maintain water quality standards.

§375.2. Projects Entities and Activities Eligible for Assistance.

(a) Financial assistance from the CWSRF is available to eligible projects for the following:

(1) for the construction of or improvements to publicly-owned treatment works;

(2) for the implementation of a non-point source project under §319 of the Act;

(3) for the development and implementation of a conservation and management plan for bays and estuaries under §320 of the Act; and

(4) for projects which qualify as green projects based upon information provided within the submitted project information form, the application, and if necessary, the business case.

(b) Financial assistance from the CWSRF is available for nonpoint source pollution projects consistent with the following definitions:

(1) BMP--Best management practices are those practices determined to be the most efficient, practical, and cost-effective measures identified to guide a particular activity or address a particular problem.

(2) National Estuary Program--A program created by the Water Quality Act of 1987 and administered according to §320 of the Act.

(3) NPS Loan Program--Nonpoint Source Pollution Loan Program established to provide low interest loans to persons for the implementation of approved nonpoint source pollution control and abatement projects and estuary management projects.

(4) NPS Management Program--The most recent Texas Nonpoint Source Management Program adopted by the Commission.

(c) Financial assistance from the CWSRF is available for nonpoint source pollution projects consistent with the following eligibilities:

(1) The executive administrator may provide financial assistance to persons for nonpoint source pollution control projects or for national estuary program projects.

(2) An Applicant for financial assistance for a nonpoint source or estuary program project shall submit an application in the form and number prescribed by the executive administrator. The executive administrator shall determine the type of financial assistance available to an Applicant for a nonpoint source pollution project or a national estuary program project.

(3) The Board may provide financial assistance to applicants by either purchasing bonds issued by such applicant or by receiving a promissory note and entering into a loan agreement with such Applicant. If, however, an Applicant is a governmental entity that is fully authorized to issue bonds, the Applicant may not enter into a loan agreement as provided in this section.

(d) Financial assistance from the CWSRF is available for nonpoint source pollution control or estuary management projects consistent with the following conditions:

(1) an identified practice within a Water Quality Management Plan;

(2) a BMP listed in the NPS Management Program; or

(3) the National Estuary Program efforts for the State.

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.

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SUBCHAPTER B. FINANCIAL ASSISTANCE

31 TAC §§375.11, 375.12, 375.14 - 375.16, 375.19

STATUTORY AUTHORITY

The amendments are adopted under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State; and also under the authority of the Texas Water Code, §15.604.

The amendments affect the Texas Water Code, Chapter 15.

§375.11. Refinancing.

(a) The executive administrator may accept applications to refinance existing debt for eligible projects when sufficient funds are available. If refinancing funds are available in an IUP, then the Applicant shall describe the need for the eligible project and provide other specific information detailed in the project information form or otherwise requested by the executive administrator.

(b) An application for refinancing of existing debt shall be the same as an application for financial assistance under this chapter. The executive administrator may consider an application for refinancing when:

(1) the project meets all of the requirements for an equivalency project under this chapter, including information evidencing that the environmental review and engineering criteria required meets the criteria under law and this chapter for the same or similar projects; and

(2) the federal tax regulations allow such refinancing.

§375.12. Planning, Acquisition, and Design Funding.

(a) This type of financial assistance is available for the planning, acquisition of land, and the design for a proposed project.

(b) Applicants who have completed the planning, acquisition, and design for a proposed project within three years of the closing date for financial assistance will receive priority for construction funding of the project in the next available IUP if the project is ready to proceed.

§375.15. Lending Rates.

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

(1) Average life--The number determined by dividing the sum of the payment periods of all maturities of a loan by the total number of maturities.

(2) Borrower--Each eligible Applicant receiving a loan from the Board.

(3) Loan interest rate--The individual interest rate for each maturity of a loan as identified by the executive administrator under this chapter.

(4) Market rate--The individual interest rate for each maturity of a loan payment that is the borrower's market cost of funds based on the MMD scale for the borrower as identified under subsection (c)(1) of this section.

(5) MMD--Thomson Municipal Market Data Range of Yield Curve Scales.

(6) Payment period--The number determined by multiplying the total principal amount due for an individual maturity as set forth in the loan by the standard period for the loan.

(7) Standard period--The number identified by determining the number of days between the date of delivery of the funds to a borrower and the date of the maturity of a bond or loan payment pursuant to which the funds were provided calculated on the basis of a 360-day year composed of twelve 30-day periods and dividing that number by 360.

(b) Procedure for setting fixed interest rates. The interest rates will be determined by this section and as described in an IUP.

(1) The executive administrator will set fixed rates for loans on a date that is:

(A) five business days prior to the adoption of the political subdivision's bond ordinance or resolution or the execution of a loan agreement; and

(B) not more than 45 days before the anticipated closing of the loan from the Board.

(2) After 45 days from the assignment of the interest rate on the loan, rates may be extended only with the executive administrator's approval.

(c) Fixed rates for non-equivalency projects. The fixed interest rates for financial assistance under this chapter will be determined as provided in this subsection. The executive administrator will identify the market rate for the borrower, determine the amount of adjustment from the market interest rate appropriate for the borrower, apply the identified interest rate adjustment to the market rate for the borrower to determine the loan interest rate, and apply the loan interest rate to the proposed principal schedule, as more fully set forth in this subsection.

(1) To identify the market rate:

(A) for borrowers that have a rating by a recognized bond rating entity and will not have bond insurance, the executive administrator will rely on the higher of the MMD scale for the current bond rating of the borrower or the MMD BAA scale;

(B) for borrowers with no rating by a recognized bond rating entity or for borrowers with a rating that is less than investment grade as determined by the executive administrator, the executive administrator will rely on the MMD BAA scale; or

(C) for borrowers that are rated by a recognized rating entity with bond insurance or for borrowers with no rating by a recognized bond rating entity with insurance, the executive administrator will rely on the higher of the borrower's uninsured fixed rate scale or the insurer's fixed rate scale.

(2) The program is designed to provide borrowers with a reduction not to exceed 130 basis points below the market rate based on a level debt service schedule. Notwithstanding the foregoing, in no event shall the loan interest rate as determined under this section be less than zero.

(3) To determine the loan interest rate, the following procedures will apply:

(A) Unless otherwise requested by the borrower under subparagraph (B) of this paragraph, the loan interest rate will be determined based on a debt service schedule that provides interest only to be paid in the first year of the debt service schedule and in which the remaining annual debt service payments are level, as determined by the executive administrator. The executive administrator will identify the appropriate MMD scale for the borrower and identify the market rate for the maturity due in the year preceding the year in which the average life is reached. The executive administrator will reduce that market rate by the number of basis points applicable according to paragraph (2) of this subsection and thereby identify a proposed loan interest rate. The proposed loan interest rate will be applied to the proposed principal repayment schedule. If the resulting debt service schedule is level to the satisfaction of the executive administrator, then the proposed loan interest rate will be the loan interest rate for the loan. If the resulting debt service schedule is not level to the satisfaction of the executive administrator, then the executive administrator may adjust the interest rate for any or all of the maturities to identify the loan interest rate that as closely as possible achieves the interest savings applicable.

(B) A borrower may request a debt service schedule in which the annual debt service payments are not level through the term of the loan, as determined by the executive administrator. In this event, the executive administrator will approximate a level debt service schedule for the loan amount and identify a proposed loan interest rate that provides for annual debt service payments that are level for the term of the loan following the procedures set forth in paragraph (1)(A) of this subsection. From the level debt service schedule, the executive administrator will determine the amount of the subsidy that would have been provided if the annual debt service payments had been level. The executive administrator will then identify the loan interest rate that as closely as possible provides the borrower the identified subsidy amount for the principal schedule requested by the borrower.

(d) Fixed rates for equivalency projects. The fixed interest rates for CWSRF loans under this subchapter are set at rates not to exceed 195 basis points below the fixed rate scale for borrowers plus an additional reduction under paragraph (1) of this subsection, or if applicable, are set at the total basis points below the fixed rate scale for borrowers derived under paragraph (2) of this subsection. The fixed rate scale shall be established for each uninsured borrower based on the borrower's market cost of funds as they relate to the MMD or the BAA scale of the MMD for borrowers with either no rating or a rating less than investment grade, using individual coupon rates for each maturity of proposed debt based on the appropriate scale. The fixed rate scale shall be established for each insured borrower based on the higher of the borrower's uninsured fixed rate scale or the MMD AA scale.

(1) Under §375.16 of this title (relating to Fees of Financial Assistance) an additional reduction not to exceed 25 basis points will be used, for total fixed interest rates not to exceed 195 basis points below the fixed scale for such borrower.

(2) For borrowers filing applications on or after September 21, 1997 for loans with an average bond life in excess of 14 years or, at the discretion of the Board for borrowers filing applications on or

after September 21, 1997 for loans that have debt schedules less than 20 years and that produce a total fixed lending rate reduction in excess of a standard loan structure (defined as a debt service schedule in which the first year of the maturity schedule is interest only followed by 20 years of principal maturing on the basis of level debt service), the following procedures will be used in lieu of the provisions of paragraph (1) of this subsection to determine the total fixed lending rate reduction.

(A) The interest rate component of level debt service will be determined by using the 13th year coupon rate of the appropriate scale of the MMD scales that corresponds to the 13th year of principal of the standard loan structure and that is measured from the first business day on the month the loan application will be presented to the Board for approval.

(B) Level debt service will be calculated using the 13th year MMD Scale coupon rate as described in subparagraph (A) of this paragraph and the par amount of the loan according to a standard loan structure. For a loan that has been proposed for a term of years equal to a standard loan structure, the dates specified in the loan application shall be used for interest and principal calculation. For a loan that has been proposed for a term of years less than a standard loan structure or longer than a standard loan structure, level debt service will be calculated beginning with the dated date and based upon the principal and interest dates specified in the application, and continuing for the term of a standard loan structure.

(C) A calculation will be made to determine how much a borrower's interest would be reduced if the loan had been made according to the total fixed lending rate reduction provided in paragraph (1) of this subsection and based upon the principal payments calculated in subparagraph (B) of this paragraph.

(D) The Board will establish a total fixed lending rate reduction for the loan that will achieve the interest savings in subparagraph (C) of this paragraph based upon the principal schedule proposed by the borrower.

(e) Variable Rates. The interest rate for CWSRF variable rate loans under this chapter will be set at a rate equal to the actual interest cost paid by the Board on its outstanding variable rate debt plus the cost of maintaining the variable rate debt in the CWSRF. Variable rate loans are required to be converted to long-term fixed rate loans within 90 days of project completion unless an extension is approved in writing by the executive administrator. Within the time limits set forward in this subdivision, borrowers may request to convert to a long-term fixed rate at any time, upon notification to the executive administrator and submittal of a resolution requesting such conversion. The fixed lending rate will be calculated under the procedures and requirements of subsections (b), (c) and (d) of this section.

(f) Private and taxable borrowers. The interest rate for loan agreements for those borrowers receiving financial assistance who are determined to be private or taxable issuers will be:

(1) for borrowers that have a rating by a recognized bond rating entity and will not have bond insurance, the executive administrator will rely on the higher of the MMD taxable scale for the current bond rating of the borrower or the MMD BAA taxable scale; or

(2) for borrowers with no rating by a recognized bond rating entity or for borrowers with a rating that is less than investment grade as determined by the executive administrator, the executive administrator will rely on the MMD BAA taxable scale; or

(3) for borrowers that are rated by a recognized bond rating entity with bond insurance or for borrowers with no rating by a recognized bond rating entity with insurance, the executive administrator will rely on the higher of the borrower's uninsured fixed rate taxable scale or the insurer's fixed rate taxable scale.

(g) Adjustments. The executive administrator may adjust a borrower's interest rate at any time prior to closing as a result of a change in the borrower's credit rating.

§375.16. Fees of Financial Assistance.

(a) General. The Applicant will be assessed charges for the purpose of recovering administrative costs of all projects receiving CWSRF financial assistance. However, no fees or costs shall be assessed on the portion of the project that receives subsidization through loan forgiveness or other subsidies as detailed in the IUP.

(b) Loan origination fee. A loan origination fee equal to 1.85% of the project costs will be assessed, as a one-time non-refundable charge. Project costs upon which the fee will be assessed do not include the origination fee or those project costs that are funded through loan forgiveness. The fee is due and payable at the time of loan closing and may be financed as a part of the financial assistance.

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.

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SUBCHAPTER C. INTENDED USE PLAN

31 TAC §§375.31 - 375.34

STATUTORY AUTHORITY

The amendments and new section are adopted under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State; and also under the authority of the Texas Water Code, §15.604.

The amendments and new section affect the Texas Water Code, Chapter 15.

§375.31. Rating Process.

(a) Projects in an IUP will be rated based upon the information detailed within the submitted project information form.

(b) Rating criteria. For the Act's §212 projects involving the construction or improvements to publically owned treatment works the following factors will be considered:

(1) Impacts to water quality--Projects that protect stream segments and groundwater from pollution.

(2) Unserved areas--Projects that will bring individual systems into a centralized system or projects that address on-site systems.

(3) Regionalization of treatment works--Projects that will consolidate and eliminate systems.

(4) Reduction or prevention--Projects that will reduce or prevent sewer system overflows and inflow and infiltration.

(5) Affordability--A Project located in a disadvantaged community shall have an affordability rating factor as defined within the applicable IUP.

(6) Emergency relief--Projects which are affected by events of natural disaster.

(7) Additional factors as designated within the applicable IUP and determined by the executive administrator.

(c) Previously funded projects. Planning, acquisition, or design projects, completed within three years from the closing of the financial assistance will receive a priority for construction funding if there are no significant changes that affect the original project rating and the project is ready to proceed.

(d) For the Act's §319 projects involving nonpoint source and §320 projects involving estuary management, the following factors will be considered:

(1) Public health--Ability to improve conditions that a public health official has determined are a nuisance and are dangerous to public health and safety and that may result from water supply and sanitation problems in the area to be served by the proposed project.

(2) Groundwater--Minimization of impact of pollutants to an aquifer or groundwater.

(3) Impaired water body--Ability to improve conditions in any water body that does not meet applicable water quality standards or is threatened for one or more designated uses by one or more pollutants.

(4) Affordability--A Project located in a disadvantaged community shall have an affordability rating factor as defined within the IUP.

(5) Additional factors as designated within the applicable IUP and determined by the executive administrator.

§375.32. Public Notice.

(a) In accordance with the Act, the Board shall hold public hearings and allow a period for public review and comment before considering the adoption and approval of the IUP and the Project Priority List.

(b) For any amendments thereto, the Board shall hold a public hearing and allow a period of public review and comment in accordance with the Act.

§375.33. Criteria and Methods for Distribution of Funds.

(a) Amount of available funds. Annually, the executive administrator will determine the amount of funds available for wastewater system improvements and other projects for the fiscal year.

(b) Subsidy limits. The total amount of subsidies in any fiscal year may not exceed the percentages established by federal law or by the capitalization grant.

(c) Small systems. Projects with identical combined rating scores, including rating scores of zero, will be listed in order of population. Projects serving fewer people will be listed above those projects serving a larger population.

(1) To the extent that eligible Applicants are available, a minimum of 15% of the funds will be made available to small systems.

(2) If small system projects on the Invited Projects List are less than 15% of the funds, then the executive administrator may bypass projects for systems serving larger populations to ensure inclusion of small system projects for at least 15% of available funds.

(d) Project Priority List. Available program funds will be applied to the list of projects designated to receive funding. The methods used for ranking include:

(1) Project costs. Project costs will be determined by cost estimates contained in the project information form if the executive administrator deems those costs reasonable and acceptable; the costs will also be reflected in the applicable IUP.

(2) Tie-breakers. If two or more projects receive the same rating, then the executive administrator will use the tie-breaker procedures described in the applicable IUP.

(3) Bypass procedure. The executive administrator may bypass higher rated and ranked projects if:

(A) an incomplete application is submitted as described in §375.41 of this title (relating to Timeliness of Application and Required Application Information); or

(B) a bypass is necessary to fund certain types of projects as detailed in the applicable IUP or as required by capitalization grant conditions.

(e) Projects submitted for financing will be screened for eligibility, scored, ranked and listed on a Project Priority List. Applicants with projects on the Invited Projects List will be invited to submit applications in accordance with the procedures and deadlines as detailed in the IUP. The project selection is subject to subsections (a) - (d) of this section. The Invited Projects List will be reviewed periodically and additional invitations will be extended until all of the annual CWSRF funding amount is committed.

(f) Utilization of remaining funds. If there are insufficient applications for financial assistance to obligate available funds for the funding year, then the executive administrator shall utilize the remaining funds during the next funding year or at any time in combination with other Board financial assistance programs.

(g) Fund shortages. When the amount of funds required to fund all complete applications for financial assistance exceeds the amount of funds available in the funding year, a shortage of funds exists. In such an instance, the Board will fund Applicants until all funds have been utilized. The Board shall fund projects prioritized by the date and time of receipt of a complete application and the project's ability to proceed to commitment.

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.

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SUBCHAPTER D. APPLICATION FOR ASSISTANCE

31 TAC §§375.40, 375.41, 375.44

STATUTORY AUTHORITY

The amendments are adopted under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State; and also under the authority of the Texas Water Code, §15.604.

The amendments affect the Texas Water Code, Chapter 15.

§375.41. Timeliness of Application and Required Application Information.

(a) Time to submit applications. Applications and required additional data or information must be submitted in a timely basis. The failure to timely submit the application, the information necessary to complete the application or additional requested information will result in the bypass of the project on the Invited Projects List.

(1) Deadline to submit application. Applicants shall submit a complete application by the deadlines established by the Board as detailed in the applicable IUP or the project will be ineligible for funding. The Applicant will be notified when an application is administratively complete.

(2) Incomplete applications. An Applicant shall cure any deficiency in an application upon request from the executive administrator and shall submit all requested information within fourteen days from receipt of the notice of a deficiency.

(3) Additional information. The Applicant shall submit any additional or modified information or data required by the executive administrator within fourteen days of the request for same, regardless of the expiration of other applicable deadlines in this section.

(4) Extension of time. The executive administrator may grant an extension of time to complete the application or to receive additional information and data if the Applicant can show good cause for the delay or if the delay is caused by an event of force majeure. The executive administrator exercises sole discretion in determining whether and to what extent to grant a time extension.

(b) Required application information. An application shall be in the form and numbers prescribed by the executive administrator and, in addition to any other information that may be required by the executive administrator or the Board, the Applicant shall provide at a minimum, the following documentation:

(1) a resolution from its governing body that shall:

(A) request financial assistance, identifying the amount of requested assistance;

(B) designate the authorized representative to act on behalf of the governing body; and

(C) authorize the representative to execute the application, appear before the Board on behalf of the Applicant, and submit such other documentation as may be required by the executive;

(2) a notarized affidavit from the authorized representative stating that:

(A) the decision to request financial assistance from the Board was made in a public meeting held in accordance with the Open Meetings Act (Texas Government Code, Chapter 551) and after providing all such notice as is required by the Open Meetings Act;

(B) the information submitted in the application is true and correct according to best knowledge and belief of the representative;

(C) the Applicant has no outstanding judgments, orders, fines, penalties, taxes, assessment or other enforcement or compliance issues of any kind or nature by EPA, the Commission, Texas Comptroller of Public Accounts, Texas Office of the Secretary of State, or any other federal, state or local government, that would materially affect the Applicant's ability to repay its debt, or identifying such judgments, orders, fines, penalties, taxes, assessment or other enforcement or compliance issue as may be outstanding for the Applicant;

(D) the Applicant warrants compliance with the representations made in the application in the event that the Board provides the financial assistance; and

(E) the Applicant will comply with all applicable federal laws, rules, and regulations as well as the laws of this State and the rules and regulations of the Board;

(3) copies of the following project documents:

(A) any draft or executed contracts for consulting services to be used by the Applicant in applying for financial assistance or constructing the proposed project, including but not limited to, financial advisor, engineer, and bond counsel; and

(B) contracts for engineering services should include the scope of services, level of effort, costs, project schedules, and other information necessary for adequate review by the executive administrator. A project schedule shall be provided with the contract; the schedule must provide firm timelines for the completion of each phase of a project and note the milestones within the phase of the project;

(4) a citation to the specific legal authority in the Texas Constitution and statutes under which the Applicant is authorized to provide the service for which the Applicant is receiving financial assistance as well as the legal documentation identifying and establishing the legal existence of the Applicant;

(5) if the Applicant provides or will provide wastewater service to another service provider, or receives such service from another service provider, the proposed agreement, contract, or other documentation which legally establishes such service relationship, with the final and binding agreements provided prior to closing;

(6) documentation of the ownership interest, with supporting legal documentation, for the property on which proposed project shall be located, or if the property is to be acquired, certification that the Applicant has the necessary legal power and authority to acquire the property;

(7) if financing of the project will require a contractual loan agreement or the sale of bonds to the Board payable either wholly or in part from revenues of contracts with others, a copy of any actual or proposed contracts under which Applicant's gross income is expected to accrue. Before the financial assistance is closed, an Applicant shall submit executed copies of such contracts to the executive administrator;

(8) if the bonds to be sold to the Board are revenue bonds secured by a subordinate lien, a copy of the authorizing instrument of the governing body for all prior and outstanding bonds shall be furnished;

(9) if a bond election is required by law to authorize the issuance of bonds to finance the project, the executive administrator may require Applicant to provide the election date and election results necessary for the issuance of the bonds as part of the application or prior to closing;

(10) an audit of the Applicant for the preceding year prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant; and

(11) if additional funds are necessary to complete the project, or if the applicant has applied for and/or received a commitment from any other source for the project or any aspect of the project, a listing of those sources, including total project costs, financing terms, and current status of the funding requests.

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.

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Kenneth L. Petersen
General Counsel
Texas Water Development Board
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SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS
DIVISION 1. STATE PROJECTS

31 TAC §§375.50, 375.55, 375.56

STATUTORY AUTHORITY

The amendments are adopted under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State; and also under the authority of the Texas Water Code, §15.604.

The amendments affect the Texas Water Code, Chapter 15.

§375.55. Environmental Determinations Affected by Proposed Project Alterations.

(a) Alterations of proposed project. If the Applicant decides to alter the proposed project after the issuance of an environmental determination, then the Applicant shall immediately notify the executive administrator in writing and shall briefly describe the reason(s) for the alterations in the proposed project.

(b) Prior to approval of the proposed alteration, the executive administrator shall examine the contract documents, the financial assistance application and other related documents to evaluate the proposed alterations to ensure consistency with the environmental determination. The executive administrator's review of proposed project alterations may result in:

(1) the reaffirmation of the original environmental determination;

(2) the issuance of a FER environmental determination when a CE has been revoked; or

(3) the issuance of a supplement to a FER environmental determination, or the revocation of the FER environmental determination and issuance a public notice that financial assistance for the proposed project will not be provided.

(c) Minor differences between the approved project and alterations that will not create previously unconsidered, adverse environmental impacts will generally not affect the ability of the proposed project alterations to proceed without additional formal environmental review.

(d) Major differences between the approved project and alterations that have the potential to generate new and previously unexamined, adverse environmental impacts may result in a decision to revoke a CE and to proceed with a more detailed level of environmental review consistent with this subchapter.

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.

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DIVISION 2. FEDERAL PROJECTS

31 TAC §§375.60, 375.61, 375.66 - 375.68

STATUTORY AUTHORITY

The amendments are adopted under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State; and also under the authority of the Texas Water Code, §15.604.

The amendments affect the Texas Water Code, Chapter 15.

§375.60. Definitions for Equivalency Projects.
Unless specifically defined differently within this subchapter, the following terms and acronyms, used in this subchapter, mean:

(1) Affected community--A community where the proposed project is expected to result in environmental impacts or potential human health or environmental effects including minority communities, low-income communities or federally-recognized Indian tribal communities.

(2) Avoidance--Avoiding the impact altogether by not taking a certain action or parts of an action during project implementation.

(3) NEPA--The federal National Environmental Policy Act, 42 U.S.C. §§4321 et seq.

(4) Indian tribes--Federally recognized Indian tribes.

(5) Minimization--Minimizing impacts by limiting the degree or magnitude of the action during project implementation.

(6) Mitigation--

(A) avoiding;

(B) minimizing;

(C) rectifying an impact by repairing, rehabilitating, or restoring the affected environment;

(D) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the project; and

(E) compensating for the impact by replacing or providing substitute resources or environments.

§375.61. Environmental Review Process.

(a) Policy and purpose. This subchapter governs the environmental review of projects funded in whole or in part by the CWSRF. Environmental review of all proposed infrastructure projects is a condition of the use of CWSRF financial assistance. This subchapter follows the procedures established by EPA for implementing the NEPA set forth at 40 CFR Part 6. The environmental review must be completed prior to the release of funds for design and construction and the review is subject to public comment. The Applicant, at all times throughout the design, construction, and operation of the project, shall comply with the determinations resulting from the environmental review.

(b) Types of environmental determinations. An environmental determination is issued by the executive administrator at the culmination of the process described in this subchapter. After gathering and reviewing relevant information and data, soliciting comments from state and federal agencies and receiving and analyzing public comments, the executive administrator will issue one of the following determinations:

(1) a Categorical Exclusion, based on submission of information from the Applicant;

(2) a Finding of No Significant Impact, based on review of the Applicant's Environmental Information Document and the Board's Environmental Assessment; or

(3) a Record of Decision, based on an Environmental Impact Statement.

(c) General review by executive administrator.

(1) The executive administrator shall conduct an inter-disciplinary, inter-agency and public review consistent with the NEPA. The purpose of this review is to ensure that the proposed project will comply with the applicable local, state, and federal laws and regulations relating to the identification of the environmental impacts of a proposed project and the necessary steps required to avoid, minimize and, if necessary, mitigate such impacts. The scope of the environmental review will depend upon the type of proposed action, the reasonable alternatives and the type of environmental impacts.

(2) For all environmental determinations that are five years old or older, and for which the proposed infrastructure project has not yet been implemented, the executive administrator must re-evaluate the proposed financial assistance application as well as the environmental conditions and public comment to determine whether to conduct a supplemental environmental review in compliance with the NEPA, or to reaffirm the original determination. If there has been substantial change in the proposed infrastructure project that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns, the executive administrator must conduct a supplemental environmental review and complete an appropriate determination in compliance with the NEPA. The executive administrator may consider environmental determinations issued by other entities.

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.

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SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

31 TAC §§375.80 - 375.83

STATUTORY AUTHORITY

The amendments are adopted under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State; and also under the authority of the Texas Water Code, §15.604.

The amendments affect the Texas Water Code, Chapter 15.

§375.81. Engineering Feasibility Report.

(a) The Applicant shall submit an engineering feasibility report signed and sealed by a professional engineer registered in the State. The report, based on guidelines provided by the executive administrator, shall provide:

(1) a description and purpose of the project;

(2) the names of the entities to be served, along with the current and future population;

(3) the cost of the project;

(4) a description of the alternatives considered and reasons for selection of the project proposed;

(5) sufficient information to evaluate the engineering feasibility;

(6) maps and drawings as necessary to locate and describe the project area;

(7) sufficient detail to document that the project will remedy the issues and problems that were evaluated for rating on the IUP;

(8) information showing the project is cost effective, and for projects that implement new systems or significantly alter current systems a detailed cost-effective analysis, including detailed operation and maintenance costs, may be requested to document program eligibility;

(9) a detailed project schedule with timelines for each phase of the project and the milestones within each phase of the project; and

(10) any other information or data necessary to evaluate the proposed project. The Applicant must submit any additional information requested by the executive administrator to document the project's eligibility for funding by the program.

(b) Approval of engineering feasibility report. The executive administrator will approve the engineering feasibility report when:

(1) the items listed in subsection (a) of this section have been completed, including requests for additional information or data;

(2) the appropriate environmental determinations have been completed in accordance with this chapter and the Applicant has

agreed to incorporate into project documents, including contracts, all mitigation measures as a result of the environmental review; and

(3) the project and alternatives to the project have been analyzed and the proposed project is cost effective.

(c) Request for project amendment. A request for an amendment, after the approval of the engineering feasibility report, to a project shall be granted only if implementation of the amendment does not affect the original purpose of the project. The implementation of the project amendment must remedy the problems and issues identified in the Applicant's original project information form. Significant amendments to a project require previous approval by the executive administrator. The Applicant shall:

(1) provide a description of and the need for amendment;

(2) submit additional engineering or environmental information as requested by the executive administrator;

(3) provide an estimate of any increase or decrease in total project costs resulting from the proposed amendment; and

(4) certify that the proposed amendment will not significantly alter the purpose of the project.

(d) Alternative methods of project delivery. Design build, construction manager at risk and other alternative methods of project delivery are eligible for available financial assistance, including combinations of planning, design and construction funding, in accordance with programmatic requirements. The executive administrator will provide written guidance regarding modifications of the type of financial assistance, and the review, approval and release of funds processes for alternative delivery projects. The Board may specify special conditions in the commitment as appropriate to accommodate an alternative method of project delivery.

§375.83. Advertising and Awarding Construction Contracts.

(a) Applicable laws and rules. The Applicant shall comply with State procurement laws and rules and with applicable federal procurement rules depending on the equivalency requirements for the financial assistance.

(b) Executive administrator approval required. The Applicant shall not proceed to advertising for bids on the project without express written approval of the solicitation documents by the executive administrator. If the applicant proceeds to advertising without approval, it may affect eligibility for funding.

(c) Changes prior to award. If the Applicant needs to alter the plans and specifications and contract documents after the executive administrator's approval, then the Applicant shall:

(1) provide the information and reasons relating to the changes if changes are required prior to bidding. The executive administrator must affirmatively approve any changes prior to advertising.

(2) Changes that occur after advertising must be incorporated into an addendum and provided to the executive administrator for approval as part of the bidding process.

(d) Contract award. The text of a construction contract or a contract containing construction phase work submitted for approval prior to advertising shall contain the same language and provisions as the contingently executed contract.

(e) Pre-construction conference. The Applicant shall conduct a pre-construction conference on significant construction contracts to address the contents of the executed contract documents with the project owner, the project engineer, the prime contractor, and other appropriate parties in attendance. The Applicant shall provide the executive administrator with at least five days advance notice of the date, time and location of the conference.

(f) Notice to proceed. The executive administrator shall review the executed contract documents, including any additional documentation required by EPA for equivalency projects, and upon acceptance of same shall advise the Applicant that a notice to proceed may be issued to the contractor.

(g) No liability. The executive administrator and the Board shall have no liability for any event arising out of or in any way related to the contracts for or construction of the project.

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.

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SUBCHAPTER G. LOAN CLOSINGS AND AVAILABILITY OF FUNDS

31 TAC §§375.90 - 375.93

STATUTORY AUTHORITY

The amendments are adopted under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State; and also under the authority of the Texas Water Code, §15.604.

The amendments affect the Texas Water Code, Chapter 15.

§375.91. Financial Assistance Secured by Bonds or Other Authorized Securities.

(a) Applicability and required documents. This section applies to closings for financial assistance with entities issuing bonds or other authorized securities. The following documents are required for closing financial assistance secured by bonds or other authorized securities:

(1) evidence that applicable requirements and regulations of all identified local, state and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) a certified copy of the ordinance or resolution adopted by the governing body authorizing the issuance of debt to be sold to the Board that is acceptable to the executive administrator. The ordinance or resolution shall have sections providing as follows:

(A) if financial assistance proceeds are to be deposited into an escrow account at the time of closing, then an escrow account shall be created that shall be separate from all other accounts and funds, as follows:

(i) the account shall be maintained by an escrow agent as defined in §375.1 of this title (relating to Definitions);

(ii) funds shall not be released from the escrow without prior written approval from the executive administrator who shall issue written authorization for the release of the funds;

(iii) upon request of the executive administrator, escrow account statements shall be provided to the executive administrator;

(iv) the investment of any financial assistance proceeds deposited into an approved escrow account shall be handled in a manner that complies with the Public Funds Investment Act, Texas Government Code, Chapter 2256; and

(v) the escrow account shall be adequately collateralized in a manner sufficient to protect the Board's interest in the project in a manner that complies with the Public Funds Collateral Act; Texas Government Code, Chapter 2257;

(B) that the Applicant shall fix and maintain rates, in accordance with state law, and collect charges to provide adequate operation and maintenance of the project;

(C) that a construction account shall be created which shall be kept separate from all other accounts and funds of the Applicant;

(D) that bonds shall be closed in book-entry-only form;

(E) the use of a paying agent/registrar that is a Depository Trust Company (DTC) participant;

(F) that the payment of all DTC closing fees assessed by the Board's custodian bank be directed to the Board's custodian bank by the Applicant;

(G) evidence that one fully registered bond has been sent to the DTC or to the Applicant's paying agent/registrar prior to closing;

(H) that all payments are made to the Board via wire transfer at no cost to the Board;

(I) that the partial redemption of bonds or other authorized securities be made in inverse order of maturity;

(J) that insurance coverage be obtained and maintained in an amount sufficient to protect the Board's interest in the project;

(K) that the Applicant, or an obligated person for whom financial or operating data is presented, will undertake, either individually or in combination with other issuers of the Applicant's obligations or obligated persons, in a written agreement or contract to comply with requirements for continuing disclosure on an ongoing basis as required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the Board were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the Board and the beneficial owner of the political subdivision's obligations, if the Board sells or otherwise transfers such obligations, and the beneficial owners of the Board's bonds if the political subdivision is an obligated person with respect to such bonds under rule 15c2-12. The ordinance or resolution shall also contain any other requirements of the SEC or the IRS relating arbitrage, private activity bonds or other relevant requirements regarding the securities held by the Board;

(L) the maintenance of current, accurate and complete records and accounts in accordance with generally accepted accounting principles to demonstrate compliance with requirements in the financial assistance documents;

(M) that the Applicant shall annually submit an audit, prepared by a certified public accountant in accordance with generally accepted auditing standards;

(N) that the Applicant shall submit a final accounting within 60 days of the completion of the project;

(O) that the Applicant shall document the adoption and implementation of an approved water conservation program for the duration of the financial assistance;

(P) the Applicant's agreement to comply with special environmental conditions specified in the Board's environmental determination as well as with any applicable Board laws or rules relating to use of the financial assistance;

(Q) that the Applicant shall establish a dedicated source of revenue for repayment of the financial assistance;

(R) that interest payments shall commence no later than one year after the date of closing and annual principal payments will commence no later than one year after completion of project construction; and

(S) any other recitals mandated by the executive administrator;

(3) unqualified approving opinions of the attorney general of Texas and, if bonds or other authorized securities are issued, a certification from the comptroller of public accounts that such debt has been registered in that office;

(4) an unqualified approving opinion by a recognized bond attorney;

(5) assurances that the Applicant will comply with any special conditions specified by the Board's environmental determination until all financial obligations to the State have been discharged;

(6) a Private Placement Memorandum containing a detailed description of the issuance of debt to be sold to the Board. The Applicant shall submit a draft Private Placement Memorandum at least 30 days prior to the closing of the financial assistance; a final electronic version of the Memorandum shall be submitted no later than seven days before closing;

(7) when any portion of the financial assistance is to be held in an escrow account, the Applicant shall execute an escrow agreement, approved as to form and substance by the executive administrator;

(8) if applicable, a home rule municipality pursuant to Chapter 104, Local Government Code, shall execute a Certification of Trust as defined in §375.1 of this title; and

(9) any additional information specified in writing by the executive administrator.

(b) Certified bond transcript. Within sixty (60) days of closing the financial assistance, the Applicant shall submit a transcript of proceedings relating to the debt purchased by the Board which shall contain those instruments normally furnished by a purchaser of debt.

(c) Phased closing. The executive administrator may determine that closing the financial assistance in phases is appropriate when:

(1) the project has distinct phases for planning, design, acquisition and for construction or if any one of the phases can be logically and practically divided into discrete sections;

(2) the project utilizes the design-build or construction manager-at-risk process or any process wherein there is simultaneous design and construction;

(3) there are limitations on the availability of funds;

(4) additional oversight is required due to the financial condition of the Applicant or the complexity of the project; or

(5) due to any unique facts arising from the particular transaction.

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.

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SUBCHAPTER H. CONSTRUCTION AND POST CONSTRUCTION REQUIREMENTS

31 TAC §§375.100, 375.106, 375.108 - 375.110

STATUTORY AUTHORITY

The amendments are adopted under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State; and also under the authority of the Texas Water Code, §15.604.

The amendments affect the Texas Water Code, Chapter 15.

§375.106. Final Accounting.

(a) Within sixty days of Applicant's receipt of the certificate of approval for the final prime construction contract and the final inspection report, the Applicant shall submit a final accounting and a final funds requisition form.

(b) After the final accounting, the executive administrator shall notify the Applicant if remaining surplus funds exist and advise the Applicant that the remaining surplus funds may be used for:

(1) payment of bonds in inverse order of maturity;

(2) deposit into the interest and sinking fund; or

(3) deposit to a reserve fund.

§375.108. Release of Retainage.

(a) Retainage. The Applicant will withhold a minimum of 5% of each progress payment throughout the course of the construction contract.

(b) Full release of retainage. The executive administrator will approve the full release of retainage on a contract when:

(1) the Applicant's engineer approves the contractor's request for release of retainage; and

(2) the Applicant's governing body approves the release of retainage.

(c) Partial release of retainage. If a project is substantially complete, the executive administrator may approve a partial release of retainage.

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.

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CHAPTER 384. RURAL WATER ASSISTANCE FUND

SUBCHAPTER C. CLOSING AND RELEASE OF FUNDS

31 TAC §384.41, §384.43

The Texas Water Development Board ("TWDB" or "Board") adopts amendments to 31 TAC §384.41, concerning Loan Closing; and §384.43, concerning Release of Funds, without changes to the proposed text as published in the June 1, 2012, issue of the *Texas Register* (37 TexReg 4033). Related amendments to §363.2, concerning Definitions of Terms; §363.33, concerning Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects; §363.42, concerning Loan Closing; §363.43, concerning Release of Funds; §363.931, concerning Requirements for Loan Closing; §363.932, concerning Release of Funds; and §363.935, concerning Interest Rate, are adopted elsewhere in this issue of the *Texas Register.*

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENTS

Loan Closings and Release of Funds.

Section 363.2 contains definitions of terms that are used in §363.42(a)(2)(A) and §384.41(a)(2)(A) regarding requirements for the recipient's escrow account in which TWDB financial assistance funds are held pending release to the recipient's construction account. The TWDB is concurrently adopting amendments to §§371.1, 371.70, 371.71, 375.1, and 375.91, concerning the Drinking Water State Revolving Fund and the Clean Water State Revolving Fund regarding the same requirements for the closing of loans into escrow and the release of funds for financial assistance provided through those programs. The adopted revisions to §§363.2, 363.42, 363.43, 363.931, 363.932, 363.935, 384.41, and 384.43 will clarify the TWDB's practices.

§384.41. Loan Closing.

Section 384.41(a)(1) is revised to clarify that, if an applicant is closing under the pre-design funding option, permits and authorizations are not required for closing because under the pre-design funding option the TWDB will be funding the planning and design activities that will result in the permits and authorizations.

Section 384.41(a)(2) is revised to clarify that the loan closing requirements apply not only to bonds, but also to a loan closed with a promissory note and loan agreement.

Section 384.41(a)(2)(A) is revised to clarify that an escrow account must be held separate from all other accounts and funds.

Section 384.41(a)(2)(A)(i) is revised to require that the escrow agent must meet the criteria in the definition of "escrow agent," as defined in 31 TAC §363.2(13). By limiting the eligible escrow agents to those that meet the criteria, the TWDB is assured a minimum level of due diligence regarding the security of the funds at the time of delivery to the financial assistance participant.

Section 384.41(a)(2)(A)(iii) is revised to require that escrow account statements be submitted to the executive administrator upon request rather than monthly as previously required.

Section 384.41(a)(2)(A)(iv) is revised to require that the investment of loan funds comply with the Public Funds Investment Act.

Section 384.41(a)(2)(A)(v) is added to require that the loan funds must be collateralized in compliance with the Public Funds Collateral Act.

Section 384.41(a)(2)(B) is amended to require that a loan recipient's construction account be separate from all other accounts.

Section 384.41(a)(2)(C) is amended to require that the rural political subdivision submit a final accounting within 60 days of the completion of the project.

Section 384.41(a)(2)(F) is amended to clarify that the loan recipient must adopt and implement an approved water conservation program for the life of the loan.

Section 384.41(a)(2)(G) is amended to clarify that the rural political subdivision's accounting records must be kept in accordance with generally accepted accounting principles.

Section 384.41(a)(2)(J) is added to require that all payments shall be made to the TWDB via wire transfer at no cost to the TWDB.

Section 384.41(a)(2)(K) is added to require that the partial redemption of bonds or other authorized securities be made in inverse order of maturity.

Section 384.41(a)(2)(L) is added to require that insurance coverage be obtained and maintained in an amount sufficient to protect the TWDB's interest in the project. This addition is consistent with the current requirement in §384.41(a)(2)(E) that the rural political subdivision shall fix and maintain rates and collect charges to provide adequate operation, maintenance and insurance coverage on the project in an amount sufficient to protect the TWDB's interest.

Section 384.41(a)(2)(M) is added to require that the rural political subdivision shall establish a dedicated source of revenue for repayment.

Section 384.41(a)(2)(N) is added to require any other recitals mandated by the executive administrator.

Section 384.41(a)(3) is amended to clarify that, instead of providing two copies of its water conservation program, the rural political subdivision is required to provide evidence that it has adopted a water conservation program in accordance with 31 TAC §363.15.

Section 384.41(a)(6) is amended to remove references to an "escrow agent bank," a "trust agreement" and a "trust agent" because the definition of "escrow agent" under 31 TAC §363.2 specifies the eligible entities that may hold loan funds, and any agreement with an escrow agent is considered an escrow agreement.

Section 384.41(b) is amended to delete the word "bond" before "transcript" because a borrower is required to submit a transcript whether it closes a loan with bonds or with a promissory note and loan agreement.

Section 384.41(c) is amended to add the requirement that the rural political subdivision provide a private placement memorandum regarding the issuance of bonds to the TWDB that is acceptable to the executive administrator.

§384.43. Release of Funds.

Section 384.43(a)(4) is revised to clarify that, if an applicant is closing under the pre-design funding option, permits and authorizations are not required for the release of funds for planning and design activities because under the pre-design funding option the TWDB will be funding the planning and design activities that will result in the permits and authorizations.

Section 384.43(b) is revised to delete references to "escrow agent bank" and "trust agent" because the definition of "escrow agent" under 31 TAC §363.2 specifies the eligible entities that may hold loan funds.

PUBLIC COMMENTS

No comments were received on the proposed rulemaking.

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code, §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The amendments affect Texas Water Code, Chapters 15, 16, and 17.

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Texas Water Development Board
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Proposal publication date: June 1, 2012
For further information, please call: (512) 463-8061

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 90. INTERMEDIATE CARE FACILITIES FOR PERSONS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS),

adopts the repeal of §90.16, concerning change of ownership; new §90.16, concerning change of ownership; and amendment to §90.61, concerning introduction, application, and general requirements for facilities for persons with an intellectual disability or related conditions, in Chapter 90, Intermediate Care Facilities for Persons with an Intellectual Disability or Related Conditions, without changes to the proposed text published in the April 13, 2012, issue of the *Texas Register* (37 TexReg 2558).

The repeal, new section, and amendment are adopted to conform rules to guidance from the Centers for Medicare and Medicaid Services (CMS), as outlined in Survey and Certification Letter 10-26, dated July 23, 2010. The guidance from CMS changes the requirements for full evacuation of individuals during a fire drill from one time per year on each shift to full evacuation of individuals during all fire drills for a small facility with a slow or prompt evacuation capability. The amendment also makes the rule consistent with rules concerning emergency preparedness at §90.50(f)(3)(B). The repeal of §90.16, regarding change of ownership, is necessary to adopt new rules on that subject. New §90.16 makes rules regarding change of ownership in an intermediate care facility (ICF/ID) consistent with rules governing nursing facilities.

DADS received no comments regarding adoption of the repeal, new section, and amendment.

SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §90.16

The repeal is adopted 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 Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities for persons with an intellectual disability or related conditions; 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.

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 July 10, 2012.

TRD-201203562
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: July 30, 2012
Proposal publication date: April 13, 2012
For further information, please call: (512) 438-4466

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40 TAC §90.16

The new section is adopted 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 Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities for persons with an intellectual disability or related conditions; 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.

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.

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For further information, please call: (512) 438-4466

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SUBCHAPTER D. GENERAL REQUIREMENTS FOR FACILITY CONSTRUCTION

40 TAC §90.61

The amendment is adopted 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 Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities for persons with an intellectual disability or related conditions; 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.

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.

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PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 106. DIVISION FOR BLIND SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopts the repeal of Title 40, Chapter 106, Division for Blind Services, Subchapter G, Business Enterprises of Texas, §§106.1201, 106.1203, 106.1205, 106.1207, 106.1209, 106.1211, 106.1213, 106.1215, 106.1217, 106.1219, 106.1221, 106.1223, 106.1225, 106.1227, 106.1229, 106.1231, and 106.1233, without changes to the proposed text as published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1243). The repeals will not be republished.

In addition, DARS adopts new Subchapter N, Business Enterprises of Texas, §106.1901, Purpose; §106.1903, Legal Authority; §106.1905, Definitions; §106.1907, General Policies; §106.1909, BET Administration; §106.1911, Training of Potential Applicants and Licensees; §106.1913, BET Licenses; §106.1915, Initial and Career Advancement Assignment Procedures; §106.1917, Fixtures, Furnishings, and Equipment; Initial Inventory; and Expendables; §106.1919, Set-Aside Fees; §106.1921, Duties and Responsibilities of Managers; §106.1923, Responsibilities of the Department of Assistive and Rehabilitative Services, Division for Blind Services; §109.1925, BET Elected Committee of Managers; §106.1927, Termination of License for Reasons Other Than Unsatisfactory Performance; §106.1929, Administrative Action Based on Unsatisfactory Performance; §109.1931, Procedures for Resolution of Manager's Dissatisfaction; §106.1933, Establishing and Closing Facilities; and §106.1935, Forms. The new rules are adopted without changes to the proposed text as published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1243) and will not be republished.

The repeals and new rules are adopted pursuant to the DARS four-year rule review of Chapter 106, as required by Texas Government Code, §2001.039. As a result of the review, DARS determined that the reasons for initially adopting these rules continue to exist. However, the review indicated a need to repeal and replace with new rules in order to renumber under a new subchapter. In addition, the rules were amended to add a purpose statement; to add a mandatory annual education requirement to encourage BET managers to keep their skills and knowledge current in a constantly changing industry environment; to add a flat five percent fee against the net proceeds of a facility with triggers to raise or lower the percentage fee rate based on potential events that could affect maintaining the current level of cash reserves to tighten procedures regarding correction of operational deficiencies to better comply with customer expectations; to address change to unassigned period for licenses; to lower the number of repetitive administrative actions from four to three in the form of manager probations within a three-year period that could result in termination of license; and to lower the deadline for informal proceedings for licensee request to initiate informal proceedings from six months to no later than 20 business days.

Elsewhere in this issue of the *Texas Register,* DARS contemporaneously adopts the rule review of Chapter 106.

The following statutes authorize the promulgation of the proposal: the Randolph-Sheppard Act, 20 U.S.C. §107 et seq.; and federal regulations, 34 CFR §395.1 et seq.; and approval by the federal Rehabilitation Services Administration.

No comments were received regarding adoption of the rules, as revised.

SUBCHAPTER G. BUSINESS ENTERPRISES OF TEXAS

40 TAC §§106.1201, 106.1203, 106.1205, 106.1207, 106.1209, 106.1211, 106.1213, 106.1215, 106.1217, 106.1219, 106.1221, 106.1223, 106.1225, 106.1227, 106.1229, 106.1231, 106.1233

The repeals are adopted pursuant to HHSC's statutory rulemaking authority under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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 July 10, 2012.

TRD-201203570
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: August 1, 2012
Proposal publication date: February 24, 2012
For further information, please call: (512) 424-4050

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SUBCHAPTER N. BUSINESS ENTERPRISES OF TEXAS

40 TAC §§106.1901, 106.1903, 106.1905, 106.1907, 106.1909, 106.1911, 106.1913, 106.1915, 106.1917, 106.1919, 106.1921, 106.1923, 106.1925, 106.1927, 106.1929, 106.1931, 106.1933, 106.1935

The new rules are adopted pursuant to HHSC's statutory rulemaking authority under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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.

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Effective date: August 1, 2012
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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER M. SUBSTITUTE-CARE SERVICES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§700.1301, 700.1302, 700.1320 - 700.1323, 700.1330 - 700.1334, 700.1340, 700.1342, 700.1343, and 700.1350 - 700.1355; and new §§700.1301, 700.1303, 700.1305, 700.1307, 700.1309, 700.1311, 700.1313, 700.1315, 700.1317, 700.1319, 700.1321, 700.1323, 700.1325, 700.1327, 700.1329, 700.1331, and 700.1333, without changes to the proposed text published in the May 18, 2012, issue of the *Texas Register* (37 TexReg 3680). Also in this issue of the *Texas Register,* DFPS is withdrawing the proposed amendments to §§700.1502, 700.1718, and 700.1726, which appeared with these rules in the May 18, 2012, issue of the *Texas Register.*

The provisions in Subchapter M, Substitute Care Services, were transferred to DFPS from the Department of Human Services when DFPS became a stand-alone agency in 1994. While relevant state and federal laws have undergone numerous revisions in the ensuing years, only minor adjustments have been made to the rules in this subchapter. Moreover, many of the provisions in this subchapter merely restate legal duties imposed on DFPS by Titles IV-B and IV-E of the Social Security Act, Subtitle E of Title V of the Texas Family Code, and Child Care Licensing (CCL) minimum standards adopted under authority of Chapter 42 of the Human Resources Code. Because many of the provisions in this subchapter are redundant, unnecessary, or no longer accurately reflect controlling state or federal laws or CCL minimum standards, DFPS is repealing the entire subchapter and replacing it with a more streamlined subchapter that improves readability, replaces outdated terminology with current terminology, more clearly identifies the controlling state and federal laws, and more accurately sets forth the core principles that necessarily guide DFPS in the provision of substitute care services. A summary of the changes is described below:

Section 700.1301 is repealed. The definition of substitute care services is contained in new §700.1301. The guiding principles for when DFPS seeks to place a child in substitute care have been deleted, because the legal standards for removal are mandated by state and federal laws. The "goals" and "objectives" reflected in current subsections (c) and (d) are revised and incorporated into new §700.1305 and §700.1309.

Section 700.1302 is repealed. The provisions in this section that describe DFPS responsibilities when providing substitute care services are revised and incorporated into new §700.1305 and §700.1309.

Section 700.1320 is repealed. The description of the acceptable settings in which DFPS may place children is moved to new §700.1307, and revised to: (1) eliminate some placement settings that no longer exist; and (2) add placement settings that are currently used, i.e. placement of a child in the child's own home; placement in a residential child-care setting properly licensed or approved by another state or Tribal licensing authority; placement of youth 18 years and older in "supervised independent living" (SIL) settings; and any other placement setting ordered by a court. The preference for relative placements is moved to new §700.1309, and reworded for consistency with federal law. The provisions relating to "unauthorized placements" (i.e. children on runaway status whose whereabouts are known) - are moved to new §700.1333, and revised to incorporate DFPS duties under the Texas Family Code with respect to missing children and to clarify DFPS responsibilities when youth in an unauthorized placement are located.

Section 700.1321 is repealed. Provisions describing the types of residential child-care settings are eliminated, as this information can be found in greater and more accurate detail in CCL rules in Chapter 748, General Residential Operations, and Chapter 749, Child-Placing Agencies. However, the different types of settings that a child in DFPS conservatorship may be placed are contained in new §700.1307. In addition, the considerations that dictate when a child may be placed in a residential child-care setting that is more restrictive than a foster home are contained in new §700.1311, including limitations regarding placement of children under five years in a general residential operation that provides emergency care. Other provisions restricting placement settings by age are eliminated because all children, regardless of age, must be placed in the least restrictive setting available that can meet the child's needs and serve the child's best interest.

Section 700.1322 is repealed. Provisions describing the "types of care" provided in various residential child-care settings are no longer consistent with types of care described in CCL minimum standards. This information is not added to a new rule, as this information can be found in greater and more accurate detail in CCL rules in Chapters 748 and 749. In addition, information regarding the Level-of-Care system can be found in greater and more accurate detail in Subchapter W of this chapter (relating to Level-of-Care Service System).

Section 700.1323 is repealed. Provisions relating to notification of parents regarding placement are included in new §700.1317. Provisions relating to how Child Protective Services (CPS) resolves placement disputes with foster parents are eliminated because they are not consistent with current practice. Federal law requires that the child welfare agency have ultimate discretion to determine placement of a child, subject only to the authority of the court to order a different placement after considering the agency's recommendations.

Section 700.1330 is repealed. Provisions defining the "case plan" and contents of the plan are revised and included in new §700.1319, along with references to the state and federal statutory requirements relating to case planning. Provisions relating to revisions of the case plan are added to new §700.1325.

Section 700.1331 is repealed. Provisions that describe the contents of the "child service plan" are included in new §700.1321, with minor revisions for conformity with current law and CPS

practice. The 45 day-time frame for initial development of the child service plan is covered in new §700.1319.

Section 700.1332 is repealed. Provisions describing the family service plan are revised for greater conformity with current law and included in new §700.1323. Some procedural requirements that are detailed in Chapter 263 of the Texas Family Code (such as documenting a parent's refusal to participate in the planning process) are not included because they are already controlled by Chapter 263 of the Texas Family Code and incorporated into policy. The 45-day time frame for initial development of the family service plan is covered in new §700.1319.

Section 700.1333 is repealed. Provisions concerning review and updates of the case plan are revised for greater conformity with state and federal law, as well as CCL minimum standards, and included in new §700.1325, with redundant provisions omitted. Provisions concerning participation in case plan reviews are included with minor revisions in new §700.1321.

Section 700.1334 is repealed. The requirement that a case plan be revised after every change in placement is covered in new §700.1325. The 30-day time frame is omitted, because some service planning time frames are controlled by CCL minimum standards relating to the admission of a new child by a child-care facility, and thus DFPS must retain the flexibility to comply with CCL minimum standards. Federal law allows up to 60 days for revision of the case plan following a change in placement.

Section 700.1340 is repealed. Provisions relating to visitation by parents are deleted, as this issue is interrelated with the "reasonable efforts" requirements of Title IV-E and the Texas Family Code, and is ultimately controlled by court orders. Provisions relating to travel are deleted because §264.122 of the Texas Family Code controls out-of-country travel procedures, and most courts have their own local rules or practices concerning out-of-state travel. Provisions relating to acceptable forms of discipline are revised and included in new §700.1331. Provisions relating to disaster planning are deleted because disaster planning has undergone substantial revisions under state law over the past decade and continues to be refined. Accordingly, this issue is better handled in policy than rule.

Section 700.1342 is repealed. None of the provisions in this rule are adopted in new Subchapter M because the provisions merely restate requirements in the Texas Family Code relating to providing prospective adoptive parents with copies of a child's Health, Social, Educational and Genetic History (HSEG) and other DFPS case records, or restate detailed internal policies and procedures more appropriate for policy than rule.

Section 700.1343 is repealed. None of the provisions in this rule are adopted in new Subchapter M because the provisions merely restate requirements in the Texas Family Code relating to the redaction of confidential information from adoption records, or restate detailed internal policies and procedures more appropriate for policy than rule.

Section 700.1350 is repealed. Provisions stating the circumstances under which child day-care services can be provided are repealed due to the need for maximum flexibility to establish eligibility criteria in policy when funding availability changes over time. The provision relating to consent for contraceptive services is repealed because this provision as currently worded is too broad, and this issue is controlled by Chapters 32 and 266 of the Texas Family Code.

Section 700.1351 is repealed. Provisions relating to medical and dental services are moved with only minor, non-substantive drafting changes to new §700.1329.

Section 700.1352 is repealed. Provisions relating to placement of children with intellectual disabilities and related conditions in child-care facilities that provide treatment services are condensed and added to new §700.1313.

Section 700.1353 is repealed. Provisions relating to placement of children with intellectual disabilities and related conditions in an intermediate care facility for persons with intellectual disabilities (ICF-ID), or a home and community-based services (HCS) setting, are condensed and added to new §700.1313. CPS's current policy requiring approval by the Assistant Commissioner for CPS, or that person's designee, of all placements in an ICF-ID or HCS four-bed group home, is added to the new rule.

Section 700.1354 is repealed. Provisions relating to placement of children in nursing homes are condensed and added to new §700.1315. CPS's current policy, requiring approval by the Assistant Commissioner for CPS, or that person's designee, of all placements in a nursing home is added to the new rule.

Section 700.1355 is repealed. Provisions relating to sibling visitation and contact are included in new §700.1327, with only minor revisions to more closely reflect requirements in federal law.

New §700.1301 defines substitute care services, which are the placement, case management, treatment, and other services provided to support children in DFPS conservatorship, as well as their parents and caretakers. The term also includes the services provided to young adults in extended foster care.

New §700.1303 provides definitions for some of the terms used in this subchapter.

New §700.1305 identifies the state and federal statutory provisions that control the delivery of substitute care services and articulates core requirements from Title IV-E of the Social Security Act.

New §700.1307 describes all of the acceptable placement options in which DFPS may place a child.

New §700.1309 describes the factors that must be considered when determining whether a placement is in the child's best interest and can meet the child's special needs, consistent with requirements in state and federal law. Federal law requires that children be placed in the least restrictive, most family-like setting consistent with the best interest and special needs of the child.

New §700.1311 describes considerations that apply when selecting a placement other than a relative or other person with whom the child has a long-standing and significant relationship (fictive kin). Pursuant to requirements in Title IV-E of the Social Security Act, DFPS must consider giving preference to placement of children with relatives, which may include fictive kin. When such a placement is not available or in the child's best interest for other reasons, this rule sets forth the factors that may require placement in a more restrictive setting than a foster home.

New §700.1313 describes the special considerations that must be followed when placing children with intellectual disabilities or related conditions, including a requirement for approval of the Assistant Commissioner of CPS or her designee before placing a child in an ICF-ID or HCS four-bed group home.

New §700.1315 describes the special considerations that must be followed when placing children with life-threatening medical conditions in a nursing home, including a requirement for approval of the Assistant Commissioner of CPS or her designee.

New §700.1317 requires notification of parents regarding a child's current placement, subject to limited exceptions in accordance with state and federal law.

New §700.1319 defines the term "case plan" and sets forth a few basic requirements relating to the case plan. Title IV-E of the Social Security Act requires each child in the state's conservatorship to have a "case plan" that meets certain requirements. Texas satisfies the federal case plan requirements through a combination of a "child service plan" and a "family service plan."

New §700.1321 describes the child service plan requirements, including the persons who must participate in the development of the plan and are entitled to a copy of the plan.

New §700.1323 describes the family service plan requirements, which are the same as the service plan requirements in Chapter 263, Texas Family Code. The rule also specifies when the family service plan can be waived or discontinued, as provided under the Texas Family Code and Title IV-E of the Social Security Act.

New §700.1325 specifies the required frequency for reviews and updates of a case plan, as required by state and federal law, CCL minimum standards, and in some instances, a residential child-care contract.

New §700.1327 restates requirements in Title IV-E of the Social Security Act for frequent visitation or other ongoing interaction between siblings who are not placed together, unless such visitation or interaction is not in a sibling's best interest.

New §700.1329 states DFPS's duty to ensure appropriate medical care for a child in DFPS conservatorship, and specifies certain types of medical care that must be provided. The rule also cites the state law controlling consent for medical services.

New §700.1331 states DFPS's philosophy regarding appropriate forms of discipline for a child in DFPS conservatorship.

New §700.1333 states DFPS responsibilities, as provided under the Texas Family Code, when a child in substitute care is missing or abducted and provides that in the case of a child on runaway status who is living in an unauthorized placement, DFPS may not pay the costs of that placement.

The sections will function by streamlining DFPS's rules concerning substitute care services for greater usability and updating the sections to accurately reflect both state and federal law concerning substitute care services.

No comments were received concerning adoption of the sections.

40 TAC §§700.1301, 700.1302, 700.1320 - 700.1323, 700.1330 - 700.1334, 700.1340, 700.1342, 700.1343, 700.1350 - 700.1355

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Title IV-E of the federal Social Security Act, which sets forth the state's obligations with respect to the provision of substitute care services, including case planning, for children removed into the state's conservatorship; and Chapter 263, Texas Family Code, which sets forth state requirements for service planning for children in DFPS conservatorship.

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.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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40 TAC §§700.1301, 700.1303, 700.1305, 700.1307, 700.1309, 700.1311, 700.1313, 700.1315, 700.1317, 700.1319, 700.1321, 700.1323, 700.1325, 700.1327, 700.1329, 700.1331, 700.1333

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Title IV-E of the federal Social Security Act, which sets forth the state's obligations with respect to the provision of substitute care services, including case planning, for children removed into the state's conservatorship; and Chapter 263, Texas Family Code, which sets forth state requirements for service planning for children in DFPS conservatorship.

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.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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SUBCHAPTER Y. CONTRACTING WITH LICENSED RESIDENTIAL CHILD-CARE PROVIDERS

40 TAC §§700.2501, 700.2502, 700.2505

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§700.2501, 700.2502, and 700.2505, without changes to the proposed text published in the May 18, 2012, issue of the *Texas Register* (37 TexReg 3688). Subchapter Y, Contracting with Licensed Residential Child Care-Providers, was originally enacted in 1996. Although there have been updates to the subchapter since the time of its original enactment, state law governing procurement, contract remedies and contract dispute resolution has changed significantly while the rules have been in effect. Also, DFPS is consolidating all of the rules pertinent to its contracts into Chapter 732 of this title (relating to Contracted Services), in an ongoing effort to consolidate the rules, which will make the agency's overall policies governing contracts clearer for the public. In this issue of the *Texas Register,* DFPS is adopting relevant parts of these repealed rules into Chapter 732.

Section 700.2051 is repealed. Subsection (a) did not provide any substantive clarification to the public and is unnecessary. The content of subsections (b) and (c), regarding Licensing and general service requirements, will be included in any public notice of a DFPS procurement for residential child-care services. The content of subsection (d), regarding contract term, renewal, and amendment, is already covered in Chapter 732.

Section 700.2502 is repealed. In accordance with §2155.083 and §2155.144 of the Texas Government Code, prerequisites to a residential child-care contract will be set forth in the agency's procurement for the contract.

Section 700.2505 is repealed. The content of subsections (a), and relevant portions of subsection (b) are moved to §732.269 of this title (relating to What contract remedies does DFPS use?). The content of subsection (f) is moved to §732.267 of this title (relating to What is the status of a contract action during disputes?). Portions of subsection (b) are deleted because they no longer reflect current terminology or practice related to contract remedies. Subsections (c) - (e) are repealed because they are covered by and partially in conflict with the DFPS residential contract for child-care services.

The repeals will function by providing increased clarity to the public regarding DFPS's requirements and remedies for all agency contracts.

No comments were received regarding the repeals.

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Texas Government Code, Chapter 2155, which sets forth a statutory scheme governing state procurements; and Texas Government Code, Chapter 2260, which sets forth a statewide contract dispute resolution process.

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.

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CHAPTER 732. CONTRACTED SERVICES SUBCHAPTER L. CONTRACT ADMINISTRATION

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§732.267 - 732.269, 732.274, 732.276, and 732.277; and new §732.267 and §732.269, without changes to the proposed text published in the May 18, 2012, issue of the *Texas Register* (37 TexReg 3704). DFPS plans to move all rules pertinent to contracts into this chapter. Consolidating all the contracting rules into one chapter, and in particular condensing all the contract remedy provisions into one subchapter, puts the public more clearly on notice of the agency's overall policies governing contracts. In this issue of the *Texas Register,* DFPS is adopting the deletion of Subchapter Y, Contracting for Residential Child-Care Services, in Chapter 700, Child Protective Services (CPS), and moving relevant portions of that subchapter into this chapter governing contracts. Also, DFPS is updating the two new rules because of changes in agency practice and state and federal law related to contract remedies and contract dispute resolution.

Section 732.267 is repealed and adopted as new. The appeal process is now governed by Texas Government Code, Chapter 2260, and Subchapter N of this chapter (relating to Dispute Resolution). This rule replaces repealed §700.2505(f), and any remedy DFPS enforces against a contractor will remain in effect during the appeal process.

Section 732.268 is repealed. The authority for DFPS to terminate a contract is just one of several remedies available to DFPS when there is a contract violation, and any notice requirements regarding a termination will be contained in the agency's procurement and contract. New §732.269 of this title (relating to What contract remedies does DFPS use?) sets forth the DFPS available remedies.

Section 732.269 is repealed and adopted as new. The authority for DFPS to terminate a contract is just one of several remedies available to DFPS when there is a contract violation, and the types of termination will be contained in the agency's procurement and contract. The new rule revamps §700.2505(a) and (b) to accurately reflect current law and agency practice regarding contract remedies, including a list of the remedies available to DFPS.

Section 732.274 is repealed. Termination as a contract remedy is contained in new §732.269. The specific terms for terminating a contract will be contained in DFPS's procurement and contract for the service.

Sections 732.276 and 732.277 are repealed. "Removal of contractual rights" and "abeyance" are no longer current terminology for agency contractual remedies. They have been replaced by debarment and suspension (for applying for a contract), respectively, which are governed by other state and federal law. All of the procedural requirements and other governing principles are set forth in such other law.

The repeals and new sections will function by increasing clarity to the public regarding DFPS's requirements and remedies for all agency contracts.

No comments were received regarding adoption of the repeals and new sections.

40 TAC §§732.267 - 732.269, 732.274, 732.276, 732.277

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Texas Government Code, Chapter 2155, which sets forth a statutory scheme governing state procurements; and Texas Government Code, Chapter 2260, which sets forth a statewide contract dispute resolution process.

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 July 12, 2012.

TRD-201203595
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: August 1, 2012
Proposal publication date: May 18, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

40 TAC §732.267, §732.269

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Texas Government Code, Chapter 2155, which sets forth a statutory scheme governing state procurements; and Texas Government Code, Chapter 2260, which sets forth a statewide contract dispute resolution process.

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 July 12, 2012.

TRD-201203596
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: August 1, 2012
Proposal publication date: May 18, 2012
For further information, please call: (512) 438-3437

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TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

43 TAC §57.3

The Automobile Burglary and Theft Prevention Authority (ABTPA) adopts an amendment to §57.3, concerning Compliance Adoption by Reference, without changes to the proposed text as published in the April 13, 2012, issue of the *Texas Register* (37 TexReg 2609).

The amendment is adopted to remove specific references that are no longer applicable to ABTPA. The Government Code §2110.008 gives ABTPA the authority to change the reporting requirements of its grant projects.

There were no comments received regarding the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4413(37), §6(a), which ABTPA interprets as authorizing it to adopt rules implementing its statutory powers and duties; and Government Code §2110.008, which the ABTPA interprets as changing the reporting requirement to the state of Texas fiscal year calendar.

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 July 11, 2012.

TRD-201203588
Charles Caldwell
Director
Automobile Burglary and Theft Prevention Authority
Effective date: July 31, 2012
Proposal publication date: April 13, 2012
For further information, please call: (512) 374-5104

♦ ♦ ♦

43 TAC §57.23

The Automobile Burglary and Theft Prevention Authority (ABTPA) adopts an amendment to §57.23, concerning Financial, Progress, and Inventory Reports, without changes to the proposed text as published in the April 13, 2012, issue of the *Texas Register* (37 TexReg 2609).

The amendment is adopted to change the due date for the Quarterly Expenditure report. The new due date is 30 days after the period end date. The Government Code §2110.008 gives ABTPA the authority to change the reporting requirements of its grant projects.

No comments were received regarding the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4413(37), §6(a), which ABTPA interprets as authorizing it to adopt rules implementing its statutory powers and duties; and Government Code §2110.008, which ABTPA interprets as changing the reporting requirement to the state of Texas fiscal year calendar.

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 July 11, 2012.

TRD-201203586
Charles Caldwell
Director
Automobile Burglary and Theft Prevention Authority
Effective date: July 31, 2012
Proposal publication date: April 13, 2012
For further information, please call: (512) 374-5104

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PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 215, Subchapter D, §215.106, Time for Filing Protest; §215.113, Manufacturer Ownership of Franchised Dealer; Good Cause Extension; Dealer Development; Subchapter E, §215.132, Definitions; §215.133, General Distinguishing Number; §215.140, Established and Permanent Place of Business; §215.141, Sanctions; §215.142, GDN Sanction and Qualification Hearing; and Subchapter F, §215.174, Application for a License; and §215.177, Established and Permanent Place of Business; and the repeal of Subchapter E, §215.134, House Trailer; Travel Trailer; Towable Recreational Vehicle, without changes to the proposed text as published in the April 27, 2012, issue of the *Texas Register* (37 TexReg 3059). The amended rules and repeal will not be republished.

EXPLANATION OF ADOPTED REPEAL AND AMENDMENTS

Adoption of the amendments and repeal implements the department's project to streamline and simplify the license application process while implementing all applicable statutory provisions.

Adopted amendments to §215.106, Time for Filing Protest, clarify the required timing and process for the filing of a protest. The antiquated methods of telegram and mailgram are eliminated as methods of filing timely protests. Although the department does not accept protests to be filed by email, the adopted amendments contemplate an electronic system by which filings might be made in the future. The adopted amendments clarify that a protest must be received by the division within the prescribed 15-day deadline, regardless of the method by which the protest is filed. The division sends dealers with standing to protest a letter announcing the opportunity to protest, accompanied by a credit card payment coupon. Currently, credit card payment is the most efficient method of timely payment of the statutorily required filing fee. However, the department does not preclude the payment of the protest filing fee by other methods. Amendments to §215.106 are also adopted to clarify that, consistent with department practice, the protestant's time for submitting the filing fee is extended by five days for all methods of delivery, instead of only those submitted by telegram, mailgram, electronic document transfer, or other similar means of communication.

Amendments to §215.113, Manufacturer Ownership of Franchised Dealer; Good Cause Extension; Dealer Development, are adopted to clarify which areas of the department perform certain functions.

Requirements to obtain a General Distinguishing Number are simplified throughout Subchapter E, General Distinguishing Numbers. Other amendments clarify which areas of the department perform certain functions.

Amendments to §215.132, Definitions, are adopted to consolidate relevant definitions into one section by adding a definition of the term "house trailer" and by cross referencing definitions for "towable recreational trailer" and "travel trailer" to the definition of house trailer. The definition is adopted using the term "nonmotorized" for consistency with statutory nomenclature. The adopted definition of house trailer clarifies that the term does not include manufactured housing. The new definition of the term "travel trailer" found in Transportation Code §501.002(30) resulting from House Bill 2357 in the 82nd Legislative Session does not directly impact the department's licensing programs. Nevertheless, the adopted amendment to §215.132 and the adopted repeal of §215.134, House Trailer, Travel Trailer, Towable Recreational Vehicle, are consistent with that new statutory provision. Section 215.134 is repealed to consolidate the definitions of house trailer, travel trailer and towable recreational vehicle with the other definitions in §215.132.

Amendments to §215.133, General Distinguishing Number, are adopted for consistency with statutory requirements of Transportation Code, §503.032. The statute states that a dealer must demonstrate that the dealership is an established and permanent place of business. One of the elements is ownership of the real property or a written lease for the property with a term of not less than the term of the license. However, the statute does not require that the applicant submit the deed or lease to the department. As the department's processes become more streamlined, the verification method is being modified. The requirement for ownership or lease verification documents is deleted, but an amendment is also adopted to remind the regulated community that the documents demonstrating ownership or lease of the real property in accordance with statutory requirements are among those items reviewed by department staff during site visits. Similarly, the statute requires the licensee to maintain a permanent furnished office and to have a conspicuous sign. In addition, Occupations Code, §2301.351 requires franchised dealers to have signs that are readily and easily visible to the public and that identify the business and the products. However, statutory provisions do not require the applicant submit photographs to the depart-

ment to show that these requirements have been met, and the requirement for photographs is being deleted. An amendment is adopted to clarify that the license applicant must submit verification of its official assumed name and that the assumed name certificates submitted by the license applicant may be a copy rather than the original document. For compliance with House Bill 2553 (Tex. H.B. 2553, 81st Leg. R.S. (2009)), an amendment to §215.133(c), is adopted to eliminate imposition of a 30 cent license plate reflectorization fee. The adopted amendment to §215.133(c), adding a passport and military identification to the list of documents that are accepted as identifying the applicant, simplifies the processing of applications and is needed for implementation of Senate Bill 1733 (Tex. S.B. 1733, 82nd Leg. R.S. (2011)). For consistency with the general distinguishing number provisions of §215.133, subsection (f) is amended to expressly state the activities allowed by a person holding a general distinguishing number wholesale dealer license and to eliminate redundancy of provisions in §215.141(a)(4). Amendments to §215.133 are also adopted to clarify that an application for a general distinguishing number may be denied if an applicant committed an act that could result in license cancellation or revocation under Occupations Code Chapter 2301 or a rule of the department, in addition to Transportation Code Chapter 503.

Amendments to §215.140, Established and Permanent Place of Business, are adopted to eliminate redundancy, make the section consistent with Transportation Code, §503.032, and correct a grammatical error. Premises requirements not specifically set out in Transportation Code, §503.032 are deleted to simplify the licensing process. These include specific hours of operation, square footage, ceiling height, heating, electric service, filing cabinets, fax machines, and land-based telephone lines with separate numbers from fax machines. In addition, vehicle display space requirements are simplified to conform to the statute. Dealers must still have sufficient space to display at least five vehicles of the type specified in the application, but are no longer required to separate display space from other parking areas by barricade affixed to the ground, nor is approval from the director required for indoor display space.

Sign requirements in §215.140 are also amended. Transportation Code §503.032 requires franchised dealers to have signs that are readily and easily visible to the public and that identify the business and the products. However, the statute does not require retail dealers or wholesale dealers to be open during specific hours, does not require signage be readable from the street, and does not address the use of banners. Adopted amendments to §215.140 allow dealers increased flexibility in signage options while maintaining requirements that provide the public with sufficient information to identify the entity from which business is being conducted.

Amendments to §215.141, Sanctions, correct a cross reference that is no longer necessary because specific working hours are no longer required. Additionally, an amendment is adopted in §215.140(9) to clarify that retail and wholesale dealers licensed after September 1, 1999 may not be located in the same business structure.

Amendments to §215.142, GDN Sanction and Qualification Hearing, are adopted for consistency with the department's reorganization of the Motor Vehicle Division whereby a separate Enforcement Division was created; to clarify that the investigation process is an integral part of the General Distinguishing Number License sanction hearings process; and to clarify which areas of the department perform certain functions.

Similar amendments are adopted in Subchapter F regarding lessor and lease facilitator requirements to simplify the process, make license requirements consistent among the department's licensees, and for consistency with controlling statutory provisions.

Amendments adopted to §215.174, Application for a License, remove requirements for lessors and lease facilitators to submit photographs, original assumed name certificates, the business background of key officers and managers, and documents verifying the formation of the business entity.

Amendments to §215.177, Established and Permanent Place of Business, are also adopted for consistency of licensing requirements among the department's licensees and for consistency with the controlling statutory provisions. Requirements relating to square footage, office configuration, ceiling height, and land-based telephone lines are removed.

COMMENTS

The department received comments from the Texas Automobile Dealers Association (TADA).

TADA did not suggest modification of the proposed rule amendments and repeal. Instead, TADA requested that the photocopy of a current driver's license, Department of Public Safety identification, passport, and United States armed forces identification that is provided by a dealership owner, president, or managing partner required as part of the application under proposed §215.133(c)(5) remain confidential and not be provided in a response to a request pursuant to the Public Information Act (PIA). TADA urged that if such a document must be provided in compliance with a PIA request, personal information contained on the document remain confidential and be redacted. TADA requested that personal information excepted from disclosure include the photograph, date of birth, place of birth, any identification or license number, expiration date, and home address.

In support of its request, TADA cited Texas Government Code §552.130, Exception: Confidentiality of Certain Motor Vehicle Records. That statutory provision expressly excepts from the Texas Government Code §552.021 disclosure requirements information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country; a motor vehicle title or registration issued by an agency of this state or another state or country; or a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

RESPONSE

The department complies with the Public Information Act, Texas Government Code, Chapter 552. TADA is correct that the department relies upon Texas Government Code §552.130 when certain information is withheld from disclosure in response to an open record request that may have otherwise been disclosed under the requirements of Texas Government Code §552.021.

The department also relies upon the Attorney General of Texas Open Record Decision 684 (ORD 684) dated December 14, 2009. The department uses that previous determination decision to withhold certain information from public disclosure without necessity of a decision from the Attorney General. Such information includes a Texas driver's license number, a copy of a Texas driver's license, a Texas license plate number, the portion of a photograph that reveals a Texas license plate number, and

the portion of any video depicting a discernible Texas license plate number.

The department shares TADA's concern that private information be withheld from public disclosure. When a response to a public information request would include private information and the information is not within the predetermination established by ORD 684, the department will continue its practice of seeking an open records decision from the Attorney General of Texas. Such items may include passports and U.S. armed forces identification.

SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

43 TAC §215.106, §215.113

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code §503.002; Transportation Code §1002.001; and Occupations Code §2301.155; which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Occupations Code §2301.351 and Transportation Code §503.032.

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 July 13, 2012.

TRD-201203606
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Effective date: August 2, 2012
Proposal publication date: April 27, 2012
For further information, please call: (512) 467-3853

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SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §§215.132, 215.133, 215.140 - 215.142

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code §503.002; Transportation Code §1002.001; and Occupations Code §2301.155; which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Occupations Code §2301.351 and Transportation Code §503.032.

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 July 13, 2012.

TRD-201203607
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Effective date: August 2, 2012
Proposal publication date: April 27, 2012
For further information, please call: (512) 467-3853

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43 TAC §215.134

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code §503.002; Transportation Code §1002.001; and Occupations Code §2301.155; which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Occupations Code §2301.351 and Transportation Code §503.032.

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 July 13, 2012.

TRD-201203605
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Effective date: August 2, 2012
Proposal publication date: April 27, 2012
For further information, please call: (512) 467-3853

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SUBCHAPTER F. LESSORS AND LEASE FACILITATORS

43 TAC §215.174, §215.177

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code §503.002; Transportation Code §1002.001; and Occupations Code §2301.155; which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Occupations Code §2301.351 and Transportation Code §503.032.

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 July 13, 2012.

TRD-201203608

Brett Bray
General Counsel
Texas Department of Motor Vehicles
Effective date: August 2, 2012
Proposal publication date: April 27, 2012
For further information, please call: (512) 467-3853

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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 Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §151.6, concerning Petition for the Adoption of a Rule. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711 or Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposed rule review.

TRD-201203598
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: July 12, 2012

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The Texas Board of Criminal Justice files this notice of intent to review §151.71, concerning Marking of State Vehicles of the Department of Criminal Justice. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711 or Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposed rule review.

TRD-201203630
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: July 16, 2012

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The Texas Board of Criminal Justice files this notice of intent to review §163.5, concerning Waiver to Standards of the Department of Criminal Justice - Community Justice Assistance Division. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711 or Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposed rule review.

TRD-201203634
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: July 16, 2012

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Texas Medical Board

Title 22, Part 9

The Texas Medical Board proposes to review Chapter 189, concerning Compliance Program, §§189.1 - 189.14, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register,* the Texas Medical Board contemporaneously proposes amendments to §§189.1 - 189.3, 189.5 - 189.9, and 189.11.

Comments on the proposed review may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

TRD-201203663
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Filed: July 18, 2012

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Adopted Rule Reviews

Department of Assistive and Rehabilitative Services

Title 40, Part 2

The Department of Assistive and Rehabilitative Services adopts the review of Chapter 106, Division for Blind Services, pursuant to the Texas Government Code, §2001.039.

The proposed review was published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1365).

Elsewhere in this issue of the *Texas Register,* DARS contemporaneously adopts amendments to the existing rules.

No comments were received regarding adoption of the rule review.

This concludes the review of Chapter 106, Division for Blind Services.

TRD-201203589
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: July 11, 2012

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 28 TAC §110.101(e)(1)

NOTICE TO EMPLOYEES CONCERNING WORKERS' COMPENSATION IN TEXAS

COVERAGE: [Name of employer] has workers' compensation insurance coverage from [name of commercial insurance company] in the event of work-related injury or occupational disease. This coverage is effective from [effective date of workers' compensation insurance policy]. Any injuries or occupational diseases which occur on or after that date will be handled by [name of commercial insurance company]. An employee or a person acting on the employee's behalf, must notify the employer of an injury or occupational disease not later than the 30th day after the date on which the injury occurs or the date the employee knew or should have known of an occupational disease, unless the Texas Department of Insurance, Division of Workers' Compensation (Division) determines that good cause existed for failure to provide timely notice. Your employer is required to provide you with coverage information, in writing, when you are hired or whenever the employer becomes, or ceases to be, covered by workers' compensation insurance.

EMPLOYEE ASSISTANCE: The Division provides free information about how to file a workers' compensation claim. Division staff will answer any questions you may have about workers' compensation and process any requests for dispute resolution of a claim. You can obtain this assistance by contacting your local Division field office or by calling 1-800-252-7031. The Office of Injured Employee Counsel (OIEC) also provides free assistance to injured employees and will explain your rights and responsibilities under the Workers' Compensation Act. You can obtain OIEC's assistance by contacting an OIEC customer service representative in your local Division field office or by calling 1-866-EZE-OIEC (1-866-393-6432).

SAFETY VIOLATIONS HOTLINE: The Division has a 24 hour toll-free telephone number for reporting unsafe conditions in the workplace that may violate occupational health and safety laws. Employers are prohibited by law from suspending, terminating, or discriminating against any employee because he or she in good faith reports an alleged occupational health or safety violation. Contact the Division at 1-800-452-9595.

Figure: 28 TAC §110.101(e)(2)

NOTICE TO EMPLOYEES CONCERNING WORKERS' COMPENSATION IN TEXAS

COVERAGE: Effective on [effective date of certificate] [name of employer] has been certified by the Texas Department of Insurance, Division of Workers' Compensation (Division) as a self-insured employer providing workers' compensation insurance in the event of work-related injury or occupational disease. Claims for injuries or occupational diseases which occur on or after that date will be handled by [name of third party administrator]. An employee or a person acting on the employee's behalf, must notify the employer of an injury or occupational disease not later than the 30th day after the date on which the injury occurs or the date the employee knew or should have known of an occupational disease, unless the Division determines that good cause existed for failure to provide timely notice. Your employer is required to provide you with coverage information, in writing, when you are hired or whenever the employer becomes, or ceases to be, covered by workers' compensation insurance.

EMPLOYEE ASSISTANCE: The Division provides free information about how to file a workers' compensation claim. Division staff will answer any questions you may have about workers' compensation and process any requests for dispute resolution of a claim. You can obtain this assistance by contacting your local Division field office or by calling 1-800-252-7031. The Office of Injured Employee Counsel (OIEC) also provides free assistance to injured employees and will explain your rights and responsibilities under the Workers' Compensation Act. You can obtain OIEC's assistance by contacting an OIEC customer service representative in your local Division field office or by calling 1-866-EZE-OIEC (1-866-393-6432).

SAFETY VIOLATIONS HOTLINE: The Division has a 24 hour toll-free telephone number for reporting unsafe conditions in the workplace that may violate occupational health and safety laws. Employers are prohibited by law from suspending, terminating, or discriminating against any employee because he or she in good faith reports an alleged occupational health or safety violation. Contact the Division at 1-800-452-9595.

Figure: 28 TAC §110.101(e)(3)

NOTICE TO EMPLOYEES CONCERNING WORKERS' COMPENSATION IN TEXAS

COVERAGE: Effective on [effective date of certificate] [name of employer] provides workers' compensation insurance coverage as a member of a self-insurance group under Labor Code Chapter 407A in the event of work-related injury or occupational disease. Claims for injuries or occupational diseases which occur on or after that date will be handled by [name of third party administrator]. An employee or a person acting on the employee's behalf, must notify the employer of an injury or occupational disease not later than the 30th day after the date on which the injury occurs or the date the employee knew or should have known of an occupational disease, unless the Texas Department of Insurance, Division of Workers' Compensation (Division) determines that good cause existed for failure to provide timely notice. Your employer is required to provide you with coverage information, in writing, when you are hired or whenever the employer becomes, or ceases to be, covered by workers' compensation insurance.

EMPLOYEE ASSISTANCE: The Division provides free information about how to file a workers' compensation claim. Division staff will answer any questions you may have about workers' compensation and process any requests for dispute resolution of a claim. You can obtain this assistance by contacting your local Division field office or by calling 1-800-252-7031. The Office of Injured Employee Counsel (OIEC) also provides free assistance to injured employees and will explain your rights and responsibilities under the Workers' Compensation Act. You can obtain OIEC's assistance by contacting an OIEC customer service representative in your local Division field office or by calling 1-866-EZE-OIEC (1-866-393-6432).

SAFETY VIOLATIONS HOTLINE: The Division has a 24 hour toll-free telephone number for reporting unsafe conditions in the workplace that may violate occupational health and safety laws. Employers are prohibited by law from suspending, terminating, or discriminating against any employee because he or she in good faith reports an alleged occupational health or safety violation. Contact the Division at 1-800-452-9595.

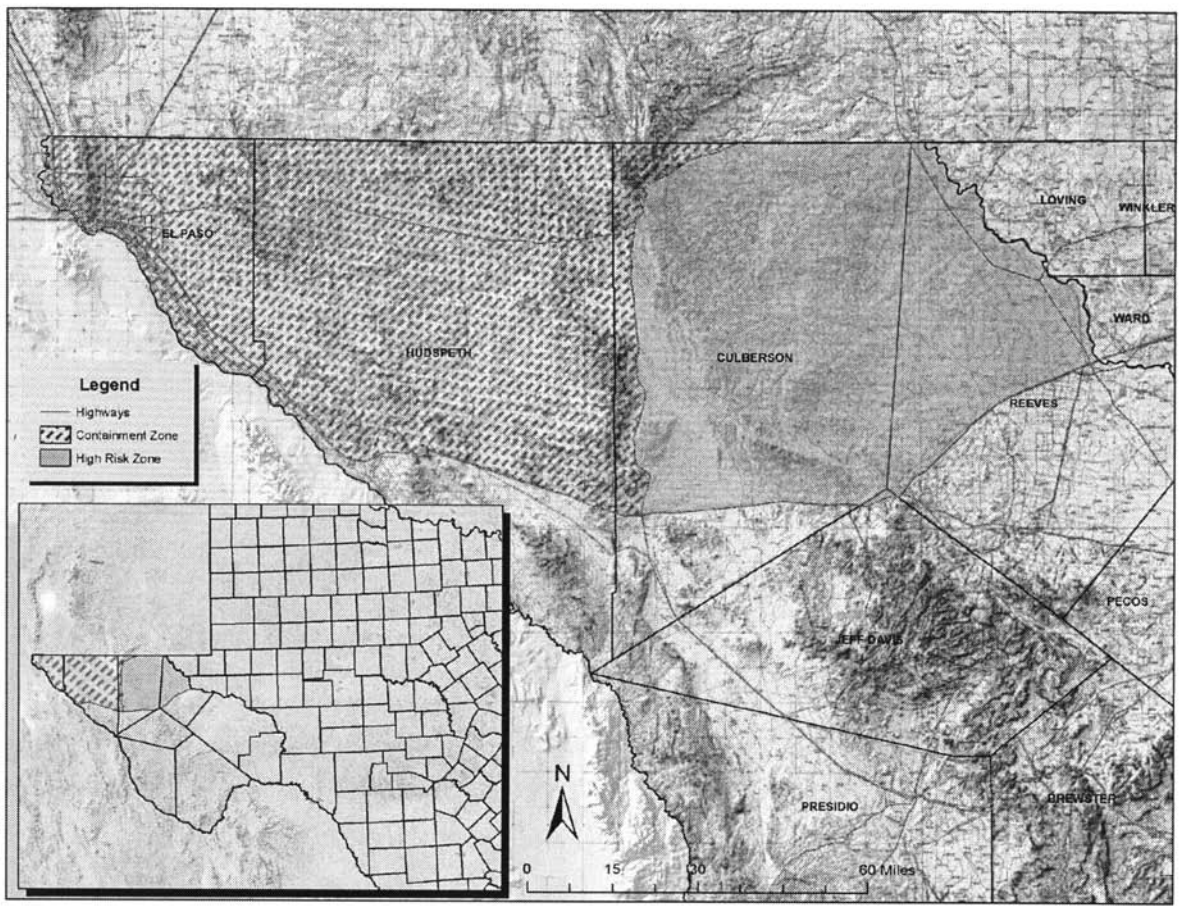
Figure: 28 TAC §110.101(e)(4)

NOTICE TO EMPLOYEES CONCERNING WORKERS' COMPENSATION IN TEXAS

COVERAGE: [Name of employer] does not have workers' compensation insurance coverage. As an employee of a non-covered employer, you are not eligible to receive workers' compensation benefits under the Texas Workers' Compensation Act. However, a non-covered (non-subscribing) employer can and may provide other benefits to injured employees. You should contact your employer regarding the availability of other benefits for a work-related injury or occupational disease. In addition, you may have rights under the common law of Texas should you have an on the job injury or occupational disease. Your employer is required to provide you with coverage information, in writing, when you are hired or whenever the employer becomes, or ceases to be, covered by workers' compensation insurance.

SAFETY VIOLATIONS HOTLINE: The Division has a 24 hour toll-free telephone number for reporting unsafe conditions in the workplace that may violate occupational health and safety laws. Employers are prohibited by law from suspending, terminating, or discriminating against any employee because he or she in good faith reports an alleged occupational health or safety violation. Contact the Division at 1-800-452-9595.

Figure: 31 TAC Chapter 65--Preamble



The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Applications: Texas Young Farmers Grant Program

Statement of Purpose. Pursuant to the Texas Agriculture Code, §58.011, the Texas Department of Agriculture (TDA) is requesting applications for the Young Farmer Grant program (YFGP). The YFGP is administered by TDA under the direction of the Texas Agricultural Finance Authority (TAFA). The purpose of this program is to provide financial assistance in the form of dollar-for-dollar matching grant funds to those persons 18 years or older but younger than 46 years of age that are engaged or will be engaged in creating or expanding an agricultural business in Texas.

Submission Dates/Locations. Forms required for submitting an application are available by accessing TDA's website at: www.TexasAgriculture.gov or by emailing TAFA at finance@TexasAgriculture.gov. One hard copy of the application must arrive no later than 5:00 p.m. on **September 7, 2012** to one of the following:

Physical Address: Texas Department of Agriculture, Texas Agricultural Finance Authority, Attn: Allen Regehr, 1700 N. Congress Ave., 11th Floor, Austin, TX 78701, Phone Number (512) 463-9932 or (512) 463-4320, Fax Number (888) 216-9867.

Mailing Address: Texas Department of Agriculture, Texas Agricultural Finance Authority, Attn: Allen Regehr, P.O. Box 12847, Austin, TX 78711.

Proposals must set forth accurate and complete information as required by this Request for Applications (RFA). Oral modifications will not be considered. Electronic applications will not be accepted or considered.

Eligibility. Grant applications will be accepted from any person 18 years or older but younger than 46 years of age that is engaged or will be engaged in creating or expanding agriculture in Texas. The applicant must be able to make dollar-for-dollar matching expenditures to sustain, create or expand the proposed project.

Application Requirements.

Funding Parameters:

The TAFA Board of Directors (board) anticipates funding in an amount of $150,000 for grants not less than $5,000 and not to exceed $10,000 per grant application. Recipients will have up to two years to expend grant funds.

The TAFA board reserves the right to fully or partially fund any particular grant application.

Form Requirements:

Applications must be submitted on form RED-300 for consideration. Required forms and instructions are available by accessing TDA's website at www.TexasAgriculture.gov or by e-mailing TAFA at: finance@TexasAgriculture.gov. An applicant is permitted to submit only one application pursuant to this RFA. Multiple grant applications submitted by the same applicant under the same RFA will be rejected, and will not be considered by the Board.

Budget Information:

YFGP projects are paid on a cost reimbursement basis.

1. **Eligible Expenses.** Generally, eligible expenses include those costs that are necessary and reasonable for proper and efficient performance and administration of a project. Expenses must be properly documented with sufficient detail, including copies of invoices. Examples of eligible expenditures are:

Personnel costs - both salary and benefits of those that perform work for the grant recipient;

Materials and direct operating expenses - equipment that costs less than $5,000 per unit, animals, seed, fertilizer, irrigation, etc.;

Equipment - nonexpendable, tangible personal property having a useful life of less than one year and an acquisition cost of less than $5,000; and

Other expenses - any expenses that do not fall into the above categories;

Indirect expenses - the YFGP limits reimbursable indirect expenses to 10% of the grant award.

2. **Ineligible Expenses.** Expenses that are prohibited by state or federal law are ineligible. Examples of these expenditures are:

Alcoholic beverages;

Entertainment;

Contributions for charitable, political, or lobbying purposes;

Expenses falling outside of the contract period;

Expenses for expenditures not listed in the project budget;

Expenses that are not adequately documented;

Value of applicant's own services;

Land; and

Personal property or other capital items with a useful life of more than one year and a cost of more than $5,000.

3. **Description of the Budget.** Applicant must present an overall project budget and include the following items in the budget description:

A. *Wages:* Grant funds may be used for directly supporting salaries and wages of employees, but not for the value of your own services.

B. *Materials and Direct Operating Expenses:* The grant may be used for expenses that are directly related to the day-to-day operation of the project, if those expenses are not included in any other budget category, and if those expenses have an acquisition cost of less than $5,000 per unit. An applicant must allocate costs on a prorated basis for shared usage.

C. *Equipment:* Eligible equipment is defined as tangible personal property having a useful life of less than one year and an acquisition cost of $5,000 or less per unit. Applicants must submit a list of all proposed equipment purchases for approval. Recipients are not authorized to purchase any equipment until they have received written approval to

do so from the Commissioner or his designee through the original grant award or a subsequent grant adjustment notice. The YFGP may refuse any request for equipment. Decisions regarding equipment purchases are made based on whether or not the grant recipient has demonstrated that the requested equipment will be purchased at a reasonable cost and is essential to the successful operation of the project.

D. *Professional/Contractual:* Any contract or agreement between a grant recipient and a third party must be in writing and consistent with Texas law. Recipients must maintain adequate documentation supporting budget items for a contractor's time, services, and rates of compensation.

E. *Indirect Expenses:* Grant funds may be used for indirect costs up to 10% of the amount of the grant award.

F. *Additional Budget Information:* Applicant should provide additional information that will be helpful to the TAFA board in evaluating a grant application, including justification for equipment purchases, a list of subcontractors and amounts, a list of key personnel and salaries to be paid with the grant, and a description of other large expenditures.

G. *Documentation of Employment Status.* Applicant should be prepared to furnish documentation of lawful employment status for each employee included in personnel costs for the project.

Evaluation of Applications.

The TAFA board will review and evaluate all applications. Prior to consideration by the board, TDA staff will score and rank the applications based on the criteria identified by the TAFA board. The board is not required to make awards based solely on staff's scoring or ranking of the applications. The board may consider other factors in making grant awards under the program, including, without limitation, the quality of the application, applicant's need for financial assistance, the project's ability to create, enhance, or sustain applicant's agricultural operation, the project's ability to improve overall agricultural productivity in Texas, and the project's ability to increase the number of agricultural enterprises in Texas that are owned and operated by young farmers.

Award Information and Notification.

The TAFA board will approve projects for funding. The TAFA board reserves the right to accept or reject any or all applications. TDA and TAFA are under no legal or other obligation to award a grant on the basis of a submitted application. Neither TDA nor TAFA will pay for any cost or expense incurred by applicant or any other entity in responding to this RFA, including, without limitation, compensation for the value of applicant's time or services incurred in responding to this RFA.

Public announcements and written notifications of funding rounds will be made. Selected applicants will be notified of the amount of award, duration of the grant, and any special conditions associated with the project.

General Compliance Information.

1. Prior to accepting the Young Farmer grant and signing the grant agreement, the recipient will be provided a copy of TDA reporting requirements, for review and execution. The Grant Agreement outlines billing procedures, annual reporting requirements, procedures for requesting a change in the scope or budget for a project, and other miscellaneous items.

2. Late or incomplete applications will not be accepted.

3. Any delegation by a grant recipient to a subcontractor regarding any duties and responsibilities imposed by the grant award must be approved in advance by TDA but shall not relieve the recipient of responsibility for performance.

4. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature, TDA and TAFA.

5. Any information or documentation submitted to TDA in connection with a grant application is subject to disclosure under the Texas Public Information Act.

6. While TDA and TAFA attempt to observe the strictest confidence in handling applications, they cannot guarantee complete confidentiality on any matter. The confidentiality of applicant's "proprietary data", if so designated, shall be strictly observed to the extent permitted by Texas law, including the Texas Public Information Act.

7. The ownership and disposition of all patentable products and intellectual property inventories shall be subject to the agreement of the grant recipient and TDA.

8. Funded projects must remain in full compliance with state and federal law and regulations. Noncompliance may result in termination.

9. Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the project. Records shall be maintained for three years after the completion of the project or as otherwise agreed with TDA. TDA and the Texas State Auditor's Office reserve the right to examine all books, documents, records, and accounts relating to the project at any time throughout the duration of the grant agreement and for three years immediately following completion of the project. If there has been any litigation, claim, negotiation, audit or other action started prior to the expiration of the three-year period involving the project's records, then the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. TDA and the Texas State Auditor's Office reserve the right to inspect project locations and to obtain full information regarding all project activities.

10. If a grant recipient has a financial audit performed in any year during which the recipient receives grant funds, the recipient shall, upon TDA's request, provide a complete copy of such audit and all information related thereto to TDA and/or TAFA, including the audit transmittal letter, management letter, and any schedules in which grant funds are analyzed, discussed, included, or reported.

11. Grant awards shall comply in all respects with the Uniform Grant Management Standards (UGMS). A copy may be downloaded from the following website: http://www.governor.state.tx.us/files/state-grants/UGMS062004.doc.

For any questions: Please contact Mr. Allen Regehr at (512) 463-9932 or by e-mail at: finance@TexasAgriculture.gov.

TRD-201203673
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: July 18, 2012

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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 pro-

posed 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: *United States of America and State of Texas v. Alcoa, Inc., et al.;* CA No. 3:12-cv-00210; In the U.S. District Court for the Southern District of Texas, Galveston Division.

Background: This case involves a tract of approximately 150 acres at 5300 Campbell Bayou Road, Texas City, Galveston County, Texas ("the Site"), approximately 1.6 miles southeast of the intersection of Loop 197 and State Hwy. 3, near Swan Lake and Galveston Bay. From about 1964 until 1996, Malone Service Company ("Malone") stored and treated or disposed of hazardous substances on portions of the Site. Various entities sent approximately 481 million gallons of waste to the Site, which is now heavily contaminated with hazardous substances including metals, volatile organics, semi-volatile organics, dioxins, and polychlorinated biphenyls. The Texas Natural Resource Conservation Commission, predecessor to the Texas Commission on Environmental Quality, revoked Malone's permits in 1997. The Site no longer receives hazardous wastes. The U.S. Environmental Protection Agency ("EPA") listed the Site on the National Priorities List in 2001. See 66 Fed. Reg. 32,235, 32,238 (June 14, 2001) (Table 1). Pursuant to an Administrative Order on Consent signed by EPA on September 30, 2003, a group of potentially responsible parties completed the Remedial Investigation/Feasibility Study for the Site. On September 29, 2009, EPA executed the Record of Decision selecting the remedial action to be carried out. Oily sludge will be solidified and placed into an on-site cell, along with contaminated soil. The groundwater will be monitored to confirm that the remedial action is preventing offsite migration. The total cost of the remedial action is estimated to be $56.4 million. The United States filed the referenced lawsuit on July 13, 2012, naming 38 parties as defendants and seeking natural resource damages, reimbursement of the costs of its response actions at the Site, and performance of response actions by the defendants. The State of Texas filed a Complaint in Intervention seeking recovery of its response costs, natural resource damages and attorneys' fees.

Nature of the Settlement: The lawsuit will be settled by a consent decree in the district court.

Proposed Settlement: The proposed consent decree provides for the recovery of the State's and the United States's past and future response costs, natural resource damages 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-201203650
Katherine Cary
General Counsel
Office of the Attorney General
Filed: July 16, 2012

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Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - June 2012

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period June 2012 is $77.59 per barrel for the three-month period beginning on March 1, 2012, and ending May 31, 2012. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of June 2012, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined as required by Tax Code, §201.059, that the average taxable price of gas for reporting period June 2012 is $1.84 per mcf for the three-month period beginning on March 1, 2012, and ending May 31, 2012. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of June 2012, from a qualified low-producing well, is eligible for 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of June 2012, is $82.41 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of June 2012, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of June 2012, is $2.50 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of June 2012, from a qualified low-producing gas well.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201203651
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: July 17, 2012

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Notice of Intent to Amend Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of intent to amend, extend, and renew an existing major consulting services contract with StatCom (Consultant), located at 3399 F.M. 102 North, Eagle Lake, Texas 77434.

The contract was awarded previously under Request for Proposals (RFP 202a), issued in 2011, for the provision of statistician consulting services to the Comptroller on statistical issues and related issues in connection with the Comptroller's Annual Property Value Study (Study). The notice of contract award was published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6530).

The amended contract will be effective on September 1, 2012, and extend through August 31, 2013. The total amount of the contract budget is not to exceed $45,000.00. The Consultant will report to the Comptroller on an as-needed, as-requested basis with multiple reports submitted no later than August 31, 2013.

TRD-201203662

William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: July 18, 2012

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/23/12 - 07/29/12 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 07/23/12 - 07/29/12 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/12 - 08/31/12 is 5.00% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/12 - 08/31/12 is 5.00% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201203652
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 17, 2012

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Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application for a name change was received from First Community Credit Union of Houston, Houston, Texas. The credit union is proposing to change its name to First Community Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201203669
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 18, 2012

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Application to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Pegasus Community Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit employees of DeGolyer and MacNaughton who work in or are paid from Dallas, Texas, to be eligible for membership in the credit union.

An application was received from SPCO Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school within a 10-mile radius of the credit union office located at 2203 Timberloch Place, Suite 100, The Woodlands, TX 77380, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201203670
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 18, 2012

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Amend Articles of Incorporation - Approved

Beaumont Community Credit Union, Beaumont, Texas - See *Texas Register* issue dated May 25, 2012.

Applications to Expand Field of Membership - Approved

Navy Army Community Credit Union (#2), Corpus Christi, Texas - See *Texas Register* issue dated October 28, 2011.

EECU, Fort Worth, Texas - See *Texas Register* issue dated April 27, 2012.

Application for a Merger or Consolidation - Approved

Commercial Metals Federal Credit Union (Irving) and America's Credit Union (Garland) - See *Texas Register* issue dated April 27, 2012.

TRD-201203671
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 18, 2012

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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 27, 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 27, 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: Bravo Natural Gas, LLC; DOCKET NUMBER: 2012-0326-AIR-E; IDENTIFIER: RN100217462 (Station 1), RN100212414 (Station 2) and RN100211580 (Station 3); LOCATION: Stinnett, Moore County and Borger, Carson County; TYPE OF FACILITY: natural gas compression stations; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O366/General Operating Permit (GOP) Number 514, Site-wide requirements (SWR) (b)(2), by failing to submit a Permit Compliance Certification (PCC) within 30 days after the end of the certification period at Station 1 and Station 2; 30 TAC §122.143(4) and §122.145(2)(C), THSC, §382.085(b), and FOP Number O366/GOP Number 514, SWR (b)(2), by failing to submit a semi-annual deviation report within 30 days after the end of the reporting period at Station 1 and Station 2; 30 TAC §122.143(4) and §122.146(2), THSC, §382.085(b), and FOP Number O3161, General Terms and Conditions (GTC), by failing to submit a PCC for Station 3 within 30 days after the end of the certification period; 30 TAC §122.143(4) and §122.146(5), THSC, §382.085(b), and FOP Number O3161, GTC, by failing to submit an accurate PCC for Station 3; and 30 TAC §122.143(4) and §122.145(2)(C), THSC, §382.085(b), and FOP Number O3161, GTC, by failing to submit a semi-annual deviation report for Station 3 within 30 days after the end of the reporting period; PENALTY: $16,840; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: C & D Charles Street GP, LLC; DOCKET NUMBER: 2012-0497-PWS-E; IDENTIFIER: RN102317443; LOCATION: Jersey Village, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), 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 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 April - August 2011; PENALTY: $2,681; ENFORCEMENT COORDINATOR: Andrea Linson, (512) 239-1482; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: City of Granbury; DOCKET NUMBER: 2012-1251-WQ-E; IDENTIFIER: RN101353381; LOCATION: Granbury, Hood County; TYPE OF FACILITY: municipal services; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Kennard; DOCKET NUMBER: 2012-0026-MWD-E; IDENTIFIER: RN102078169; LOCATION: Kennard, Houston County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011474001, Operational Requirements (OR) Number 1 and 30 TAC §305.125(1) and (5), by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; TPDES Permit Number WQ0011474001, Permit Conditions (PC) Number 2.g., 30 TAC §305.125(1), and TWC, §26.121(a), by failing to prevent an unauthorized discharge of wastewater from the collection system into or adjacent to water in the state; TPDES Permit Number WQ0011474001, Monitoring and Reporting Requirements Number 3.c.ii. and 30 TAC §305.125(1), by failing to record the identity of the individual who collected the effluent samples or made the effluent measurements; TPDES Permit Number WQ0011474001, Effluent Limitations and Monitoring Requirements Number 1 and 30 TAC §305.125(1) and §319.4, by failing to collect effluent samples at the frequency specified in the permit; TPDES Permit Number WQ0011474001, Sludge Provisions and 30 TAC §305.125(17), by failing to submit monitoring results at the intervals specified in the permit; TPDES Permit Number WQ0011474001, Effluent Limitations and Monitoring Requirements Number 1 and PC Number 2.d., 30 TAC §305.125(1), and TWC, §26.121(a), by failing to prevent the discharge of sludge from the facility into or adjacent to water in the state; and TPDES Permit Number WQ0011474001, OR Number 1 and 30 TAC §305.125(1) and (5), by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; PENALTY: $54,502; Supplemental Environmental Project offset amount of $54,502 applied to City of Kennard Waste Water Treatment Plant Effluent Disinfection System; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: City of Malone; DOCKET NUMBER: 2011-1189-MWD-E; IDENTIFIER: RN102075660; LOCATION: Malone, Hill County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and (4) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010514001, Permit Conditions Number 2.d, by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0010514001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (11)(C)(i), §319.7(a), and TPDES Permit Number WQ0010514001, Monitoring and Reporting Requirements Number 3.c, by failing to maintain complete records of monitoring activities; 30 TAC §305.125(1) and TPDES Permit Number WQ0010514001, Operational Requirements

Number 1, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §317.7(i), by failing to provide a backflow prevention device at the facility; and 30 TAC §305.125(1) and §319.11(d), and TPDES Permit Number WQ0010514001, Monitoring and Reporting Requirements Number 2.a, by failing to accurately measure the flow as prescribed in the Water Measurement Manual, United States Department of the Interior Bureau of Reclamation, Washington, D.C., or methods that are equivalent as approved by the executive director; PENALTY: $23,144; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: City of Ranger; DOCKET NUMBER: 2012-0573-MWD-E; IDENTIFIER: RN103118923; LOCATION: Ranger, Eastland County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011557003, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limits; PENALTY: $9,970; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: Cross-Cut Hardwoods, Incorporated; DOCKET NUMBER: 2012-0438-AIR-E; IDENTIFIER: RN101953206; LOCATION: Alto, Cherokee County; TYPE OF FACILITY: sawmill; RULE VIOLATED: 30 TAC §116.115(c), Air Quality Standard Permit for Sawmills Operating Requirement Number (2)(D), and Texas Health and Safety Code, §382.085(b), by failing to maintain the minimum required distance for production equipment of 150 feet from the sawmill property line; PENALTY: $1,620; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: CROWN RETAIL BUSINESS CORPORATION dba Fuel Depot 15; DOCKET NUMBER: 2012-0613-PST-E; IDENTIFIER: RN105989834; 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 tank system for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $5,000; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Everest Financial Corporation dba Shell/Kwik-Mart/Popeyes; DOCKET NUMBER: 2012-0910-PST-E; IDENTIFIER: RN101552362; 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: $4,000; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: GLOBAL JUBILEE 2007, INCORPORATED dba Jet Travel Plaza; DOCKET NUMBER: 2012-0329-PST-E; IDENTIFIER: RN102449725; LOCATION: Teague, Freestone 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 also by failing to provide proper release detection for the piping associated with the UST system; PENALTY: $5,128; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Grand Ranch Treatment Company; DOCKET NUMBER: 2012-0956-MWD-E; IDENTIFIER: RN102344157; LOCATION: Joshua, Johnson County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Texas Pollutant Discharge Elimination System Permit Number WQ0013846001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, 30 TAC §305.125(1) and TWC, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: $8,255; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Hemphill Independent School District; DOCKET NUMBER: 2012-0541-PST-E; IDENTIFIER: RN101884344; LOCATION: Hemphill, Sabine County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (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) and to provide release detection for the pressurized piping associated with the UST system; PENALTY: $4,500; Supplemental Environmental Project offset amount of $3,600 applied to Houston Arboretum and Nature Center, Hurricane Ike Habitat Restoration and Removal of Invasive Species; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: John Merritt Homes, Incorporated; DOCKET NUMBER: 2012-1252-WQ-E; IDENTIFIER: RN106389679; LOCATION: Fair Oaks Ranch, Kendall 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: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: JX Nippon Chemical Texas, Incorporated dba Nisseki Chemical of Texas; DOCKET NUMBER: 2011-2250-AIR-E; IDENTIFIER: RN102887270; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Federal Operating Permit Number O3068, Special Terms and Conditions Number 11, New Source Review Permit Number 19624, Special Conditions Number 16, and Texas Health and Safety Code, §382.085(b), by failing to conduct monthly sampling for volatile organic compounds leakage from a cooling tower, Emission Point Number CT-4; PENALTY: $54,117; Supplemental Environmental Project offset amount of $21,647 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Clean School Buses; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Larry Rambo Trucking; DOCKET NUMBER: 2012-1247-WQ-E; IDENTIFIER: RN106388101; LOCATION: Mansfield, Tarrant County; TYPE OF FACILITY: sand, fill dirt mining; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: MURPHY OIL USA, INCORPORATED dba Murphy USA 6979; DOCKET NUMBER: 2012-0627-PST-E; IDENTIFIER: RN104064787; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(9) and Texas Health and Safety Code (THSC), §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first; PENALTY: $8,975; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Nabors Well Services Company; DOCKET NUMBER: 2012-0487-AIR-E; IDENTIFIER: RN105863344; LOCATION: Aledo, Tarrant County; TYPE OF FACILITY: salt water disposal; RULE VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code (THSC), §382.085(a) and (b), by failing to prevent nuisance odor conditions; and 30 TAC §116.110(a)(4) and THSC, §382.085(b), by failing to comply with the conditions of the Permit by Rule; PENALTY: $3,280; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: North Houston Pole Line, L.P.; DOCKET NUMBER: 2012-0929-PST-E; IDENTIFIER: RN101749000; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling station; 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 UST system; and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: $9,446; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: North Texas Maverick Builders LP; DOCKET NUMBER: 2012-1260-WQ-E; IDENTIFIER: RN106417777; LOCATION: Aledo, Parker 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: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Omar Saif Enterprises, Incorporated dba Khan C Store; DOCKET NUMBER: 2012-0445-PST-E; IDENTIFIER: RN102030012; LOCATION: Mesquite, 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: $4,128; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Raymond Wietzikoski dba Raymonds Shell; DOCKET NUMBER: 2012-0191-PST-E; IDENTIFIER: RN101676377; LOCATION: Groesbeck, Limestone County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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 §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the piping associated with the UST system; PENALTY: $10,992; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: S. M. MOON INVESTMENTS CORPORATION dba Exxon; DOCKET NUMBER: 2012-0465-PST-E; IDENTIFIER: RN102246394; LOCATION: Seagoville, 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 (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: $3,675; ENFORCEMENT COORDINATOR: Thomas Greimel, P.G., (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: S.N.V. BUSINESS, INCORPORATED dba Bellaire Food Mart; DOCKET NUMBER: 2012-0350-PST-E; IDENTIFIER: RN101724409; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $2,000; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Southwestern Motor Transport, Incorporated; DOCKET NUMBER: 2012-0727-PST-E; IDENTIFIER: RN102380912; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (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: $10,000; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(25) COMPANY: The Methodist Hospital dba Methodist DeBakey Heart Center; DOCKET NUMBER: 2012-0881-PST-E; IDENTIFIER: RN102962446; LOCATION: Houston, Harris County; TYPE OF FACILITY: hospital with emergency generators and underground storage tanks (USTs); RULE VIOLATED: 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: $2,250; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Toll Dallas TX LLC; DOCKET NUMBER: 2011-1835-WR-E; IDENTIFIER: RN105739247; LOCATION: Tarrant County; TYPE OF FACILITY: developing residential community; RULE VIOLATED: 30 TAC §297.11 and TWC, §11.121, by failing to

obtain authorization prior to impounding, diverting, taking, or using state water; PENALTY: $1,880; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Turner Industries Group LLC; DOCKET NUMBER: 2012-1246-WQ-E; IDENTIFIER: RN105546980; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: manufacturing custom piping; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(28) COMPANY: Upper Jasper County Water Authority; DOCKET NUMBER: 2012-0741-MWD-E; IDENTIFIER: RN102739687; LOCATION: Jasper, Jasper County; TYPE OF FACILITY: water treatment plant; RULE VIOLATED: 30 TAC §§305.125(1) and (17), 319.1, and 319.7(d); and Texas Pollutant Discharge Elimination System Permit Number WQ0014269001, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; PENALTY: $720; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-201203653
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 17, 2012

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Enforcement Orders

An agreed order was entered regarding Omar Avilez dba Omar Avilez Farm, Docket No. 2009-1441-AGR-E on June 21, 2012, assessing $1,020 in administrative penalties with $204 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 Bayer Corporation, Docket No. 2011-1191-AIR-E on June 21, 2012, assessing $2,300 in administrative penalties with $460 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Karen Reeves, Docket No. 2011-1240-PWS-E on June 21, 2012, assessing $6,121 in administrative penalties with $1,223 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 Archdiocese of Galveston-Houston, Docket No. 2011-1293-PWS-E on June 21, 2012, assessing $1,200 in administrative penalties with $240 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Freeport LNG Development, L.P., Docket No. 2011-1500-AIR-E on June 21, 2012, assessing $2,430 in administrative penalties with $486 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 Lubbock Alternator & Supply, Inc., Docket No. 2011-1874-MSW-E on June 21, 2012, assessing $2,500 in administrative penalties with $500 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 DEVON ENERGY PRODUCTION COMPANY, L.P., Docket No. 2011-1876-WR-E on June 21, 2012, assessing $1,850 in administrative penalties with $370 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 BZ Enterprises, Inc. dba I-35 Texaco, Docket No. 2011-1906-PST-E on June 21, 2012, assessing $6,123 in administrative penalties with $1,224 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 MARKET TRUCK STOP INC. dba Texas Truck Stop, Docket No. 2011-1933-PST-E on June 21, 2012, assessing $6,300 in administrative penalties with $1,260 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 SCCW Industrial Services, LLC dba West Limited, Docket No. 2011-1960-AIR-E on June 21, 2012, assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arturo Ulloa dba JEA Tires, Docket No. 2011-1971-MSW-E on June 21, 2012, assessing $6,375 in administrative penalties with $1,275 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 GOOD LUCK EXXON INC. dba Exxon Food Mart, Docket No. 2011-2014-PST-E on June 21, 2012, assessing $4,864 in administrative penalties with $972 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Susser Petroleum Company, LLC dba QS 318, Docket No. 2011-2029-PST-E on June 21, 2012, assessing $3,750 in administrative penalties with $750 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 Nita Corporation dba George's Food and Fuel, Docket No. 2011-2043-PST-E on June 21, 2012, assessing $4,750 in administrative penalties with $950 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 PINTO CONSTRUCTION CO., INC., Docket No. 2011-2061-WR-E on June 21, 2012, assessing $7,414 in administrative penalties with $1,482 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 NATHAN INVESTMENTS, LLC dba Tigerland Express Taco Casa, Docket No. 2011-2074-PST-E on June 21, 2012, assessing $3,750 in administrative penalties with $750 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 E.S.E. WE MAKE TRACKS, INC., Docket No. 2011-2086-WR-E on June 21, 2012, assessing $6,368 in administrative penalties with $1,273 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.

A field citation was entered regarding Saratoga Homes of Texas Austin, LLC, Docket No. 2011-2094-WQ-E on June 21, 2012, assessing $700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Orange Water & Sewer, LLC, Docket No. 2011-2100-MWD-E on June 21, 2012, assessing $4,708 in administrative penalties with $941 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 Prue Bend Homeowner's Association, Inc., Docket No. 2011-2103-EAQ-E on June 21, 2012, assessing $3,050 in administrative penalties with $610 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 Susser Petroleum Company LLC dba QS 332, Docket No. 2011-2108-PST-E on June 21, 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 FUEL DEPOT, LLC, Docket No. 2011-2127-PST-E on June 21, 2012, assessing $3,416 in administrative penalties with $683 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 Gloria Martinez, Docket No. 2011-2145-MSW-E on June 21, 2012, assessing $1,050 in administrative penalties with $210 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 Sand Inc dba Ferris Food Mart, Docket No. 2011-2164-PST-E on June 21, 2012, assessing $1,875 in administrative penalties with $375 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 COMMERCIAL METALS COMPANY dba CMC Recycling American, Docket No. 2011-2184-PST-E on June 21, 2012, assessing $1,875 in administrative penalties with $375 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 ZEENA CORPORATION dba Ovilla Market, Docket No. 2011-2185-PST-E on June 21, 2012, assessing $3,880 in administrative penalties with $776 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frank M. Martinez dba Martinez Auto Sales & Service, Docket No. 2011-2193-PST-E on June 21, 2012, assessing $1,875 in administrative penalties with $375 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 Wm. G. Johnson Oil Co. dba Kammans Exxon, Docket No. 2011-2196-PST-E on June 21, 2012, assessing $6,504 in administrative penalties with $1,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HONG & TAFT, INC. dba H & T Texaco, Docket No. 2011-2201-PST-E on June 21, 2012, assessing $7,206 in administrative penalties with $1,441 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 ASA Management, Inc. dba Shell 103, Docket No. 2011-2211-PST-E on June 21, 2012, assessing $2,942 in administrative penalties with $588 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 FUEL DEPOT, LLC, Docket No. 2011-2243-PST-E on June 21, 2012, assessing $3,342 in administrative penalties with $668 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 LOS CAMPEONES, INC. dba Valley International Country Club, Docket No. 2011-2276-MSW-E on June 21, 2012, assessing $4,200 in administrative penalties with $840 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 SHREE-JI CORPORATION dba Scotties, Docket No. 2011-2279-PST-E on June 21, 2012, assessing $3,885 in administrative penalties with $777 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bonham Independent School District, Docket No. 2011-2291-PST-E on June 21, 2012, assessing $2,500 in administrative penalties with $500 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 Eufrocina Merino dba Roslyn Food Mart, Docket No. 2011-2297-PST-E on June 21, 2012, assessing $2,923 in administrative penalties with $584 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 Sang Thanh Diep dba Nice Food Market, Docket No. 2011-2303-PST-E on June 21, 2012, assessing $2,350 in administrative penalties with $470 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 COTTURA INC dba Harry Hines Shell Plus, Docket No. 2011-2312-PST-E on June 21, 2012, assessing $5,100 in administrative penalties with $1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gilbert A. Daniel dba Sam's Drive In Shell, Docket No. 2011-2324-PST-E on June 21, 2012, assessing $2,004 in administrative penalties with $400 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 M & S BROTHERS, INC. dba M & S Grocery, Docket No. 2011-2349-PST-E on June 21, 2012, assessing $7,426 in administrative penalties with $1,485 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 KENMARK HOMES, LP, Docket No. 2011-2359-WQ-E on June 21, 2012, assessing $2,500 in administrative penalties with $500 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 CJ CHARLES DEVELOPMENT INC dba Daily Stop, Docket No. 2012-0010-PST-E on June 21, 2012, assessing $4,013 in administrative penalties with $802 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 Bisma-Zaeem, Inc. dba B-Z Mart, Docket No. 2012-0012-PST-E on June 21, 2012, assessing $3,638 in administrative penalties with $727 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 Shaan Group, Inc. dba Katy 66, Docket No. 2012-0014-PST-E on June 21, 2012, assessing $2,300 in administrative penalties with $460 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 City of Los Fresnos, Docket No. 2012-0081-MWD-E on June 21, 2012, assessing $4,375 in administrative penalties with $875 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Metro National Corporation, Docket No. 2012-0096-PST-E on June 21, 2012, assessing $3,733 in administrative penalties with $746 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 Michael Sung dba Ola's Grocery Store, Docket No. 2012-0103-PST-E on June 21, 2012, assessing $2,635 in administrative penalties with $527 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 KARAM Z ENTERPRISES INC. dba Gulfway Foodmart, Docket No. 2012-0107-PST-E on June 21, 2012, assessing $6,163 in administrative penalties with $1,232 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southline Metal Products Company, Docket No. 2012-0113-AIR-E on June 21, 2012, assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TIM COOPER FARM ENTERPRISES, L.P. dba Cooper Farms Country Store, Docket No. 2012-0121-PST-E on June 21, 2012, assessing $2,008 in administrative penalties with $401 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 Mira Vista, Inc., Docket No. 2012-0142-WQ-E on June 21, 2012, assessing $3,375 in administrative penalties with $675 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 City of Ennis, Docket No. 2012-0156-PST-E on June 21, 2012, assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Song Il Kim dba Mike Pit Stop 5, Docket No. 2012-0197-PST-E on June 21, 2012, assessing $3,342 in administrative penalties with $668 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 Susser Petroleum Company LLC dba Quick Stuff 384 Stripes, Docket No. 2012-0198-PST-E on June 21, 2012, assessing $2,625 in administrative penalties with $525 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 Davis Motor Crane Service, Inc., Docket No. 2012-0242-PST-E on June 21, 2012, assessing $2,250 in administrative penalties with $450 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 BOND ENTERPRISES, INC. dba Fairpark Grocery, Docket No. 2012-0255-PST-E on June 21, 2012, assessing $2,754 in administrative penalties with $550 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 Federal Express Corporation, Docket No. 2012-0290-PST-E on June 21, 2012, assessing $3,342 in administrative penalties with $668 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.

A field citation was entered regarding CPS Energy, Docket No. 2012-0468-WQ-E on June 21, 2012, assessing $700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Billy J. Bush, Docket No. 2012-0578-WOC-E on June 21, 2012, assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Brandon J. Berry, Docket No. 2012-0581-WOC-E on June 21, 2012, assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Longino J. Cantu, Jr., Docket No. 2012-0582-WOC-E on June 21, 2012, assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Raymond Wong dba Satsuma Park Villa Mobile Home Park, Docket No. 2010-1763-UTL-E on June 28, 2012, assessing $420 in administrative penalties with $84 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 Shahzab & Sara, Inc. dba Hopcus Mini Mart, Docket No. 2011-0849-PST-E on June 28, 2012, assessing $2,550 in administrative penalties with $510 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 SAHAND INC. dba JR's Food Mart, Docket No. 2011-1400-PST-E on June 28, 2012, assessing $750 in administrative penalties with $150 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 ALLIED TRADING CORPORATION dba A & Q Chevron Food Mart, Docket No. 2011-1429-PST-E on June 28, 2012, assessing $2,250 in administrative penalties with $450 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 PAVER INVESTMENTS LIMITED PARTNERSHIP dba Stepping Stone School No. 14, Docket No. 2011-1681-EAQ-E on June 28, 2012, assessing $2,000 in administrative penalties with $400 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 MEHTAB ENTERPRISE, LLC dba Super Star Food Mart, Docket No. 2011-1868-PST-E on June 28, 2012, assessing $5,147 in administrative penalties with $1,029 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 Metroplex Quarry's Inc., Docket No. 2011-2112-IWD-E on June 28, 2012, assessing $1,848 in administrative penalties with $369 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 M.A.A.R. ENTERPRISES LLC dba Cap City Corner, Docket No. 2011-2166-PST-E on June 28, 2012, assessing $6,219 in administrative penalties with $1,243 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 David Maddox dba M M Food Mart 1, Docket No. 2011-2183-PST-E on June 28, 2012, assessing $2,004 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OIL PATCH PETROLEUM, INC., Docket No. 2011-2225-PST-E on June 28, 2012, assessing $5,000 in administrative penalties with $1,000 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 Greenstar Mid-America, LLC, Docket No. 2011-2226-MSW-E on June 28, 2012, assessing $1,650 in administrative penalties with $330 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BAYLOR HEALTH CARE SYSTEM, Docket No. 2011-2236-PST-E on June 28, 2012, assessing $2,766 in administrative penalties with $553 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 LEO BUSINESS, INC. dba US Express 2, Docket No. 2011-2238-PST-E on June 28, 2012, assessing $4,354 in administrative penalties with $870 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, P.G., Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B & F and Sons, LLC, Docket No. 2011-2310-PST-E on June 28, 2012, assessing $3,125 in administrative penalties with $625 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 Shakil Enterprises Inc. dba Refuge General Store, Docket No. 2011-2323-PST-E on June 28, 2012, assessing $2,629 in administrative penalties with $525 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 Swami Shreehari LLC dba Jonathan's Shop & Save, Docket No. 2011-2340-PST-E on June 28, 2012, assessing $1,875 in administrative penalties with $375 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 Ana Holdings, Inc. dba Happy Days Grocery, Docket No. 2011-2350-PST-E on June 28, 2012, assessing $2,500 in administrative penalties with $500 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 2100 Ross Realty LP, Docket No. 2011-2351-IWD-E on June 28, 2012, assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paul Fuller dba Paul's Lawn and Landscape L.L.C., Docket No. 2011-2358-LII-E on June 28, 2012, assessing $450 in administrative penalties with $90 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cameron Technologies US, Inc., Docket No. 2012-0011-AIR-E on June 28, 2012, assessing $5,250 in administrative penalties with $1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bradley Sessums dba Sessums Service Station, Docket No. 2012-0037-PST-E on June 28, 2012, assessing $5,150 in administrative penalties with $1,030 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dry Comal Creek Vineyards, Inc., Docket No. 2012-0085-EAQ-E on June 28, 2012, assessing $5,625 in administrative penalties with $1,125 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 Jackie S. Jones dba J & S Country Market, Docket No. 2012-0091-PST-E on June 28, 2012, assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Luis Suarez dba Air One Mobile Welding Supply, Docket No. 2012-0095-PST-E on June 28, 2012, assessing $2,625 in administrative penalties with $525 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 Segovia, Inc., Docket No. 2012-0175-PWS-E on June 28, 2012, assessing $107 in administrative penalties with $21 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 Ellis County, Docket No. 2012-0201-PST-E on June 28, 2012, assessing $2,500 in administrative penalties with $500 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 NUECES ELECTRIC COOPERATIVE, INC., Docket No. 2012-0207-PST-E on June 28, 2012, assessing $3,000 in administrative penalties with $600 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 Waterpark Management, Inc., Docket No. 2012-0210-WQ-E on June 28, 2012, assessing $2,300 in administrative penalties with $460 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 Vinod Nagi dba Park N Sak, Docket No. 2012-0230-PST-E on June 28, 2012, assessing $2,500 in administrative penalties with $500 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 Sophorn Hem dba Kong Food Mart, Docket No. 2012-0233-PST-E on June 28, 2012, assessing $3,500 in administrative penalties with $700 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Goldthwaite, Docket No. 2012-0240-PWS-E on June 28, 2012, assessing $172 in administrative penalties with $34 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Airstream Harbor, Inc., Docket No. 2012-0246-MWD-E on June 28, 2012, assessing $3,982 in administrative penalties with $796 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 Haider Corporation, Docket No. 2012-0268-PST-E on June 28, 2012, assessing $2,250 in administrative penalties with $450 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 Rhodia Inc., Docket No. 2012-0279-IWD-E on June 28, 2012, assessing $6,128 in administrative penalties with $1,225 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 El Pollo Regio IP, LLC dba El Pollo Regio, Docket No. 2012-0284-AIR-E on June 28, 2012, assessing $1,312 in administrative penalties with $262 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cimarron Municipal Utility District, Docket No. 2012-0305-PWS-E on June 28, 2012, assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHARDA CONVENIENCE STORE, INC. dba Cracker Barrel 5, Docket No. 2012-0319-PST-E on June 28, 2012, assessing $2,635 in administrative penalties with $527 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.

A field citation was entered regarding Clyde R. Kresta, Docket No. 2012-0577-WOC-E on June 28, 2012, assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding William A. Hale, Docket No. 2012-0579-WOC-E on June 28, 2012, assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Ronnie Linnstaedter, Docket No. 2012-0580-WOC-E on June 28, 2012, assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201203665
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 18, 2012

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Notice of Water Quality Applications

The following notices were issued on July 6, 2012, through July 13, 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

CHEVRON USA INC which operates the Galena Park Terminal, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001745000, which authorizes the discharge of stormwater, truck rinse water, drainage from truck loading areas and diked spill containment areas, tank water draws (including hystrostatic tank test water and drawdown from under ground storage tanks), and associated groundwater from remediation activities at a daily average flow not to exceed 10,000 gallons per day, and a daily maximum flow not to exceed 20,000 gallons per day via Outfall 002, and the discharge of stormwater runoff from diked tank areas on an intermittent and flow variable basis via Outfalls 003 and 004. The facility is located at 12523 American Petroleum Road approximately 0.5 mile north of the intersection of Federal Road and Clinton Drive in the City of Galena Park, Harris County, Texas 77547. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

SOUTH COAST TERMINALS LP which operates South Coast Terminals, has applied for a renewal of TPDES Permit No. WQ0003133000, which authorizes the discharge of storm water, wash water from external surface wash down of tanks and diked tank area, and boiler blowdown on an intermittent and flow variable basis via Outfall 001. The facility is located at 9317 East Avenue S, approximately one-mile north of the intersection of State Highway 225 and Loop 610 in the City of Houston, Harris County, Texas 77020. The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination council (CCC) and has determined that the action is consistent with the applicable CMP goals and policies.

CITY OF BRACKETTVILLE AND FORT CLARK MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010194002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 40 acres. The facility is located approximately 2.3 miles south of the intersection of U.S. Highway 90 and State Highway 131 and 0.75 mile west of State Highway 131 in Kinney County, Texas 78832.

CITY OF CORPUS CHRISTI has applied for a major amendment to TPDES Permit No. WQ0010401005 to authorize an increase in the two-hour peak flow from 13,889 gallons per minute (gpm) to 27,800 gpm. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day in the interim I and II phases and 8,000,000 gallons per day in the final phase. The facility is located at 1402 West Broadway Street, in the City of Corpus Christi in Nueces County, Texas 78401.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495050, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,760,000 gallons per day. The facility is located at 7410 Galveston Road (State Highway No. 3), approximately 400 feet Northwest of the intersection of Old Galveston Road (TX 3) and Edgebrook Drive in the City of Houston in Harris County, Texas 77034.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495065, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 8545 Scranton Street, due east of William P. Hobby Airport, approximately 0.7 mile southwest of the intersection of Interstate Highway 45 (Gulf Freeway) and Airport Boulevard in Harris County, Texas 77075.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495110, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,050,000 gallons per day. The facility is located at 6301 West Fuqua Street, at the intersection of South Beltway 8 and West Fuqua Street, adjacent to the west boundary of Mayfair Park Subdivision southwest of the City of Houston in Fort Bend County, Texas 77489.

ORANGE COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0010875004, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 670,000 gallons per day. The facility is located approximately 300 feet northwest of the intersection of Oak Lane and Ferndale Street in the City of Vidor in Orange County, Texas 77662.

ELI GRAVRIEL SASSON has applied for a renewal of TPDES Permit No. WQ0011414002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility is located at 1710 Greens Road, north of Greens Bayou, approximately 3,150 feet west of the intersection of Greens Road and Aldine Westfield Road, 5,100 feet east of the intersection of Greens Road and Hardy Road in Harris County, Texas 77032.

FOREST GLEN INC HAS applied for a renewal of TPDES Permit No. WQ0011844001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 6 miles southeast of the intersection of U.S. Highway 190 and Farm-to-Market Road 2296 in Walker County, Texas 77340.

CROSS ROADS INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013789001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 16,000 gallons per day. The facility is located at 14434 Farm-to-Market Road 59, approximately 940 feet northeast of the intersection of Farm-to-Market Road 3441 and Farm-to-Market Road 59 in Henderson County, Texas 75148.

AQUA DEVELOPMENT INC has applied for a renewal of TPDES Permit No. WQ0014279001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day in the Final Phase. The facility is located at 28059 Trade Winds Court, approximately 1.10 miles north of the intersection of State Highway 288 and Farm-to-Market Road 1462 in Brazoria County, Texas 77583.

BHAKTI VISHRAM KUTEER LLC has applied for a renewal of TPDES Permit No. WQ0014818001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 49,000 gallons per day. The facility will be located approximately 1,320 feet southeast from the intersection of Farm-to-Market Road 2759 and Farm-to-Market Road 762, in the City of Rosenberg in Fort Bend County, Texas 77471.

LBC PARTNERS LTD HAS applied for a new permit, Proposed TCEQ Permit No. WQ0015037001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 56,400 gallons per day via surface irrigation of 21 acres of public access grassland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located on the west side of Farm-to-Market Road 2722, approximately 0.5 mile north of the intersection of Bear Creek Trail Road and Farm-to-Market Road 2722 in Comal County, Texas 78132.

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.

TRINITY BAY CONSERVATION DISTRICT has applied for a minor amendment to the TPDES Permit No. WQ0014734001 to authorize the addition of a chlorine contact chamber for additional disinfection of effluent. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located 500 feet north of the intersection of Farm to Market Road 562 and Hawkins Camp Road in Smith Point in Chambers County, Texas 77514.

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-201203664
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 18, 2012

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp.

1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 9, 2012, through June 13, 2012. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on July 18, 2012. The public comment period for this project will close at 5:00 p.m. on August 17, 2012.

FEDERAL AGENCY ACTIONS:

Applicant: Port Isabel Public Improvement District; Location: The project site is located in the "Finger Canals" off the Laguna Madre at the Modern Venice Subdivision, along West Bass Avenue, West Tarpon Avenue, and Oyster Cove, in Port Isabel, Cameron County, Texas. The project site can be located on the U.S.G.S. quadrangle map titled: Port Isabel, Texas. NAD 83, Latitude: 26.073023 North; Longitude: -97.221727West. Project Description: The applicant proposes to bulkhead and fill areas along West Tarpon Avenue, West Bass Avenue, as well as an undeveloped portion of Oyster Cove that is included within the Port Isabel Improvement District. The purpose of this project is to develop the area for residential lots. The project will include the installation of a bulkhead, placement of associated backfill, installation of infrastructure, and roadway improvements. The project will result in the permanent filling of 4.955 acres of jurisdictional area, including 0.455 acres of wetlands, 0.13 acres of shallow water habitat, and 4.37 acres of area classified as sand tidal flat. As infrastructure such as drinking water, sanitary wastewater, electrical lines, and roadways are not currently present within the project area, these utilities and access roads will be installed within the 40-foot roadway right-of-way (ROW). The applicant stated that a wetland mitigation plan would be developed utilizing wetland mitigation ratios prior to construction. CMP Project No.: 12-0793-F1. Type of Application: U.S.A.C.E. permit application #SWG-2011-00561 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Tuscan Lakes Development II, L.P.; Location: The project is located in wetlands adjacent to Gum Bayou, roughly bounded by State Highway 96 (East League City Parkway) to the north, FM 646 to the south, FM 270 to the west, and Tuscan Lakes Boulevard to the east, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Dickinson, Texas. NAD 83, Latitude: 29.494484 North; Longitude: -95.056757 West. Project Description: The applicant proposes to discharge approximately 6,776 cubic yards of fill into 4.2 acres of palustrine emergent wetland during the construction and development of approximately 115 acres of the southeast sector of the existing 870-acre master planned mixed-use community of Tuscan Lakes. The project will offer single family homes, multi-family housing, commercial/retail sites, drainage improvements, and storm water detention. The applicant proposed to mitigate for the proposed impacts through on-site in-kind establishment and enhancement with a proposed water detention facility. CMP Project No.: 12-0790-F1. Type of Application: U.S.A.C.E. permit application #SWG-2004-01158 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Kate Zultner, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.texas.gov. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201203676
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: July 18, 2012

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Texas Health and Human Services Commission

Notice of Public Hearing

The Council on Children and Families will hold a public hearing Thursday, August 9, 2012, in Austin to hear testimony about its ongoing work.

The hearing will run from 11:00 a.m. - 2:00 p.m. in the Public Hearing Room of the Brown-Heatly Building, 4900 N. Lamar Blvd., Austin, Texas 78751.

The Council on Children and Families has been established in accordance with Government Code Chapter 531, Subchapter T. It includes state agency representatives and public members. The goal of the Council is to coordinate the state's health, education, and human services systems to ensure that children and families have access to needed services; improve coordination and efficiency in state agencies, advisory councils on issues affecting children, and local levels of service; prioritize and mobilize resources for children; and facilitate an integrated approach to providing services for children and youth.

The Council on Children and Families is seeking testimony (written or oral) on current needs and resources for children and families in the areas of education, health and human services, workforce, and juvenile justice, as well as innovative approaches to addressing coordination of resources. Council members would like **specific examples** of the opportunities and challenges families and communities may be facing, and **specific examples** of innovative efforts and approaches, including local collaborative initiatives and partnerships.

Particularly, the Council would like to hear the status and dynamics of local trends across systems, agencies, level of governments, and community resources and developments in cross system/agency coordination for services to children and families.

To ensure that every interested party who wishes to provide oral testimony has an opportunity to do so, time for oral testimony may be limited depending on the number of such parties who are present. An interested party may submit written testimony in addition to, or in lieu of, oral testimony.

Any interested party who is unable to attend the hearing may submit written testimony no later than Monday, August 6, 2012, via email to opccy@hhsc.state.tx.us, or U.S. mail to: Council on Children and Families, Texas Health and Human Services Commission, P.O. Box 13247, Mail Code: 1214, Austin, Texas 78711.

For additional information, contact: Sherri Hammack, Office of Program Coordination for Children and Youth, Health and Human Services Commission, (512) 420-2856.

This meeting is open to the general public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who need auxiliary aids or services for this meeting are asked to call Cassandra Marx at (512) 420-2857 at least 72 hours before the meeting.

TRD-201203654
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: July 17, 2012

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 15, 2012, at 1:00 p.m., to receive public comment on the proposed rate for the Truman W. Smith Children's Care Center, a nursing facility which is a member of the pediatric care facility special reimbursement class of the Nursing Facility Program operated by the Texas Department of Aging and Disability Services (DADS).

The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC), Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Permian Basin Conference Room of the Health and Human Services Commission, 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 Disability Act (ADA) accommodation or auxiliary aids or services should contact Esther Brown by calling (512) 491-1445 at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to increase the rate for the nursing facility pediatric care facility special reimbursement class for Truman W. Smith Children's Care Center from $223.44 a day to $226.66 a day. The proposed rate will be effective September 1, 2012, and was determined in accordance with the rate setting methodology listed below under "Methodology and Justification."

Methodology and Justification. The proposed rate was determined in accordance with the rate setting methodology codified at 1 TAC Chapter 355, Subchapter C, §355.307, Reimbursement Setting Methodology.

Briefing Package. A briefing package describing the proposed payment rate will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on July 31, 2012. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Esther Brown 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 rate 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 Esther Brown, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Esther Brown 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 Esther Brown, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-201203597
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: July 12, 2012

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 15, 2012, at 1:00 p.m., to receive public comment on the proposed rate for the Truman W. Smith Children's Care Center, a nursing facility which is a member of the pediatric care facility special reimbursement class of the Nursing Facility Program operated by the Texas Department of Aging and Disability Services (DADS).

The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC), Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Permian Basin Conference Room of the Health and Human Services Commission, 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 Esther Brown by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to increase the rate for the nursing facility pediatric care facility special reimbursement class for Truman W. Smith Children's Care Center from $223.44 a day to $226.66 a day. The proposed rate will be effective September 1, 2012, and was determined in accordance with the rate setting methodology listed below under "Methodology and Justification."

Methodology and Justification. The proposed rate was determined in accordance with the rate setting methodology codified at 1 TAC Chapter 355, Subchapter C, §355.307, Reimbursement Setting Methodology.

Briefing Package. A briefing package describing the proposed payment rate will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on July 31, 2012. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Esther Brown 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 rate 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 Esther Brown, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Esther Brown 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 Esther Brown, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-201203667

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: July 18, 2012

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Public Notice

The Texas Health and Human Services Commission is submitting to the Centers for Medicare and Medicaid Services a request for an amendment to the Home and Community-based Services (HCS) waiver program, under the authority of §1915(c) of the Social Security Act. The Home and Community-based Services waiver program is currently approved for a five-year period beginning September 1, 2008, and ending August 31, 2013. The proposed effective date for the amendment is August 1, 2012.

The Home and Community-based Services program provides service and supports to persons with intellectual disabilities who live in their own home or family home, or in a community setting such as a small group home. To be eligible for the program, individuals must meet financial eligibility criteria as well as level of care for admission to an intermediate care facility for individuals with intellectual disabilities.

The Texas Home and Community-based Services waiver program serves individuals who have an intellectual disability in the community as an alternative to services in an intermediate care facility. The purpose of this amendment is to add a new target group for the following: children with intellectual disabilities in the Department of Family and Protective Services conservatorship leaving a general residential option. Ten slots will be available for this group. The group will allow these individuals the opportunity to access services prior to waiting on the interest list.

The Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning August 1, 2012, through August 31, 2013. This amendment maintains cost neutrality for waiver years 2011 through 2013.

To obtain copies of the proposed waiver amendment, interested parties may contact JayLee Therrien by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-370, Austin, Texas 78708-5200, phone (512) 491-1388, fax (512) 491-1957, or by email at Jaylee.Therrien@hhsc.state.tx.us.

TRD-201203680
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: July 18, 2012

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by LIFECARE ASSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Woodlands Hills, California.

Application to change the name of CONGRESS LIFE INSURANCE COMPANY to GENERATION LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Phoenix, Arizona.

Application to change the name of SELECTCARE OF TEXAS, L.L.C. to SELECTCARE OF TEXAS, INC., a domestic health maintenance organization. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201203674
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: July 18, 2012

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Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

USAble Life

The application is subject to public inspection at the offices of the Texas Department of Insurance, General Counsel Division, Legal Section - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of USAble Life to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application and comments, if the commissioner is satisfied that all requirements of law have been met, the commissioner or the commissioner's designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-201203622
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: July 16, 2012

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Texas Lottery Commission

Correction of Error

The Texas Lottery Commission filed a notice entitled "Instant Game Number 1427 'Spicy Hot Cash!'" for publication in the "In Addition" section of the March 23, 2012, issue of the *Texas Register* (37 TexReg 2106). Section 2.2.C is revised, as follows.

"C. Every ticket will contain at least four X's and five O's or five X's and four O's."

No other sections of the notice are affected by this revision.

TRD-201203679

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Instant Game Number 1394 "$7,500,000 Fortune"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1394 is "$7,500,000 FORTUNE". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1394 shall be $50.00 per ticket.

1.2 Definitions in Instant Game No. 1394.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible play symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, $50.00, $70.00, $100, $200, $500, $1,000, $2,000, $10,000, $7,500,000, POT OF GOLD SYMBOL, CROWN SYMBOL, STACK OF BILLS SYMBOL, GOLD BAR SYMBOL, MONEY BAG SYMBOL, TREASURE CHEST SYMBOL, PIGGY BANK SYMBOL, VAULT SYMBOL, ANCHOR SYMBOL, DIAMOND SYMBOL, LIMOUSINE SYMBOL, GOLD COIN SYMBOL, PEARL NECKLACE SYMBOL, RING SYMBOL, WATCH SYMBOL, and WALLET SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1394 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
$50.00	FIFTY
$70.00	SEVENTY
$100	ONE HUN
$200	TWO HUN
$500	FIV HUN
$1,000	ONE THO

$2,000	TWO THO
$10,000	TEN THO
$7,500,000	7.5 MILL
POT OF GOLD SYMBOL	DOUBLE
CROWN SYMBOL	DOUBLE
STACK OF BILLS SYMBOL	BILLS
GOLD BAR SYMBOL	GLDBAR
MONEY BAG SYMBOL	MNYBAG
TREASURE CHEST SYMBOL	CHEST
PIGGY BANK SYMBOL	PGYBNK
VAULT SYMBOL	VAULT
ANCHOR SYMBOL	ANCHOR
DIAMOND SYMBOL	DMND
LIMOUSINE SYMBOL	LIMO
GOLD COIN SYMBOL	COIN
PEARL NECKLACE SYMBOL	PEARLS
RING SYMBOL	RING
WATCH SYMBOL	WATCH
WALLET SYMBOL	WALLET

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Mid-Tier Prize - A prize of $50.00, $70.00, $100, $150, $200, or $500.

G. High-Tier Prize - A prize of $1,000, $2,000, $10,000, or $7,500,000.

H. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the ticket.

I. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1394), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 020 within each pack. The format will be: 1394-0000001-001.

J. Pack - A pack of "$7,500,000 FORTUNE" Instant Game tickets contains 020 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of ticket 001 will be shown on the front of the pack; the back of ticket 020 will be revealed on the back of the pack. There will be no breaks between the tickets in a pack.

K. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

L. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$7,500,000 FORTUNE" Instant Game No. 1394 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$7,500,000 FORTUNE" Instant Game is determined once the latex on the ticket is scratched off to expose 83 (eighty-three) Play Symbols. GAME 1: If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the prize for that number. If a player reveals a "pot of gold" play symbol, the player wins DOUBLE the prize for that symbol. GAME 2: If a player reveals 3 matching prize amounts in the same GAME, the player wins that amount. If a player reveals 2 matching prize amounts and a "crown" play symbol, the player wins DOUBLE that amount. GAME 3: If a player matches any of YOUR SYMBOLS play symbols to any of the WINNING SYMBOLS play symbols, the player wins the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 83 (eighty-three) Play Symbols must appear under the Latex Overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 83 (eighty-three) Play Symbols under the Latex Overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 83 (eighty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 83 (eighty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a pack will not have identical play data, spot for spot.

B. A ticket will win as indicated by the prize structure.

C. A ticket can win up to thirty-three (33) times.

D. On winning and non-winning tickets, the top cash prizes of $7,500,000 and $10,000 will each appear at least once, except on tickets winning thirty-three (33) times.

E. GAME 1: Players can win up to fifteen (15) times in this play area.

F. GAME 1: This play area consists of fifteen (15) YOUR NUMBERS, fifteen (15) Prize symbols and five (5) WINNING NUMBERS.

G. GAME 1: On tickets winning more than one (1) time in this play area, more than one (1) WINNING NUMBER will be used to create the match wins.

H. GAME 1: On winning tickets, a non-winning prize amount will not match a winning prize amount.

I. GAME 1: On all tickets, a prize amount will not appear more than 3 times, except as required by the prize structure to create multiple wins.

J. GAME 1: On non-winning tickets, a WINNING NUMBER will never match a YOUR NUMBER.

K. GAME 1: The five (5) WINNING NUMBERS will always be different from each other (no duplicates).

L. GAME 1: All YOUR NUMBERS on a ticket will be different from each other, except as required by the prize structure to create multiple wins.

M. GAME 1: The POT OF GOLD (double) symbol will never appear as a WINNING NUMBER.

N. GAME 1: The POT OF GOLD (double) symbol will never appear on non-winning tickets.

O. GAME 1: The POT OF GOLD (double) symbol will win double the prize amount shown as per the prize structure.

P. GAME 2: Players can win up to eight (8) times in this play area.

Q. GAME 2: The play area consists of twenty-four (24) prize and / or play symbols.

R. GAME 2: There will never be three (3) identical symbols in a vertical or diagonal line, unless required for a multiple win.

S. GAME 2: Consecutive non-winning tickets within a pack will not have identical GAMES. For instance if the first ticket contains $50, $100, $1,000 in any ROW then the next ticket may not contain $50, $100 and $1,000 in any row in any order.

T. GAME 2: Non-winning tickets will not have identical games. For example if GAME 1 is $50, $100, $1,000 then GAME 2 through GAME 8 will not contain $50, $100, $1,000 in any order.

U. GAME 2: Winning tickets will contain three (3) matching prize symbols in a horizontal row or two (2) matching prize symbols and a "CROWN" symbol.

V. GAME 2: On winning tickets, non-winning games will have different prize amounts from the winning prize amounts in this play area.

W. GAME 2: The CROWN (double) symbol will never appear on non-winning tickets.

X. GAME 2: The CROWN (double) symbol will win double the prize amount shown as per the prize structure.

Y. GAME 3: Players can win up to ten (10) times in this play area.

Z. GAME 3: This play area consists of ten (10) YOUR SYMBOLS, ten (10) Prize symbols and four (4) WINNING SYMBOLS.

AA. GAME 3: On tickets winning more than one (1) time in this play area, more than one (1) WINNING SYMBOL will be used to create the wins.

BB GAME 3: On non-winning tickets, a WINNING SYMBOL will never match a YOUR SYMBOL.

CC. GAME 3: On winning tickets, a non-winning prize amount will not match a winning prize amount.

DD. GAME 3: All YOUR SYMBOLS on a ticket will be different from each other, except as required by the prize structure to create multiple wins.

EE. GAME 3: On all tickets, a prize amount will not appear more than 3 times, except as required by the prize structure to create multiple wins.

FF. GAME 3: The four (4) WINNING SYMBOLS will always be different from each other (no duplicates).

2.3 Procedure for Claiming Prizes.

A. To claim a "$7,500,000 FORTUNE" Instant Game prize of $50.00, $70.00, $100, $150, $200, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $70.00, $100, $150, $200, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$7,500,000 FORTUNE" Instant Game prize of $1,000, $2,000, or $10,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "$7,500,000 FORTUNE" top level prize of $7,500,000, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "$7,500,000 FORTUNE" Instant Game prize, other than the top level prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$7,500,000 FORTUNE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "$7,500,000 FORTUNE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature

appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,720,000 tickets in the Instant Game No. 1394. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1394 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$50	558,000	6.67
$70	651,000	5.71
$100	220,100	16.90
$150	41,695	89.22
$200	14,260	260.87
$500	14,260	260.87
$1,000	5,828	638.30
$2,000	1,984	1,875.00
$10,000	104	35,769.23
$7,500,000	3	1,240,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 2.47. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1394 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1394, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201203666
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 18, 2012

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Texas Board of Pardons and Paroles

Correction of Error

The Texas Board of Pardons and Paroles proposed an amendment to 37 TAC §143.52, concerning Commutation of Sentence, Felony, or Misdemeanor, in the July 13, 2012, issue of the *Texas Register* (37 TexReg 5229).

On page 5230, there is an error in §143.52(b). The reference to "§508.050, Government Code", at the end of the subsection, should be shown as deleted language. The corrected subsection reads as follows:

"(b) If the offender [~~convicted person~~] has the recommendation of two of the current trial officials and no written communication is received from the third trial official, the board shall give the remaining trial official at least 10 days notice that such a clemency recommendation is being considered by the board [~~(§508.050, Government Code)~~]."

TRD-201203672

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Texas Parks and Wildlife Department

Notice of Hearing and Opportunity for Public Comment

This is a notice of an opportunity for public comment and a public hearing on the application of Mill Creek Golf Club for a Texas Parks and Wildlife Department (TPWD) permit to remove or disturb 15,000 cubic yards of sand and gravel from and within the bed of Salado Creek in Bell County at a location approximately 1.5 miles downstream of IH-35 and 200 feet upstream of Chisholm Trail. The purpose is to remove deposited material to promote drainage through the natural stream bed.

The hearing will be held at 10:00 a.m. on Friday, August 17, 2012, at TPWD headquarters, located at 4200 Smith School Road, Austin, Texas 78744.

The hearing is not a contested case hearing under the Administrative Procedure Act.

Written comments must be submitted within 30 days of the publication of this notice in the *Texas Register* or the newspaper, whichever is later, or at the public hearing.

Submit written comments, questions, or requests to review the application to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, Texas 78744; fax (512) 389-4405; or e-mail tom.heger@tpwd.state.tx.us.

TRD-201203661
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: July 17, 2012

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Notice of Proposed Real Estate Transactions

Definition of Existing Easement - Harris County

Pipeline Corridor at San Jacinto Battleground State Historic Site

In a meeting on August 30, 2012, the Texas Parks and Wildlife Commission (the Commission) will consider a recommendation by staff to define the areal extent of an easement for an existing pipeline installed in 1969 at San Jacinto Battleground State Historic Site. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

Land Acquisition - Stephens County

427 Acres at Palo Pinto Mountains State Park

In a meeting on August 30, 2012, the Texas Parks and Wildlife Commission will consider authorizing the acquisition of a tract of land of approximately 427 acres in Stephens County for addition to the Palo Pinto Mountains State Park. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

Lease Termination - Jackson County

Lake Texana State Park

In a meeting on August 30, 2012, the Texas Parks and Wildlife Commission will consider terminating the lease of approximately 575 acres in Jackson County from the Lavaca Navidad River Authority known as Lake Texana State Park. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

TRD-201203660
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: July 17, 2012

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Public Utility Commission of Texas

Notice of Application to Implement New Rough Production Cost Equalization Adjustment Rate

Notice is given to the public of an application for rate decrease filed with the Public Utility Commission of Texas (commission) on July 9, 2012, pursuant to the Public Utility Regulatory Act, Texas Utility Code Annotated §§14.001, 33.001, and 36.101 - 36.111 (Vernon 2007 & Supplement 2011).

Docket Style and Number: Application of Entergy Texas, Inc., for Authority to Implement New Rough Production Cost Equalization Adjustment (RPCEA) Rate, Docket Number 40542.

The Application: On July 9, 2012, Entergy Texas, Inc. (ETI) filed a request that the commission and municipalities approve its RPCEA Rider designed to credit retail customers' bills with certain payments made to ETI pursuant to the Entergy System Agreement. ETI included a notice of rate decrease request, applicable tariff sheets, and supporting work papers with its application.

ETI proposes to credit customers' bills with approximately $37.5 million (including interest) of RPCEA payments received by ETI in 2011 and 2012. ETI proposes to apply the credit to customers' bills over the six month period from September 2012 through February 2013. ETI's application affects all of ETI's retail electric customers and customer classes, except those customers receiving service under the Rate Schedules EAPS, SMS, LQF, and SQF.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 40542.

TRD-201203609
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 2012

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Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on July 9, 2012, to relinquish designation as an eligible telecommunications carrier (ETC).

Docket Title and Number: Application of Sprint Nextel Corporation to Relinquish its Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to P.U.C. Substantive Rule §26.418(i). Docket Number 40543.

The Application: In 2005, Sprint Nextel Corporation (Sprint) was granted ETC designation in the 679 non-rural wire centers served by Southwestern Bell Telephone Company d/b/a AT&T Texas and by Verizon Southwest (Attachment 1 to the application lists these wire centers). Sprint is requesting relinquishment of its ETC designation in response to an agreement with the Federal Communications Commission (FCC) to reduce Sprint's federal high-cost universal service fund (USF) support. In order to meet the phase-out requirement for 2013, Sprint has decided to relinquish its ETC designation in Texas effective December 31, 2012. Sprint stated it plans to continue to provide wireless service in Texas as a non-ETC. Existing subscribers will be able to continue receiving wireless service from Sprint on a non-ETC basis.

Sprint stated that AT&T Texas and Verizon Southwest are incumbent local exchange carriers that have been designated as ETCs in Texas. In addition, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility is designated as an ETC in most of these wire centers. As a result, Sprint, in its ETC capacity, does not provide service in an area that is not served by another ETC. Sprint requests that the relinquishment be approved effective December 31, 2012.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 40543.

TRD-201203610
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 2012

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On July 12, 2012, AMIGOS - Tu Compania de Telefonos (Applicant) filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Number 60775. Applicant seeks to relinquish the certificate. Applicant stated that it has no customers in Texas and does not intend to provide telephone service in Texas in the future.

The Application: Application of AMIGOS - Tu Compania de Telefonos to Relinquish Service Provider Certificate of Operating Authority, Docket Number 40551.

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 August 3, 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 40551.

TRD-201203668
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 18, 2012

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Notice of Petition of Calpine Corporation for Approval of Voluntary Mitigation Plan

Notice is given to the public of a petition for approval of a voluntary mitigation plan filed with the Public Utility Commission of Texas (commission).

Docket Style and Number: Petition of Calpine Corporation for Approval of Voluntary Mitigation Plan, Docket Number 40545.

The Application: On July 10, 2012, Calpine Corporation, on behalf of itself and its generation subsidiaries, filed a petition requesting the commission to approve its proposed Voluntary Mitigation Plan (VMP), pursuant to the Public Utility Regulatory Act (PURA) §15.023(f). The proposed VMP would establish the policies governing Calpine's participation and operations in the day-ahead and real-time markets of the Electric Reliability Council of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Docket Number 40545.

TRD-201203611
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 2012

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Notice of Workshop Proceeding to Evaluate the Feasibility of Instituting a Smart Meter Opt-Out Program

The Public Utility Commission of Texas will hold a workshop in Project Number 40190, *Proceeding to Evaluate the Feasibility of Instituting a Smart Meter Opt-Out Program.* The workshop will be held on Tuesday, August 21, 2012, at 8:00 a.m. in Room 1-100 located in the William B. Travis Building at 1701 N. Congress Avenue, Austin, Texas 78701. The workshop will be open to the public. Individuals do not need to register or contact the staff to attend or participate at the workshop.

Questions concerning the workshop or this notice should be referred to Christine Wright, Infrastructure and Reliability Division, at (512) 936-7376 or Jacob Lawler, Legal Division, at (512) 936-7275. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201203602
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 12, 2012

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Proceeding Regarding Policy Options on Resource Adequacy Notice of Workshop

The Public Utility Commission of Texas will hold a workshop in Project Number 40480, *Commission Proceeding Regarding Policy Options on Resource Adequacy,* to consider policy options included in the Brattle Group Report. The workshop will be held on July 27, 2012, at 1:00 p.m. in the Commissioners' Hearing Room at the commission offices at 1701 N. Congress, 7th floor, Austin, Texas

78701. In preparation for the workshop, the commission requests comments on the recommendations in the Brattle Report, filed on June 1, 2012, in Project Number 40268. Recommendations relating to increasing the high system-wide offer cap, low system-wide offer cap, and peaker net margin as proposed in Project Number 40268, *PUC Rulemaking to Amend PUC Substantive Rule §25.505, Relating to Resource Adequacy in the Electric Reliability Council of Texas Power Region,* will not be addressed in this workshop or project. Therefore, comments on those issues should not be filed in this Project Number 40480. Comments should be limited to no more than 20 pages, formatted to include policy questions for The Brattle Group to address, include comments on the topic identified for panel discussion in the agenda below, and filed no later than July 11, 2012. If there are specific technical questions regarding the underlying methodology of the Brattle Group Report, please submit these questions to the designated Electric Reliability Council of Texas (ERCOT) legal contact as instructed in the ERCOT Market Notice M-A062712-01, which was sent by ERCOT to all registered market participants on June 27, 2012.

A preliminary agenda for the workshop is:

I. Opening remarks from The Brattle Group, ERCOT, and the Independent Market Monitor.

II. Questions for The Brattle Group, ERCOT, and the Independent Market Monitor from stakeholders and the commission.

III. Panel Discussion.

What should be the long-term reliability objectives for ERCOT?

IV. Summary and response to discussion by The Brattle Group.

Questions concerning the workshop or this notice should be referred to Diana Leese, Competitive Markets Division, at (512) 936-7204 or Jason Haas, Legal Division, at (512) 936-7295. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201203600
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 12, 2012

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Texas Department of Transportation

Public Notice of Draft Environmental Impact Statement - Grand Parkway (SH 99), Segment B; Extension of Comment Deadline

Pursuant to Title 43, Texas Administrative Code, §2.103(d), the Texas Department of Transportation (TxDOT) is announcing to the public the availability of the Draft Environmental Impact Statement (DEIS) dated June 6, 2012, for the proposed construction of Segment B of the Grand Parkway (State Highway 99), from SH 288 to IH 45 (S) in Brazoria and Galveston Counties, Texas (the project). Written comments may be submitted to the Grand Parkway Association, Attention: Segment B Comments, 4544 Post Oak Place, Suite 222, Houston, Texas 77027 or to TxDOT Houston District, Attention: Director of Project Development, P.O. Box 1386, Houston, Texas 77251-1386. Comments will also be accepted by email to segmentBcomments@grandpky.com.

Notice of the availability of the DEIS was published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 5032). That notice contained additional information including a description of the project and the Recommended Alternative Alignment. **The purpose of the current notice is to extend the period for public comment on the DEIS so that the period will now close on September 26, 2012.**

Copies of the DEIS and other information about the project may be obtained by contacting Mr. David Gornet at the Grand Parkway Association, at (713) 965-0871. The document is on file and available for review at the following locations:

(1) Grand Parkway Association, 4544 Post Oak Place, Suite 222, Houston, Texas 77027;

(2) Texas Department of Transportation, 7600 Washington Avenue, Houston, Texas 77007;

(3) Houston Public Library (Texas Room), 500 McKinney Street, Houston, Texas 77002;

(4) Alvin Library, 105 South Gordon Street, Alvin, Texas 77511;

(5) Manvel Library, 20514B Highway 6, Manvel, Texas 77578;

(6) Angleton Library, 401 East Cedar Street, Angleton, Texas 77515; and

(7) Helen Hall Library, 100 W. Walker Street, League City, Texas 77573.

The document can also be downloaded from www.grandpky.com.

TRD-201203677
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 18, 2012

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Public Notice - Photographic Traffic Signal Enforcement Systems: Municipal Reporting of Traffic Crashes

The Texas Department of Transportation (department) is requesting that each municipality subject to the requirements contained in Transportation Code, §707.004 provide the required data to the department **no later than October 26, 2012** in order for the department to meet the mandated deadline for an annual report to the Texas Legislature.

Pursuant to Transportation Code, §707.004, each municipality operating a photographic traffic signal enforcement system or planning to install such a system must compile and submit to the department certain statistical information. Before installing such a system, the municipality is required to submit a written report on the number and type of traffic crashes that have occurred at the intersection over the last 18 months prior to installation. The municipality is also required to provide annual reports to the department after installation showing the number and type of crashes that have occurred at the intersection.

The department is required by Transportation Code, §707.004 to produce an annual report of the information submitted to the department by December 1 of each year.

The department has created a web page detailing municipal reporting requirements and to allow the required data to be submitted electronically:

http://www.txdot.gov/safety/red_light_cameras.htm

For additional information contact the Texas Department of Transportation, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483 or call (512) 416-3118.

TRD-201203678

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 18, 2012

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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)*