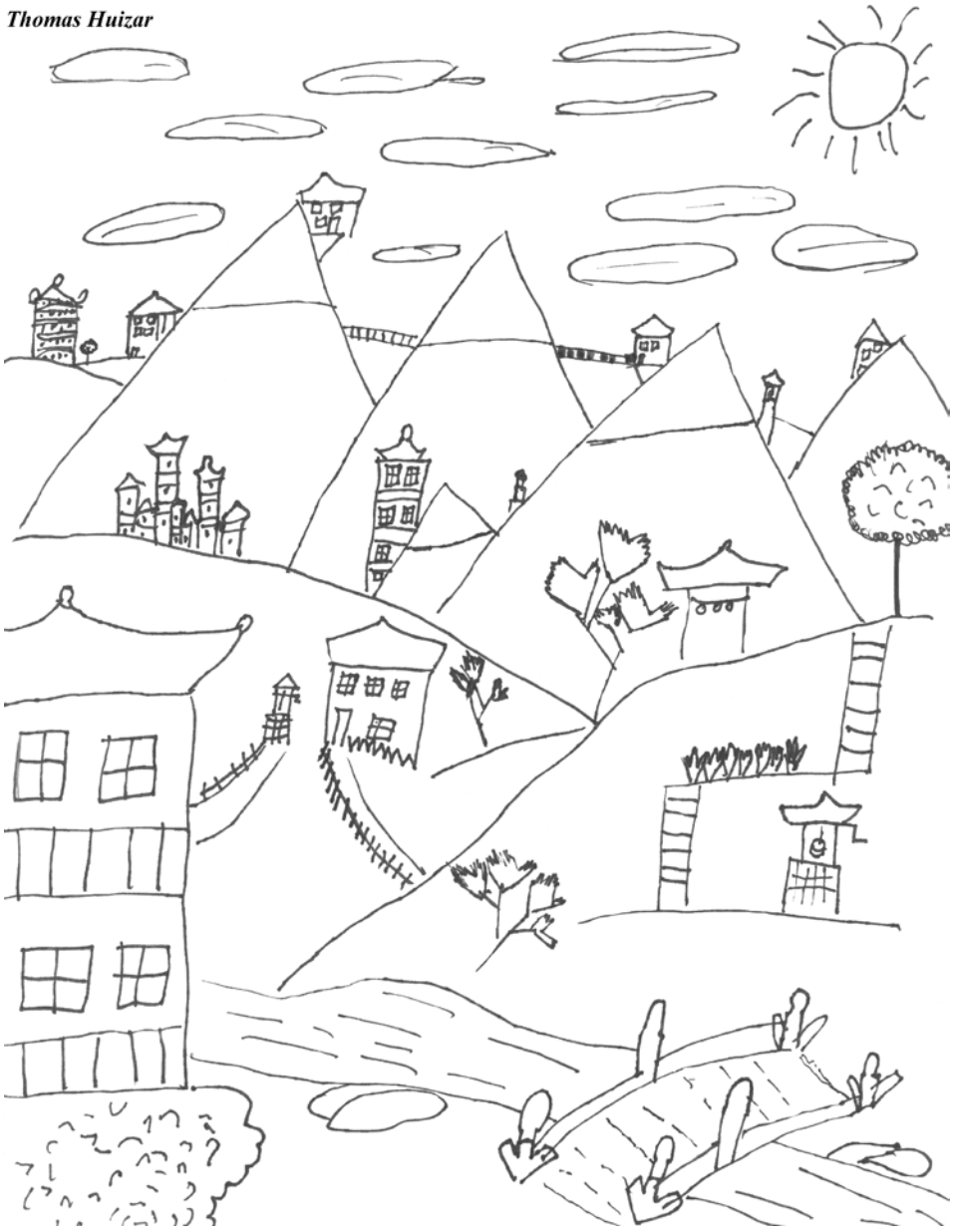
TEXAS REGISTER

Volume 37 Number 46 *November 16, 2012* *Pages 9049 - 9198*

Thomas Huizar



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

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

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

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

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

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

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

Secretary of State –
Hope Andrade

Director –
Dan Procter

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

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

...

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

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-1096-GA

Requestor:

The Honorable Joe Shannon, Jr.

Tarrant County Criminal District Attorney

Tim Curry Criminal Justice Center

401 West Belknap

Fort Worth, Texas 76196-0201

Re: Whether a county auditor has a right to access inmate property in a county jail to compare it with inmate property receipts (RQ-1096-GA)

Briefs requested by December 5, 2012

RQ-1097-GA

Requestor:

The Honorable Dan Patrick

Chair, Committee on Education

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether the Texas Constitution prevents local political subdivisions from recognizing domestic partnerships by granting benefits previously only available to married couples (RQ-1097-GA)

Briefs requested by December 6, 2012

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

TRD-201205738
Katherine Cary
General Counsel
Office of the Attorney General
Filed: November 7, 2012

♦ ♦ ♦

Opinions

Opinion No. GA-0972

The Honorable Robert F. Deuell, M.D.

Chair, Committee on Nominations

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authority of an employer to ban the transport and storage of handguns by concealed handgun license holders in locked private vehicles on employee parking lots (RQ-1061-GA)

S U M M A R Y

An employer subject to section 52.061 of the Labor Code may not ban the transport and storage of handguns in locked private vehicles by employees with concealed handgun licenses in employee parking areas by posting the notice authorized by section 30.06 of the Penal Code.

A federally approved facility security plan under either the Maritime Transportation Security Act or the Chemical Facility Anti-Terrorism Standards is not federal law that would preempt section 52.061 of the Labor Code.

No statute of which we are aware provides a specific remedy for employees whose employers violate section 52.061. And the Legislature has not authorized this office or any other state agency to take corrective action. Despite the lack of a statutory remedy, an aggrieved employee may, depending on the circumstances, have the ability to sue an offending employer under the Uniform Declaratory Judgments Act.

Opinion No. GA-0973

The Honorable Anna Laura Cavazos Ramirez

Webb County Attorney

Post Office Box 420268

Laredo, Texas 78042-0268

Re: Whether a taxing authority may impose, and a county is obligated to pay, penalties and interest on ad valorem taxes imposed on real property purchased by a county for the year of sale that have remained unpaid (RQ-1063-GA)

S U M M A R Y

When a political subdivision acquires property from a private party and the property qualifies for a constitutional or statutory tax exemption, the exemption generally precludes charging the political subdivision penalties and interest for any outstanding ad valorem taxes.

Whether a particular piece of property acquired by a political subdivision is tax exempt on a specific date will depend on particular facts regarding the property.

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

TRD-201205744

Katherine Cary
General Counsel
Office of the Attorney General
Filed: November 7, 2012

♦ ♦ ♦

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes the repeal of §354.1430, concerning Definitions, and §354.1432, concerning Benefits and Limitations; and proposes new §354.1430, concerning Definitions, and §354.1432, concerning Telemedicine and Telehealth Benefits and Limitations.

Background and Justification

Senate Bill (SB) 293, 82nd Legislature, Regular Session, 2011, requires HHSC to expand services provided by use of advanced telecommunications services. SB 293 changes the definition of telemedicine to allow providers of telemedicine services to be persons who are acting under physician delegation and supervision. The bill also creates a new telehealth benefit, which is similar to telemedicine, but it allows providers who are licensed or certified health professionals, acting within the scope of their license or certification, to participate. The proposed rules reflect new definitions and benefits described in the bill, as well as definitions that clarify terms used in the new rules.

Section-by-Section Summary

The title of Division 33 is changed from "Telemedicine Services" to "Advanced Telecommunications Services" to better describe the services included within the division.

Proposed new §354.1430 defines the words and terms used in the division.

Proposed new §354.1432 describes the requirements for providing telemedicine medical services and telehealth services reimbursed by the Texas Medicaid program, including the types of services that can be provided; locations where the services can be provided; requirements for in-person evaluations, policies, procedures, and records management; state and federal regulations related to confidentiality; and the methodology for determining reimbursement for providing these services.

The proposed repeal of §354.1430 and §354.1432 delete the current rules, and provisions of the rules proposed for repeal are incorporated into new §354.1430 and §354.1432 as appropriate.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed repeal and new rules are in effect, there will be a cost savings to state government because there will be fewer hospital readmissions and emergency room visits. However, the amount of cost savings cannot be determined for the following reasons:

(1) Telemedicine services would be open to new providers, such as psychotherapists and providers who work under the supervision of another provider. This indicates utilization would increase.

(2) The start-up and ongoing costs associated with the advanced medical technology used to provide many telemedicine services are high and not subject to reimbursement from Medicaid. This indicates adoption and utilization would be depressed.

(3) Currently, telemedicine medical services have relatively low reimbursement rates, and, as noted above, high start-up and ongoing costs. Reimbursement for these services would increase under the current proposal. However, the fiscal impact to the state is currently expected to be relatively insignificant.

The proposed repeal and new rules will not have a fiscal impact on 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 repeal and new rules. There are no anticipated economic costs to persons who are required to comply with the proposed repeal and new rules. There is no anticipated negative impact on local employment.

Public Benefit

Kay Ghahremani, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed repeal and new rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of enforcing the rules will be improved access to services, service efficiency, and quality.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Garry Walsh, Operations Oversight, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, Austin, Texas 78708-5200, Mail Code H-390 91X; by fax to (512) 249-3707; or by e-mail to garry.walsh@hhsc.state.tx.us within 30 days of the publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for December 11, 2012 from 9:00 a.m. to 10:00 a.m. (central time) in the Texas Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

DIVISION 33. TELEMEDICINE SERVICES

1 TAC §354.1430, §354.1432

(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 provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.0216, which requires HHSC by rule to develop and implement a system to reimburse providers of services under the state Medicaid program for services performed using telemedicine medical services or telehealth services.

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

§354.1430. Definitions.

§354.1432. Benefits and Limitations.

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 November 5, 2012.

TRD-201205693
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 16, 2012
For further information, please call: (512) 424-6900

♦ ♦ ♦

DIVISION 33. ADVANCED TELECOMMUNICATIONS SERVICES

1 TAC §354.1430, §354.1432

Statutory Authority

The new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.0216, which requires HHSC by rule to develop and implement a system to reimburse providers of services under the state Medicaid program for services performed using telemedicine medical services or telehealth services.

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

§354.1430. Definitions.

The following words and terms, when used in this division, have the following meanings.

(1) Distant site--The place where a physician or health professional is physically located when providing telemedicine medical services or telehealth services.

(2) Established health site--A location where a patient will present to seek a health service where there is a patient site presenter and sufficient technology and medical equipment to allow for an adequate physical evaluation or assessment, as appropriate for the patient's presenting complaint. It requires a defined health provider-patient relationship. A patient's private home is not an established health site.

(3) Established medical site--Has the meaning defined in the rules of the Texas Medical Board at 22 TAC §174.2 (relating to Definitions).

(4) In-person evaluation--Has the meaning defined in the rules of the Texas Medical Board at 22 TAC §174.2.

(5) Patient site--The place where a patient is physically located.

(6) Patient site presenter--An individual at the patient site who:

(A) introduces the patient to the distant site provider for examination, and to whom the distant site provider may delegate tasks and activities; and

(B) is at least one of the following:

(i) licensed or certified in Texas to perform health care services and must present and/or be delegated tasks and activities only within the scope of the individual's licensure or certification; or

(ii) a qualified mental health professional-community services (QMHP-CS) as defined in 25 TAC §412.303 (relating to Definitions).

(7) Readily available--Means the patient site presenter is:

(A) in the same room as the patient; or

(B) at the discretion of the licensed or certified professional providing the service, not in the same room as the patient but

within the proximity determined by the licensed or certified professional.

(8) State mental health facility--A hospital with an inpatient component funded or operated by the Department of State Health Services.

(9) State supported living center--A state-supported and structured residential facility operated by the Department of Aging and Disability Services to provide to individuals with intellectual and developmental disabilities a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, as defined at Health and Safety Code §531.002(17).

(10) Telehealth service--A health service, other than a telemedicine medical service, delivered by a licensed or certified health professional acting within the scope of the health professional's license or certification who does not perform a telemedicine medical service and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or medical specialty expertise.

(11) Telemedicine medical service--A health care service, initiated by a physician who is licensed to practice medicine in Texas under Title 3, Subtitle B of the Occupations Code or provided by a health professional acting under physician delegation and supervision, that is provided for purposes of patient assessment by a health professional, diagnosis or consultation by a physician, or treatment, or for the transfer of medical data, and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or medical specialty expertise.

§354.1432. Telemedicine and Telehealth Benefits and Limitations.

Telemedicine medical services and telehealth services are a benefit under the Texas Medicaid program as provided in this section and are subject to the specifications, conditions, limitations, and requirements established by the Texas Health and Human Services Commission or its designee (HHSC).

(1) Conditions for reimbursement applicable to telemedicine medical services.

(A) The telemedicine medical services must be designated for reimbursement by HHSC. Telemedicine medical services designated for reimbursement include:

(i) consultations;

(ii) office or other outpatient visits;

(iii) psychiatric diagnostic interviews;

(iv) pharmacologic management;

(v) psychotherapy; and

(vi) data transmission.

(B) The services must be provided in compliance with 22 TAC Chapter 174 (relating to Telemedicine).

(C) The patient site must be:

(i) an established medical site;

(ii) a state mental health facility; or

(iii) a state supported living center.

(2) Conditions for reimbursement applicable to telehealth services.

(A) The telehealth services must be designated for reimbursement by HHSC. Designated telehealth services will be listed in the Texas Medicaid Provider Procedures Manual.

(B) The services must be provided in compliance with standards established by the respective licensing or certifying board of the professional providing the services.

(C) The patient site must be:

(i) an established health site;

(ii) a state mental health facility; or

(iii) a state supported living center.

(D) The patient site presenter must be readily available for telehealth services. However, if the telehealth services relate only to mental health, a patient site presenter does not have to be readily available except when the patient may be a danger to himself or to others.

(E) Before receiving a telehealth service, the patient must receive an in-person evaluation for the same diagnosis or condition, with the exception of a mental health diagnosis or condition. For a mental health diagnosis or condition, the patient may receive a telehealth service without an in-person evaluation provided the purpose of the initial telehealth appointment is to screen and refer the patient for additional services and the referral is documented in the medical record.

(F) For the continued receipt of a telehealth service, the patient must receive an in-person evaluation at least once during the previous 12 months by a person qualified to determine a need for services.

(G) Both the distant site provider and the patient site presenter must maintain the records created at each site unless the distant site provider maintains the records in an electronic health record format.

(H) Written telehealth policies and procedures must be maintained and evaluated at least annually by both the distant site provider and the patient site presenter and must address:

(i) patient privacy to assure confidentiality and integrity of patient telehealth services;

(ii) archival and retrieval of patient service records; and

(iii) quality oversight mechanisms.

(3) Conditions for reimbursement applicable to both telemedicine medical services and telehealth services.

(A) Preventive health visits under Texas Health Steps (THSteps), also known as Early and Periodic Screening, Diagnosis and Treatment program, are not reimbursed if performed using

telemedicine medical services or telehealth services. Health care or treatment provided using telemedicine medical services or telehealth services after a THSteps preventive health visit for conditions identified during a THSteps preventive health visit may be reimbursed.

(B) Documentation in the patient's medical record for a telemedicine medical service or a telehealth service must be the same as for a comparable in-person evaluation.

(C) Providers of telemedicine medical services and telehealth services must maintain confidentiality of protected health information (PHI) as required by 42 CFR Part 2, 45 CFR Parts 160 and 164, chapters 111 and 159 of the Occupations Code, and other applicable federal and state law.

(D) Providers of telemedicine medical services and telehealth services must comply with the requirements for authorized disclosure of PHI relating to patients in state mental health facilities and residents in state supported living centers, which are included in, but not limited to, 42 CFR Part 2, 45 CFR Parts 160 and 164, Health and Safety Code §611.004, and other applicable federal and state law.

(E) Telemedicine medical services and telehealth services are reimbursed in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

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 November 5, 2012.

TRD-201205694
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 16, 2012
For further information, please call: (512) 424-6900

♦ ♦ ♦

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 117. CONTROL OF AIR POLLUTION FROM NITROGEN COMPOUNDS

SUBCHAPTER D. COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 2. DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MINOR SOURCES

30 TAC §§117.2103, 117.2130, 117.2135, 117.2145

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§117.2103, 117.2130, 117.2135, and 117.2145.

If adopted, the amended sections will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

On April 5, 2012, Halliburton Energy Services, Incorporated (Halliburton) submitted a petition for rulemaking requesting a partial exemption from the rules in 30 TAC Chapter 117, Subchapter D, Division 2 that limit nitrogen oxides (NO_x) emissions from minor sources in the Dallas-Fort Worth (DFW) 1997 eight-hour ozone nonattainment area. The commission approved the petition for rulemaking on May 30, 2012, and issued an order on June 1, 2012, directing the executive director to examine the issues in the petition and to initiate rulemaking (Project No. 2012-029-PET-NR).

The unique service of the Halliburton Drawworks Engine makes ongoing testing to demonstrate compliance with the Chapter 117 NO_x emission limits impractical and comparatively more expensive than the stationary engine testing envisioned during the adoption of the Chapter 117 rules in 2007. To comply with the Chapter 117 testing requirements, Halliburton must arrange for both emissions testing equipment (a normal and expected expense) and for the rental, transport, and use of a dynamometer, which is typically used by engine manufacturers for testing purposes. Preparing the engine for installation of the dynamometer and returning the engine to operational status subsequent to the emissions testing presents significant safety hazards associated with the removal of the drive train and transmission, removal of the torque converter, and the placement and use of non-dedicated hoisting equipment on the rig floor. Performing a compliant emissions test of the Drawworks Engine takes three to four days to complete, whereas compliant emissions testing on a typical stationary engine only requires approximately half a day. Additionally, engines used to raise and lower down-hole equipment in actual oil and gas operations in the field, which the Drawworks Engine is designed to simulate, are typically not subject to similar Chapter 117 testing requirements because they are not installed at a location long enough to trigger the definition of a stationary internal combustion engine in §117.10. The Drawworks Engine is subject to Chapter 117, Subchapter D, Division 2 because the equipment has been made stationary to provide testing and training facilities for sources that are not subject to the rule.

The proposed change would expand the list of exempted sources in §117.2103 to include stationary diesel engines that are used exclusively for product testing and personnel training, operate less than 1,000 hours per year on a rolling 12-month basis, and meet applicable Tier emission standards for non-road engines listed in 40 Code of Federal Regulations (CFR) §89.112(a), Table 1 (October 23, 1998) in effect at the time of installation, modification, reconstruction, or relocation. The proposed exemption is narrow in scope and consistent with the similar existing exemptions for stationary diesel engines located at minor sources, such as stationary engines used in research and testing and stationary engines used for purposes of performance verification and testing. The proposed change would also revise the operating requirements of §117.2130, the monitoring requirements of §117.2135, and the recordkeeping requirements of §117.2145 to reflect the new category of exempt engines.

Demonstrating Noninterference under Federal Clean Air Act, Section 110(l)

The commission provides the following information to demonstrate why the proposed new exemption in §117.2103 would not negatively impact the status of the state's progress towards attainment with the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS), would not interfere with control measures, and would not prevent reasonable further progress toward attainment of the ozone NAAQS.

On December 6, 2000, as part of the Houston-Galveston-Brazoria (HGB) attainment demonstration SIP, the commission adopted a new control strategy for stationary reciprocating internal combustion engines, boilers, and process heaters located at minor industrial, commercial, and institutional sources of NO_x in the HGB area. The adopted rulemaking exempted engines used for specific purposes, such as those used in research and testing and those used for the purposes of performance verification and testing.

On May 23, 2007, as part of the DFW 1997 eight-hour ozone attainment demonstration SIP, the commission adopted new emission control requirements for stationary reciprocating internal combustion engines located at minor industrial, commercial, and institutional sources of NO_x in the DFW area. The NO_x emission reductions were necessary for the DFW area to attain the 1997 eight-hour ozone NAAQS. Similar to the HGB rulemaking, the DFW rulemaking also adopted exemptions for engines used for specific purposes, such as those used in research and testing and those used for the purposes of performance verification and testing.

The proposed partial exemption is narrowly tailored and will not adversely impact the DFW area's progress in attaining the 1997 eight-hour ozone NAAQS. During the 2000 and 2007 rulemakings, no stationary engines similar in function to the Halliburton Drawworks engine were identified in the emissions inventory in the counties impacted by the rulemakings, and no such engines were relied upon for creditable reductions for the SIP. Therefore, if the proposed rulemaking is adopted, it would not result in a loss of any SIP creditable reductions for the DFW 1997 eight-hour ozone nonattainment area. Additionally, based on February 2012 emissions test results and a limit of 1,000 hours of run time per year, the Drawworks Engine has maximum potential annual NO_x emissions of 0.87 tons per year and is well below the emission standards established in the Chapter 117 minor source NO_x rules. The proposed exemption criteria require compliance with the federal standards in 40 CFR Part 89 to ensure that the proposed exemption will not result in backsliding. Based on the test results, the Drawworks Engine at the Halliburton Carrollton Plant meets Tier 3 emission standards for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998). Therefore, the Drawworks Engine would be required to and does meet the applicable federal emission standards in 40 CFR §89.112(a), Table 1 (October 23, 1998) for the engine's size and installation date. The NO_x emission limits for stationary diesel engines in §117.2110 were derived from the Tier standards in 40 CFR Part 89. Therefore, the proposed exemption should not result in additional NO_x emissions in the DFW area.

Based on these factors, the commission has determined that the proposed rule change will not negatively impact the status of the state's attainment demonstration for the 1997 eight-hour ozone NAAQS, will not interfere with control measures, and will not prevent reasonable further progress toward attainment of the ozone NAAQS.

Section by Section Discussion

Section 117.2103, Exemptions

The commission proposes §117.2103(10) to exempt stationary diesel engines that are used exclusively for product testing and personnel training, operate less than 1,000 hours per year on a rolling 12-month basis, and meet applicable Tier emission standards for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) in effect at the time of installation, modification, reconstruction, or relocation. The proposed exemption is only intended to apply to an engine that is in dedicated service for product testing and personnel training and is not intended to apply to an engine that is used for any additional purpose. The proposed amendment would exempt engines in this unique service from ongoing testing to demonstrate compliance with the Chapter 117 NO_x emission limits because the testing requirements are impractical and comparatively more expensive than the stationary engine testing envisioned at adoption of the rule. Requiring compliance with the federal standards in 40 CFR Part 89 ensures that the proposed exemption will not result in additional NO_x emissions in the DFW area because the Chapter 117 NO_x emission limits were derived from these federal standards. The petitioner requested the proposed exemption limit the engine's operating hours to less than 1,000 hours per year based on a rolling 12-month average. The commission is proposing to limit the engine's operating hours to less than 1,000 hours per year on a rolling 12-month basis to more accurately reflect how an affected source would demonstrate compliance with the operating restriction of a total of 1,000 hours per year.

Section 117.2130, Operating Requirements

The commission proposes to amend §117.2130(c) to distinguish between product testing as used in the proposed exemption in §117.2103(10) and engine testing as used in the existing rule language in §117.2130(c). Currently, the existing rule language in §117.2130(c) prohibits a person from starting or operating any stationary diesel or dual-fuel engine in the DFW 1997 eight-hour ozone nonattainment area for testing or maintenance between the hours of 6:00 a.m. and noon, except when a specific manufacturer's recommended test requires a run of over 18 consecutive hours, to verify the reliability of emergency equipment immediately after unforeseen repairs, and to use firewater pumps for emergency response training conducted in the months of April through October. The proposed revision clarifies that the prohibition is specific to testing or maintenance of the engine to avoid conflict with the proposed new exemption in §117.2103(10) for stationary engines that are used exclusively for product testing and personnel training and more accurately reflect the intent of the prohibition.

Section 117.2135, Monitoring, Notification, and Testing Requirements

The commission proposes to amend §117.2135(e) by including by reference the proposed exemption in §117.2103(10). The proposed revision would require sources claiming the proposed exemption in §117.2103(10) to monitor the operating time with a non-resettable elapsed run time meter in order to demonstrate compliance with the operating restrictions in §117.2103(10). To conform to *Texas Register* formatting standards, the commission also proposes to amend subsection (e) to add a reference to the title of §117.2103.

Section 117.2145, Recordkeeping and Reporting Requirements

The commission proposes to amend §117.2145(b) by reformatting the existing provision and adding new recordkeeping requirements associated with the proposed exemption in

§117.2103(10). The existing requirements in §117.2145(b) are only proposed for reformatting to accommodate the new recordkeeping requirements associated with the proposed exemption in §117.2103(10). The proposed amendment will not alter the intent of the existing recordkeeping requirements for sources currently complying with §117.2145(b) or impose any new requirements on engines claimed exempt under §117.2103(5), (8), or (9) or §117.2130(b)(3). The commission requests comment on any instance where the reformatting of §117.2145(b) inadvertently altered the existing recordkeeping requirements.

The proposed changes to §117.2145(b) modify the record retention requirement in existing §117.2145(b) to apply to the records specified in paragraphs (1) - (3). Consistent with the current requirements, records are required to be maintained for at least five years and must be made available upon request to representatives of the executive director, the EPA, or any local air pollution control agency having jurisdiction.

Proposed §117.2145(b)(1) requires written records of the number of hours of operation for each day's operation to be maintained for each engine claimed exempt under §117.2103(5), (8), (9), or (10) or §117.2130(b)(3). Proposed §117.2145(b)(1) includes the existing requirements in §117.2145(b) for engines claimed exempt under §117.2103(5), (8), or (9) or §117.2130(b)(3) and would apply the same requirements to engines claimed exempt under proposed §117.2103(10). The proposed revision would require sources claiming the proposed exemption in §117.2103(10) to maintain written records of the number of hours of operation for each day's operation in order to demonstrate compliance with the operating restrictions included in §117.2103(10).

Proposed §117.2145(b)(2) includes the existing requirements in §117.2145(b) for the owner or operator of each engine claimed exempt under §117.2103(5) to maintain written records of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation.

Proposed §117.2145(b)(3) requires the owner or operator of each engine claimed exempt under §117.2103(10) to maintain records of manufacturer's specifications or test data sufficient to demonstrate compliance with the corresponding emission standard for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) as specified in §117.2103(10)(C). This recordkeeping requirement was not specifically requested in the petition for rulemaking approved by the commission on May 30, 2012. However, the commission is proposing to include this recordkeeping requirement to clearly indicate the records required to demonstrate compliance with the proposed exemption criteria in §117.2103(10) and facilitate enforcement of the proposed exemption. Additionally, the proposed recordkeeping provision in subsection (b)(3) makes clear that either engine manufacturer's specifications or actual emission testing are acceptable for demonstrating that the engine meets the exemption criteria.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules since currently available resources would be used to implement them. Other units of state or local government would not experience fiscal impacts under the proposed rules since these entities do not typically own or operate the type of stationary diesel engines addressed by the proposed rules.

The proposed rules are narrow in scope and would apply only to the DFW 1997 eight-hour ozone nonattainment area. The proposed rules would expand the list of exempt stationary engines in Chapter 117 to include a certain type of stationary diesel engine. The proposed exemption would be similar to existing exemptions for stationary diesel engines located at minor sources in the DFW area. The proposed exemption would be for stationary diesel engines that are used exclusively for product testing and personnel training; that operate less than 1,000 hours per year; and that meet applicable Tier emission standards found in federal regulations for non-road engines. The proposed rules would also clarify monitoring and recordkeeping requirements for this type of engine.

No units of local government or other state agencies are known to own or use the type of stationary engine that is the subject of this rulemaking. Therefore, the proposed rules would have no fiscal impact on these governmental entities.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be continued protection of the environment and public health and safety combined with efficient and fair administration of NO_x emission standards for the DFW 1997 eight-hour ozone nonattainment area.

The proposed rules would not have a fiscal impact on individuals in the DFW 1997 eight-hour ozone nonattainment area.

The proposed rules would give a limited exemption from the emission limits, monitoring requirements, and testing requirements found in Chapter 117 for one large business in the DFW 1997 eight-hour ozone nonattainment area that owns and operates a stationary diesel engine that is used exclusively for product testing and personnel training; that operates less than 1,000 hours per year; and that meets applicable federal Tier emission standards for non-road engines. The narrow scope of the proposed rulemaking would not result in additional NO_x emissions in the DFW 1997 eight-hour ozone nonattainment area since the maximum potential NO_x emissions for this engine operating within this exemption would be 0.87 tons per year.

The proposed rulemaking would require the large business to install and operate a non-resettable run time meter and to maintain records of engine operating hours. However, the business would not be required to dismantle the transmission of the engine to install a dynamometer or incur the cost to rent or transport the dynamometer to comply with emission testing requirements under the current rules. An emissions test using a dynamometer could be as much as $26,000 per testing event, and testing could take up to four days. The one-time cost of a run time meter is estimated to be $2,000 to $3,000, and recordkeeping costs are expected to be minimal under the proposed rules.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. A small business does not typically own or operate an engine that would be used in the type of service addressed by the proposed rules.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the proposed rulemaking does not meet the definition of a major environmental rule. Texas Government Code, §2001.0225 states that a major environmental rule is a rule for which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, while the proposed rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis would not be required because the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, it does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the proposed rulemaking is part of the SIP, and as such is designed to meet, not exceed the relevant standard set by federal law; 2) parts of the proposed rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this proposed rulemaking; and 4) the proposed rulemaking is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble.

The proposed rulemaking implements requirements of the Federal Clean Air Act (FCAA). Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs and control measures to assure that their SIPs provide for implementation, attainment, maintenance, and enforcement of the NAAQS within the state. The specific intent of the proposed rulemaking is to implement changes within the Chapter 117, Subchapter D, Division 2 rules, which will expand the list of exempted sources operating in limited services in §117.2103 to include stationary diesel engines that are used exclusively for product testing and personnel training, and meet applicable Tier emission standards for non-road engines listed in the applicable CFR.

While the proposed rulemaking protects the environment or reduces risks to human health from environmental exposure, it does not constitute a major environmental rule under Texas Government Code, §2001.0225(g)(3) because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor would the rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. The rulemaking as a result is not subject to a regulatory impact analysis under Texas Government Code, §2001.0225 because it is not a major environmental rule.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633, 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program; or are adopted solely under the general powers of the TCEQ. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded: based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application. The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeded a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts revisions to the SIP and rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every revision to the SIP would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the con-

clusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the rules have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that, when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation *(Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ); superseded by statute on another point of law,* Tax Code §112.108, Other Actions Prohibited, *as recognized in, First State Bank of Dumas v. Sharp,* 863 S.W.2d 81, 83 (Tex. App. Austin 1993, *no writ); Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978)).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of substantial compliance as required in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has complied with the requirements of Texas Government Code, §2001.0225.

Even if the proposed rulemaking constitutes a major environmental rule under Texas Government Code, §2001.0225(g)(3), a regulatory impact analysis is not required because this exemption is part of the commission's SIP for making progress toward the attainment and maintenance of the NAAQS. Therefore, the proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law, since they are part of an overall regulatory scheme designed to meet, not exceed the relevant standard set by federal law (NAAQS). The commission is charged with protecting air quality within the state and to design and submit a plan to achieve attainment and maintenance of the federally mandated NAAQS. The Third District Court of Appeals upheld this interpretation in *Brazoria County v. Texas Comm'n on Envtl. Quality,* 128 S.W. 3d 728 (Tex. App. - Austin 2004, *no writ).* The specific intent of the proposed rulemaking is to implement changes within the Chapter 117, Subchapter D, Division 2 rules expanding the list of exempted sources listed in §117.2103 to include stationary diesel engines used exclusively for product testing and personnel training, and meet applicable Tier emission standards for non-road engines listed in the applicable CFR. This proposal, therefore, does not exceed an express requirement of federal law. The amendment is needed to implement state law but does exceed those new requirements. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of THSC, Chapter 382, which are cited in the Statutory Authority section of this preamble, including THSC, §382.012 and §382.019. Because this proposed rulemaking does not meet any of the four applicability requirements, Texas Government Code, §2001.0225(b) does not apply, and a regulatory impact analysis is not required.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

Promulgation and enforcement of the rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is an update to Chapter 117, Subchapter D, Division 2 expanding the list of exempted sources listed in §117.2103 to include stationary diesel engines used exclusively for product testing and personnel training, and meet applicable Tier emission standards for non-road engines. This rulemaking is not burdensome, restrictive, or limiting of rights to private real property because the rulemaking regulates the use of stationary engines in limited circumstances. Furthermore, the rulemaking benefits the public by providing oil and gas field operators an opportunity for safe simulation without incurring the significant safety hazards typically associated with the current testing requirements of stationary engines.

The rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, this rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 117 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the amendments to Chapter 117 are adopted, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 117 requirements.

Announcement of Hearing

The commission will hold two public hearings on this proposal: one in Fort Worth on December 13, 2012 at 2:00 p.m. at the commission's Dallas-Fort Worth Regional Office located at 2309 Gravel Drive; and a second hearing in Austin on December 18, 2012 at 10:00 a.m. in Building E, Conference Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2012-031-117-AI. The comment period closes December 19, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Javier Galván, Air Quality Planning Section, (512) 239-1492.

Statutory Authority

The amendments are proposed under the authority of the following: Texas Government Code, §2001.021, Petition for the Adoption of Rules, which authorizes an interested person to petition a state agency for the adoption of a rule Texas Water Code (TWC), §5.102, General Powers, §5.103, Rules, and §5.105, General Policy (these provisions authorize the commission to adopt rules necessary to carry out its powers and duties as well as all general policies under the TWC); Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. The sections are also proposed under THSC, §382.016, Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; THSC, §382.021, Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures; and THSC, §382.051(d), Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under THSC, Chapter 382. Finally, the amendment is also proposed under Federal Clean Air Act, 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standard will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements TWC, §5.103 and §5.105, and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021, 382.051, and FCAA, 42 USC, §§7401 *et seq*.

§117.2103. Exemptions.

This division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources) does not apply to the following stationary engines, except as specified in §§117.2130(c), 117.2135(e), and 117.2145(b) and (c) of this title (relating to Operating Requirements; Monitoring, Notification, and Testing Requirements; and Recordkeeping and Reporting Requirements):

(1) engines with a horsepower (hp) rating of less than 50 hp;

(2) engines used in research and testing;

(3) engines used for purposes of performance verification and testing;

(4) engines used solely to power other engines or gas turbines during startups;

(5) engines operated exclusively in emergency situations, except that operation for testing or maintenance purposes is allowed for up to 100 hours per year, based on a rolling 12-month average. Any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after June 1, 2007, is ineligible for this exemption. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations (CFR) §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account;

(6) engines used in response to and during the existence of any officially declared disaster or state of emergency;

(7) engines used directly and exclusively by the owner or operator for agricultural operations necessary for the growing of crops or raising of fowl or animals;

(8) diesel engines placed into service before June 1, 2007, that:

(A) operate less than 100 hours per year, based on a rolling 12-month average; and

(B) have not been modified, reconstructed, or relocated on or after June 1, 2007. For the purposes of this clause, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account; [~~and~~]

(9) new, modified, reconstructed, or relocated stationary diesel engines placed into service on or after June 1, 2007, that:

(A) operate less than 100 hours per year, based on a rolling 12-month average, in other than emergency situations; and

(B) meet the corresponding emission standard for nonroad engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) and in effect at the time of installation, modification, reconstruction, or relocation. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account; and[~~.~~]

(10) new, modified, reconstructed, or relocated stationary diesel engines placed into service on or after June 1, 2007, that:

(A) are used solely for product testing and personnel training;

(B) operate less than 1,000 hours per year, on a rolling 12-month basis; and

(C) meet the corresponding emission standard for nonroad engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) and in effect at the time of installation, modification, reconstruction, or relocation. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account.

§117.2130. Operating Requirements.

(a) The owner or operator shall operate any unit subject to the emission specifications of §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) in compliance with those specifications.

(b) All units subject to §117.2110 of this title must be operated so as to minimize nitrogen oxides (NO_x) emissions, consistent with the emission control techniques selected, over the unit's operating or load range during normal operations. Such operational requirements include the following.

(1) Each unit controlled with post-combustion control techniques must be operated such that the reducing agent injection rate is maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity.

(2) Each stationary internal combustion engine controlled with nonselective catalytic reduction must be equipped with an automatic air-fuel ratio (AFR) controller that operates on exhaust O_2 or CO control and maintains AFR in the range required to meet the engine's applicable emission specifications.

(3) Each stationary internal combustion engine must be checked for proper operation according to §117.8140(b) of the title (relating to Emission Monitoring for Engines).

(c) No person shall start or operate any stationary diesel or dual-fuel engine for testing or maintenance of the engine between the hours of 6:00 a.m. and noon, except:

(1) for specific manufacturer's recommended testing requiring a run of over 18 consecutive hours;

(2) to verify reliability of emergency equipment (e.g., emergency generators or pumps) immediately after unforeseen repairs. Routine maintenance such as an oil change is not considered to be an unforeseen repair; or

(3) firewater pumps for emergency response training conducted in the months of April through October.

§117.2135. Monitoring, Notification, and Testing Requirements.

(a) Oxygen (O_2) monitors. If the owner or operator installs an O_2 monitor, the criteria in §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources) should be considered the appropriate guidance for the location and calibration of the monitor.

(b) Nitrogen oxides (NO_x) monitors. If the owner or operator installs a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS), the CEMS or PEMS must meet the requirements of §117.8100(a) or (b) of this title. If a PEMS is used, the PEMS must predict the pollution emissions in the units of the applicable emission limitations of this division.

(c) Monitor installation schedule. Installation of monitors must be performed in accordance with the schedule specified in §117.9210 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources).

(d) Testing requirements. The owner or operator of any unit subject to §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall comply with the following testing requirements.

(1) Each unit must be tested for NO_x, carbon monoxide (CO), and O_2 emissions.

(2) One of the ammonia monitoring procedures specified in §117.8130 of this title (relating to Ammonia Monitoring) must be used to demonstrate compliance with the ammonia emission specification of §117.2110(h)(2) of this title for units that inject urea or ammonia into the exhaust stream for NO_x control.

(3) For units not equipped with CEMS or PEMS, all testing must be conducted according to §117.8000 of this title (relating to Stack Testing Requirements). In lieu of the test methods specified in §117.8000 of this title, the owner or operator may use American Society for Testing and Materials (ASTM) D6522-00 to perform the NO_x, CO, and O_2 testing required by this subsection on natural gas-fired reciprocating engines. If the owner or operator elects to use ASTM D6522-00 for the testing requirements, the report must contain the information specified in §117.8010 of this title (relating to Compliance Stack Test Reports).

(4) Test results must be reported in the units of the applicable emission specifications and averaging periods. If compliance test-

ing is based on 40 Code of Federal Regulations Part 60, Appendix A reference methods, the report must contain the information specified in §117.8010 of this title.

(5) For units equipped with CEMS or PEMS, the CEMS or PEMS must be installed and operational before testing under this subsection. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(6) Initial compliance with the emission specifications of §117.2110 of this title for units operating with CEMS or PEMS must be demonstrated after monitor certification testing using the NO_x CEMS or PEMS.

(7) For units not operating with CEMS or PEMS, the following apply.

(A) Retesting as specified in paragraphs (1) - (4) of this subsection is required within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.

(B) Retesting as specified in paragraphs (1) - (4) of this subsection may be conducted at the discretion of the owner or operator after any modification that could reasonably be expected to decrease the NO_x emission rate, including, but not limited to, installation of post-combustion controls, low-NO_x burners, low excess air operation, staged combustion (for example, overfire air), flue gas recirculation, and fuel-lean and conventional (fuel-rich) reburn.

(C) Stationary, reciprocating internal combustion engines not equipped with CEMS or PEMS must be periodically tested for NO_x and CO emissions as specified in §117.8140(a) of this title (relating to Emission Monitoring for Engines).

(8) Testing must be performed in accordance with the schedule specified in §117.9210 of this title.

(9) All test reports must be submitted to the executive director for review and approval within 60 days after completion of the testing.

(10) The owner or operator of an affected unit in the Dallas-Fort Worth eight-hour ozone nonattainment area must submit written notification of any CEMS or PEMS relative accuracy test audit (RATA) or testing required under this section to the appropriate regional office and any local air pollution control agency having jurisdiction at least 15 days in advance of the date of RATA or testing.

(e) Run time meters. The owner or operator of any stationary diesel engine claimed exempt using the exemption of §117.2103(5), (8), [~~or~~] (9), or (10) of this title (relating to Exemptions) shall record the operating time with a non-resettable elapsed run time meter.

§117.2145. Recordkeeping and Reporting Requirements.

(a) Recordkeeping. The owner or operator of a unit subject to §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:

(1) for each unit using a continuous emission monitoring system (CEMS) or predictive emission monitoring system (PEMS) in accordance with §117.2135(b) of this title (relating to Monitoring, Notification, and Testing Requirements) monitoring records of:

(A) hourly emissions for units complying with an emission specification enforced on a block one-hour average; and

(B) daily emissions for units complying with an emission specification enforced on a rolling 30-day average. Emissions must be recorded in units of:

(i) pounds per million British thermal units (MMBtu) heat input; and

(ii) pounds or tons per day;

(2) for each stationary internal combustion engine subject to §117.2110 of this title, records of:

(A) emissions measurements required by §117.2130(b)(3) of this title (relating to Operating Requirements); and

(B) catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken;

(3) records of carbon monoxide (CO) measurements specified in §117.2130(b)(3) of this title;

(4) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring systems; and

(5) records of the results of performance testing, including the testing conducted in accordance with §117.2135(d) of this title.

(b) Records for exempt engines. [~~Written records of the number of hours of operation for each day's operation must be made for each engine claimed exempt under §117.2103(5), (8), or (9) of this title or §117.2130(b)(3) of this title. In addition, for each engine claimed exempt under §117.2103(5) of this title, written records must be maintained of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation.~~] The following records must be maintained for at least five years and must be made available upon request to representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency having jurisdiction.

(1) Written records of the number of hours of operation for each day's operation must be maintained for each engine claimed exempt under §117.2103(5), (8), (9), or (10) of this title (relating to Exemptions) or §117.2130(b)(3) of this title.

(2) For each engine claimed exempt under §117.2103(5) of this title, written records must be maintained of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation.

(3) For each engine claimed exempt under §117.2103(10) of this title, records must be maintained of manufacturer's specifications or test data sufficient to demonstrate compliance with the emission standard specified in §117.2103(10)(C) of this title.

(c) Records of operation for testing and maintenance. The owner or operator of each stationary diesel or dual-fuel engine shall maintain the following records for at least five years and make them available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction:

(1) date(s) of operation;

(2) start and end times of operation;

(3) identification of the engine; and

(4) total hours of operation for each month and for the most recent 12 consecutive months.

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 November 2, 2012.

TRD-201205663
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 16, 2012
For further information, please call: (512) 239-2548

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.325

The Comptroller of Public Accounts proposes amendments to §3.325, concerning refunds and payments under protest.

Subsection (a)(2) is amended to add a new subparagraph (E) to expressly state longstanding policy with respect to third parties to whom permitted sellers may assign a right to a refund, such as creditors and successor entities, as provided for in Tax Code, §111.104(b). The proposed amendment does not concern the assignment of any right to refund by a permitted seller to a non-permitted purchaser, which is covered in subsection (a)(1) of this section. It is intended to make clear that third-party assignees and successors are subject to the same requirements to claim and receive a refund as the original permitted seller.

Subsection (a)(4)(A) - (C) is reorganized to provide greater clarity as to the requirements for refund claims under Tax Code, §111.104. Subparagraph (E) of this paragraph is amended to better identify the types of documents that are needed by the comptroller to verify a claim and to also provide guidance if the documents are voluminous and cannot be easily submitted to the agency.

New subsection (b)(10), concerning the statute of limitations for refund claims, identifies the items that must be submitted with a refund claim in order to toll the statute of limitations. This subsection explains that a refund claim may not meet all the requirements for the comptroller to pay the requested amount, but may still toll the statute of limitations and allow a person to request an administrative hearing. The subsection also explains that if certain requirements are not met, the statute of limitations will not be tolled.

Subsection (e) is amended to add a new paragraph (3) to state expressly in this section the comptroller's right under Tax Code, §111.105(e) to issue a demand notice for documents that support the refund claim once a timely request for a hearing is made if a claim is denied in whole or in part. This right is also stated in §1.9 of this title concerning the issuance of position letters during the administrative hearing process. Subsection (e)(1) is amended to state that when the comptroller denies a refund claim in whole or in part, the comptroller will also identify the requirements of subsection (a)(4) that were not met.

Non-substantive changes have been made to add greater clarity in subsections (a)(1) and (b)(9).

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the procedures and requirements for claiming and receiving a refund. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §111.104(b) (Refunds) and §111.105(e) (Tax Refund: Hearing).

§3.325. Refunds and Payments Under Protest.

(a) Requirements for refund claims.

(1) Refund claims by non-permitted purchasers. A person who does not have a sales and use tax permit and who has paid tax in error to a permitted seller may request a refund only from [~~only~~] the permitted seller to whom the tax was paid. The permitted seller who refunds tax to a purchaser may claim a refund as provided by paragraph (2) of this subsection. A permitted seller may assign its right to refund to the purchaser, who may then request a refund directly from the comptroller as provided by paragraph (4) of this subsection.

(2) Refund claims by permitted sellers and third party assignees and successors.

(A) With one exception relating to the return transactions, no taxes, penalties, or interest will be refunded by the comptroller to a permitted seller who has collected tax in error from a purchaser until all such taxes are first refunded or credited with the purchaser's written consent to the person from whom they were collected. If the refund claim relates to a return of tangible personal property, a permitted seller is entitled to claim a credit or request a refund of sales tax equal to the amount of sales tax refunded to a purchaser when the purchaser receives a full or partial refund of the sales price of a taxable item that is returned to the seller.

(B) Before a permitted seller refunds to a purchaser tax collected in error on the sale of a taxable item, the permitted seller must obtain from the purchaser a properly completed exemption or resale certificate that meets all the requirements of §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title

(relating to Exemption Certificates). The permitted seller must retain the certificate to document the basis for the refund.

(C) After the permitted seller has refunded or credited the tax to the account of the purchaser, the permitted seller may then seek reimbursement from the comptroller in accordance with the procedures that are outlined in paragraph (4) of this subsection or take a credit on a future sales and use tax return filed by the seller in the amount refunded or credited to the account of the purchaser.

(D) Refunds on exports. See §3.323 of this title (relating to Imports and Exports) for information about amounts a seller can refund on taxable items that are exported by a purchaser.

(E) A permitted seller's right to a refund may be assigned to a third party such as a creditor, settlement trustee, or successor entity. The comptroller will grant or deny a refund claimed by a third party assignee on the same basis as if it had been claimed by the original seller. The third party assignee must comply with all requirements of this section when filing any refund claim, including the requirement to refund or credit tax paid in error to the purchaser in accordance with subparagraph (C) of this paragraph.

(3) Refund claims by permitted purchasers.

(A) How to file a refund claim. A permitted purchaser may amend a return for the period in which an overpayment was made, file a refund claim with the comptroller according to the requirements of paragraph (4) of this subsection, or take a credit on a future sales and use tax return filed by the purchaser for taxes paid in error to a permitted seller. The permitted purchaser must have been permitted at the time the tax paid in error was due and payable in order to claim a refund directly from the comptroller, amend a return for the period in which an overpayment was made, or to take a credit on a future sales and use tax return. If the permitted purchaser was not permitted at the time the tax paid in error was due and payable, the permitted purchaser must be assigned the right to refund by the permitted seller and must file a refund claim with the comptroller for the assigned taxes that meets the requirements in paragraph (4) of this subsection.

(B) Sample and projection method of calculating refund claims. A permitted purchaser who paid tax in error to a permitted seller may compute the amount of overpayment by use of a projection based on a sampling of transactions and on a method that complies with generally accepted sampling methods as approved by the comptroller. The purchaser must have been permitted for the entire period included in the projection. The method by which the projection and computation were performed must be retained and be made available upon request of the comptroller.

(C) Credits.

(i) Reports and documentation. A permitted purchaser who paid tax in error to a permitted seller and who takes credits on tax returns is required to report the total amount of tax credit being taken and the earliest date of the tax paid in error on a supplemental sales tax report prescribed by the comptroller. The permitted purchaser must retain, for the period required in Tax Code, Chapter 111, all documentation that is necessary to support the credit claimed.

(ii) Credits allowed on certain purchases. See §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers) for additional rules about credits that can be claimed by permitted purchasers.

(4) A person who requests a refund from the comptroller must:

(A) submit a claim in writing that states [~~identifies the period during which the claimed overpayment was made and must state~~] fully and in detail each reason or ground on which the claim is founded; [~~the specific grounds upon which the claim is based,~~]

(B) identify the period during which the claimed overpayment was made;

(C) include [~~including~~], at a minimum, each of the following about each transaction upon which a refund is requested:

(i) purchaser or seller's name, as appropriate;

(ii) invoice number, if applicable;

(iii) date of transaction;

(iv) description of the item(s) purchased or sold;

(v) specific reason for the refund, such as applicable statutory authority;

(vi) purchase or sale amount subject to refund;

(vii) total amount of tax refund requested;

(viii) identification of all local jurisdictions to which tax was remitted; and

(ix) if requesting a refund for taxes paid in error to a permitted seller, the seller's name, address and sales tax permit number or information that allows the comptroller to identify the seller's sales tax permit number;

(D) [~~(B)~~] submit the claim within the applicable limitations period as provided by subsection (b) of this section; and

(E) [~~(C)~~] submit supporting documentation [~~required by the comptroller~~] to verify any refund claimed or credit taken, such as copies of invoices, cancelled checks, and executed contracts. If the supporting documentation cannot be easily mailed or otherwise easily submitted to the agency, the refund claim must include a statement that all supporting documentation necessary to verify the claim will be made available to the comptroller upon request.

(b) Statute of limitations for refund claims.

(1) Unless otherwise indicated by this section, a claim for refund must be made within four years from the date on which the tax was due and payable as provided by Tax Code, §151.401.

(2) A claim for refund for tax paid pursuant to a deficiency determination must be made by the later of:

(A) four years from the date on which the tax was due and payable; or

(B) six months after the date on which the deficiency determination for the periods becomes final, and is subject to the restriction imposed by paragraph (3) of this subsection.

(3) A refund claim filed within six months after the date on which a deficiency determination becomes final is within the limitations period for all items included in the deficiency determination. A refund claim for all other items is subject to the limitations period in paragraph (1) of this subsection.

(4) Extension of limitations period. Before the expiration of the statute of limitations, the comptroller and a taxpayer may agree in writing to extend the limitation period in accordance with Tax Code, §111.203. An extension applies only to the periods specifically mentioned in the agreement and no single extension agreement may be for a period that exceeds 24 months from the date of the expiration of the limitations period being extended. Any refund request pertaining to periods for which limitations have been extended must be made prior to the expiration date of the agreement. Following expiration of the

agreement, the statute of limitations applies to subsequent refund requests as if no extension had been authorized.

(5) A redetermination or refund proceeding does not toll the statute of limitations, except for the issues contested.

(6) Failure to file a claim within the limitations prescribed by this section constitutes a waiver of any demand against the state on account of the overpayment.

(7) The informal review of a refund claim by the comptroller is not a hearing or contested case and does not toll the limitation period for any subsequent claim for refund on the same period and type of tax for which the claim was fully or partially denied.

(8) For more information about the statute of limitations, see §3.339 of this title (relating to Statute of Limitations).

(9) Limitations on refunds and credits claimed by organizations exempt from sales and use tax under Tax Code, §151.310. Organizations that are exempt from sales and use tax under Tax Code, §151.310 should see §3.322 of this title (relating to Exempt Organizations) for information about limitations on refunds and credits that may be claimed depending on whether the organization qualifies for exemption either before or on or after September 1, 2009.

(10) Requirements to toll the statute of limitations.

(A) Subject to the other paragraphs of this subsection regarding the statute of limitations, a refund claim that is filed with the comptroller will toll the statute of limitations if the following requirements are met:

(i) the claim states fully and in detail each reason or ground on which the claim is founded, as required by subsection (a)(4)(A) of this section;

(ii) the claim identifies the period during which the claimed overpayment was made, as required by subsection (a)(4)(B) of this section;

(iii) if the claim is being filed by a non-permitted person who is an assignee of or successor to a refund that may be owed, the person submits with the claim for refund the assignment of right to refund; and

(iv) if a person other than the person to whom the refund is due is submitting the claim for refund, a power of attorney is submitted with the claim.

(B) If the refund claim meets the requirements of subparagraph (A) of this paragraph, but does not meet the other requirements under subsection (a)(4) of this section, the claim will be denied and the person may request a hearing as provided by subsection (e) of this section.

(C) If a person does not meet the requirements of subparagraph (A) of this paragraph, the statute of limitations will not be tolled.

(c) Interest on Refunds.

(1) Eligibility for Interest. Interest is earned on refunds except in the following situations:

(A) a refund claim for a period for which a report is due before January 1, 2000;

(B) credits taken by a taxpayer on a return;

(C) tax paid on an account that is later determined to be uncollectable and written off as a bad debt for federal tax purposes. See §3.302 of this title (relating to Accounting Methods, Credit Sales, Bad Debt Deductions, Repossessions, Interest on Sales Tax, and Trade-Ins); and

(D) as otherwise determined by the comptroller.

(2) Interest rates.

(A) Refunds claimed before September 1, 2005. The interest rate for a refund that is claimed before September 1, 2005 and granted for a period for which a report is due after December 31, 1999 is the rate set in Tax Code, §111.060, as provided in Tax Code, §111.064.

(B) Refunds claimed on or after September 1, 2005. The interest rate for a refund that is claimed on or after September 1, 2005 and granted for a period for which a report is due after December 31, 1999 is the lesser of the annual rate of interest earned on deposits in the state treasury during December of the previous calendar year as determined by the comptroller or the rate set in Tax Code, §111.060, as provided in Tax Code, §111.064.

(3) Calculation of Interest. Interest accrues on refund claims identified in paragraph (1) of this subsection at a rate determined by paragraph (2) of this subsection on the net amount that is found to be erroneously paid:

(A) beginning on the later of 60 days after the date of payment or the due date of the tax report; and

(B) ending, as determined by the comptroller, on either:

(i) the date of allowance of credit that results from either a final decision that the comptroller has issued or from an audit; or

(ii) a date that is not more than 10 days before the date of the refund warrant.

(d) Determining when a refund is claimed.

(1) The postmark date or its equivalent on a refund request determines when a refund is claimed.

(2) If refund claims or credits are pending with the comptroller and a person makes additional claims for refund, the date of each claim controls whether interest is due and the amount applicable to each separate claim.

(e) Denial of refund claim.

(1) The comptroller will notify the claimant if the comptroller determines that a refund claim cannot be granted in part or in full and will also notify the claimant which requirements of subsection (a)(4) of this section were not met. The claimant may then request a refund hearing within 30 days of the denial.

(2) A person may not refile a refund claim for the same transaction or item, tax type, period, and ground or reason that was previously denied by the comptroller.

(3) After receiving a timely request for a refund hearing, the comptroller may issue a written demand notice requesting that all documentation to enable the comptroller to verify the claim be produced within 180 days from the date of the demand notice. A person may not introduce into evidence at the hearing any documents that were not timely produced as requested by the demand notice. This limitation does not apply to a judicial proceeding filed in accordance with Tax Code, Chapter 112. The ability of the comptroller to demand documentation once a claim for a refund hearing is requested does not eliminate the requirement that persons provide documentation under subsection (a)(4)(E) of this section when the refund is first claimed.

(f) Payments under protest. A person who intends to file suit under Tax Code, Chapter 112, Subchapter B, must submit to the comp-

troller a letter of protest with the payment of the tax that is the subject of the protest. For information about payments under protest and electronic funds transfer payments, see §3.9(h) of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers). The letter of protest must state fully and in detail every reason that the taxpayer contends that the assessment is unlawful or unauthorized and must accompany the payment. If the payment and letter of protest do not accompany one another, the payment will not be deemed to have been made under protest. The comptroller will advise the taxpayer of the amount of payment under protest that the comptroller has received and the date of the payment.

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 November 2, 2012.

TRD-201205661
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 16, 2012
For further information, please call: (512) 475-0387

♦ ♦ ♦

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 Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.1502, concerning foster and adoptive home inquiry and screening, in its chapter governing Child Protective Services (CPS). The amendment provides for a general clean-up of language to ensure consistency with current agency policy and with language commonly used by Foster and Adoptive (FAD) staff. The proposal also provides for flexibility relating to age of parents to adopt, a length of marriage requirement, and divorce finalization requirements that had previously rendered certain prospective adoptive parents ineligible for approval to adopt.

The amendment to paragraph (2)(A) deletes the requirement that foster and adoptive applicants must have a life expectancy to be able to raise a child to adulthood. The DFPS age requirements go further than what is currently mandated by minimum standards. A good number of grandparents and older relatives are applying to adopt relatives, and DFPS does not want to discourage older family members from being considered as possible placements, nor does DFPS want older family members to believe that their age automatically disqualifies them from consideration.

The amendment to paragraph (2)(B): (1) clarifies that a married couple not separated must submit a joint application to adopt; and (2) allows the CPS Assistant Commissioner, or a designee, to issue a waiver to the rule that prospective adoptive applicants who are separated but not divorced must finalize their divorce before DFPS FAD staff will issue an approval to adopt. The waiver may be granted if it is established that it is in the "best interests" of a child to do so. The amendment also provides examples of factors that may be used in the "best interests" analysis. Factors include, but are not limited to, family relationship between the prospective applicant and the child, prior relationship between the prospective applicant and the child, and the applicant's ability to meet the child's needs as set forth in the home screening.

Paragraph (2)(C) amends the previous requirement that a couple be married at least two years before submitting an application to adopt. The amendment clarifies that generally couples must be married for at least two years, but that FAD staff will now accept applications from those who do not meet the preferred length of marriage requirement. The amendment also creates an obligation for FAD staff to conduct an assessment of the stability of the couple's relationship and their reasons for wanting to adopt before allowing the couple to continue in the adoption approval process.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that exceptions can be made for separated and not divorced adoptive applicants when in the best interest of a child. Additionally, couples not married for more than two years will be able to submit an application for adoption if DFPS staff assesses the couple's relationship to be stable. Finally, grandparents and older relatives will be more likely to apply to adopt relatives and can be approved when in the best interest of children. This will open up the adoption process and likely result in increasing the number of approved adoptive homes. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

HHSC has determined that the proposed amendment 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, Government Code.

Questions about the content of the proposal may be directed to Terri Parsons at (512) 438-4793 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-468, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Com-

missioner 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 amendment implements HRC §40.002.

§700.1502. Foster and Adoptive Home Inquiry and Screening.

The Texas Department of Family and Protective [~~and Regulatory~~] Services' (DFPS') [(~~TDPRS'~~)] policies for responding to inquiries and screening and approval of foster and adoptive homes are as follows:

(1) Responding to inquiries. DFPS [~~TDPRS~~] receives inquiries as a result of recruitment efforts by staff, volunteers, foster and adoptive parents, foster and adoptive parent associations, and other organizations that work with DFPS [~~TDPRS~~]. When inquiries are received, staff should provide a written response within 10 working days to provide families information about the process of becoming a foster or adoptive parent with DFPS [~~TDPRS~~].

(2) Screening [~~and approval of foster and adoptive homes~~]. When screening prospective foster and adoptive parents, DFPS considers both the Minimum Standards promulgated by Residential Child Care Licensing (RCCL) and the following factors:

(A) Age. Applicants to foster or adopt [~~All applicants~~] must be at least 21 years of age [~~or older~~]. Age is evaluated in relation to the applicant's [~~life expectancy and~~] maturity. [~~The applicants' life expectancy must be long enough for the applicants to be able to raise the child to adulthood. Applicants who are nearing retirement age usually are only considered and approved for adolescent children.~~]

(B) Marriage. [~~If married, both spouses must apply and their license or declaration of marriage must be recorded. If separated and not divorced, adoptive applicants must finalize the divorce prior to being approved as an adoptive parent.~~]

(i) Regarding foster parents, DFPS follows the Minimum Standards promulgated by RCCL that govern married applicants. In order for one spouse to be a foster parent, both spouses must be verified to provide foster care.

(ii) Regarding adoptive parents:

(I) If an applicant is married but not separated and wishes to submit an application, the applicant's spouse must join in the application and the license or declaration of marriage must be recorded.

(II) Except as provided in subclause (III) of this clause, if an applicant is separated but not divorced, he or she may submit an application, but is required to finalize the divorce before the home can be approved.

(III) If an applicant seeking to adopt does not have a finalized divorce, the Assistant Commissioner of Child Protective Services, or designee, may grant a waiver if it is in the best interest of the child to do so. Relevant factors in assessing whether to grant a waiver include, but are not limited to, any family relationship between the applicant and the child, any other significant prior relationship between the applicant and the child, and the applicant's ability to meet the child's particular needs as evidenced in an adoptive home screening.

(C) Length of marriage. In general, couples must be married at least two years before submitting an application to adopt. DFPS will accept adoption applications from couples who have not been married at least two years, but staff are required to assess the stability of the couple's relationship and their reason for wanting to adopt a child prior to allowing the couple to proceed in the adoption process. If DFPS determines that the couple's relationship is stable, the application will be further reviewed for approval to adopt. [~~Couples must be married at least two years before TDPRS accepts an adoption application, unless the following exception is made. Exception: If the couple cohabitated for two years prior to the marriage or obtained a civil registration of common law marriage for the length of time required, the worker should assess the impact of the marriage on the stability of the couple's relationship to determine the appropriateness of making an exception.~~]

(D) (No change.)

(E) Disabilities. Disabilities are evaluated in relation to the applicants' adjustment to the disability and the limits, if any, that the disability imposes on the applicants' ability to care for a child.

(F) Residence. Adoptive home screenings [~~studies~~] are started only if the applicant(s) [~~applicants~~] will live in the community long enough for DFPS [~~PRS~~] to complete a screening [~~study~~] and make a placement. Exceptions are made in unusual situations involving [~~which involve~~] a child with special needs if another licensed child placing agency in the new community agrees to complete the adoption services.

(G) Adoption by foster families. Foster families are evaluated using the same criteria applied to any other adoptive applicants. The home screening [~~study~~] must be updated to meet the minimum standards for adoptive homes. The evaluation focuses on the family's demonstrated skill and ability to parent the children DFPS [~~TDPRS~~] has placed in the family's care and determines the attachment the family and the child have to each other.

(H) (No change.)

(I) Health. The applicants' physical, [~~and~~] mental, and emotional health must be sufficient to assume parenting responsibilities. Physical, [~~and~~] mental, and emotional conditions are considered to protect the child against another loss of parenting through death, incapacity, or repetition of abuse or neglect.

(J) Religion. There are no specific religion [~~religious~~] requirements. Applicants are evaluated based on:

(i) - (iii) (No change.)

(K) Discipline. Physical discipline may not be used on a child in any DFPS [~~TDPRS~~] foster or adoptive home prior to consummation. DFPS [~~TDPRS~~] evaluates applicants based on their willingness and ability to:

(i) - (ii) (No change.)

(iii) employ methods of discipline that conform to the policies specified in the Minimum Standards promulgated by Residential Child Care Licensing. [~~§700.1340(c) of this title (relating to Special Issues).~~]

(L) Criminal history. Criminal history background checks must be completed on all prospective foster and adoptive parents and the members of their households who are 14 years old [~~of age~~] or older and not under [~~in~~] the legal conservatorship of DFPS [~~TDPRS~~]. Criminal history background checks are [~~will be~~] conducted in accordance with the criminal history rules promulgated by the Child Care Licensing Division of DFPS [~~TDPRS~~].

(M) Adoptive home screenings [~~studies~~] - fertility. Fertility assessments may be needed if DFPS [~~are required only if TDPRS~~]

believes the couple needs to know more about their fertility before they adopt a child. The couple's fertility is important only in relation to resolution of their feelings about their infertility and their ability to accept and parent a child not born to them.

(N) Citizenship and immigration. Only U.S. citizens, permanent residents, or other qualified aliens (as defined in 8 U.S.C. §1641(b)) can be approved as foster or adoptive parents. If an applicant who seeks to adopt a child does not have the required immigration status, the Assistant Commissioner [~~Director~~] of Child Protective Services or a designee, may [~~can~~] grant a waiver if it is in the best interest of the child to do so. Relevant factors in assessing whether to grant a waiver include any family relationship or other significant prior relationship between the child and the applicant, and the applicant's ability to meet the child's particular needs.

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 October 31, 2012.

TRD-201205636
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 16, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

CHAPTER 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §745.903 and §745.915; the repeal of §745.911 and §745.913; and new §745.911 and §745.913, concerning controlling persons, in its Licensing chapter. The purpose of the amendments, repeals, and new sections is to implement legislation passed during the 82nd Legislative Session. Senate Bill (S.B.) 1178, 82nd Legislature, made changes to Chapter 42 of the Human Resources Code (HRC) in regards to who is ineligible to be a controlling person at an operation regulated by Child Care Licensing (CCL). Earlier this year, CCL amended administrative rules to implement the legislation (the rules became effective March 1, 2012). The changes in this proposal will further support the implementation of S.B. 1178 by outlining in what circumstances a person is prohibited from being a controlling person, when CCL will make this determination, and updating the rules. Also, DFPS is changing the name of Subchapter G to Controlling Persons.

The amendment to §745.903 clarifies the alternatives for submitting controlling-person information to CCL.

New §745.911, which replaces repealed §745.911, outlines the circumstances when a person may not serve as a controlling person at a child-care operation.

New §745.913, which replaces repealed §745.913, simplifies the times when CCL checks whether a person is ineligible to serve as a controlling person at a child-care operation.

The amendment to §745.915 updates the language of this rule to be consistent with the new statute, which precludes certain persons from being controlling persons, but does not preclude those persons from being employed in child-care.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the public will have a clearer understanding of who can serve as controlling persons and children will be safer in regulated child-care settings because CCL will not allow ineligible persons to serve as controlling persons. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

Questions about the content of the proposal may be directed to Leslie Reid at (512) 438-4666 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-467, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER G. CONTROLLING PERSONS

40 TAC §§745.903, 745.911, 745.913, 745.915

The amendments and new sections are proposed 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 amendments and new sections implement HRC §§42.042, 42.062, and 42.072(c-1).

§745.903. When and how must an operation submit controlling-person information to Licensing [~~must I submit to Licensing information about a person whom I consider to be a controlling person at my child-care operation~~]?

(a) [~~We will provide you with a Controlling Person Form.~~] You must provide [~~us~~] information [~~on the form~~] about each person that is a controlling person at your operation as defined in §745.901(a) of this title (relating to Who is a controlling person at a child-care operation?) when you apply for your permit. [~~You must complete and submit this form to your local Licensing office:~~]

[~~(1) When you apply for your permit; or~~]

[~~(2) Within two days after a person becomes a controlling person at your operation.~~]

(b) After you receive a permit from us, you must provide us information about someone who is a controlling person at your operation within two days after a person becomes a controlling person.

(c) To provide the information to us, you must either:

(1) Enter the information on-line through the DFPS website; or

(2) Submit a completed Controlling Person Form to your local Licensing office.

§745.911. In what circumstances may a person not serve as a controlling person at my child-care operation?

A person may not serve as a controlling person in a child-care operation if:

(1) We sustained the person as a controlling person within the previous five years;

(2) The person is ineligible to apply for a permit because of an adverse action that was sustained during the previous five years; or

(3) The person was a permit holder, controlling person, or otherwise listed on the application for a permit for a facility that had its permit denied, revoked, suspended, or terminated by a state health and human services agency in the last 10 years, as outlined in Chapter 531 of the Government Code, Subchapter W (relating to Adverse Licensing, Listing, or Registration Decisions). Depending upon the circumstances that led to the previous permit denial, suspension, revocation, or termination and the person's relationship to that facility, we may determine that this person may not serve as a controlling person for your child-care operation.

§745.913. When does Licensing check to determine whether someone is ineligible to serve as a controlling person at my child-care operation?

Licensing will check to determine whether someone is ineligible to serve as a controlling person, when:

(1) You submit an application for a permit; and

(2) Any time we receive information that identifies someone as a controlling person.

§745.915. What happens after Licensing determines that someone is ineligible to serve as a controlling person at my child-care [~~for employment at my~~] operation?

(a) We will notify you in writing if someone is ineligible to serve as a controlling person [~~for employment~~] at your operation.

(b) If the person that we have prohibited from serving as a controlling person [~~you from employing~~] believes that the results of the check are inaccurate, you may contact the [~~local~~] Licensing office that sent the notice to you to discuss the accuracy of the information.

(c) Unless we determine that the notification was [~~results of the check were~~] inaccurate, this person may not serve as a controlling person at [~~you must remove this person from~~] your operation.

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 October 31, 2012.

TRD-201205631
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 16, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER G. CONTROLLING PERSON AND CERTAIN EMPLOYMENT PROHIBITED

40 TAC §745.911, §745.913

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

The repeals are proposed 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 HRC §§42,042, 42.062, and §42.072(c-1).

§745.911. In what other circumstances may a person not serve as a controlling person at my operation?

§745.913. When does Licensing check whether someone is ineligible to serve as a controlling person at my child-care operation?

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 October 31, 2012.

TRD-201205632
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 16, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS
DIVISION 3. CONFIDENTIALITY

40 TAC §745.8491, §745.8493

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §745.8491 and §745.8493, concerning Who can obtain confidential information from an abuse or neglect investigation that is not in the operation's monitoring file and Are there any portions of a child abuse or neglect investigation file that Licensing may not release to anyone, in its

Licensing chapter. The purpose of the amendments is to clarify confidentiality requirements relating to Child Care Licensing (CCL) abuse or neglect investigation records.

The amendment to §745.8491 outlines who can obtain confidential information from an abuse or neglect investigation that is not in the operation's monitoring file. The proposed changes: (1) add language that the parent of the child who is an alleged perpetrator in the investigation has the right to confidential information; (2) amend language that currently states that records will be released to an operation who is "cited for abuse or neglect" to "cited for a deficiency;" and also allows a single-source continuum contractor (SSCC) for foster care redesign to receive this information from their subcontractors with a signed release when the operation is cited for a deficiency; (3) add language to allow prospective adoptive parents to review CCL abuse or neglect records relevant to the child they plan to adopt who is either the subject of the investigation or is an alleged perpetrator in the investigation; and (4) allow the parent of a child who is not the subject of or the alleged perpetrator in the investigation but was a collateral witness in the investigation to obtain the portion of the investigation record relating to their child.

The amendment to §745.8493 outlines which portions of abuse or neglect investigation records are confidential and not releasable to anyone. The proposed changes will: (1) clarify that in addition to the reporter's name being confidential, any information that identifies the reporter is also confidential; (2) prohibit the release of identities of children except to the parent or prospective adoptive parent, or an operation (or the SSCC) that was cited for a deficiency as a result of the investigation. The rule also states that notwithstanding the fact that some information is not releasable, there are certain entities in specific situations that can also obtain this "super" confidential information (e.g., DFPS staff, law enforcement, state legislators, and individuals with court orders). Finally, DFPS may withhold information in its records if the agency deems it necessary to ensure the safety of an individual.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that an operation and an SSCC will have the opportunity to review the record that resulted in a minimum standard citation the operation received during the course of an investigation; a parent or prospective adoptive parent will have access to important information regarding a child's abuse or neglect history with Licensing; a child's identity will be protected and kept confidential; and an individual's safety may be considered in a request for confidential records. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

Questions about the content of the proposal may be directed to Penni L. Massingill at (512) 438-2366 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-469, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The amendments are proposed 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 amendments implement HRC §40.005 and §42.042.

§745.8491. Who can obtain confidential information from an abuse or neglect investigation that is not in the operation's monitoring file?

(a) The following have the authority to obtain confidential information relating to an abuse or neglect investigation:

(1) DFPS staff, including volunteers, as necessary to perform their assigned duties;

(2) The parent of the child who is the subject of the investigation or the alleged perpetrator in the investigation;

(3) An attorney ad litem, guardian ad litem, or court appointed special advocate of an alleged victim of child abuse or neglect;

(4) The alleged perpetrator;

(5) Law enforcement;

(6) A member of the state legislature when necessary to carry out that member's official duties;

(7) An operation cited for a deficiency [~~abuse or neglect~~] as a result of the investigation; [~~and~~]

(8) With a signed release from the operation, a single-source continuum contractor (SSCC) for foster-care redesign that subcontracts with the operation that is cited for a deficiency as a result of the investigation;

(9) [~~(8)~~] An administrative law judge, or a judge of a court of competent jurisdiction in a criminal or civil case arising out of an investigation of child abuse or neglect, if he:

(A) Provides notice to DFPS and any other interested parties;

(B) After reviewing the information, including audio and/or videotapes, determines that the disclosure is essential to the administration of justice and will not endanger the life or safety of any individual; and

(C) Includes in his disclosure order any safeguards that the court finds appropriate to protect the interest of the child involved in the investigation; and[~~.~~]

(10) According to the Texas Family Code §162.006, a prospective adoptive parent of the child who is the subject of the investigation or who is the alleged perpetrator in the investigation.

(b) Notwithstanding any other provision of this section, the parent of a child who is not the subject of or the alleged perpetrator in the investigation but was a collateral witness during the investigation is entitled to the portion of the investigation record related to their child.

§745.8493. Are there any portions of a child abuse or neglect investigation file that Licensing may not release to anyone?

(a) We may not release the following portions of an abuse or neglect investigation file to anyone:

(1) The audio taped or videotaped interview of a child, as well as any photographs taken of a child. An [~~(an~~] authorized person may review them but may not have copies[~~)~~];

(2) Any information that would interfere with an ongoing law enforcement investigation or prosecution;

(3) The name of [~~Information about~~] the person who made the report or any information identifying this person[~~, unless law enforcement requests the information under Texas Family Code, §261.107~~];

(4) The location of a family violence shelter; [~~and~~]

(5) Information pertaining to an individual who was provided family violence services; and[~~.~~]

(6) The identity of any child or information identifying the child, unless the requestor is:

(A) The child's parent or prospective adoptive parent;

(B) The operation that was cited for a deficiency as a result of the investigation; or

(C) The single-source continuum contractor (SSCC) for foster care redesign when:

(i) The SSCC subcontracts with the operation;

(ii) The operation has signed a release of information; and

(iii) The operation was cited for a deficiency as a result of the investigation.

(b) Notwithstanding any other provision in this section, DFPS may provide any of the above confidential information to the following parties in the relevant situations:

(1) DFPS staff, including volunteers, as necessary to perform their assigned duties;

(2) Law enforcement for the purpose of investigating allegations of child abuse or neglect or false or malicious reporting of alleged child abuse or neglect;

(3) A member of the state legislature when necessary to carry out that member's official duties; and

(4) Any other individuals ordered by an administrative law judge or judge of a court of competent jurisdiction.

(c) Notwithstanding any other provision in this chapter, DFPS may withhold any information in its records if, in the judgment of DFPS, the release of that information would endanger the life or safety of any individual.

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 October 31, 2012.

TRD-201205637
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 16, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §748.103

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §748.103, concerning What are my operational responsibilities as the permit holder, in its General Residential Operations chapter. The purpose of the amendment is to implement legislation passed during the 82nd Legislative Session. Senate Bill (S.B.) 1178, 82nd Legislature, made changes to Chapter 42 of the Human Resources Code (HRC) in regards to who is ineligible to be a controlling person at an operation regulated by Child Care Licensing (CCL). Earlier this year, CCL amended administrative rules to implement the legislation (the rules became effective March 1, 2012). The changes in this proposal will further support the implementation of S.B. 1178 by outlining when an operation must report changes to CCL regarding persons who serve as a controlling person. Also, DFPS is changing the name of this chapter to Minimum Standards for General Residential Operations.

The amendment to §748.103 adds a requirement that the permit holder notify CCL when either of the following occurs: (1) a new individual becomes a controlling person at the operation; or (2) an individual ceases to be a controlling person at the operation. The purpose for this rule change is to ensure that CCL has the most current information on controlling persons at general residential operations so that CCL can comply with requirements in law and administrative rules to ensure that persons that are controlling persons at an operation are eligible to serve in that role. Additionally, this requirement currently exists in day care minimum standards. For the purpose of complying with the law and administrative rules, it is beneficial to CCL for the minimum standards for both day care and residential child-care operations to be consistent.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that children will be safer in regulated child-care settings because CCL will have the most current information on controlling persons at general residential operations in order to ensure that these operations do not have persons ineligible to be a controlling person serving in that role. There will be no effect on large, small, or micro-busi-

nesses. While the amendment does require operations to report additional information to CCL, reporting this information will not require the purchase of any new equipment or any additional staff time in order to comply. Most controlling persons are also members of the operation's governing body, and operations currently are required to notify CCL of changes to the governing body. There is no anticipated economic cost to persons who are required to comply with the proposed section.

HHSC has determined that the proposed amendment 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, Government Code.

Questions about the content of the proposal may be directed to Leslie Reid at (512) 438-4666 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-467, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The amendment is proposed 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 amendment implements HRC §§42.042, 42.062, and 42.072(c-1) and (g).

§748.103. What are my operational responsibilities as the permit holder?

(a) When you begin operating, you must:

(1) - (10) (No change.)

(11) Prepare the annual budget and controlling expenditures to ensure the needs of the children are met; [~~and~~]

(12) Ensure that no member of the governing body, member of the executive committee, member of management, or employee is listed as a sustained controlling person; and[.]

(13) Notify us as soon as possible, but no later than two days after:

(A) A new individual becomes a controlling person at your operation; or

(B) An individual ceases to be a controlling person at your operation.

(b) (No change.)

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

Filed with the Office of the Secretary of State on October 31, 2012.

TRD-201205633

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 16, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §749.103

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §749.103, concerning What are my operational responsibilities as the permit holder, in its Child-Placing Agencies chapter. The purpose of the amendment is to implement legislation passed during the 82nd Legislative Session. Senate Bill (S.B.) 1178, 82nd Legislature, made changes to Chapter 42 of the Human Resources Code (HRC) in regards to who is ineligible to be a controlling person at an operation regulated by Child Care Licensing (CCL). Earlier this year, CCL amended administrative rules to implement the legislation (the rules became effective March 1, 2012). The changes in this proposal will further support the implementation of S.B. 1178 by outlining when a child-placing agency must report changes to CCL regarding who serves as a controlling person. Also, DFPS is changing the name of this chapter to Minimum Standards for Child-Placing Agencies.

The amendment to §749.103 adds a requirement that the permit holder notify CCL when either of the following occurs: (1) a new individual becomes a controlling person at the child-placing agency; or (2) an individual ceases to be a controlling person at the child-placing agency. The purpose for this rule change is to ensure that CCL has the most current information on controlling persons at child-placing agencies so that CCL can comply with requirements in law and administrative rules to ensure that persons that are controlling persons at a child-placing agency are eligible to serve in that role. Additionally, this requirement currently exists in day care minimum standards. For the purpose of complying with the law and administrative rules, it is beneficial to CCL for the minimum standards for both day care operations and residential child care facilities to be consistent.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that children will be safer in regulated child-care settings because CCL will have the most current information on controlling persons at child-placing agencies in order to ensure that these facilities do not have persons ineligible to be a controlling person serving in that role. There will be no effect on large, small, or micro-businesses. While the amendment does require child-placing agencies to

report additional information to CCL, reporting this information will not require the purchase of any new equipment or any additional staff time in order to comply. Most controlling persons are also members of the child-placing agency's governing body, and child-placing agencies currently are required to notify CCL of changes to the governing body. There is no anticipated economic cost to persons who are required to comply with the proposed section.

HHSC has determined that the proposed amendment 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, Government Code.

Questions about the content of the proposal may be directed to Leslie Reid at (512) 438-4666 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-467, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The amendment is proposed 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 amendment implements HRC §§42.042, 42.062, and 42.072(c-1) and (g).

§749.103. What are my operational responsibilities as the permit holder?

When you begin operating, you must:

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

(16) Ensure that no member of the governing body, member of the executive committee, management staff, or employee is listed as a sustained controlling person; [~~and~~]

(17) If your child-placing agency will be moving to another location or changing hours of operation, notify us in writing as soon as possible but at least 15 days prior to the move or change in hours of operation; and[~~,~~]

(18) Notify us as soon as possible, but no later than two days after:

(A) A new individual becomes a controlling person at your child-placing agency; or

(B) An individual ceases to be a controlling person at your child-placing agency.

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 October 31, 2012.

TRD-201205634
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 16, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

CHAPTER 750. MINIMUM STANDARDS FOR INDEPENDENT FOSTER HOMES
SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION
DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §750.103

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §750.103, concerning What are my operational responsibilities as permit holder, in its Independent Foster Homes chapter. The purpose of the amendment is to implement legislation passed during the 82nd Legislative Session. Senate Bill (S.B.) 1178, 82nd Legislature, made changes to Chapter 42 of the Human Resources Code (HRC) in regards to who is ineligible to be a controlling person at an operation regulated by Child Care Licensing (CCL). Earlier this year, CCL amended administrative rules to implement the legislation (the rules became effective March 1, 2012). The changes in this proposal will further support the implementation of S.B. 1178 by outlining when an independent foster home must report changes to CCL regarding who serves as a controlling person. Also, DFPS is changing the name of this chapter to Minimum Standards for Independent Foster Homes.

The amendment to §750.103 adds a requirement that the permit holder notify CCL when either of the following occurs: (1) a new individual becomes a controlling person at the independent foster home; or (2) an individual ceases to be a controlling person at the independent foster home. The purpose for this rule change is to ensure that CCL has the most current information on controlling persons at independent foster homes so that CCL can comply with requirements in law and administrative rules to ensure that persons that are controlling persons at an independent foster home are eligible to serve in that role. Additionally, this requirement currently exists in day care minimum standards. For the purpose of complying with the law and administrative rules, it is beneficial to CCL for the minimum standards for both day care operations and residential child care facilities to be consistent.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that children will be safer in regulated child-care settings because CCL will have the most current information on controlling persons at independent foster homes in order to ensure that these facilities do not have persons ineligible to be a controlling person serving in that role. There will be no effect on large, small, or micro-businesses. While

the amendment does require independent foster homes to report additional information to CCL, reporting this information will not require the purchase of any new equipment or any additional staff time in order to comply. Most controlling persons are also members of the independent foster home's governing body, and independent foster homes currently are required to notify CCL of changes to the governing body. There is no anticipated economic cost to persons who are required to comply with the proposed section.

HHSC has determined that the proposed amendment 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, Government Code.

Questions about the content of the proposal may be directed to Leslie Reid at (512) 438-4666 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-467, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The amendment is proposed 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 amendment implements HRC §§42.042, 42.062, and 42.072(c-1) and (g).

§750.103. What are my operational responsibilities as permit holder?

When you begin operating, you must:

(1) - (8) (No change.)

(9) Comply with Chapter 42 of the Human Resources Code, all other applicable laws and rules of the Texas Administrative Code; [~~and~~]

(10) Ensure that no member of the governing body, member of the executive committee, management staff, or employee is listed as a prohibited controlling person; and[~~.~~]

(11) Notify us as soon as possible, but no later than two days after:

(A) A new individual becomes a controlling person at your independent foster home; or

(B) An individual ceases to be a controlling person at your independent foster home.

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 October 31, 2012.

TRD-201205635
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 16, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

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 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.507

The Texas Health and Human Services Commission withdraws the proposed amendment to §355.507 which appeared in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6193).

Filed with the Office of the Secretary of State on November 5, 2012.

TRD-201205699
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 5, 2012
For further information, please call: (512) 424-6900

♦ ♦ ♦

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 §26.401, §26.420

Proposed amended §26.401 and §26.420, published in the April 27, 2012, issue of the *Texas Register* (37 TexReg 2956), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on October 30, 2012.

TRD-201205571

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

SUBCHAPTER H. ELIGIBILITY

40 TAC §48.2915, §48.2916

The Texas Health and Human Services Commission withdraws, on behalf of the Department of Aging and Disability Services, the proposed amendment to §48.2915; and new §48.2916 which appeared in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4810).

Filed with the Office of the Secretary of State on October 31, 2012.

TRD-201205658
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 31, 2012
For further information, please call: (512) 438-3734

♦ ♦ ♦

SUBCHAPTER J. COMMUNITY BASED ALTERNATIVES (CBA) PROGRAM

40 TAC §§48.6002, 48.6011, 48.6033, 48.6040, 48.6050, 48.6082, 48.6084, 48.6088, 48.6090

The Texas Health and Human Services Commission withdraws, on behalf of the Department of Aging and Disability Services, the proposed amendments to §§48.6002, 48.6011, 48.6040, 48.6050, 48.6082, 48.6084, 48.6088, and 48.6090; and new §48.6033 which appeared in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4810).

Filed with the Office of the Secretary of State on October 31, 2012.

TRD-201205650
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 31, 2012
For further information, please call: (512) 438-3734

♦ ♦ ♦

CHAPTER 51. MEDICALLY DEPENDENT CHILDREN PROGRAM
SUBCHAPTER A. INTRODUCTION

40 TAC §51.103

The Texas Health and Human Services Commission withdraws, on behalf of the Department of Aging and Disability Services, the proposed amendment to §51.103 which appeared in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4817).

Filed with the Office of the Secretary of State on October 31, 2012.

TRD-201205651
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 31, 2012
For further information, please call: (512) 438-3734

♦ ♦ ♦

SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND SERVICES
DIVISION 3. SERVICES

40 TAC §51.231

The Texas Health and Human Services Commission withdraws, on behalf of the Department of Aging and Disability Services, the proposed amendment to §51.231 which appeared in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4817).

Filed with the Office of the Secretary of State on October 31, 2012.

TRD-201205652
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 31, 2012
For further information, please call: (512) 438-3734

♦ ♦ ♦

SUBCHAPTER D. PROVIDER REQUIREMENTS
DIVISION 2. SERVICE DELIVERY REQUIREMENTS FOR ALL PROVIDERS

40 TAC §51.411, §51.413

The Texas Health and Human Services Commission withdraws, on behalf of the Department of Aging and Disability Services, the proposed amendments to §51.411 and §51.413 which appeared in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4817).

Filed with the Office of the Secretary of State on October 31, 2012.

TRD-201205653
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 31, 2012
For further information, please call: (512) 438-3734

♦ ♦ ♦

DIVISION 9. SERVICE DELIVERY REQUIREMENTS FOR DAY ACTIVITY AND HEALTH SERVICES

40 TAC §51.481

The Texas Health and Human Services Commission withdraws, on behalf of the Department of Aging and Disability Services, the proposed new §51.481 which appeared in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4817).

Filed with the Office of the Secretary of State on October 31, 2012.

TRD-201205654
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 31, 2012
For further information, please call: (512) 438-3734

♦ ♦ ♦

SUBCHAPTER E. CLAIMS PAYMENT AND DOCUMENTATION

40 TAC §51.509, §51.511

The Texas Health and Human Services Commission withdraws, on behalf of the Department of Aging and Disability Services, the proposed amendments to §51.509 and §51.511 which appeared in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4817).

Filed with the Office of the Secretary of State on October 31, 2012.

TRD-201205655
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 31, 2012
For further information, please call: (512) 438-3734

♦ ♦ ♦

CHAPTER 98. ADULT DAY CARE AND DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS
SUBCHAPTER H. DAY ACTIVITY AND HEALTH SERVICES (DAHS) CONTRACTUAL REQUIREMENTS

40 TAC §§98.201, 98.203 - 98.205, 98.207, 98.211

The Texas Health and Human Services Commission withdraws, on behalf of the Department of Aging and Disability Services, the proposed amendments to §§98.201, 98.207, and 98.211; and new §§98.203 - 98.205 which appeared in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4822).

Filed with the Office of the Secretary of State on October 31, 2012.

TRD-201205656
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 31, 2012
For further information, please call: (512) 438-3734

♦ ♦ ♦

40 TAC §§98.203 - 98.205

The Texas Health and Human Services Commission withdraws, on behalf of the Department of Aging and Disability Services, the proposed repeal of §§98.203 - 98.205 which appeared in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4822).

Filed with the Office of the Secretary of State on October 31, 2012.

TRD-201205657
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: October 31, 2012
For further information, please call: (512) 438-3734

♦ ♦ ♦

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 59. COLLECTIONS

1 TAC §59.2

The Office of the Attorney General (OAG) adopts amendments to Texas Administrative Code, Title 1, Part 3, Office of the Attorney General, Chapter 59, Collections, §59.2, concerning Collection Process: Uniform Guidelines and Referral of Delinquent Collections, without changes to the proposed text as published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6187) and will not be republished.

The amendments adopted are necessary to correct and update certain provisions of the rule. First, text that was omitted in error from §59.2(b)(6)(B) is added to correct the language of the original *Texas Register* entry and the Texas Administrative Code. Second, §59.2 is updated to reflect the 90 day reporting requirement for uncollected and delinquent obligations, replacing the 120 day requirement that currently appears in the rule. This time period was shortened from 120 days to 90 days by an amendment to Texas Government Code §2107.003 that was enacted by Senate Bill 1615, 80th R.S. (2007), and the change to the rule is made for consistency with current law. Finally, a reference in §59.2 to the reporting requirements in §59.3 is removed due to the repeal of §59.3.

No comments were received regarding adoption of the amendments during the comment period.

The amendments are adopted in accordance with Texas Government Code §2107.002, which authorizes the Office of the Attorney General to adopt, by rule, uniform guidelines for the process by which a state agencies collect delinquent obligations.

No other code, article, or statute is affected by this adoption.

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 November 2, 2012.

TRD-201205688

Katherine Cary
General Counsel
Office of the Attorney General
Effective date: November 22, 2012
Proposal publication date: August 17, 2012
For further information regarding this publication, please contact Diane Morris, Agency Liaison, at (512) 936-1180.

♦ ♦ ♦

1 TAC §59.3

The Office of the Attorney General (OAG) adopts the repeal of Texas Administrative Code, Title 1, Part 3, Office of the Attorney General, Chapter 59, Collections, §59.3, concerning Reporting Delinquent Obligations Owed to the State. The repeal is adopted without changes to the proposal as published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6190) and will not be republished.

The repeal of §59.3 is necessary to update the OAG's Collection rules for consistency with current law. Section 59.3 was adopted to enact the mandatory reporting requirements of Texas Government Code §2107.005, which formerly required state agencies and other units of state government to submit an annual report to the OAG regarding uncollected or delinquent obligations owed to the State. Texas Government Code §2107.005 was repealed by House Bill 1781, 82nd Leg. R.S. (2011), and Senate Bill 5, 82nd Leg. R.S. (2011), both of which became effective June 17, 2011. Consistent with the statutory repeal of Texas Government Code §2107.005, the reporting requirements described in §59.3 are no longer necessary.

No comments were received regarding adoption of the repeal during the comment period.

The repeal is adopted pursuant to Texas Government Code §2001.039(c), which authorizes the repeal of administrative rules where the reasons for initially adopting the rules have been determine to no longer exist.

No other code, article, or statute is affected by this adoption.

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 November 2, 2012.

TRD-201205689

Katherine Cary
General Counsel
Office of the Attorney General
Effective date: November 22, 2012
Proposal publication date: August 17, 2012
For further information regarding this publication, please contact Diane Morris, Agency Liaison, at (512) 936-1180.

♦ ♦ ♦

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.105, concerning General Reporting and Documentation Requirements, Methods, and Procedures; §355.112, concerning Attendant Compensation Rate Enhancement; §355.306, concerning Cost Finding Methodology; §355.308, concerning Direct Care Staff Rate Component; §355.503, concerning Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs; §355.505, concerning Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program; §355.509, concerning Reimbursement Methodology for Residential Care; §355.510, concerning Reimbursement Methodology for Emergency Response Services (ERS); §355.511, concerning Reimbursement Methodology for Home-Delivered Meals; §355.513, concerning Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program; §355.5902, concerning Reimbursement Methodology for Primary Home Care; and §355.6907, concerning Reimbursement Methodology for Day Activity and Health Services. The amendments to §355.306 and §355.503 are adopted with changes to the proposed text as published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6193). The text of the rules will be republished. The amendments to §§355.105, 355.112, 355.308, 355.505, 355.509 - 355.511, 355.513, 355.5902, and 355.6907 are adopted without changes to the proposed text as published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6193) and will not be republished.

Background and Justification

HHSC, under its authority and responsibility to administer and implement rates, is adopting the amendments to: (1) standardize how some providers may be automatically excused from submitting a cost report; (2) delete obsolete language to reflect current agency practice; and (3) update references to legacy health and human services (HHS) agencies.

Under certain circumstances, HHSC may excuse a provider not participating in the Attendant Compensation Rate Enhancement from submitting a cost report. These exceptions have varied by program and been inconsistent in application. HHSC removed these exceptions from the program reimbursement methodology rules and grouped them in §355.105(b)(4)(D). HHSC also inserted a cross-reference to §355.105(b)(4)(D) in each program reimbursement methodology rule to inform providers where to find the exceptions.

HHSC also defined circumstances whereby a provider who is participating in the Attendant Compensation Rate Enhancement or the Nursing Facility Direct Care Staff Rate Enhancement may be automatically excused from submitting a cost report, an Attendant Compensation Report, or a Nursing Facility Staffing and Compensation Report.

Finally, HHSC deleted obsolete language to reflect current agency practice and updated references to legacy HHS agencies.

Comments

The 30-day comment period ended September 16, 2012. During this period, HHSC received one comment from the Texas Health Care Association regarding the proposed amendments to these rules. A summary of the comment and HHSC's response follow.

Comment: Concerning §355.306(e), the commenter suggested that HHSC replace the term "final cost report" with the term "accountability report." The commenter understands the need for a final settlement/recoupment process for providers participating in the enhancement program, but believes that this can be accomplished just as well with the more abbreviated accountability report as with a full cost report. The commenter believes that this change would benefit both the agency and providers and would remain consistent with the agency's desire to simplify the system when possible.

Response: HHSC agrees that, in the situation described by the commenter, the provider should have to submit only an accountability report. This situation is addressed in §355.308(f)(2)(B), which states "When a participating facility changes ownership, the prior owner must submit a Staffing and Compensation Report covering the period from the beginning of the facility's cost reporting period to the date recognized by HHSC or its designee as the ownership-change effective date." In order to make this requirement clear in §355.306, HHSC has changed §355.306(e) to read "(e) Final cost reports for change of ownership. When a facility changes ownership, for a provider who participates in the rate enhancement program, the prior owner must submit a final Staffing and Compensation Report as described in §355.308 of this title. When a facility changes ownership, for a provider not participating in the rate enhancement program, the prior owner is excused from submitting a final cost report and, if its prior year's cost report is pending audit completion, the audit will be suspended and the cost report excluded from the final cost report database."

After the proposed rules were published in the *Texas Register,* the Centers for Medicare and Medicaid Services (CMS) approved a request from HHSC to not pursue a Section 1915(i) amendment. As a result of this approval, DADS has discontinued plans to add Day Activity and Health Services (DAHS) to the Community-Based Alternatives (CBA) and Medically Dependent Children Program (MDCP) waiver programs. Therefore, it is no longer necessary to add a reimbursement methodology for DAHS to the CBA and MDCP waivers. As a result, HHSC has withdrawn the proposed amendment to §355.507 and is adopting the amendment to §355.503 with changes to remove the language (proposed as subsection (c)(3)(7)) concerning the reimbursement methodology for DAHS.

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.105, §355.112

Statutory Authority

The amendments are adopted 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(a), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

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 November 5, 2012.

TRD-201205695
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 25, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.306, §355.308

Statutory Authority

The amendments are adopted 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(a), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

§355.306. Cost Finding Methodology.

(a) Cost reports. Cost reporting requirements vary depending on whether the provider participates in the Direct Care Staff Rate enhancement program. All providers who participate in the rate enhancement program must file a cost report, as described in §355.308 of this title (relating to Direct Care Staff Rate Component). A provider that is not participating in the rate enhancement program must file a cost report unless:

(1) the provider meets one or more of the conditions in §355.105(b)(4)(D) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures); or

(2) the cost report would represent costs accrued during a time period immediately preceding a period of decertification, if the decertification period was greater than either 30 calendar days or one entire calendar month.

(b) Exclusion of and adjustments to certain reported expenses. Providers are responsible for eliminating unallowable expenses from the cost report. HHSC reserves the right to exclude any unallowable costs from the cost report and to exclude entire cost reports from the reimbursement determination database if there is reason to doubt the accuracy or allowability of a significant part of the information reported.

(1) Cost reports included in the database used for reimbursement determination.

(A) Individual cost reports will not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(B) In the event that all cost reports submitted for a specific facility are disqualified through the application of subparagraph (A)(i) and/or (ii) of this paragraph, the facility will not be represented in the reimbursement database for the cost report year in question.

(2) Adjustments and exclusions of cost report data include, but are not necessarily limited to:

(A) Fixed capital asset costs.

(i) HHSC staff determine fixed capital asset costs as detailed in this section.

(ii) Fixed capital asset costs are reimbursed in the form of a use fee calculated as described in §355.307 of this title (relating to Reimbursement Setting Methodology). The following fixed capital charges are excluded from the reimbursement base:

(I) building and building equipment depreciation and lease expense;

(II) mortgage interest;

(III) land improvement depreciation; and

(IV) leasehold improvement amortization.

(B) Limits on other facility and administration costs. To ensure that the results of HHSC's cost analyses accurately reflect the costs that an economic and efficient provider must incur, HHSC may place upper limits or caps on expenses for specific line items and categories of line items included in the rate base for the administration and facility cost centers. HHSC sets upper limits at the 90th percentile in the array of all costs per unit of service or total annualized cost, as appropriate for a specific line item or category of line item, as reported by all contracted facilities, unless otherwise specified. The specific line items and categories of line items that are subject to the 90th percentile cap are:

(i) total buildings and equipment rental or lease expense;

(ii) total other rental or lease expense for transportation, departmental, and other equipment;

(iii) building depreciation;

(iv) building equipment depreciation;

(v) departmental equipment depreciation;

(vi) leasehold improvement amortization;

(vii) other amortization;

(viii) total interest expense;

(ix) total insurance for buildings and equipment;

(x) facility administrator salary, wages, and/or benefits with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(xi) assistant administrator salary, wages, and/or benefits with the cap based on an array of nonrelated-party assistant administrator salaries, wages, and/or benefits;

(xii) facility owner, partner, or stockholder salaries, wages, and/or benefits (when the owner, partner, or stockholder is not the facility administrator or assistant administrator), with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(xiii) other administrative expenses including the cost of professional and facility malpractice insurance, advertising expenses, travel and seminar expenses, association dues, other dues, professional service fees, management consultant fees, interest expense on working capital, management fees, other fees, and miscellaneous office expenses; and

(xiv) total central office overhead expenses or individual central office line items. Individual line item caps are based on an array of all corresponding line items.

(C) Occupancy adjustments. HHSC adjusts the facility and administration costs of providers with occupancy rates below a target occupancy rate. The target occupancy rate is the lower of:

(i) 85%; or

(ii) the overall average occupancy rate for contracted beds in facilities included in the rate base during the cost reporting periods included in the base.

(D) Cost projections. HHSC projects certain expenses in the reimbursement base to normalize or standardize the reporting period and to account for cost inflation between reporting periods and the period to which the prospective reimbursement applies as specified in §355.108 of this title (relating to Determination of Inflation Indices).

(3) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in paragraph (1)(A)(i) of this subsection.

(c) Reimbursement determinations and allowable costs. Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. HHSC excludes from reimbursement determinations any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers.

(d) General information. In addition to the requirements of this section, cost reports will be governed by the information in §355.101 of this title (relating to Introduction), §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures), §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), §355.107 of this title (relating to Notification of Exclusions and Adjustments), §355.108 of this title (relating to Determination of Inflation Indices), §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs), and §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(e) Final cost reports for change of ownership. When a facility changes ownership, for a provider who participates in the rate enhancement program, the prior owner must submit a final Staffing and Compensation Report as described in §355.308 of this title. When a facility changes ownership, for a provider not participating in the rate enhancement program, the prior owner is excused from submitting a final cost report and, if its prior year's cost report is pending audit completion, the audit will be suspended and the cost report excluded from the final cost report database.

(f) Requirements for cost report completion. A completed nursing facility cost report must:

(1) meet the definition of completed cost report specified in §355.105(b)(4)(A) of this title;

(2) have attached the property appraisal used to determine the allowable appraised property value as described in subsection (g) of this section;

(3) not report figures for days of service and number of beds that reflect occupancy of greater than 100%;

(4) have a management contract attached, if applicable; and

(5) have a lease agreement attached, if applicable.

(g) Allowable appraised property values. Allowable appraised property values are determined as follows:

(1) Proprietary facilities. The allowable appraised values of proprietary facilities to be reported on Texas Medicaid cost reports are determined from local property taxing authority appraisals. The year of the property appraisal must be the calendar year within which the provider's cost report fiscal year ends, or the prior calendar year.

(2) Tax exempt facilities. The allowable appraised property values for tax exempt facilities are determined as follows.

(A) Tax exempt facilities provided an appraisal from their local property taxing authority. Tax exempt facilities provided an appraisal from their local property taxing authority must report this appraised value on their Texas Medicaid cost report. The year of the property appraisal must be the calendar year within which the provider's cost report fiscal year ends, or the prior calendar year.

(B) Tax exempt facilities not provided an appraisal from their local property taxing authority. Tax exempt facilities not provided an appraisal from their local property taxing authority because of an "exempt" status must provide documentation received from the local taxing authority certifying exemption for the current reporting period and must contract with an independent appraiser to appraise the facility land and improvements. These independent appraisals must meet the following criteria.

(i) The appraisal must value land and improvements using the same basis used by the local taxing authority under Texas laws regarding appraisal methods and procedures.

(ii) The appraisal must be updated every five years with the initial appraisal setting the five-year interval.

(I) Facilities achieving exempt status during their fiscal year ending in calendar year 1997 or a subsequent year must submit an initial appraisal to HHSC's Rate Analysis Department as part of their cost report for the fiscal year during which the exempt status was achieved. This appraisal must be reflective of the facility's appraised value during that fiscal year.

(II) If a facility is reappraised due to improvements or reconstruction as defined in clause (iii) of this subparagraph, a new five-year interval will be set.

(iii) Facilities making capital improvements, or requiring reconstruction due to fire, flood, or other natural disaster, when the improvements or reconstruction cost more than $2,000 per licensed bed, may contract with an independent appraiser to have land and improvements reappraised within the cost reporting period in which the improvement(s) is placed into service.

(iv) If for any reason an appraisal becomes available from the local taxing authority for a provider who previously lacked such an appraisal, the provider must report, on the next Texas Medicaid cost report submitted, the local taxing authority's appraised values instead of the independent appraisal values.

(3) Governmental facilities. Governmental facilities are exempt from the requirement to report an appraised property value.

(h) In addition to the requirements of §355.102 and §355.103 of this title, the following apply to costs for the nursing facilities (NF) program.

(1) Medical costs. The costs for medical services and items delineated in 40 TAC §19.2601 (relating to Vendor Payment) are allowable. These costs must also comply with the general definition of allowable costs as stated in §355.102 of this title.

(2) Chaplaincy or pastoral services. Expenses for chaplaincy or pastoral services are allowable costs.

(3) Voucherable costs. Except as detailed in subparagraphs (A) and (B) of this paragraph, any expenses directly reimbursable to the provider through a voucher payment and any expenses in excess of the limit, or ceiling, for a voucher payment system are unallowable costs.

(A) The ventilator dependent supplemental voucher system and the children with tracheostomies supplemental voucher system are not subject to the cost reporting restrictions described in this paragraph.

(B) Select voucher systems, when indicated by department procedures, are not subject to the cost reporting restrictions described in this paragraph. To avoid the possibility of providers being reimbursed through the voucher system and the daily rate for the same expenses, the department may not waive the cost reporting restrictions described in this paragraph unless the following criteria are met:

(i) the voucher system is a temporary system;

(ii) the costs represent ongoing costs; and

(iii) the costs are not represented in the payment rate until after the voucher system has been discontinued.

(4) Preferred items. Costs for preferred items which are billed to the recipient, responsible party, or the recipient's family are not allowable costs.

(5) Preadmission Screening and Annual Resident Review (PASARR) expenses. Any expenses related to the direct delivery of specialized services and treatment required by PASARR for residents are unallowable costs.

(6) Advanced Clinical Practitioner (ACP) or Licensed Professional Counselor (LPC) services. Expenses for services provided by an ACP or LPC are unallowable costs.

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 November 5, 2012.

TRD-201205696
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 25, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §§355.503, 355.505, 355.509 - 355.511, 355.513

Statutory Authority

The amendments are adopted 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(a), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

§355.503. Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs.

(a) General requirements. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction). Providers are reimbursed for waiver services provided to individuals who meet the criteria for alternatives to nursing facility care. Additionally, providers are reimbursed a one-time administrative expense fee for a pre-enrollment assessment of potential waiver participants. The pre-enrollment assessment covers care planning for the participant.

(b) Other sources of cost information. If HHSC has determined that there is not sufficient reliable cost report data from which to determine reimbursements and reimbursement ceilings for waiver services, reimbursements and reimbursement ceilings will be developed by using data from surveys; cost report data from other similar programs, consultation with other service providers or professionals experienced in delivering contracted services; and other sources.

(c) Waiver reimbursement determination. Recommended reimbursements are determined in the following manner:

(1) Unit of service reimbursement. Reimbursement for personal assistance services and in-home respite care services, and cost per unit of service for nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, speech/language therapy, and day activity and health services will be determined on a fee-for-service basis in the following manner:

(A) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report.

(B) Total allowable costs are reduced by the amount of the pre-enrollment expense fee and requisition fee revenues accrued for the reporting period.

(C) Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

(D) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Medicare Contributions, Workers' Compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(E) Allowable administrative and facility costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's units of service to the amount of total waiver units of service.

(F) For nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech/language therapy, and in-home respite care services, an allowable cost per unit of service is calculated for each contracted provider cost report for each service. The allowable cost per unit of service, for each contracted provider cost report is multiplied by 1.044. This adjusted allowable cost per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers).

(G) For personal assistance services, two cost areas are created:

(i) The attendant cost area includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(ii) Another attendant cost area is created which includes the other personal attendant services costs not included in subparagraph (G)(i) of this paragraph as determined in subparagraphs (A) - (E) of this paragraph. An allowable cost per unit of service is determined for each contracted provider cost report for the other attendant cost area. The allowable cost per unit of service for each contracted provider cost report are arrayed. The units of service for each contracted provider cost report in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044.

(iii) The attendant cost area and the other attendant cost area are summed to determine the personal assistance services cost per unit of service.

(2) Per day reimbursement.

(A) The reimbursement for Adult Foster Care (AFC) and out-of-home respite care in an AFC home will be determined as a per day reimbursement using a method based on modeled projected expenses, which are developed using data from surveys, cost report data from other similar programs, consultation with other service providers or professionals experienced in delivering contracted services, and other sources. The room and board payments for AFC Services are not covered in these reimbursements and will be paid to providers from the client's Supplemental Security Income, less a personal needs allowance.

(B) The reimbursement for Assisted Living/Residential Care (AL/RC) will be determined as a per day reimbursement in accordance with §355.509(a) - (c)(2)(F)(iii) of this title (relating to Reimbursement Methodology for Residential Care).

(i) The per day reimbursement for attendant care for each of the six levels of care will be determined based upon client need for attendant care.

(ii) A total reimbursement amount will be calculated and the proposed reimbursement is equal to the total reimbursement less the client's room and board payments.

(iii) The room and board payment is paid to the provider by the client from the client's Supplemental Security Income (SSI), less a personal needs allowance.

(iv) The reimbursement for out-of-home respite in an AL/RC facility is determined using the same methodology as the reimbursement for AL/RC except that the out-of-home respite rates:

(I) are set at the rate for providers who choose not to participate in the attendant compensation rate enhancement; and

(II) include room and board costs equal to the client's SSI, less a personal needs allowance.

(v) When the SSI is increased or decreased by the Federal Social Security Administration, the reimbursement for AL/RC and out-of-home respite provided in an AL/RC facility will be adjusted in amounts equal to the increase or decrease in SSI received by clients.

(C) The reimbursement for out-of-home respite care provided in a Nursing Facility will be based on the amount determined for the Nursing Facility case mix class into which the CBA participant is classified.

(D) The reimbursement for Personal Care 3 will be composed of two rate components, one for the direct care cost center and one for the non-direct care cost center.

(i) Direct care costs. The rate component for the direct care cost center will be determined by modeling the cost of the minimum required staffing for the Personal Care 3 setting, as specified by the Department of Aging and Disability Services, and using staff costs and other statistics from the most recently audited cost reports from providers delivering similar care.

(ii) Non-direct care costs. The rate component for the non-direct care cost center will be equal to the non-attendant portion of the non-apartment assisted living rate per day for non-participants in the Attendant Compensation Rate Enhancement. Providers receiving the Personal Care 3 rate are not eligible to participate in the Attendant Compensation Rate Enhancement and receive direct care add-on's to the Personal Care 3 rates.

(3) Emergency Response Services. The reimbursement for Emergency Response Services will be determined as monthly reimbursement ceiling, based on the ceiling amount determined in accordance with §355.510 of this title (relating to Reimbursement Methodology for Emergency Response Services (ERS)).

(4) Requisition fees. Requisition fees are reimbursements paid to the CBA home and community support services contracted providers for their efforts in acquiring adaptive aids, medical supplies, dental services, and minor home modifications for CBA participants.

Reimbursement for requisition fees for adaptive aids, medical supplies, dental services, and minor home modifications will vary based on the actual cost of the adaptive aids, medical supplies, dental services, and minor home modifications. Reimbursements are determined using a method based on modeled projected expenses, which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.

(5) Pre-enrollment expense fee. Reimbursement for pre-enrollment assessment is determined using a method based on modeled projected expenses that are developed by using data from surveys; cost report data from other similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and other sources.

(6) Home-Delivered Meals. The reimbursement for Home-Delivered Meals will be determined on a per meal basis, based on the ceiling amount determined in accordance with §355.511 of this title (relating to Reimbursement Methodology for Home-Delivered Meals).

(7) Exceptions to the reimbursement determination methodology. HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(d) Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title (relating to Introduction).

(e) Reporting of cost.

(1) Cost reporting guidelines. If HHSC requires a cost report for any waiver service in this program, providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Excused from submission of cost reports. If required by HHSC, a contracted provider must submit a cost report unless the provider meets one or more of the conditions in §355.105(b)(4)(D) of this title.

(3) Number of cost reports to be submitted.

(A) Contracted providers participating in the attendant compensation rate enhancement.

(i) At the same level of enhancement. If all the contracts under the legal entity participate in the enhancement at the same level of enhancement, the contracted provider must submit one cost report for the legal entity.

(ii) At different levels of enhancement. If all the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit one cost report for each level of enhancement.

(B) Contracted providers not participating in the attendant compensation rate enhancement. If all the contracts under the legal entity do not participate in the enhancement, the contracted provider must submit one cost report for the legal entity.

(C) Contractors participating and not participating in attendant compensation rate enhancement.

(i) At the same level of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate at the same level of enhancement, the contracted provider must submit:

(I) one cost report for the contracts that do not participate; and

(II) one cost report for the contracts that do participate.

(ii) At different levels of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit:

(I) one cost report for the contracts that do not participate; and

(II) one cost report for each level of enhancement.

(4) Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers; the purpose is to ensure that the database reflects costs and other information which are necessary for the provision of services, and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(5) Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs), in addition to the following.

(A) Client room and board expenses are not allowable, except for those related to respite care.

(B) The actual cost of adaptive aids, medical supplies, dental services, and home modifications are not allowable for cost reporting purposes. Allowable labor costs associated with acquiring adaptive aids, medical supplies, dental services, and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable for cost reporting purposes. Refer to §355.103(17)(K) of this title (relating to Specifications for Allowable and Unallowable Costs).

(f) Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(g) Reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of

Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

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 November 5, 2012.

TRD-201205697
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 25, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER G. TELEMEDICINE SERVICES AND OTHER COMMUNITY-BASED SERVICES

1 TAC §355.5902, §355.6907

Statutory Authority

The amendments are adopted 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(a), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

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 November 5, 2012.

TRD-201205698
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 25, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 424-6900

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER P. APPEAL PROCEDURES FOR THE FOOD AND NUTRITION PROGRAMS

DIVISION 1. APPEAL PROCEDURES FOR THE CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

4 TAC §1.1000, §1.1003

The Texas Department of Agriculture (the department) adopts amendments to Chapter 1, Subchapter P, §1.1000, concerning Definitions, and §1.1003, concerning Suspension Review for Submitting False or Fraudulent Claims. Section 1.1003 is adopted with changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7554) and will be republished. Section 1.1000 is adopted without changes and will not be republished. The amendment to §1.1003(3) is adopted to correct a typographical error in the reference to the Texas Unified Nutrition Programs System.

The amendment to §1.1000 adds the definition of a Suspension Review Official. The amendments to §1.1003 are adopted to clarify the procedures for a suspension review by a CACFP Contracting Entity (CE) and to update the rule and state procedures for suspension review of CEs that participate in CACFP to make them consistent with the requirements of 7 CFR §226.6(c)(5)(ii), relating to suspension of a CE for submitting false or fraudulent claims.

No public comments were received on the proposal.

The amendments to §1.1000 and §1.1003 are adopted under the Texas Agriculture Code, §12.016 which provides the department with the authority to adopt rules to administer its duties under the Texas Agriculture Code.

§1.1003. Suspension Review for Submitting False or Fraudulent Claims.

The following are requirements for a suspension review based on submitting false or fraudulent claims.

(1) Notice of Suspension. TDA shall notify the institution's executive director and chairman of the board of directors that TDA intends to suspend the institution's participation in CACFP, including suspension of all Program payments, unless the institution requests a review of the proposed suspension. The notice must also specify:

(A) that TDA is proposing to suspend the institution's participation;

(B) that the proposed suspension is based on the institution's submission of a false or fraudulent claim, as described in the serious deficiency notice;

(C) the effective date of the suspension (which may be no earlier than ten (10) days after the institution receives the suspension notice);

(D) the name, address and telephone number of the suspension review official who will conduct the suspension review; and

(E) that if the institution wishes to have a suspension review, it must request a review and submit to the SRO written documentation opposing the proposed suspension within ten (10) days of the institution's receipt of the notice.

(2) Request for suspension review. The request for suspension review shall be submitted in writing to the SRO not later than ten (10) days after the date the notice is received and must include written documentation opposing the proposed suspension. On or before that

date, TDA may submit documentation and/or written argument and authorities in support of the suspension.

(3) Hearing. No hearing shall be provided. The suspension review shall be limited to a review of TDA's file pertaining to the institution, including relevant information from the Texas Unified Nutrition Programs System, along with written submissions by the institution or TDA concerning TDA's proposal to suspend the institution's participation.

(4) Basis for decision. The SRO shall make a determination based on a preponderance of the evidence provided by TDA, the institution, and, the executive director and chairman of the board of directors, based on the laws, regulations, policies, and procedures governing the Program.

(5) Time for issuing a decision. Within ten (10) days of TDA's receipt of the request for the suspension review, the SRO shall issue a written determination informing TDA, the institution, and the institution's executive director and chairman of the board of directors, of the SRO's decision. This timeframe is an administrative requirement for TDA and may not be used as a basis for overturning TDA's action if a decision is not made within the specified timeframe.

(6) Appeal from decision by the SRO. If the SRO determines that TDA's action was appropriate, the institution, or the institution's executive director and chairman of the board of directors, may seek an administrative review of the suspension as provided by 7 CFR §226.6(c)(5)(ii)(D)(3) and (k).

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 November 2, 2012.

TRD-201205666
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: November 22, 2012
Proposal publication date: September 28, 2012
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER FF. CREDIT LIFE AND CREDIT ACCIDENT AND HEALTH INSURANCE

DIVISION 10. RESPONSIBILITIES AND OBLIGATIONS OF INSURANCE COMPANIES AND THEIR AGENTS AND REPRESENTATIVES

28 TAC §3.6011

The Texas Department of Insurance adopts amendments to Title 28 Texas Administrative Code §3.6011, concerning a revised *Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance* (Consumer Bill of Rights) that insurers must provide to each insured with a new policy or renewal notice. The amendments are adopted with nonsubstantive changes to the proposed text published in the July 6, 2012, issue of the *Texas Register* (37 TexReg 5080).

REASONED JUSTIFICATION. The Office of Public Insurance Counsel (OPIC) submitted a petition to the department requesting the adoption of a revised Consumer Bill of Rights to reflect legislative changes in regard to consumers' right to privacy. Insurance Code §501.156 requires OPIC to submit a consumer bill of rights appropriate to each personal line of insurance regulated by the department. The department regulates credit life, credit disability, and credit involuntary unemployment insurance under Insurance Code Chapters 1153 and 3501.

The Consumer Bill of Rights currently in effect was adopted by reference in §3.6011, effective October 1, 1993 (September 24, 1993, issue of the *Texas Register* (18 TexReg 6546)). The revised Consumer Bill of Rights reflects legislative changes affecting consumer rights, updates contact information, and includes editorial changes for clarity and conciseness.

The Consumer Bill of Rights has been revised in response to comments received on the published proposal. Those changes are discussed in the Summary of Comments and Agency Response section of this adoption order. Additionally, the department made the following editorial revisions to the Consumer Bill of Rights after the proposed rule was published:

All contact information throughout the document was removed and placed in a chart located at the end of the document.

In Right No. 8 which is Right No. 6 in the adopted Consumer Bill of Rights, the phrase "...for credit insurance than what the creditor paid for that insurance when they purchased it from the insurance company" was removed and replaced with, "...more than the premium charged by the insurer or add any fees or interest in relation to the insurance." The revised Right now reads: "A creditor cannot charge you more than the premium charged by the insurer or add any fees or interest in relation to the insurance."

In Right No. 10, which is Right No. 8 in the adopted Consumer Bill of Rights, the phrase "If your rate changes..." was added at the beginning of the sentence. As revised, the Right now reads: "If your rate changes, a creditor must notify you at least 30 days before any unscheduled premium increases are direct drafted from your bank account. Your company must send you notice by U.S. mail and it must include a toll-free number and mailing address to accept your objection. You must object to the increased draft at least five days before it goes into effect to stop the direct draft."

In Right No. 13, which is Right No. 11 in the adopted Consumer Bill of Rights, the phrase "If your loan is paid off early..." was added to the beginning of the sentence; and the phrase "...the return of any unused..." was replaced with "...refund or accounting...."

As revised the Right reads: "If your loan is paid off early, you are entitled to a refund or accounting of the unearned premiums, unless the amount is less than $3."

Right No. 18, which is Right No. 16 in the adopted Consumer Bill of Rights, replaced the word "related" with "relevant."

Right No. 19, which is Right No. 17 in the adopted Consumer Bill of Rights, replaced "requires" with "necessary."

Nonsubstantive changes were made to the proposed text to add §3.6011(e) extending the compliance date to February 11, 2013. The changes in the rule and adopted Consumer Bill of Rights do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

HOW THE SECTION WILL FUNCTION. Amendments to the title of the section and subsections (a) - (c) of §3.6011 change references from "involuntary unemployment insurance" to "credit involuntary unemployment insurance." This nonsubstantive change is necessary for clarity.

Amendments to §3.6011(a) and (c) update the name of the office and mail code where the form is available.

Amendments to §3.6011(a) and (c) update the department's website address.

Section 3.6011(e) specifies that the compliance date is February 11, 2013.

Amendments to §3.6011(b) and (d) change references from "10-point type" to "10 point font." This nonsubstantive change is necessary to conform the text to the department's rule style guidelines.

Finally, §3.6011(a) adopts by reference the revised Consumer Bill of Rights, and §3.6011(c) adopts the Spanish version of the revised Consumer Bill of Rights.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment--Length of Consumer Bill of Rights: A commenter stated that from the insurer's perspective the current three-page Consumer Bill of Rights adequately advises consumers of their rights. The commenter also stated that insurers would prefer a two-page bill of rights that refers consumers to a website for more detailed information. Additionally, the commenter requested that the department authorize the form to be reproduced in a smaller font size to allow the Consumer Bill of Rights to fit on the front and back of one page.

Agency Response: The agency did not make changes in response to this comment because §3.6011(b) allows the form to be reproduced using 10-point font and any smaller font would make the document inaccessible to many consumers. The adopted Consumer Bill of Rights includes three additional rights and is just over three pages in 11-point font. Further, it is concise and well-organized so that consumers may refer back to it as needed to assist them in understanding and asserting their rights.

Comment--Cost to Insurers. A commenter stated that the department's cost analysis incorrectly calculated the cost to insurers and asserted that insurers will incur significant costs complying with amended §3.6011. The commenter stated that it is expensive to update documents when a platform is used to produce documents and that there will be a loss of any unused stock of the current Consumer Bill of Rights. The commenter requested that the department delay the compliance date to assist in reducing insurers' compliance cost.

Agency Response: The department recognizes that it may cost some insurers more to comply with the rule depending on the type of delivery system utilized. In an effort to mitigate some compliance costs new §3.6011(e) extends compliance to February 11, 2013.

Comment--Applicability. A commenter stated the use of "current and future policy holders" in the preamble was confusing and asked the department to clarify the insureds to which the amendment applies.

Agency Response: The department did not make changes in response to this comment. The current rule requires each new policy or renewal notice for credit life, credit disability, or credit involuntary unemployment insurance to include a copy of the most current version of the Consumer Bill of Rights, and this amendment does not change the requirement. For example, if a renewal notice is sent to a current policy holder on February 11, 2013, and that consumer had received the previous Consumer Bill of Rights in 2011, then the 2013 renewal notice must include the newly adopted Consumer Bill of Rights.

Comment--Fiscal Impact on State Government. A commenter disagreed with the department's finding of no fiscal impact on state government. The commenter stated that adoption of this amendment will force industry to move from credit insurance to debt cancellation, which would not produce premium tax revenue because it is not an insurance product.

Agency Response: The department did not make changes in response to this comment and disagrees that this adoption will have any impact on industry's choice between the two products. The commenter did not provide documentation to support that a downward trend will occur or that this amendment will be a major factor when deciding which product to use. The department also notes that the newly adopted Consumer Bill of Rights is only nine lines longer than the version it is replacing.

Consumer Bill of Rights.

Comment: A commenter suggested using the term "coverage" instead of "policy" because this product could be either a policy or certificate of insurance.

Agency Response: The department agrees and has added a sentence at the end of the first paragraph of the adopted Consumer Bill of Rights stating that the term "policy" includes a certificate of insurance.

Comment: A commenter suggested that "unearned" premium should be used instead of "unused" because that is the term used in most policies.

Agency Response: The department agrees and has made this change throughout the Consumer Bill of Rights.

Comment: A commenter stated that Right No. 4, which is Right No. 2 in the adopted Consumer Bill of Rights, should reflect that, although a lender may require credit insurance, the lender cannot require the consumer to purchase credit insurance.

Agency Response: The department did not make changes in response to this comment because the text as written exhausts all of the consumer options without being repetitive.

Comment: A commenter stated that the last sentence of Right No. 4, which is Right No. 2 in the adopted Consumer Bill of Rights, is misleading and should be deleted because credit insurance is tied to a particular debt.

Agency Response: The department did not make changes in response to this comment because a consumer may satisfy the need for credit insurance by using an existing policy as provided for by Insurance Code §1153.161. Although this option may not

be utilized very often, it is still an option available to some consumers.

Comment: A commenter stated that the inclusion of age and disability in Right No. 7, which is Right No. 5 in the adopted Consumer Bill of Rights, is incorrect because state law allows credit insurance to be limited based on age and disability.

Agency Response: The department agrees and has added language to alert the consumer that there are exceptions based on age, disability, and partial disability.

Comment: A commenter stated that Right No. 9, which is Right No. 7 in the adopted Consumer Bill of Rights, should include a statement that the amount of credit insurance may be less than the amount required to fully extinguish the indebtedness.

Agency Response: The department did not make changes in response to this comment because Right No. 3 states that the application and policy must include the amount of coverage. If the amount of coverage is less than the amount of indebtedness, the consumer should be aware of the difference.

Comment: A commenter stated that Right No. 10, which is Right No. 8 in the adopted Consumer Bill of Rights, should be deleted in its entirety because credit insurance is usually written on a single premium basis and does not involve any increases.

Agency Response: The department has revised Right No. 8 in response to this comment to specify that this right only applies to those circumstances in which the consumer's premium increases.

Comment: A commenter suggested that "if any" should be inserted after "decrease" in Right No. 11, which is Right No. 9 in the adopted Consumer Bill of Rights, for clarity.

Agency Response: The department agrees and has made this change for clarity.

Comment: A commenter stated that the reference to arson should be deleted in Right No. 19, which is Right No. 17 in the adopted Consumer Bill of Rights, because it typically does not apply to credit insurance claims.

Agency Response: The department did not make changes in response to this comment because Insurance Code §542.056(b) provides all insurers additional time to provide notice of acceptance or rejection of a claim when there is a reasonable basis to believe the loss occurred due to arson.

Comment: A commenter suggested that Right No. 24, which is Right No. 22 in the adopted Consumer Bill of Rights, should state "unpaid claim amount" instead of "claim amount" because, if a lawsuit were instigated, the amount claimed would be the unpaid portion of the claim amount.

Agency Response: The department did not make changes in response to this comment because there are other laws and rules that control civil litigation and the amount a plaintiff may claim and recover.

Comment: A commenter stated that Rights Nos. 24 and 26, which are Rights Nos. 22 and 24 in the adopted Consumer Bill of Rights, are duplicative.

Agency Response: The department did not make changes in response to this comment because Right No. 22 only addresses the consumer's right to sue if the insurance company violates certain provisions of the Unfair Claim Settlement Practices Act provided in Insurance Code Chapter 542. Alternatively, Right No. 24 addresses the consumer's right generally to sue an insurer under any legitimate cause of action.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL. For, with changes: American National Insurance Company.

STATUTORY AUTHORITY. The amendments are adopted pursuant to Insurance Code §501.156 and §36.001. Section 501.156 requires OPIC to submit to a consumer bill of rights appropriate to each personal line of insurance regulated by the department to be distributed on issuance of a policy by an insurer to each policyholder. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§3.6011. Responsibility and Obligation of Insurers to Provide Copies of Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance to Each Insured.

(a) The commissioner adopts by reference the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance form. All insurers writing credit life, credit disability, and credit involuntary unemployment insurance policies must provide with each new policy and certificate of credit life, credit disability, and credit involuntary unemployment insurance a copy of the Texas Department of Insurance Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance. This form is filed with the Office of the Secretary of State, Texas Register Section. The form can be obtained from the Texas Department of Insurance, Rate and Form Review Office, MC 106-1A, P.O. Box 149104, Austin, Texas 78714-9104. The form can also be obtained from the department's internet website at http://www.tdi.texas.gov. The Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance shall accompany each renewal notice for credit life, credit disability, and credit involuntary unemployment insurance unless the current version of the form has been previously provided to the insured by the insurer.

(b) Insurers may reproduce the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance for the distribution required by subsection (a) of this section. Alternatively, insurers may generate it on their own equipment. If the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance is generated by the insurers, it must appear in no less than 10-point font and be on separate pages with no other text on those pages.

(c) The commissioner adopts by reference the Spanish language version of the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance form. The department has promulgated a Spanish language version of this form that has been filed with the Secretary of State's Office. The Spanish language version of the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance must be provided to any consumer who requests it from the company. The form can be obtained from the Texas Department of Insurance, Rate and Form Review Office, MC 106-1A, P.O. Box 149104, Austin, Texas 78714-9104. The form can also be obtained from the department's internet website at http://www.tdi.texas.gov.

(d) Insurers may reproduce the Spanish language version of the Consumer Bill of Rights for the distribution required by subsection (c) of this section. Alternatively, insurers may generate the form on their own equipment. If the form is generated by the insurers, it must

appear in no less than 10 point font and be on separate pages with no other text on those pages.

(e) This section applies to all credit life, credit disability, and credit involuntary unemployment insurance policies offered, issued, renewed, or delivered after February 11, 2013. All policies offered, issued, renewed or delivered prior to February 11, 2013, are not subject to this amended rule.

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 November 5, 2012.

TRD-201205701
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: November 25, 2012
Proposal publication date: July 6, 2012
For further information, please call: (512) 463-6326

♦ ♦ ♦

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER W. CONSUMER PROTECTION REQUIREMENTS CONSUMER BILL OF RIGHTS

28 TAC §5.9970

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 28 TAC §5.9970 are not included in the print version of the Texas Register. The figures are available in the on-line version of the November 16, 2012, issue of the Texas Register.)

The commissioner of insurance adopts amendments to Subchapter W, §5.9970, concerning the Consumer Bills of Rights. The commissioner adopts the amendments to §5.9970 with changes to the proposed text published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3345).

REASONED JUSTIFICATION. The Texas Department of Insurance (TDI) received petitions from the Office of Public Insurance Counsel, requesting the adoption of revised Consumer Bills of Rights for Personal Automobile Insurance (BRPA) and Homeowners, Dwelling, and Renters Insurance (BRHO). Insurance Code §501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates. An insurer must distribute the appropriate bill of rights to each policyholder upon issuance of a policy under TDI rules.

The revised BRPA and BRHO are necessary to ensure that insurers distribute up-to-date consumer rights information to current and future policyholders. The Spanish language translations of the revised BRPA and BRHO ensure that the information is available to policyholders whose primary language is Spanish. The revised bills of rights are set forth in Figure 1: 28 TAC §5.9970(b), Figure 2: 28 TAC §5.9970(b), Figure 1: 28 TAC §5.9970(d), and Figure 2: 28 TAC §5.9970(d) of this adoption. TDI adopted the current versions of the BRPA and BRHO on April 19, 2005. The revisions contain changes due to legislative acts and regulatory actions that affect the rights of insurance consumers, as well as nonsubstantive editorial changes. Insurers may begin providing the revised BRPA and BRHO immediately after adoption. Insurers must provide the revised BRPA and BRHO on and after January 31, 2013.

On June 26, 2012, TDI held a hearing on the proposal to amend §5.9970. In response to written comments and comments made at the hearing, TDI has made the following changes to the proposed section. TDI has changed the definition of "insurer" in 28 TAC §5.9970(a) to clarify that it does not include the Texas Windstorm Insurance Association or the Texas Fair Plan Association. TDI has also changed 28 TAC §5.9970(c) and (e) to allow consumers to request electronic copies of those documents instead of receiving hard copies. Finally, TDI has changed the language in BRHO #29 and BRPA #24 to clarify the insured's options if the insured disagrees with a settlement offer.

HOW THE SECTION WILL FUNCTION. Section 5.9970 adopts the revised BRPA and BRHO in English and Spanish. The section defines "insurer" and requires insurers to provide copies of the BRPA and BRHO to insureds. The revised BRPA and BRHO summarize consumers' existing rights in clear, accurate terms. They are not all-inclusive statements of rights, and they do not grant additional rights or impose obligations not based in statute or rule. Since TDI adopted the current versions of the BRPA and BRHO on April 19, 2005, legislative acts and regulatory actions have affected the rights of insurance consumers, as stated in the BRPA and BRHO. The adopted section and revisions to the BRPA and BRHO ensure that consumers receive relevant, up-to-date information.

SUMMARY OF COMMENTS AND AGENCY RESPONSE TO COMMENTS.

Comment: Two commenters requested that TDI amend §5.9970(a) to clarify that the definition of "insurer" does not include TWIA and TFPA, because neither of those organizations qualify under the definition of "insurer" in Insurance Code §2301.051(1), which applies to this rule.

Agency Response: TDI has changed the definition of "insurer" in §5.9970(a) to exclude TWIA and TFPA. Insurance Code §2301.052, which forms part of the statutory basis for §5.9970, includes the definition of "insurer" in §2301.051(1). That definition specifically excludes TWIA and TFPA. TWIA and TFPA do not currently provide copies of the BRHO and BRPA with their policies because many of the rights in the BRHO and BRPA do not apply to TWIA and TFPA policies. In contrast, the Texas Automobile Insurance Plan Association, while also not included in the definition of "insurer" in §2301.051(1), does not issue policies. Instead, it assigns risks to participating automobile insurers, who then issue policies and provide copies of the BRPA to their policyholders. Unlike TWIA and TFPA, the rights summarized in the BRPA apply to policyholders assigned through TAIPA, so it is logical for those policyholders to receive copies of the BRPA in accordance with §5.9970.

Comment: A commenter requested that TDI clarify BRPA #27, Choice of Repair Shop and Replacement Parts. Several commenters requested that TDI add to BRPA #9, Notice of Reduced Coverage, the language "such as the use of aftermarket new or used parts," or "repair shop from a list of approved shops." The commenters also requested that TDI add to BRPA #27 the language "of your choice" after "shop." Another commenter re-

quested that TDI not add the "of your choice" language, observing that 28 TAC §5.501 already requires disclosure as to the insured's right to select a repair shop. The commenter stated that repeating the disclosure, which the insured has already received, in the BRPA would be duplicative.

Agency Response: TDI disagrees that the language in BRPA #27 needs clarification. In accordance with the stated definition of the BRPA as a summary of rights, BRPA #27 clearly, concisely, and accurately summarizes the consumer rights afforded by Insurance Code Chapter 1952, Subchapter G, Repair of Motor Vehicles.

TDI declines to add the phrase "such as the use of aftermarket new or used parts" to BRPA #9. If the policy states that the insured vehicle may be repaired with parts of like kind and quality (LKQ), using LKQ parts would not reduce coverage under the policy.

TDI declines to add the phrase "repair shop from a list of approved shops" to BRPA #9 because Insurance Code §1952.301 already prohibits an insurer from limiting the policyholder's selection of a repair person or facility to repair damage to the vehicle. Adding the requested limitation to the BRPA would be confusing and unnecessary.

TDI declines to add the phrase "of your choice" after "shop" to BRPA #27. BRPA #27 already states that the insured has the right to choose the repair shop and replacement parts for the vehicle.

Comment: Several commenters requested that TDI define the terms "fair and reasonable," "fairly and honestly," "unfair," and "promptly." Another commenter responded that the definition of terms like "reasonable" depends on the facts, so defining them in the BRPA would be unwise.

Several commenters stated that insurers are not paying for proper repairs. They asserted that unreasonable insurer claim payment amounts are an unfair settlement practice; that insurers are not paying for repairs that the manufacturers say are necessary; that the insurers' willingness to pay for replacing parts is partly based on cost to replace; and that using used structure and suspension parts is a safety issue.

Several commenters requested that TDI amend BRPA #27 to define "reasonable amount." The comment refers to the notice to claimants regarding motor vehicle repairs mandated by 28 TAC §5.501, which states that an insurance company is not required to pay more than a reasonable amount for repairs and parts. The commenters requested that BRPA #27 define "reasonable amount" as the manufacturer's suggested retail price of the original equipment manufacturer (OEM) part. The commenters asserted that consumers expect OEM parts, that only OEM parts are LKQ, and that the use of non-OEM parts could void manufacturer warranties. The commenters questioned the worth of the LKQ part certification and requested that TDI require a notice concerning the use of non-OEM parts.

Another commenter responded that consumers can choose the part used to repair the vehicle. If the selected part costs more than the insurer's estimated cost for that part, the consumer can pay the difference. The commenter asserted that insurers do not require LKQ parts for "safety parts," that using LKQ parts is "green," and that using OEM parts does not guarantee that the repair shop will not have to return and reorder parts due to damage or bad fit.

Agency Response: As stated in TDI's response to the previous comment, the BRPA is a summary of existing rights. It does not grant additional rights or impose obligations not based in existing law. TDI cannot incorporate the requested language into the BRPA because there is no basis in statute or rule for the requested language.

Additionally, in using the terms "reasonable," "fair and reasonable," "fairly and honestly," "unfair," and "promptly," the legislature created a flexible system to address multiple situations. Attempting to fit all possible factual scenarios into a universal definition of fairness, honesty, or reasonableness is not practical. Determining what these terms mean in a particular situation is one of the duties of the courts.

Whether an insurer's claim payment is proper or reasonable, or whether a repair is necessary in any given situation depends on the specific facts of that situation. The manufacturer's guidelines may be evidence of necessity, but that determination, if disputed, must be made by a finder of fact. An insurer's motivation for paying to replace a part is not relevant; what is relevant are the insurer's actions. What constitutes a safety issue is also a question of fact. Section 5.9970 cannot address these factual issues.

With regard to the definition of "promptly," Insurance Code §§542.051 - 542.061 address prompt payment of claims. Copying these statutes into BRPA #26, Time Frames for Claim Processing and Payment, would unnecessarily lengthen and complicate the BRPA. The general guidelines for the deadlines applicable to most auto claims that BRPA #26 provides suit the purpose of the BRPA as a summary of rights.

Asserting that the only reasonable amount is the OEM price is also inconsistent with Insurance Code §1952.301, which does not require insurance companies to pay for new OEM parts in every situation. TDI has consistently stated that Insurance Code §1952.301 does not abrogate the language in automobile insurance policies that allows insurers to pay for repairs using LKQ parts. In *Berry v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884 (Tex.Ct.App.2000), the court of appeals supported TDI's construction of Article 5.07-1 (which was later recodified as Insurance Code §1952.301), holding that the statute does not require insurance companies to pay for new OEM parts in the satisfaction of all legitimate claims.

In the *Berry* decision, the court noted that the legislature was aware of concerns that the use of non-OEM parts could void existing warranties, and ultimately held that LKQ parts may be used to satisfy claims. Thus, there is no statutory basis for TDI to require a notice with regard to the use of non-OEM parts. Whether the use of non-OEM parts could void manufacturer warranties is an issue for the claimant to consider, but not necessarily one that affects coverage. TDI agrees that insureds can request that the repair shop use only OEM parts on their vehicles and pay the difference between the LKQ and OEM prices.

Comment: A commenter requested that TDI allow a six-month period between the adoption date of the rule and its effective date. Another commenter requested that TDI adopt §5.9970 as proposed and published, with a three-month period between the adoption date of the rule and its effective date.

Agency Response: TDI agrees that a transition period is warranted. Insurers may begin providing the revised BRPA and BRHO immediately after adoption. Insurers must provide the revised BRPA and BRHO on and after January 31, 2013.

Comment: A commenter requested that TDI amend §5.9970(e) to allow policyholders the option of receiving the bills of rights electronically, or to opt out of receiving the documents at each renewal. Another commenter suggested that electronic distribution should be on an opt-in basis.

Agency Response: Electronic distribution of the BRPA and BRHO on an opt-in basis is consistent with Insurance Code §§35.001 - 35.004. Insurance Code §35.003 allows a regulated entity to conduct business electronically to the same extent that the entity is authorized to conduct business otherwise if before the conduct of business each party to the business agrees to conduct the business electronically. TDI has changed §5.9970(c) and §5.9970(e) to specifically allow policyholders to receive the BRPA and BRHO electronically, provided that they must affirmatively inform the insurer of that choice.

TDI declines to amend §5.9970(c) or §5.9970(e) to allow policyholders to opt out of receiving the BRPA or BRHO at each renewal, because such an amendment would be unnecessary. Section 5.9970(c) and §5.9970(e) already state that the insurer must provide the bill of rights with each renewal notice for any such insurance unless the insurer has previously provided the insured with a copy. Thus, the insured would only receive a copy of the BRPA or BRHO at renewal if he or she had not already received one, making it unnecessary for the insured to affirmatively opt out at each renewal.

Comment: A commenter requested that TDI amend BRPA #24 and BRHO #29 to state that an insurer has no duty to change its offer if the insurer determines that the offer is reasonable and appropriate.

Agency Response: TDI concurs that no statute requires an insurer to change its offer under those circumstances. Because an affirmative statement of options is more helpful to consumers than a statement that an insurer has no duty to act, TDI has changed BRPA #24 and BRHO #29 to clarify the insured's options if the insured disagrees with a settlement offer, rather than merely stating what the insurer is not obligated to do.

Comment: Several commenters asserted that automobile policy changes should be in writing.

Agency Response: Insurance Code Article 5.06(2) already requires insurers to confirm automobile policy changes in writing. Article 5.06(2) states in part, "A contract or agreement not written into the application and policy is void and of no effect and in violation of the provisions of this subchapter."

Comment: Several commenters stated that insurers total cars to their benefit, and requested that TDI add a section to the BRPA regarding total loss vehicles. The commenters stated that the Department of Public Safety's owner-retained report refers to penalties for a "person," which leaves out insurance companies.

Agency Response: There is no explicit statutory or rule authority for adding a section to the BRPA regarding total loss vehicles. The BRPA is a summary of existing rights. It does not grant additional rights or impose obligations not based in existing law. For the BRPA to contain a section regarding total loss vehicles, there must first be a law or a rule creating those rights. TDI cannot comment on the Department of Public Safety's actions or reports.

Comment: Several commenters requested that TDI change "may" to "shall" in BRPA #36, Right to Sue.

Agency Response: TDI declines to change BRPA #36 to assert that aggrieved policyholders can always sue, because it would be inaccurate. In order to sue, the complainant must meet certain legal criteria, such as standing and a valid cause of action.

Comment: Several commenters requested that TDI change BRPA #37, asserting that in court, the plaintiff has the burden of proof.

Agency Response: TDI declines to make the requested change to BRPA #37 (Burden of Proof). BRPA #37 accurately restates Insurance Code §554.002, which states, "In a suit to recover under an insurance or health maintenance organization contract, the insurer or health maintenance organization has the burden of proof as to any avoidance or affirmative defense that the Texas Rules of Civil Procedure require to be affirmatively pleaded. Language of exclusion in the contract or an exception to coverage claimed by the insurer or health maintenance organization constitutes an avoidance or an affirmative defense."

Comment: Several commenters requested that TDI change BRPA #38, Requesting New Rules, to refer to the statutory or rule authority requirement and include persuadability.

Agency Response: TDI declines to make this change. The basis for the commenters' request relates to correspondence from TDI about a previous rule request pertaining to the BRPA. TDI received the request and responded that staff did not find statutory authority that would support it, but that the requester could request a hearing on this rule and attempt to make a persuasive case for the requested amendment. The commenters appear to have misinterpreted TDI's use of "persuasive" in the letter. TDI's use of "persuasive" in the context of requesting rule language refers to persuasion by arguing that an existing statute or rule mandates or allows the requested language. The language in BRPA #38 is accurate and clear.

Comment: Several commenters stated that they like the proposed changes.

Agency Response: TDI appreciates the comment.

Comment: Several commenters requested that TDI create an auto repair industry advisory board, and that TDI should educate its staff on repair shop operations.

A commenter asserted that insurers manipulate repair shop tickets with their estimates to avoid taxes.

A commenter requested that TDI require that the consumer sign a separate notice regarding the use of non-OEM parts and its possible effects on the consumer's vehicle warranty.

A commenter requested a new requirement that insurers notify consumers of the differences between company procedures in dealing with direct repair program (DRP) and independent shops.

Several commenters asserted that insurers must be improperly steering insureds to DRPs; that DRP agreements are one-sided, unfair, and bad for consumers; and that insurers blame delays on non-DRP body shops. The commenters asserted that insurers pay steering fees, so they must be acting improperly.

Several commenters stated that the TDI complaint process is ineffective, that TDI should act on behalf of consumers that cannot hire an attorney to force insurers to reconsider appraisals, and that TDI should rule in favor of every complainant, leaving insurers to sue if they think the complainant is wrong.

Several commenters stated that labor rates should be higher. The commenters asserted that insurers should give repair shops a 15% deviation on labor rates. They stated that materials prices have increased, but labor rates have not increased at the same rate, because DRP agreements keep labor rates down. They requested that TDI conduct a labor rate study.

A commenter asserted that insurers are not training or paying adjusters adequately.

Several commenters stated that insurers delay repairs, requesting that TDI mandate timelines for the appraisal process and for supplemental claims. A commenter responded that insurers have no incentive to delay repairs, because costly car rental coverage motivates insurers to expedite repairs.

Several commenters stated that insurers delay repairs by basing estimates on out-of-town suppliers' prices, and requested that TDI require insurers to use local sources to supply parts for auto repairs. Another commenter responded that restricting insurers to local suppliers would limit part availability, decrease competition, and increase costs. The commenter stated that pre-paying for remotely purchased parts is part of the cost of doing business, and that consumer remedies exist when the shop does not get the product it purchased.

Agency Response: TDI notes the comments, but the comments are beyond the scope of §5.9970. The purpose of §5.9970 is to adopt the revised BRPA and BRHO, and to require insurers to provide them to policyholders. The BRPA and BRHO summarize existing rights. They do not grant additional rights or impose obligations not based in existing law.

With respect to complaints, §5.9970 does not affect the TDI complaint process. TDI can and does take action on justified complaints. However, complaints as to coverage and the amount of loss often involve questions of law and fact that the courts must resolve.

With respect to labor costs, TDI does not regulate labor rates or materials costs.

With respect to adjuster management, Insurance Code §4101.053 sets out the requirements for an adjuster license, and §4101.059 discusses continuing education for adjusters. What constitutes "adequate" payment for an adjuster is a question of fact.

With respect to appraisal timelines, there is no statutory authority for TDI to mandate detailed timelines for insurers to appraise damaged vehicles.

With respect to out-of-town suppliers, there is no statutory basis for requiring insurers to use local sources to supply parts for auto repairs.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTION. For with changes: Office of Public Insurance Counsel; Texas Windstorm Insurance Association; Texas Fair Plan Association; Nationwide Insurance and Financial Services; Houston Auto Body Association; Deer Park Paint and Body; United Services Automobile Association; Autocraft; Roadrunner Body and Paint; and four individuals.

STATUTORY AUTHORITY. TDI adopts the amendments to §5.9970 pursuant to Insurance Code §§501.156, 2301.052, 2301.055, and 36.001. Section 501.156 requires OPIC to submit to TDI for adoption a consumer bill of rights appropriate to each personal line of insurance TDI regulates. These bills of rights are to be distributed on issuance of a policy by an insurer to each policyholder under TDI rules. Section 2301.052(a) states that, notwithstanding any other provision of the Insurance Code and except under specific circumstances, Chapter 2301, Subchapter A applies to an insurer with respect to insurance policy forms and endorsements for personal automobile insurance and residential property insurance. Section 2301.055 grants the commissioner the authority to adopt reasonable and necessary rules to implement Subchapter A. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§5.9970. Responsibility and Obligation of Insurers To Provide Copies of the Consumer Bills of Rights to Each Insured for Personal Automobile Insurance and for Homeowners, Dwelling and Renters Insurance.

(a) For purposes of this section, insurer(s) means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write personal automobile insurance or residential property insurance in this state. The term includes an affiliate, as described by §823.003(a) of the Insurance Code, if that affiliate is authorized to write and is writing personal automobile insurance or residential property insurance in this state. The term does not include the Texas Windstorm Insurance Association or the Texas Fair Plan Association.

(b) The Texas Department of Insurance adopts the "Consumer Bill of Rights Personal Automobile Insurance" (BRPA - Revised 2012), and the Spanish language translation:
Figure 1: 28 TAC §5.9970(b)
Figure 2: 28 TAC §5.9970(b)

(c) All insurers writing personal automobile insurance policies must provide with each new policy of personal automobile insurance a copy of the BRPA - Revised 2012. At the consumer's request, the insurer may provide an electronic copy of the BRPA - Revised 2012 instead of a hard copy. The insurer must provide the BRPA - Revised 2012 with each renewal notice for personal automobile insurance unless the insurer has previously provided the insured with the BRPA - Revised 2012. The BRPA - Revised 2012 must appear in no less than 10 point type and be on separate pages with no other text on those pages. The insurer must provide the Spanish language version of the BRPA - Revised 2012 to any consumer who requests it from the insurer. You may request a copy of the BRPA - Revised 2012 from the Texas Department of Insurance, Mail Code 104-1A, P.O. Box 149104, Austin, Texas 78714-9104 or from the Texas Department of Insurance website at www.tdi.texas.gov.

(d) The Texas Department of Insurance adopts the "Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance" (BRHO - Revised 2012), and the Spanish language translation:
Figure 1: 28 TAC §5.9970(d)
Figure 2: 28 TAC §5.9970(d)

(e) All insurers writing homeowners, renters, or dwelling insurance must provide with each new policy of any such insurance a copy of the BRHO - Revised 2012. At the consumer's request, the insurer may provide an electronic copy of the BRHO - Revised 2012 instead of a hard copy. The insurer must provide the BRHO - Revised 2012 with each renewal notice for any such insurance unless the insurer has previously provided the insured with the BRHO - Revised 2012. The BRHO - Revised 2012 must appear in no less than 10 point type and be on separate pages with no other text on those pages. The insurer must provide the Spanish language version of the BRHO - Revised 2012 to any consumer who requests it from the insurer. You may request a copy of the BRHO - Revised 2012 from the Texas De-

partment of Insurance, Mail Code 104-1A, P.O. Box 149104, Austin, Texas 78714-9104 or from the Texas Department of Insurance website at www.tdi.texas.gov.

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 November 5, 2012.

TRD-201205702
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: January 31, 2013
Proposal publication date: May 4, 2012
For further information, please call: (512) 463-6326

♦ ♦ ♦

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 106. PERMITS BY RULE
SUBCHAPTER O. OIL AND GAS

30 TAC §106.352

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendment to §106.352.

The amendment is adopted *with change* to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4341) and will be republished.

Background and Summary of the Factual Basis for the Adopted Rule

On January 26, 2011, the commission adopted a new §106.352, *Oil and Gas Handling and Production Facilities.* Subsections (a) - (k) of the new section consist of updated control, monitoring, and reporting requirements that apply in 23 counties of North Central Texas (Archer, Bosque, Clay, Comanche, Cooke, Coryell, Dallas, Denton, Eastland, Ellis, Erath, Hill, Hood, Jack, Johnson, Montague, Palo Pinto, Parker, Shackelford, Stephens, Somervell, Tarrant, and Wise), commonly known as the Barnett Shale Region. Subsection (l) consists of the requirements that existed in the previous version of §106.352 and applies to the remainder of the state's counties.

The new §106.352 is the result of an ongoing, multi-phased evaluation of permits by rule (PBR) and standardized authorizations (standard permits). The goals of this evaluation include: updating administrative and technical requirements; making appropriate changes to registration or notification requirements; ensuring that air emissions from specific facilities are protective of public health and welfare; including practically enforceable record requirements; and allowing the commission to more effectively focus resources on facilities that significantly contribute air contaminants to the atmosphere. To accomplish these goals, the commission provided a minimum setback of oil and gas facilities from receptors and a method of updating its inventory of existing facilities. Through this evaluation, the commission determined a need to significantly revise the PBR and standard permit for oil and gas facilities or groups of facilities at a site, which resulted in the January 2011 adoption.

Updating §106.352 was particularly critical for oil and gas site in urban locations or in close proximity to the public and was adopted primarily to better regulate production of oil and natural gas in the Barnett Shale Region.

The designation of the Barnett Shale Region counties was based on the underlying geologic formation as recognized by the Texas Railroad Commission (RRC), the high volume of current and potential drilling sites, and their close proximity to dense urban populations. The implementation of the rule in the Barnett Shale Region gave the commission an opportunity to evaluate its administration in the area that presented the most immediate challenge. This rulemaking is a result of the ongoing evaluation. The updated §106.352 has been in effect for facilities constructed since April 1, 2011, and the commission has had the opportunity to evaluate its appropriateness based on population density, the total number and concentration of Barnett Shale formation drilling and producing oil and gas facilities near population centers, and monitoring and compliance records.

The adopted amendment to §106.352 removes certain counties from the applicability of rules regulating oil and gas facilities in the Barnett Shale Region, extends the deadline for historical notification of facility location and method of authorization, and corrects typographical errors.

Section Discussion

As stated in the preamble from the January 26, 2011, adoption, the commission determined that the rule should apply to the area of the state with the greatest number of new or modified facilities located in close proximity to the greatest number of residents. The commission amends §106.352(a)(1) to remove Archer, Bosque, Coryell, Clay, Comanche, Eastland, Shackelford, and Stephens Counties from the applicability of §106.352(a) - (k). Section 106.352(l) applies to the removed counties. Using data from the RRC, the commission evaluated oil and gas operations in the Barnett Shale Counties based on population density and the total number and concentration of Barnett Shale drilling and producing facilities in close proximity to population centers.

The commission has examined monitoring and enforcement data in the removed counties to confirm that no ambient air quality standards are threatened and there are no ongoing rule compliance problems. The commission has analyzed the drilling and production activity in Archer, Bosque, Clay, Comanche, Coryell, Eastland, Shackelford, and Stephens Counties, and the commission removes these counties based primarily on the relatively low density of Barnett Shale oil and gas facilities near the associated population centers.

In this rulemaking, the commission has complied with the applicable requirements of Senate Bill (SB) 1134, 82nd Legislature, 2011, which requires evaluation of four criteria before adopting or amending a PBR or standard permit. First, the legislation requires a regulatory analysis as provided by Texas Government Code, §2001.0225. The commission has performed this analysis in accordance with its established procedures for rulemaking and concluded that these rule amendments are not a major environmental rule, because the amendments do not affect the economy of the state or a portion of the state in a material way. The second and third criteria involve an evaluation of air quality monitoring and modeling data to establish any emissions limits or emissions related requirements. This rulemaking does not establish or revise any emissions limit or emissions re-

lated requirements. Therefore, the commission has determined these criteria are not applicable. However, the commission has examined monitoring data from the removed counties and has determined that the requirements of §106.352(l) will ensure that the purposes of the Texas Clean Air Act are not contravened and there will be no threat to public health. Fourth, the commission is required to consider whether the requirements of a permit should be imposed only on facilities that are located in a particular geographic region of the state. The commission has complied with this requirement, considering whether the requirements of §106.352(a) - (k) can be made applicable to a smaller geographic region of the state. Oil and gas facilities in the removed counties are instead required to comply with §106.352(l), applicable to non-Barnett Shale Counties.

The commission amends §106.352(b)(7)(B) and (f)(1) to extend the deadline for owners and operators of existing oil and gas facilities to provide notification to the commission of the facility location and method of authorization from January 1, 2013, to January 5, 2015. The January 1, 2013, date was originally tied to the date for authorization of maintenance, startup, and shutdown (MSS) emissions (January 5, 2012). However, SB 1134, codified in Texas Health and Safety Code (THSC), §382.051962, extended the MSS authorization deadline to January 5, 2014. Therefore, to remain consistent with the change in timing for the MSS authorization, the commission extends the historical notification deadline. Because this rulemaking does not specifically address the authorization of MSS, the deadlines for submission of applications to authorize MSS in THSC, §382.051962(c) do not apply.

The commission amends §106.352(d)(2)(C) and (F) to correct a typographical error in each subparagraph by inserting the word "be" between the words "otherwise" and "authorized" in both subsections.

The commission proposed amending §106.352(e)(2) to account for local ordinances which require an equal or greater separation of oil and gas facilities from a receptor, in order to provide flexibility for operators located in urban areas, on small well pad sites, with difficulty meeting property line distance limitations while ensuring continued protection of the human health and the environment. However, in order to avoid unintended interpretations, the commission is not adopting the proposed amendment to §106.352(e)(2). The subsection will read as it did before the proposed amendment. The commission amends §106.352(e)(2)(B) to add the words "less than" between the word "use" and the number "50" since an existing separation of 50 feet would require no action from the oil and gas owner or operator.

The commission amends §106.352(k)(2)(A) to refer to the TCEQ internet Web page instead of the "commissioner's internet Web page."

The commission amends §106.352(l)(5) to refer to the "executive director" instead of the "Office of Permitting and Registration" as that office designation is obsolete.

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking does not meet the definition of a "major environmental rule." Texas Government Code, §2001.0225 states that a "major environmental rule" is "a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." The purpose of this rulemaking is removal of Archer, Bosque, Clay, Comanche, Coryell, Eastland, Shackelford, and Stephens Counties from the list of Barnett Shale Counties subject to §106.352(a) - (k), addition of clarifying language to the PBR and oil and gas standard permit for the measurement of minimum distance requirements, and extension of the deadline for the historical notification required in §106.352(f)(1) from January 1, 2013, to January 5, 2015. It is not expected that this rulemaking will adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, or the public health and safety of the state or a sector of the state.

Furthermore, while the rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis would not be required because the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule which: "(1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopts a rule solely under the general powers of the agency instead of under a specific state law." Specifically, the rulemaking does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the rulemaking is not designed to exceed any relevant standard set by federal law; 2) the rulemaking does not exceed an express requirement of state law; 3) no contract or delegation agreement covers the topic that is the subject of this rulemaking; and 4) the rulemaking is authorized by specific sections of THSC, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble.

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" as required in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

Additionally, SB 1134 applies to this rulemaking. SB 1134 states that the commission may not amend an existing PBR or an existing standard permit relating to an oil and gas facility unless the commission: 1) conducts a regulatory analysis as provided by Texas Government Code, §2001.0225; 2) determines, based on the evaluation of credible air quality monitoring data, that the emissions limits or other emissions-related requirements of the permit are necessary to ensure that the intent of the Texas Clean Air Act is not contravened, including the protection of the public's health and physical property; 3) establishes any required emissions limits or other emissions-related requirements based on: (A) the evaluation of credible air quality monitoring data; and (B) credible air quality modeling that is not based on the worst-case scenario of emissions or other worst-case modeling scenarios unless the actual air quality monitoring data and evaluation of

that data indicate that the worst-case scenario of emissions or other worst-case modeling scenarios yield modeling results that reflect the actual air quality monitoring data and evaluation; and 4) considers whether the requirements of the permit should be imposed only on facilities that are located in a particular geographic region of the state.

The commission has conducted a regulatory analysis in accordance with Texas Government Code, §2001.0225 as previously described. The executive director examined monitoring and enforcement data in the removed counties to confirm that no ambient air quality standards are threatened and that there are no ongoing rule compliance problems. Finally, the rulemaking does not establish an emission limit or emission-related requirements and are adopted in accordance with SB 1134.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. One comment was received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the rulemaking and performed an analysis of whether the rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

Promulgation and enforcement of the rulemaking is neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to remove Archer, Bosque, Clay, Comanche, Coryell, Eastland, Shackelford, and Stephens Counties from the list of Barnett Shale Counties subject to §106.352(a) - (k), add clarifying language to the PBR and oil and gas standard permit regarding the measurement of minimum distance requirements, and extend the deadline for the historical notification required in §106.352(f)(1) from January 1, 2013, to January 5, 2015. The rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.),* and commission rules in 30 TAC Chapter 281, Subchapter B, Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Advisory Committee and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this adopted rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1), Goals). This rule will not authorize new emissions in coastal areas. Therefore, in accordance with 31 TAC §505.22(e), Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program, the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 106 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, include any changes made using the amended Chapter 106 requirements into their operating permit.

Public Comment

The commission held a public hearing on this rule on July 10, 2012, at 7:00 p.m. in Fort Worth, at the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas. This hearing was held in conjunction with a public meeting on similar revisions to the Air Quality Standard Permit for Oil and Gas Handling and Production Facilities. The comment period closed on July 16, 2012.

The commission received comments from Texas Representative Lon Burnam, an individual, the Texas Alliance of Energy Producers (TAEP), the Texas Oil & Gas Association (TxOGA), and the Texas Pipeline Association (TPA). The commission also received a comment from Duggins, Wren, Mann & Romero, LLP which was submitted after the close of the comment period.

Regarding removal of the eight counties from the applicability of §106.352(a) - (k), TAEP, TxOGA and TPA submitted comments in support of the removal of the counties, the individual opposed removal of the counties, and Representative Burnam did not agree that the commission had provided adequate justification for removal of the counties. Regarding extension of the historical notification deadline, TPA supported the amendment. Regarding the distance requirements in §106.352(e)(2), Representative Burnam and TXOGA supported the amendment, TPA opposed, and TXOGA and TPA provided alternate considerations.

Response to Comments

Removal of counties from applicability of §106.352(a) - (k)

Representative Lon Burnam commented that "the agency has not met the requirements of Sec. 382.051961(b), Health and Safety Code, regarding certain analyses and evaluations that must be made prior to amending an existing permit by rule or standard permit." Representative Burnam commented that the THSC requires that any revised emission limits be based on the evaluation of air quality monitoring and modeling data, and that removing the eight counties from applicability of subsections (a) - (k) does revise emission limits applicable to oil and gas facilities in those counties.

The commission has not made changes to the rule based on this comment. This rulemaking does not establish or revise any emissions limit or emissions related requirement of subsections (a) - (k) or (l). The removal of the applicability of subsections (a) - (k) to facilities in the eight counties is not a revised emission limit. All counties in Texas that are not included as Barnett Shale counties are included in subsection (l). The initial designation of the Barnett Shale Region counties was based on the underlying geologic formation as recognized by the RRC, the high volume of current and potential drilling sites, and the close proximity of those sites to dense, urban populations. The commission has had the opportunity to evaluate facilities in the affected counties based on population density, the total number and concentration of Barnett Shale formation drilling and producing oil and gas facilities near population centers, and monitoring and compliance records. The monitoring and compliance records confirm that no ambient air quality standards are threatened and that there are no ongoing rule compliance problems, given the relatively low density of Barnett Shale oil and gas facilities near the associated population centers. The commission has determined that §106.352(l) is a more appropriate authorization for the referenced eight counties, and the requirements will ensure that the purposes of the Texas Clean Air Act are not contravened and there will be no threat to public health.

Representative Burnam commented that this rulemaking "appears to meet the statutory definition of a major environmental rule. The definition of a Major Environmental Rule in Sec. 2001.0225(g)(3), Government Code, is not limited to rules which 'affect the economy of the state or a portion of the state in a material way,' as the agency states. The definition also applies to rules 'that may adversely affect . . . the environment, or the public health and safety of the state or a sector of the state.' Therefore, I believe the agency must conduct the analysis required under Sec. 2001.0225(b) before moving forward with this rule project."

The commission has not made changes to the rule based on this comment. As discussed in the Final Regulatory Impact Analysis Determination, the commission performed this analysis in accordance with its established procedures for rulemaking consistent with the requirements of Texas Government Code, §2001.0225 and concluded this rulemaking is not a major environmental rule. Specifically, the commission concluded this is not a major environmental rule because it does not affect the economy of the state or a portion of the state in a material way. Removing the eight counties from the applicability of subsection (a) - (k) and therefore subjecting them to subsection (l) will not adversely affect the environment and will ensure the protection of public health and safety, as it does for the rest of the counties in Texas.

An individual opposed removal of any counties from the applicability of subsections (a) - (k).

The commission appreciates the individual's participation in the rulemaking process. The comment did not include justification on why the individual did not want the counties removed and the commission has not changed the rule in response to this comment.

TAEP, TxOGA, and TPA support the removal of the eight counties from the applicability of subsections (a) - (k). TAEP and TPA supported removal based on low production rates as well as low population density.

The commission appreciates the support.

Historical Notification Extension

TPA supported the extension of the deadline for notification of historical facilities and their method of authorization.

The commission appreciates the support.

Distance Measurement

Representative Burnam supported the change to §106.352(e)(2), regarding the clarification on distance requirements when a local ordinance requires a distance equal or greater than 50 feet. TxOGA also supported the change as it related to recognition of local ordinances for set-back distances that already meet the 50 feet minimum distance.

The commission appreciates the support. However, in order to avoid unintended interpretations, the commission is not adopting the proposed amendment to §106.352(e)(2). The subsection will read as it did before the proposed amendment.

TPA opposed allowing "local ordinances to supplant state setback requirements." TPA's comment stated, "We recognize that home-rule cities have broad powers to enact and enforce ordinances to promote the general welfare of their citizens, but those powers are not without limits. For example, the Texas Clean Air Act (TCAA) sets limits on a municipality's authority to enact ordinances for the control and abatement of air pollution or any other ordinance, where such ordinances are inconsistent with the TCAA or TCEQ rules or orders. Tex Health and Safety Code §382.113(a)(2)." TxOGA commented that they do not support "pre-empting state air quality authority/primacy."

In order to avoid unintended interpretations, the commission is not adopting the proposed amendment to §106.352(e)(2). The subsection will read as it did before the proposed amendment.

TxOGA commented that clarification was needed regarding "compliance with local setback ordinances." Specifically, TxOGA asked if a city grants a waiver from the set-back distance required by a local ordinance, would the waiver also apply to the PBR's 50-foot setback required in §106.352(e)(2)?

The commission clarifies that 50 feet is the minimum distance required for compliance with the PBR, regardless of waivers granted from any other applicable distance requirement. The only exceptions to the 50 feet requirement are listed in §106.352(e)(2)(A) - (C).

TPA suggested the addition of a fourth exception to the 50 feet requirement in §106.352(e)(2). TPA recommended that the TCEQ provide that facilities that have no receptors within 250 feet of the facility's property line qualify for an exception. TPA commented that this provision would add additional compliance flexibility, particularly for those sites where a 50-foot buffer from the facility to the property line is not possible. TPA submitted this suggested language for §106.352(e)(2)(D) "any facility that

has no receptor within 250 feet of the facility's property line at the time this section is claimed, registered, or certified."

The commission has not changed the rule in response to this comment. Although the suggestion is outside the scope of this proposal, we are committed to continue working with any companies/individuals to further refine the rule, make changes to it in the future, and issue guidance.

TPA commented that ". . .TCEQ revise its proposal to clearly indicate the continuing application of the exceptions in subsections (e)(2)(A) through (C) to a local ordinance."

The commission clarifies that the exceptions in §106.352(e)(2)(A) - (C) apply to the 50 feet distance requirement in the PBR. Compliance with, or exceptions to, a local ordinance are outside of TCEQ's regulatory authority.

General

Duggins, Wren, Mann and Romero, LLP commented that the applicability language of both the PBR and standard permit include that subsections (a) - (k) are applicable "only" in the Barnett Shale counties which are listed in subsection (a)(1), while guidance from TCEQ allows facilities outside of the listed counties to choose to operate under subsections (a) - (k). The commenter requested clarification.

The commission has not changed the rule in response to this comment. The language in the rule is meant to clarify that no facilities outside of the Barnett Shale counties are required to comply with subsections (a) - (k). However, it is not meant to prohibit facilities in other counties from choosing to comply with those subsections. The commission has processed applications for sites outside of the listed counties since the January 26, 2011, adoption date of §106.352. The commission maintains that if companies so desire, facilities located outside the Barnett Shale counties may voluntarily register under the requirements in §106.352(a) - (k), or the non-rule standard permit.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; §382.051962, which extended the deadline for owners or operators of oil and gas facilities to authorize maintenance, startup, and shutdown emissions to January 5, 2014; §382.051963, which authorizes the commission to obtain information about oil and gas authorizations, including location; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The adopted amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

§106.352. Oil and Gas Handling and Production Facilities.

(a) Applicability. This section applies to all stationary facilities, or groups of facilities, at a site which handle gases and liquids associated with the production, conditioning, processing, and pipeline transfer of fluids or gases found in geologic formations on or beneath the earth's surface including, but not limited to, crude oil, natural gas, condensate, and produced water with the following conditions:

(1) The requirements in subsections (a) - (k) of this section are applicable only for new projects and related facilities located in the Barnett Shale (Cooke, Dallas, Denton, Ellis, Erath, Hill, Hood, Jack, Johnson, Montague, Palo Pinto, Parker, Somervell, Tarrant, and Wise Counties) on or after April 1, 2011. For all other new projects and related facilities in all other counties of the state, subsection (l) of this section is applicable.

(2) Only one Oil and Gas Handling and Production Facilities permit by rule (PBR) for an oil and gas site (OGS) may be claimed or registered for each combination of dependent facilities and authorizes all facilities in sweet or sour service. This section may not be used if operationally dependent facilities are authorized by the Air Quality Standard Permit for Oil and Gas Sites, or a permit under §116.111 of this title (relating to General Application). Existing authorized facilities, or groups of facilities, at an OGS under this section which are not changing certified character or quantity of emissions must only meet subsections (i) and (k) of this section (protectiveness review and planned maintenance, startup, and shutdown (MSS) requirements) and otherwise retain their existing authorization. Except for planned MSS activities which must meet the requirements of subsection (i) of this section, any combination of dependent facilities with a permit under §116.111 of this title cannot also claim this section for any new facility, or changes to an existing facility, which handles (or is related to the processing of) crude oil, condensate, natural gas, or any other petroleum raw material, product, or by-product.

(3) This section does not relieve the owner or operator from complying with any other applicable provision of the Texas Health and Safety Code, Texas Water Code, rules of the Texas Commission on Environmental Quality (TCEQ), or any additional local, state, or federal laws or regulations. Emissions that exceed the limits in this section are not authorized and are violations.

(4) Emissions from upsets, emergencies, or malfunctions are not authorized by this section. This section does not regulate methane, ethane, or carbon dioxide.

(b) Definitions and Scope.

(1) Facility is a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source. Stationary sources associated with a mine, quarry, drilling, or a well test lasting less than 72 hours are not considered facilities.

(2) Receptor includes any building which is in use as a single or multi-family residence, school, day-care, hospital, business, or place of worship at the time this section is registered. A residence is a structure primarily used as a permanent dwelling. A business is a structure that is occupied for at least eight hours a day, five days a week, and does not include businesses who are handling or processing materials as described in subsection (a) of this section. This term does not include structures occupied or used solely by the owner or operator of the OGS facility, or the mineral rights owner of the property upon which the OGS facility is located. All measurements of distance to receptors

shall be taken from the emission release point at the OGS facility that is nearest to the point on the building that is nearest to the OGS facility.

(3) An OGS is defined as all facilities which meet each of the following:

(A) Located on contiguous or adjacent properties;

(B) Under common control of the same person (or persons under common control); and

(C) Designated under same two digit standard industrial classification (SIC) codes.

(4) For purposes of determining applicability of Chapter 122 of this title (relating to Federal Operating Permits Program), the definitions of §122.10 of this title (relating to General Definitions), apply.

(5) A project under this section is defined as the following and must meet all requirements of this section prior to construction or implementation of changes:

(A) Any new facility or new group of operationally dependent facilities at an OGS;

(B) Physical changes to existing authorized facilities or group of facilities at an OGS which increase the potential to emit over previously certified emission limits; or

(C) Operational changes to existing authorized facilities or group of facilities at an OGS which increase the potential to emit over previously certified emission limits.

(6) For purposes of registration under this section, the following facilities shall be included:

(A) All facilities or groups of facilities at an OGS which are operationally dependent on each other;

(B) Facilities must be located within a 1/4 mile of a project emission point, vent, or fugitive component, except for those components excluded in subparagraph (C) of this paragraph;

(C) If piping or fugitive components are the only connection between facilities and the distance between facilities exceeds 1/4 mile, then the facilities are considered separate for purposes of this registration;

(D) The boundaries of the registration become fixed at the time this section is claimed and registered. No individual facility may be authorized under more than one registration;

(E) Any facility or group of facilities authorized under an existing PBR registration which is operationally dependent on a project must be revised to incorporate the project. Existing authorized facilities, or group of facilities, at an OGS under this section which are not changing certified character or quantity of emissions must only meet subsections (i) and (k) of this section (the protectiveness review and planned MSS requirements) and otherwise retain their existing authorization; and

(F) All facilities at an OGS registered under this section must collectively emit less than or equal to 250 tons per year (tpy) of nitrogen oxides (NO_x) or carbon monoxide (CO); 15 tpy of particulate matter with less than 10 microns (PM_{10}); 10 tpy of particulate matter less than 2.5 microns ($PM_{2.5}$); and 25 tpy of volatile organic compounds (VOC), sulfur dioxide (SO_2), hydrogen sulfide (H_2S), or any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(7) For purposes of all previous claims of this section (or any previous version of this section) where no project is occurring:

(A) existing authorized facilities, or group of facilities, at an OGS must meet only subsection (i) of this section no later than January 5, 2012; and

(B) submit a notification in accordance with subsection (f) of this section no later than January 5, 2015.

(8) For purposes of ensuring protection of public health and welfare and demonstrating compliance with applicable ambient air standards and effects screening levels (ESLs), the impacts analysis as specified in subsection (k) of this section must be completed.

(A) All impacts analysis must be done on a contaminant-by-contaminant basis for any net project increases. If a claim under this section is only for planned MSS under subsection (i) of this section, the analysis shall evaluate planned MSS scenarios only.

(B) Hourly and annual emissions shall be limited based on the most stringent of subsections (g), (h), or (k) of this section.

(c) Authorized Facilities, Changes, and Activities.

(1) For existing OGS which are authorized by previous versions of this section.

(A) A project requires registration unless otherwise specified.

(B) The following projects do not require registration, but must comply with best management practices (BMP) in subsection (e) of this section, compliance demonstrations in subsections (i) and (j) of this section, and must be incorporated into the registration at the next revision or certification:

(i) Addition of any piping, fugitive components, any other new facilities, that increase actual emissions less than or equal to 1.0 tpy VOC, 5.0 tpy NO_x, 0.01 tpy benzene, and 0.05 tpy H_2S over a rolling 12-month period;

(ii) Changes to any existing facilities that increase certified emissions less than or equal to 1.0 tpy VOC, 5.0 tpy NO_x, 0.01 tpy benzene, and 0.05 tpy H_2S over a rolling 12-month period;

(iii) Total increases over a rolling 60-month period of time that are less than or equal to 5.0 tpy VOC or NO_x, 0.05 tpy benzene, or 0.1 tpy H_2S;

(iv) Addition of any new engine rated less than 100 horsepower (hp); or

(v) Replacement of any facility if the new facility does not increase the previous actual or certified emissions.

(C) For facilities authorized under §116.111 of this title, only records of MSS as specified in this section must be kept and this section may only be used for planned MSS for the facility types specified in this section.

(2) All authorizations under this section shall meet the following:

(A) new, changed, or replacement facilities shall not exceed the thresholds for major source or major modification as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions), and in Federal Clean Air Act, §112(g) or §112(j);

(B) all facilities shall comply with all applicable 40 Code of Federal Regulations (CFR), Parts 60, 61, and 63 requirements for New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and Maximum Achievable Control Technology (MACT); and

(C) all facilities shall comply with all applicable requirements of Chapters 111, of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter), 112 of this title (relating to Control of Air Pollution from Sulfur Compounds), 113 of this title (relating to Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants), 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds), and 117 of this title (relating to Control of Air Pollution from Nitrogen Compounds).

(3) To be eligible for this PBR, in addition to the requirements found in §106.4 of this title (relating to Requirements for Permitting by Rule), an applicant:

(A) shall meet all applicable requirements as set forth in this section;

(B) shall not misrepresent or fail to fully disclose all relevant facts in obtaining the permit; and

(C) shall not be indebted to the state for failure to make payment of penalties or taxes imposed by the statutes or rules within the commission's jurisdiction.

(D) Notwithstanding any limitations in §50.131(c) of this title (relating to Purpose and Applicability), a person may file a Motion to Overturn under the procedures set forth in §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) in order to seek commission review of any denial of a PBR for failing to meet the conditions set forth in this paragraph.

(4) This paragraph covers groups of facilities typically associated with wellheads, pump-jacks, Christmas trees, metering stations, and other similar facilities handling or containing crude oil, condensate, natural gas, or a mixture of these materials (examples include, but are not limited to, stripper/marginal wells producing up to 10 barrels of oil equivalent per day, natural gas up to 60,000 cubic feet per day, or high pressure gas wells). The following projects and facilities are authorized and must only comply with subsection (e)(1) and (2) of this section, and applicable portions of subsection (j) of this section:

(A) Claims under this paragraph must include all facilities or groups of facilities at an OGS which are operationally dependent on each other and located within a 1/4 mile of a project emission point, vent, or fugitive component. If piping or fugitive components are the only connection between facilities and the distance between facilities exceeds 1/4 mile, then the facilities are considered separate for purposes of this paragraph.

(B) A site-wide combination of engines which meet the following:

(i) up to 450 hp if fueled by sweet gas;

(ii) up to 100 hp if fueled by sour gas containing not more than 10,000 parts per million by weight (ppmw) H_2S; or

(iii) up to 20 hp fueled by sour gas containing more than 10,000 ppmw but not more than 50,000 ppmw H_2S.

(C) For any one of the following combinations of facilities:

(i) only piping and fugitive components handling natural gas up to a maximum of 135 valves, 135 open-ended lines, any combination of connectors and flanges up to 2,000 components, and 135 component types otherwise not specified; or

(ii) only piping and fugitive components handling liquids or gas up to a maximum of 25 valves, 25 open-ended lines, any combination of connectors and flanges up to 2,000 components, and 25 component types otherwise not specified;

(iii) only piping and fugitive components handling liquids or gas up to a maximum of four pump seals; four open-ended lines; and any combination of valves, flanges, and connectors up to 225 components; or

(iv) separators used solely to separate crude oil, condensate, and natural gas (which are routed directly to a sales pipeline) from produced water. Tanks used and handling only produced water up to 1,205 barrels per day. All associated piping and fugitive components up to a maximum of five pump seals; five open-ended lines; and any combination of valves, flanges, and connectors totaling 150 components in VOC service and 500 components in water service; or

(v) separators used solely to separate crude oil, condensate, and natural gas (which are routed directly to a sales pipeline) from produced water. Tanks used and handling only produced water up to 580 barrels per day. All associated piping and fugitive components up to a maximum of two pump seals; two open-ended lines; and any combination of valves, flanges, and connectors totaling 230 components in VOC service and 500 components in water service.

(d) Facilities and Exclusions.

(1) Only the following specific facilities and groups of facilities have been evaluated for this PBR, along with supporting infrastructure equipment and facilities, and may be included in a registration for this section:

(A) fugitive components, including valves, pressure relief valves, pipe flanges and connectors, pumps, compressors, stuffing boxes, instrumentation and meters, natural gas driven pneumatic pumps, and other similar devices with seals that separate process and waste material from the atmosphere and the associated piping;

(B) separators, including all gas, oil, and water physical separation units;

(C) treatment and processing equipment, including heater-treaters, methanol injection, glycol dehydrators, molecular or mole sieves, amine sweeteners, H_2S scavenger chemical reaction vessels for sulfur removal, and iron sponge units;

(D) cooling towers and associated heat exchangers;

(E) gas recovery units, including cryogenic expansion, absorption, adsorption, heat exchangers and refrigeration units;

(F) combustion units, including engines, turbines, boilers, reboilers, and heaters;

(G) storage tanks for crude oil, condensate, produced water, fuels, treatment chemicals, slop and sump oils, and pressure tanks with liquefied petroleum gases;

(H) surface support facilities associated with underground storage of gas or liquids;

(I) truck loading equipment;

(J) control equipment, including vapor recovery systems, glycol and amine reboilers, condensers, flares, vapor combustors, and thermal oxidizers; and

(K) temporary facilities used for planned maintenance, and temporary control devices for planned startups and shutdowns.

(2) Exclusions. The following are not authorized under this section:

(A) sour water strippers or sulfur recovery units;

(B) carbon dioxide hot carbonate processing units;

(C) water injection facilities. These facilities may otherwise be authorized by §106.351 of this title (relating to Salt Water Disposal (Petroleum));

(D) liquefied petroleum gases, crude oil, or condensate transfer or loading into or from railcars, ships, or barges. These facilities may otherwise be authorized by §106.261 of this title (relating to Facilities (Emission Limitations)) and §106.262 of this title (relating to Facilities (Emission and Distance Limitations));

(E) incinerators for solid waste destruction;

(F) remediation of petroleum contaminated water and soil. These facilities may otherwise be authorized by §106.533 of this title (relating to Remediation); and

(G) cooling towers and heat exchangers with direct contact with gaseous or liquid process streams containing VOC, H_2S, halogens or halogen compounds, cyanide compounds, inorganic acids, or acid gases.

(e) BMP and Minimum Requirements. For any new project, and any associated emission control equipment registered under this section, paragraphs (1) - (5) of this subsection shall be met as applicable. These requirements are not applicable to existing, unchanging facilities. Equipment design and control device requirements listed in paragraphs (6) - (12) of this subsection only apply to those that are chosen by the operator to meet the limitations of this section.

(1) All facilities which have the potential to emit air contaminants must be maintained in good working order and operated properly during facility operations. Each operator shall establish and maintain a program to replace, repair, and/or maintain facilities to keep them in good working order. The minimum requirements of this program shall include:

(A) Compliance with manufacturer's specifications and recommended programs applicable to equipment performance and effect on emissions, or alternatively, an owner or operator developed maintenance plan for such equipment that is consistent with good air pollution control practices;

(B) cleaning and routine inspection of all equipment; and

(C) replacement and repair of equipment on schedules which prevent equipment failures and maintain performance.

(2) Any facility shall be operated at least 50 feet from any property line or receptor (whichever is closer to the facility). This distance limitation does not apply to the following:

(A) any fugitive components that are used for isolation and/or safety purposes may be located at 1/2 of the width of any applicable easement;

(B) any facility at a location for which the distance requirements were satisfied at the time this section is claimed, registered, or certified (provided that the authorization was maintained) regardless of whether a receptor is subsequently built or put to use less than 50 feet from any OGS facility; or

(C) existing facilities which are located less than 50 feet from a property line or receptor when constructed and previously authorized. If modified or replaced the operator shall consider, to the extent that good engineering practice will permit, moving these facilities to meet the 50-foot requirement. Replacement facilities must meet all other requirements of this section.

(3) Engines and turbines shall meet the emission and performance standards listed in Table 6 in subsection (m) of this section and the following requirements:

(A) liquid fueled engines used for back-up power generation and periodic power needs at the OGS are authorized if the fuel has no more than 0.05% sulfur and the engine is operated less than 876 hours per rolling 12-month period;

(B) engines and turbines used for electric generation more than 876 hours per rolling 12-month period are authorized if no reliable electric service is readily available and Table 6 in subsection (m) of this section is met. In all other circumstances, electric generators must meet the technical requirements of the Air Quality Standard Permit for Electric Generating Unit (EGU) (not including the EGU standard permit registration requirements) and the emissions shall be included in the registration under this section;

(C) all applicable requirements of Chapter 117 of this title (relating to Control of Air Pollution from Nitrogen Compounds);

(D) all applicable requirements of 40 CFR Parts 60 and 63; and

(E) compression ignition engines that are rated less than 225 kilowatts (300 hp) and emit less than or equal to the emission tier for an equivalent-sized model year 2008 non-road compression ignition engine located at 40 CFR §89.112, Table 1 are authorized.

(4) Open-topped tanks or ponds containing VOCs or H_2S are allowed up to a potential to emit equal to 1.0 tpy of VOC and 0.1 tpy of H_2S.

(5) The following shall apply to all fugitive components at the site associated with the project:

(A) All components shall be physically inspected quarterly for leaks.

(B) All components found to be leaking shall be repaired. Every reasonable effort shall be made to repair a leaking component. All leaks not repaired immediately shall be tagged or noted in a log. At manned sites, leaks shall be repaired no later than 30 days after the leak is found. At unmanned sites, leaks shall be repaired no later than 60 days after the leak is found. If the repair of a component would require a unit shutdown, which would create more emissions than the repair would eliminate, the repair may be delayed until the next shutdown.

(C) Tank hatches, not designed to be completely sealed, shall remain closed (but not completely sealed in order to maintain safe design functionality) except for sampling, gauging, loading, unloading, or planned maintenance activities.

(D) To the extent that good engineering practices will permit, new and reworked valves and piping connections shall be located in a place that is reasonably accessible for leak checking during plant operation. Underground process pipelines shall contain no buried valves such that fugitive emission monitoring is rendered impractical.

(6) When leak detection and repair (LDAR) fugitive monitoring is chosen by the operator, Table 9, in subsection (m) of this section, shall apply. In addition, all components shall be physically inspected at least weekly by operating personnel walk-through.

(7) Tanks and vessels that utilize a paint color to minimize the effects of solar heating (including, but not limited to, white or aluminum):

(A) to meet this requirement the solar absorptance should be 0.43 or less, as referenced in Table 7.1 - 6 in Compilation of Air Pollutant Emission Factors (AP-42);

(B) paint shall be applied according to paint producers recommended application requirements if provided and in sufficient quantity as to be considered solar resistant;

(C) paint coatings shall be maintained in good condition and will not compromise tank integrity. Minimal amounts of rust may be present not to exceed 10% of the external surface area of the roof or walls of the tank and in no way may compromise tank integrity. Additionally, up to 10% of the external surface area of the roof or walls of the tank or vessel may be painted with other colors to allow for identification and/or aesthetics;

(D) for tanks and vessels purposefully darkened to create the process reaction and help condense liquids from being entrained in the vapor or are in an area whereby a local, state, federal law, ordinance, or private contract predating this section's effective date establishes in writing tank and vessel colors other than white, these requirements do not apply.

(8) All emission estimation methods including but not limited to computer programs such as GRI-GLYCalc, AmineCalc, E&P Tanks, and Tanks 4.0, must be used with monitoring data generated in accordance with Table 8 in subsection (m) of this section where monitoring is required. All emission estimation methods must also be used in a way that is consistent with protocols established by the commission or promulgated in federal regulations (NSPS, NESHAPS). Where control is relied upon to meet subsection (k) of this section, control monitoring is required.

(9) Process reboilers, heaters, and furnaces that are also used for control of waste gas streams:

(A) may claim 50% to 99% destruction efficiency for VOCs and H_2S depending on the design and level of monitoring applied. The 90% destruction may be claimed where the waste gas is delivered to the flame zone or combustion fire box with basic monitoring as specified in subsection (j) of this section. Any value greater than 90% and up to 99% destruction efficiency may be claimed where enhanced monitoring and/or testing are applied as specified in subsection (j) of this section;

(B) if the waste gas is premixed with the primary fuel gas and used as the primary fuel in the device through the primary fuel burners, 99% destruction may be claimed with basic monitoring as specified in subsection (j) of this section;

(C) in systems where the combustion device is designed to cycle on and off to maintain the designed heating parameters, and may not fully utilize the waste gas stream, records of run time and enhanced monitoring are required to claim any run time beyond 50%.

(10) Vapor recovery Units (VRUs) may claim up to 100% control. The control efficiency is based on whether it is a mechanical VRU (mVRU) or a liquid VRU (lVRU). The VRUs must meet the appropriate design, monitoring, and recordkeeping in Table 7 and Table 8 in subsection (m) of this section.

(11) Flares used for control of emissions from production, planned MSS, emergency, or upset events may claim design destruction efficiency of 98%. 99% may be claimed for destruction of compounds containing only carbon, hydrogen, and oxygen with no more than three carbon atoms. All flares must be designed and operated in accordance with the following:

(A) meet specifications for minimum heating values of waste gas, maximum tip velocity, and pilot flame monitoring found in 40 CFR §60.18;

(B) if necessary to ensure adequate combustion, sufficient gas shall be added to make the gases combustible;

(C) an infrared monitor is considered equivalent to a thermocouple for flame monitoring purposes;

(D) an automatic ignition system may be used in lieu of a continuous pilot;

(E) flares must be lit at all times when gas streams are present;

(F) fuel for all flares shall be sweet gas or liquid petroleum gas except where only field gas is available and it is not sweetened at the site; and

(G) flares shall be designed for and operated with no visible emissions, except for periods not to exceed at total of five minutes during any two consecutive hours. Acid gas flares which must comply with opacity limits and records in accordance with §111.111(a)(4) of this title (relating to Requirements for Specified Sources), regarding gas flares, are exempt from this visible emission limitation.

(12) Thermal oxidation and vapor combustion control devices:

(A) may claim design destruction efficiency from 90% to 99.9% for VOCs and H_2S depending on the design and the level of monitoring and testing applied;

(B) a device designed for the variability of the waste gas streams it controls with basic monitoring to indicate oxidation or combustion is occurring when waste gas is directed to the device may claim 90% destruction efficiency;

(C) devices with intermediate monitoring, designed for the variability of the waste gas streams they control, with a fire box or fire tube designed to maintain a temperature above 1,400 degrees Fahrenheit (F) for 0.5 seconds, residence time; or designed to meet the parameters of a flare with minimum heating values of waste gas, maximum tip velocity, and pilot flame monitoring as found in 40 CFR §60.18, but within a full or partial enclosure may claim a design destruction efficiency of 90% to 98%;

(D) devices with enhanced monitoring and ports and platforms to allow stack testing may claim a 99% efficiency where the devices are designed for the variability of the waste gas streams they control, with a fire box or fire tube designed to maintain a temperature above 1,400 degrees F for 0.5 seconds, residence time;

(E) devices that can claim 99% destruction efficiency may claim 99.9% destruction efficiency if stack testing is conducted and confirms the efficiency and the enhanced monitoring is adjusted to ensure the continued efficiency. Temperature and residence time requirements may be modified if stack testing is conducted to confirm efficiencies.

(f) Notification, Certification, and Registration Requirements.

(1) For all previous claims of this section (or any previous version of this section) existing authorized facilities, or group of facilities, identified in subsection (b)(7) of this section must submit a notification no later than January 5, 2015. Facilities or groups of facilities which meet subsection (c)(4) of this section do not have to meet the following notification requirements:

(A) For actively operating facilities which have never been registered with the commission, submit updated Core Data and basic identifying information (previously claimed historical versions of this section and lease name or well numbers as provided to the Texas Railroad Commission) through ePermits using the "APD OGS Historical Notification."

(B) For those facilities which have previously registered with the commission and updates are needed to the commission's Central Registry (CR), submit a hard copy of a Core Data Form with an attachment listing identifying information (previously claimed historical versions of this section and lease name or well numbers as provided to the Texas Railroad Commission). If no updates to CR are required, no further action is needed.

(C) No fee is required for this notification.

(2) If no other changes, except for authorizing planned MSS, occur at an existing site under this section, or any previous version of this section, the following apply no later than January 5, 2012:

(A) Records demonstrating compliance with subsection (i) of this section must be kept;

(B) If the existing OGS is certified, an addendum to the OGS certification may be filed using Form APD-CERT. No fee is required for this updated certification; and

(C) Planned MSS does not require registration if no other project is occurring, and shall be incorporated at the next revision or update to a registration under this section after January 5, 2012.

(3) For facilities authorized under §116.111 of this title, only records of MSS as specified in this section must be kept. Planned MSS shall be incorporated into the permit at the next permit renewal or amendment after January 5, 2012.

(4) Prior to construction or implementation of changes for any project which meets this section, a notification shall be submitted through the ePermits system. This notification shall include the following:

(A) Identifying information (Core Data) and a general description of the project must be submitted through ePermits (or if not available, hard-copy) using the "APD OGS New Project Notification."

(B) A fee of $25 for small businesses (as defined in §106.50 of this title (relating to Registration Fees for Permits by Rule)), or $50 for all others must be submitted through the commission's ePay system.

(5) For any registration which meets the emission limitations of Level 1 as required in subsection (g) of this section:

(A) Within 180 days after start of operation or implemented changes (whichever occurs first), the facilities must be registered through ePermits form "APD OGS PBR Level 1 and 2 Registration" (or if not available, submittal of hard-copy).

(B) This registration shall include a detailed summary of maximum emissions estimates based on:

(i) site-specific or defined representative gas and liquid analysis;

(ii) equipment design specifications and operations;

(iii) material type and throughput;

(iv) other actual parameters essential for accuracy for determining emissions; and

(v) documentation demonstrating compliance with all applicable requirements of this section.

(C) The fee for this registration shall be $25 for small businesses, as defined in §106.50 of this title, or $175 for all others.

(6) For any registration which meets the emission limitations of Level 2 as required in subsection (h) of this section:

(A) Within 90 days after start of operation or implemented changes (whichever occurs first), the facilities must be registered through ePermits form "APD OGS PBR Level 1 and 2 Registration" (or if not available, submittal of hard-copy).

(B) This registration shall include a detailed summary of maximum emissions estimates based on:

(i) site-specific or defined representative gas and liquid analysis;

(ii) equipment design specifications and operations;

(iii) material type and throughput; and

(iv) other actual parameters essential for accuracy for determining emissions and compliance with all applicable requirements of this section.

(C) The fee for this registration shall be $75 for small businesses (as defined in §106.50 of this title) or $400 for all others.

(7) Certified registrations or certifications are required in the following circumstances:

(A) For projects at existing major sites, establish emission increases less than any applicable threshold or contemporaneous emission increases for major sources or major modifications under prevention of significant deterioration (PSD), nonattainment new source review (NNSR) as specified in §116.12 of this title and in Federal Clean Air Act §112(g), §112(j), or the definition of major source in §122.10 of this title.

(B) If a project or registration includes control for reductions, limited hours, throughput, and materials or other operational limitations which are less than the potential to emit, and if modeling is used to demonstrate compliance with subsection (k) of this section.

(C) If a project is located at a site subject to NO_x cap and trade requirements in Chapter 101, Subchapter H of this title (relating to Emissions Banking and Trading) or relies on controls to comply with any state or federal regulation.

(D) For projects which resolve compliance issues and are the result of a commission or United States Environmental Protection Agency order.

(8) If the ePermits system is not available for more than 24 hours or not otherwise accessible, hard copies of notifications, registrations, or certifications may be submitted by first-class mail.

(9) If emissions increase at an OGS to a level where it exceeds its current authorization, either through a change in production or addition of facilities, the site may claim and register its facilities under the applicable authorization (Level 1 or Level 2 PBR or Standard Permit) as follows:

(A) Within 90 days from the initial notification of construction of an oil and gas facility, a registration can update the authorization mechanism by submitting a revision to the PBR or an application for a standard permit; and

(B) Within 90 days of the change of production or installation of additional equipment, a revision to the PBR or an application for a standard permit has been submitted.

(g) Level 1 Requirements. Total maximum estimated emissions shall meet the most stringent of the following. All emissions estimates must be based on representative worst-case operations and planned MSS activities.

(1) Emissions of any criteria air contaminant shall not exceed the applicable limits for a major stationary source or major modification for PSD, NNSR and in Federal Clean Air Act, §112(g), §112(j), or the definition of major source in §122.10 of this title.

(2) Emissions must meet the limitations established in subsection (k) of this section.

(3) Maximum emissions are limited to less than the following after any operator limitations or controls:
Figure: 30 TAC §106.352(g)(3) (No change.)

(h) Level 2 Requirements. If the requirements of Level 1 cannot be met, then the conditions of this subsection must be followed. Total maximum estimated registered or certified emissions shall meet the most stringent of the following. All emissions estimates must be based on representative worst-case operations and planned MSS activities.

(1) Total maximum estimated annual emissions of any air contaminant shall not exceed the applicable limits for a major stationary source or major modification for PSD and NNSR as specified in §116.12 of this title.

(2) Emissions must meet the limitations established in subsection (k) of this section.

(3) Maximum emissions are limited to less than the following after any operator limitations or controls:
Figure: 30 TAC §106.352(h)(3) (No change.)

(i) Planned Maintenance, Startups and Shutdowns. For any facility, group of facilities or site using this section or previous versions of this section, the following shall apply.

(1) Prior to January 5, 2012, representations and registration of planned MSS is voluntary, but if represented must meet the applicable limits of this section. After January 5, 2012, all emissions from planned MSS activities and facilities must be considered for compliance with applicable limits of this section. This section may not be used at a site or for facilities authorized under §116.111 of this title if planned MSS has already been authorized under that permit.

(2) As specified, releases of air contaminants during, or as result of, planned MSS must be quantified and meet the emission limits in this section, as applicable. This analysis must include:

(A) alternate operational scenarios or redirection of vent streams;

(B) pigging, purging, and blowdowns;

(C) temporary facilities if used for degassing or purging of tanks, vessels, or other facilities;

(D) degassing or purging of tanks, vessels, or other facilities; and

(E) management of sludge from pits, ponds, sumps, and water conveyances.

(3) Other planned MSS activities authorized by this section are limited to the following. These planned MSS activities require only recordkeeping of the activity.

(A) Routine engine component maintenance including filter changes, oxygen sensor replacements, compression checks, overhauls, lubricant changes, spark plug changes, and emission control system maintenance.

(B) Boiler refractory replacements and cleanings.

(C) Heater and heat exchanger cleanings.

(D) Turbine hot section swaps.

(E) Pressure relief valve testing, calibration of analytical equipment; instrumentation/analyzer maintenance; replacement of analyzer filters and screens.

(4) Engine/compressor startups associated with preventative system shutdown activities have the option to be authorized as part of typical operations if:

(A) prior to operation, alternative operating scenarios to divert gas or liquid streams are registered and certified with all supporting documentation;

(B) engine/compressor shutdowns shall result in no greater than 4 lb/hr of natural gas emissions; and

(C) emissions which result from the subsequent compressor startup activities are controlled to a minimum of 98% efficiency for VOC and H_2S.

(j) Records, sampling, and monitoring. The following records shall be maintained at a site in written or electronic form and be readily available to the agency or local air pollution control program with jurisdiction upon request. All required records must be kept at the facility site. If the facility normally operates unattended, records must be maintained at an office within Texas having day-to-day operational control of the plant site. Other requirements, including but not limited to, federal recordkeeping or testing requirements, can be used to demonstrate compliance if the other requirements are at least as stringent as the associated requirements in the Tables 7 and 8 in subsection (m) of this section. Any documentation that is already being kept for other purposes will suffice for demonstrating requirements. If a control or method is not relied upon for emission reductions, then the associated sampling, monitoring, and records are not applicable.

(1) Sampling and demonstrations of compliance shall include the requirements listed in Table 7 in subsection (m) of this section.

(2) Monitoring and records for demonstrations of compliance shall include the requirements listed in Table 8 in subsection (m) of this section.

(k) Emission limits based on impacts evaluation.

(1) All impacts evaluations must be completed on a contaminant-by-contaminant basis for any net emissions increases resulting from a project and must meet the following as appropriate:

(A) Compliance with state or federal ambient air standards shall be demonstrated for nitrogen dioxide (NO_2), SO_2, and H_2S at any property-line within 1/4 mile or 1/2 mile of a project under subsection (g) (Level 1) or subsection (h) (Level 2) of this section, respectively.

(B) Compliance with hourly ESLs for benzene and annual ESL for benzene, shall be demonstrated at the nearest receptor within 1/4 mile or 1/2 mile of a project under subsection (g) (Level 1) or subsection (h) (Level 2) of this section, respectively.

(2) Distance measurements shall be determined using the following.

(A) For each facility or group of facilities, the shortest corresponding distance from any emission point, vent, or fugitive component to the nearest receptor must be used with the appropriate compliance determination method with the published ESLs as found through the TCEQ internet Web page.

(B) For each facility or group of facilities, the shortest corresponding distance from any emission point, vent, or fugitive component to the nearest property line must be used with the appropriate compliance determination method with any applicable state or federal ambient air quality standard.

(3) Impacts evaluations are not required under the following cases:

(A) If there is no receptor within 1/4 mile of a Level 1 registration, or 1/2 mile of a Level 2 registration, no further ESL review is required.

(B) If there is no property line within 1/4 mile of a Level 1 registration, or 1/2 mile of a Level 2 registration, no further ambient air quality standard review is required.

(C) If the project total emissions are less than any of the following rates, no additional analysis or demonstration of the specified air contaminant is required:
Figure: 30 TAC §106.352(k)(3)(C) (No change.)

(4) Evaluation of emissions shall meet the following.

(A) For all evaluations of NO_x to NO_2, a conversion factor of 0.20 for 4-stroke rich and lean-burn engines and 0.50 for 2-stroke lean-burn engines may be used.

(B) The maximum predicted concentration or rate at the property boundary or receptor, whichever is appropriate, must not exceed a state or federal ambient air standard or ESL.

(5) The impacts analysis shall be based on the following facility emissions.

(A) The following shall be met for ESL reviews:

(i) If a project's air contaminant maximum predicted concentrations are equal to or less than 10% of the appropriate ESL, no further review is required.

(ii) If a project's air contaminant maximum predicted concentrations combined with project increases for that contaminant over a 60-month period after the effective date of this revised section are equal to or less than 25% of the appropriate ESL, no further review is required.

(iii) In all other cases, all facility emissions at an OGS, regardless of authorization type, located within 1/4 mile of a project requiring registration under this section shall be evaluated.

(B) The following shall be met for state and federal ambient air quality standard reviews:

(i) If a project's air contaminant maximum predicted concentrations are equal to or less than the significant impact level (also known as *de minimis* impact in Chapter 101 of this title (relating to General Air Quality Rules)), no further review is required;

(ii) In all other cases, all facility emissions at an OGS, regardless of authorization type, located within 1/4 mile of a project requiring registration under this section shall be evaluated.

(6) Evaluation must comply with one of the methods listed with no changes or exceptions.

(A) Tables.

(i) Emission impact Tables 2 - 5F in subsection (m) of this section, may be used in accordance with the limits and descriptions in Table 1 in subsection (m) of this section.

(ii) Values in Tables 2 - 5F in subsection (m) of this section may be used with linear interpolation between height and distance points. A distance of less than 50 feet or greater than 5,500 feet may not be used. Release heights may not be extrapolated beyond the limits of any table and instead the minimum or maximum height will be used. If distances and release heights are not interpolated, the next lowest height and lesser distances shall be used for determination of maximum acceptable emissions. All facilities exempted from the distance to the property line restriction in subsection (e)(2) of this section must use 50 feet as the distance to the property line for those ambient standards based on property line.

(B) Screening Modeling. A screening model may be used to demonstrate acceptable emissions from an OGS under this section if all of the parameters in the screening modeling protocol provided by the commission are met.

(C) Dispersion Modeling. A refined dispersion model may be used to demonstrate acceptable emissions from an OGS under this section if all of the parameters in the refined dispersion modeling protocol provided by the commission are met.

(l) The requirements in this subsection are applicable to new and modified facilities except those specified in subsection (a)(1) of this section. Any oil or gas production facility, carbon dioxide separation facility, or oil or gas pipeline facility consisting of one or more tanks, separators, dehydration units, free water knockouts, gunbarrels, heater treaters, natural gas liquids recovery units, or gas sweetening and other gas conditioning facilities, including sulfur recovery units at facilities conditioning produced gas containing less than two long tons per day of sulfur compounds as sulfur are permitted by rule, provided that the following conditions of this subsection are met. This subsection applies only to those facilities named which handle gases and liquids associated with the production, conditioning, processing, and pipeline transfer of fluids found in geologic formations beneath the earth's surface.

(1) Compressors and flares shall meet the requirements of §106.492 and §106.512 of this title (relating to Flares; and Stationary Engines and Turbines, respectively). Oil and gas facilities which are authorized under historical standard exemptions and remain unchanged maintain that authorization and the remainder of this subsection does not apply.

(2) Total emissions, including process fugitives, combustion unit stacks, separator, or other process vents, tank vents, and loading emissions from all such facilities constructed at a site under this subsection shall not exceed 25 tpy each of SO_2 all other sulfur compounds combined, or all VOCs combined; and 250 tpy each of NO_x and CO. Emissions of VOC and sulfur compounds other than SO_2 must include gas lost by equilibrium flash as well as gas lost by conventional evaporation.

(3) Any facility handling sour gas shall be located at least one-quarter mile from any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facility or the owner of the property upon which the facility is located.

(4) Total emissions of sulfur compounds, excluding sulfur oxides, from all vents shall not exceed 4.0 pounds per hour (lb/hr) and the height of each vent emitting sulfur compounds shall meet the following requirements, except in no case shall the height be less than 20 feet, where the total emission rate as H_2S, lb/hr, and minimum vent height (feet), and other values may be interpolated:

(A) 0.27 lb/hr at 20 feet;

(B) 0.60 lb/hr at 30 feet;

(C) 1.94 lb/hr at 50 feet;

(D) 3.00 lb/hr at 60 feet; and

(E) 4.00 lb/hr at 68 feet.

(5) Before operation begins, facilities handling sour gas shall be registered with the executive director in Austin using Form PI-7 along with supporting documentation that all requirements of this subsection will be met. For facilities constructed under §106.353 of this title (relating to Temporary Oil and Gas Facilities), the registration is required before operation under this subsection can begin. If the facilities cannot meet this subsection, a permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) is required prior to continuing operation of the facilities.

(m) The following tables shall be used as required in this section.

Figure: 30 TAC §106.352(m) (No 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 November 2, 2012.

TRD-201205662
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: November 22, 2012
Proposal publication date: June 15, 2012
For further information, please call: (512) 239-2141

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §19.405, concerning additional requirements for trust funds in Medicaid-certified facilities; and §19.2314, concerning financial audits, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification. The amendment to §19.405 is adopted with changes to the proposed text published in the July 13, 2012, issue of the *Texas Register* (37 TexReg 5235). The amendment to §19.2314 is adopted without changes to the proposed text.

Federal and state law governing nursing facility licensure and Medicaid program participation includes specific provisions regarding the management of a resident's personal funds. Residents in licensed-only and Medicaid-certified facilities may manage their own funds, or they may designate another person or authorize the nursing facility to assume that responsibility. If the nursing facility is authorized to manage a resident's funds, DADS monitors the nursing facility to ensure that the funds are properly safeguarded and accounted for by the facility. The amendments apply only to Medicaid-certified facilities.

The amendments are adopted to clarify the requirements for managing residents' personal funds and to explain how DADS monitors and enforces those requirements. The amendments are adopted, in part, in response to recommendations in a report issued by DADS Internal Audit in November 2008 regarding trust fund monitoring. The audit recommendations have been implemented and the adoption reflects current practices.

DADS corrected a typographical error in §19.405(d)(4)(B)(iii).

DADS received a written comment from one individual. A summary of the comment and the response follows.

Comment: The commenter stated that the term "Generally Accepted Accounting Standards" in §19.405(d)(1)(B)(i) is incorrect. The correct term is "Generally Accepted Accounting Principles."

Response: The agency agrees with this comment and made the suggested change.

SUBCHAPTER E. RESIDENT RIGHTS

40 TAC §19.405

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 Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas 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.

§19.405. Additional Requirements for Trust Funds in Medicaid-certified Facilities.

(a) Deposit of funds. The facility must keep funds received from a resident for holding, safeguarding, and accounting, separate from the facility's funds.

(1) This separate account must be identified " (Name of Facility), Resident's Trust Fund Account," or by a similar title that shows a fiduciary relationship exists between a resident and the facility.

(2) A facility may commingle the trust funds of Medicaid residents and private-pay residents.

(3) If the funds are commingled, the facility must provide, upon request, the following records to the Department of Aging and Disability Services, the Texas attorney general's Medicaid Fraud Control Unit, and the U.S. Department of Health and Human Services:

(A) copies of release forms signed and dated by each private-pay resident or responsible party whose funds are commingled; and

(B) legible copies of the trust fund records of private-pay residents whose funds are commingled.

(4) The facility must maintain the forms and records described in paragraph (3) of this subsection in the same manner as the financial records of Medicaid residents as specified in this section.

(5) A facility must ensure that a release form described in paragraph (3)(A) of this subsection:

(A) includes permission for the facility to maintain trust fund records of private-pay residents in the same manner as those of Medicaid residents;

(B) is obtained from a private-pay resident upon admission or at the time of request for trust fund services; and

(C) includes a provision allowing inspection of the private-pay resident's trust fund records by the agencies described in paragraph (3) of this subsection.

(b) Funds in excess of $50. The facility must deposit any residents' personal funds in excess of $50 in an interest-bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on the residents' funds to that account. In pooled accounts, there must be a separate accounting for each resident's share.

(c) Funds less than $50. The facility may maintain a resident's personal funds that do not exceed $50 in a noninterest-bearing account, interest-bearing account, or petty cash fund.

(d) Accounting and records.

(1) The facility must:

(A) establish and maintain current, written, individual records of all financial transactions involving a resident's personal funds that the facility is holding, safeguarding, and accounting;

(B) keep these records in accordance with:

(i) the American Institute of Certified Public Accountants' Generally Accepted Accounting Principles; and

(ii) the requirements of law for a fiduciary relationship; and

(C) include at least the following in these records:

(i) resident's name;

(ii) identification of resident's legally authorized representative, representative payee, or responsible party, if any, and payor source;

(iii) valid letter of guardianship, if any;

(iv) valid power of attorney, if any;

(v) resident's admission and discharge dates;

(vi) resident's trust fund ledger containing the following:

(I) description of each transaction;

(II) the date and amount of each deposit and withdrawal;

(III) the name of the person who accepted any withdrawn funds;

(IV) the balance after each transaction; and

(V) amount of interest earned, posted at least quarterly;

(vii) receipts for purchases and payments, including cash-register tapes or sales statements from a seller;

(viii) written requests for personal funds from the trust fund account; and

(ix) written requests for specific brands, items, or services.

(2) The facility must maintain the following as general trust fund records:

(A) valid trust fund trial balance;

(B) petty cash logs;

(C) bank statements for trust fund and operating accounts;

(D) trust fund checkbook and register;

(E) trust fund account monthly reconciliations;

(F) trust fund bank account agreement form;

(G) applied income ledgers;

(H) applied income payment plans from DADS;

(I) proof of surety bond;

(J) written agreements (e.g., bed hold, private room); and

(K) facility census, admission, discharge, and leave records.

(3) A resident must approve a withdrawal from the resident's personal funds by signing a document that shows the resident's approval and the date of the approval.

(4) Except as provided in subparagraph (B) of this paragraph, a facility must obtain a receipt for the purchase of an item or service.

(A) The receipt must contain:

(i) the resident's name;

(ii) the date the receipt was written or created;

(iii) the amount of funds spent;

(iv) the specific item or service purchased;

(v) the name of the business from which the purchase was made; and

(vi) the signature of the resident.

(B) A receipt is not required if:

(i) a purchase is made with funds withdrawn in accordance with paragraph (3) of this subsection;

(ii) a purchase is made by the resident, a legally authorized representative, a responsible party, or an individual (other than facility personnel) authorized in writing by the resident; or

(iii) the item purchased costs one dollar or less.

(5) If a facility cannot obtain the signature of a resident as required by paragraph (3) or (4)(A)(vi) of this subsection, the facility must obtain the signature of a witness. The witness may not be the person responsible for accounting for the resident's trust funds, that person's supervisor, or the person who accepts the withdrawn funds or who sells the item being purchased. The facility and DADS staff must be able to identify the witness's name, address, and relationship to the resident or facility.

(e) Notice of certain balances. The facility must notify each resident that receives Medicaid benefits:

(1) if the amount in the resident's account reaches $200 less than SSI resource limit for one person, specified in §1611(a)(3)(B) of the Social Security Act; and

(2) that, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

(f) Conveyance upon death.

(1) If a resident with personal funds managed by a facility dies, the facility must convey, within 30 days after the resident's death, the resident's funds and a final accounting of those funds to the individual or probate jurisdiction administering the resident's estate, or make a bona fide effort to locate the responsible party or heir to the estate (see also §19.416 of this title (relating to Personal Property)).

(2) If a facility is not able to convey funds in accordance with paragraph (1) of this subsection, the facility must, within 30 days after the resident's death;

(A) hold the funds by depositing them in a separate account or maintaining them in an existing account, designating on the account records that the resident is deceased; or

(B) submit funds to DADS in accordance with paragraph (4) of this subsection.

(3) If the facility holds funds in accordance with paragraph (2)(A) of this subsection:

(A) the facility must provide DADS with a notarized affidavit that contains:

(i) the resident's name;

(ii) the amount of funds being held;

(iii) a description of the facility's efforts to locate a responsible party or heir;

(iv) a statement acknowledging that the funds are not the property of the facility, but the property of the deceased resident's estate; and

(v) a statement that the facility will hold the funds until they are conveyed to a responsible party or heir or submitted to DADS in accordance with paragraph (4) of this subsection;

(B) the facility must submit the funds to DADS in accordance with paragraph (4) of this subsection within 180 days after the resident's death; and

(C) funds held by a facility in accordance with this paragraph may be monitored or reviewed by DADS or the Health and Human Services Commission, Office of Inspector General.

(4) A facility must submit unclaimed funds to DADS, Accounts Receivable, Mail Code E-411, P.O. Box 149030, Austin Texas 78714-9030.

(A) The funds must be identified as money that will escheat to the state.

(B) If the facility held the funds in accordance with paragraph (3) of this subsection, the facility must include the notarized affidavit described in paragraph (3)(A) of this subsection.

(g) Assurance of financial security. The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary of Health and Human Services to ensure the security of all personal funds of residents deposited with the facility.

(1) The amount of a surety bond must equal the average monthly balance of all the facility's resident trust fund accounts for the 12-month period preceding the bond issuance or renewal date.

(2) Resident trust fund accounts are specific only to the single facility purchasing a resident trust fund surety bond.

(3) If a facility employee is responsible for the loss of funds in a resident's trust fund account, the resident, the resident's family, and the resident's legal representative are not obligated to make any payments to the facility that would have been made out of the trust fund had the loss not occurred.

(h) Items and services that may not be charged to a resident's personal funds.

(1) The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare.

(2) Items or services included in Medicare or Medicaid payment that may not be billed to the resident's personal funds by the facility include:

(A) nursing services as required in §19.1001 of this title (relating to Nursing Services);

(B) dietary services as required in §19.1101 of this title (relating to Dietary Services);

(C) an activities program as required in §19.702 of this title (relating to Activities);

(D) room and bed maintenance services;

(E) routine personal hygiene items and services as required to meet the needs of the resident, including, but not limited to:

(i) hair hygiene supplies, including shampoo, comb, and brush;

(ii) bath soaps, disinfecting soaps, or specialized cleansing agents when indicated to treat special skin problems or to fight infection;

(iii) razor and shaving cream;

(iv) toothbrush, toothpaste, and dental floss;

(v) denture adhesive and denture cleanser;

(vi) moisturizing lotion;

(vii) tissues, cotton balls, and cotton swabs;

(viii) deodorant;

(ix) incontinent care and supplies, to include, but not limited to, cloth or disposable incontinent briefs;

(x) sanitary napkins and related supplies;

(xi) towels and washcloths;

(xii) hospital gowns;

(xiii) over-the-counter drugs;

(xiv) hair and nail hygiene services; and

(xv) personal laundry; and

(F) medically-related social services as required in §19.703 of this title (relating to Social Services General Requirements).

(3) A facility must base necessity for and type of incontinent brief described in paragraph (2)(E)(ix) of this subsection on an

assessment of the resident's medical and psychosocial condition and resulting determination.

(i) Items and services that may be charged to a resident's personal funds. The facility may charge a resident for requested services that are more expensive than or in excess of covered services in accordance with §19.2601 of this title (relating to Vendor Payment (Items and Services Included)). The following list contains general categories and examples of items and services that the facility may charge to a resident's personal funds if they are requested by a resident, if the facility informs the resident that there will be a charge, and if payment is not made by Medicare or Medicaid:

(1) telephone;

(2) television or radio for personal use;

(3) personal comfort items, including smoking materials, notions and novelties, and confections;

(4) cosmetics and grooming items and services in excess of those for which payment is made under Medicare or Medicaid;

(5) personal clothing;

(6) personal reading material;

(7) gifts purchased on behalf of a resident;

(8) flowers and plants;

(9) social events and entertainment offered outside the scope of the activities program, provided under §19.702 of this title;

(10) noncovered special care services, such as privately hired nurses and aides;

(11) private room, except when therapeutically required, such as isolation for infection control;

(12) specially-prepared or alternative food requested instead of the food generally prepared by the facility, as required in §19.1101 of this title; and

(13) incontinent briefs if the resident's legally authorized representative or responsible party submits a written request to the facility and the attending physician and director of nurses (DON) determine and document in the clinical record that there is no medical or psychosocial need for supplies.

(j) Request for items or services that may be charged to a resident's personal funds. The facility must:

(1) not charge a resident, nor his representative, for any item or service not requested by the resident;

(2) not require a resident, or his representative, to request any item or service as a condition of admission or continued stay; and

(3) inform the resident or his representative, when he requests an item or service for which a charge will be made, that there will be a charge for the item or service and the amount of the charge.

(k) Access to financial record. The individual financial record must be available on request to the resident, responsible party, representative payee or legal representative.

(l) Quarterly statement.

(1) The individual financial record must be available, through quarterly statements and on request, to the resident, legally authorized representative, representative payee, or responsible party.

(2) The statement must reflect any resident's funds that the facility has deposited in an account as well as any resident's funds held by the facility in a petty cash account.

(3) The statement must include at least the following:

(A) balance at the beginning of the statement period;

(B) total deposits and withdrawals;

(C) interest earned, if any;

(D) bank name and location of any account in which the resident's personal funds have been deposited; and

(E) ending balance.

(m) Banking charges.

(1) Charges for checks, deposit slips, and services for pooled checking accounts are the responsibility of the facility and may not be charged to the resident, legally authorized representative, or responsible party.

(2) Bank service charges and charges for checks and deposit slips may be deducted from the individual checking accounts if it is the resident's written, individual choice to have this type of account.

(3) Bank fees on individual accounts established solely for the convenience of the facility are the responsibility of the facility and may not be charged to the resident, legally authorized representative, or responsible party.

(4) The facility may not charge the resident, legally authorized representative, or responsible party for the administrative handling of either type of account.

(5) If the facility places any part of the resident's funds in savings accounts, certificates of deposit, or any other plan whereby interest or other benefits are accrued, the facility must distribute the interest or benefit to participating residents on an equitable basis. If pooled accounts are used, interest must be prorated on the basis of actual earnings or end-of-quarter balances.

(n) Access to funds.

(1) Disbursements from the trust fund.

(A) A request for funds from the trust fund or trust fund petty cash box may be made, either orally or in writing, by the resident, the resident's legally authorized representative, representative payee, or responsible party to cover a resident's expenses.

(B) The facility must respond to a request received during normal business hours at the time of the request.

(C) The facility must respond to a request received during hours other than normal business hours immediately at the beginning of the next normal business hours.

(2) Discontinuing trust fund participation.

(A) If a resident, legally authorized representative, or responsible party requests that the facility discontinue managing the resident's personal funds the facility must return to the resident, legally authorized representative, or responsible party all of the resident's personal funds held by the facility, including any interest accrued.

(B) If the request is made during normal business hours, the facility must immediately return the funds.

(C) If the request is made during hours other than normal business hours, the facility must return the funds immediately during the next normal business hours.

(3) Transfer or discharge. If a resident is transferred or discharged from a facility, the facility must, within five working days after the transfer or discharge, return to the resident, legally authorized representative, or responsible party all of the resident's personal funds held by the facility, including any interest accrued.

(4) For purposes of this subsection, normal business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding national holidays.

(o) Handling of monthly benefits. If the Social Security Administration has determined that a Title II and Title XVI Supplemental Security Income (SSI) benefit to which the resident is entitled should be paid through a representative payee, the provisions in 20 Code of Federal Regulations (CFR), §§404.2001 - 404.2065, for Old Age, Survivors, and Disability Insurance benefits and 20 CFR, §§416.601 - 416.665, for SSI benefits apply.

(p) Change of ownership. If the ownership of a facility changes, the former owner must transfer the bank balances or trust funds to the new owner with a list of the residents and their balances. The former owner must get a receipt from the new owner for the transfer of these funds. The former owner must keep this receipt for monitoring or audit purposes.

(q) Alternate forms of documentation. Without DADS prior written approval, a facility may not submit alternate forms of documentation, including affidavits, to verify a resident's personal fund expenditures or as proof of compliance with any requirements specified in these requirements for the resident's personal funds.

(r) Limitation on certain charges. A nursing facility may not impose charges for certain Medicaid-eligible individuals, for nursing facility services that exceed the per diem amount established by DADS for such services. "Certain Medicaid-eligible individuals" means an individual who is entitled to medical assistance for nursing facility services, but for whom such benefits are not being paid because, in determining the individual's income to be applied monthly to the payment for the costs of nursing facility services, the amount of such income exceeds the payment amounts established by DADS.

(s) Trust fund monitoring and audits.

(1) DADS may periodically monitor all trust fund accounts to assure compliance with this section. DADS notifies a facility of monitoring plans and gives a report of the findings to the facility.

(2) DADS may, as a result of monitoring, refer a facility to the Office of Inspector General (OIG) for an audit.

(3) The facility must provide all records and other documents required by subsection (d) of this section to DADS upon request.

(4) DADS provides the facility with a report of the findings, which may include corrective actions that the facility must take and internal control recommendations that the facility may follow.

(5) The facility may request an informal review in accordance with subsection (t) of this section or a formal hearing in accordance with subsection (u) of this section to dispute the report of findings.

(6) If the facility does not request an informal review or a formal hearing and the report of findings requires corrective actions, the facility must complete corrective actions within 60 days after receiving the report of findings.

(7) If the facility does not complete corrective actions required by DADS within 60 days after receiving the report of findings, DADS may impose a vendor hold on payments due to the facility under the provider agreement until the facility completes corrective actions.

(8) If DADS imposes a vendor hold in accordance with paragraph (7) of this subsection, the facility may request a formal hearing in accordance with subsection (u)(5) of this section. If the failure to correct is upheld, DADS continues the vendor hold until the facility completes the corrective actions.

(t) Informal review.

(1) A facility that disputes the report of findings described in subsection (s)(4) of this section may request an informal review under this section. The purpose of an informal review is to provide for the informal and efficient resolution of the matters in dispute and is conducted according to the following procedures:

(A) DADS must receive a written request for an informal review by United States (U.S.) mail, hand delivery, special mail delivery, or fax no later than 15 days after the date on the written notification of the report of findings described in subsection (s)(4) of this section. If the 15th day is a Saturday, Sunday, national holiday, or state holiday, then the first day following the 15th day is the final day the written request will be accepted. A request for an informal review that is not received by the stated deadline is not granted.

(B) A facility must submit a written request for an informal review:

(i) by U.S. mail to DADS Trust Fund Monitoring Unit, Attn: Manager, P.O. Box 149030, Mail Code W-340, Austin, Texas 78714-9030;

(ii) hand delivery or special mail delivery to 701 West 51st Street, Austin, Texas 78751-2321; or

(iii) by fax to (512) 438-3639.

(C) A facility must, with its request for an informal review:

(i) submit a concise statement of the specific findings it disputes;

(ii) specify the procedures or rules that were not followed;

(iii) identify the affected cases;

(iv) describe the reason the findings are being disputed; and

(v) include supporting information and documentation that directly demonstrates that each disputed finding is not correct.

(D) DADS does not grant a request for an informal review that does not meet the requirements of this subsection.

(2) Informal review process. Upon receipt of a request for an informal review, the Trust Fund Monitoring Unit Manager coordinates the review of the information submitted.

(A) Additional information may be requested by DADS, and must be received in writing by U.S. mail, hand delivery, special mail, or fax in accordance with paragraph (1)(B)(i) - (iii) of this subsection no later than 15 days after the date the facility receives the written request for additional information. If the 15th day is a Saturday, Sunday, national holiday, or state holiday, then the first day following the 15th day is the final day the additional information will be accepted.

(B) DADS sends its written decision to the facility by certified mail, return receipt requested.

(i) If the original findings are upheld, DADS continues the schedule of deficiencies and requirement for corrective action.

(ii) If the original findings are reversed, DADS issues a corrected schedule of deficiencies with the written decision.

(iii) If the original findings are revised, DADS issues a revised schedule of deficiencies including any revised corrective action.

(iv) If the original findings are upheld or revised, the facility may request a formal hearing in accordance with subsection (u) of this section.

(v) If the original findings are upheld or revised and the facility does not request a formal hearing, the facility has 60 days from the date of receipt of the written decision to complete the corrective actions. If the facility does not complete the corrective actions by that date, DADS may impose a vendor hold. If DADS imposes a vendor hold, the facility may request a formal hearing in accordance with subsection (u)(5) of this section. If the failure to correct is upheld, DADS continues the vendor hold until the facility completes the corrective action.

(u) Formal hearing.

(1) The facility must submit a written request for a formal hearing under this section to: HHSC Appeals Division, Mail Code W-613, P.O. Box 149030, Austin, Texas 78714-9030.

(2) The written request for a formal hearing must be received within 15 days after:

(A) the date on the written notification of the report of findings described in subsection (s)(4) of this section; or

(B) the facility receives the written decision sent as described in subsection (t)(2)(B) of this section.

(3) A formal hearing is conducted in accordance with Texas Administrative Code, Title 1, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(4) No later than 60 days after a final determination is issued as a result of a formal hearing requested by a facility under subsection (s)(8) or (t)(2)(B)(iv) of this section, the facility must complete any corrective action required by DADS or be subject to a vendor hold on payments due to the facility under the provider agreement until the facility completes corrective action. If DADS imposes a vendor hold, the facility may request a formal hearing in accordance with paragraph (5) of this subsection. If the failure to correct is upheld, DADS continues the vendor hold until the facility completes the corrective action.

(5) If DADS imposes a vendor hold under subsections (s)(7), (t)(2)(B)(v), or (u)(4) of this section, the facility may request a formal hearing within 15 days after receiving notice of the correction failure and the vendor hold. The formal hearing is limited to the issue of whether the facility completed the corrective action.

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 October 31, 2012.

TRD-201205646
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: November 20, 2012
Proposal publication date: July 13, 2012
For further information, please call: (512) 438-3734

♦ ♦ ♦

SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

40 TAC §19.2314

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 Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas 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.

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 October 31, 2012.

TRD-201205647
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: November 20, 2012
Proposal publication date: July 13, 2012
For further information, please call: (512) 438-3734

♦ ♦ ♦

CHAPTER 98. ADULT DAY CARE AND DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §98.2, concerning definitions, and §98.206, concerning program requirements, in Chapter 98, concerning Adult Day Care and Day Activity and Health Services Requirements. The amendments are adopted with changes to the proposed text published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4822).

Section 98.2 and §98.206 are adopted without the proposed amendments related to implementation of a State Plan amendment concerning Day Activity and Health Services (DAHS) in accordance with §1915(i) of the Social Security Act because the State Plan amendment is not going to be implemented.

In §98.2, the proposed definitions of the Community Based Alternatives (CBA) Program, Medically Dependent Children Program (MDCP), and "functional impairment" are not being adopted. The definition of "authorization" has been amended to reflect that a person's case manager must decide if services may be provided to an individual. In addition, the terms "case manager" and "individual" are being phased in to replace "case worker" and "client." The term "day activity and health services (DAHS)" is being amended to clarify that DAHS are structured health, so-

cial, and related services provided in a DAHS facility. The definition of the term "individual plan of care" is being amended to clarify that it is developed by a DAHS facility.

Changes were also made to §98.206 as proposed. The proposed requirement for a DAHS facility to annually obtain and send physician orders regarding nursing services to the DADS case manager is not being adopted. Two amendments are being adopted in §98.206 that enhance the health and safety of services provided by a DAHS facility. First, nursing services must include ensuring that an individual plan of care appropriately reflects the orders of an individual's physician. Second, new safety requirements for vehicles used to provide transportation services are being added.

As a result of the decision not to implement the §1915(i) State Plan amendment, proposed amendments to §§48.2915, 48.6002, 48.6011, 48.6040, 48.6050, 48.6082, 48.6084, 48.6088, 48.6090, 51.103, 51.231, 51.411, 51.509, 51.511, 98.201, 98.207, and 98.211; proposed new §§48.2916, 48.6033, 51.481, 98.203, 98.204, and 98.205; and the proposed repeal of §§98.203, 98.204, and 98.205 are withdrawn elsewhere in this issue of the *Texas Register.*

DADS received no comments regarding adoption of the amendments.

SUBCHAPTER A. INTRODUCTION

40 TAC §98.2

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 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; 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; and Texas Human Resources Code, Chapter 103, which provides DADS with the authority to license and regulate adult day care facilities.

§98.2. Definitions.

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

(1) Abuse--The negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person, or sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under §21.08, Penal Code (indecent exposure) or Chapter 22, Penal Code (assaultive offenses) committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

(2) Adult--A person 18 years of age or older, or an emancipated minor.

(3) Adult day care facility--A facility that provides services under an Adult Day Care Program on a daily or regular basis, but not overnight, to four or more elderly or handicapped persons who are not related by blood, marriage, or adoption to the owner of the facility.

(4) Adult day care program--A structured, comprehensive program that is designed to meet the needs of adults with functional impairments through an individual plan of care by providing health, social, and related support services in a protective setting.

(5) Affiliate--With respect to a:

(A) partnership, each partner thereof;

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

(C) natural person which includes each:

(i) person's spouse;

(ii) partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(6) Ambulatory--Mobility not relying on walker, crutch, cane, other physical object, or use of wheelchair.

(7) Applicant--A person applying for a license under Texas Human Resources Code, Chapter 103.

(8) Authorization--A case manager's decision, before services begin and before payment can be made, that DAHS may be provided to an individual.

(9) Case manager--A DADS employee who is responsible for DAHS case management activities. Activities include eligibility determination, individual enrollment, assessment and reassessment of an individual's need, service plan development, and intercession on the individual's behalf.

(10) Caseworker--Case manager.

(11) Client--Individual.

(12) Construction, existing--See definition of existing building.

(13) Construction, new--Construction begun after April 1, 2007.

(14) Construction, permanent--A building or structure that meets a nationally recognized building code's details for foundations, floors, walls, columns, and roofs.

(15) Contract manager--A DADS employee, designated as the primary contact point between the facility and DADS, who is responsible for the overall management of the DAHS contract.

(16) DADS--The Department of Aging and Disability Services.

(17) DAHS facility--An entity that contracts with DADS to provide day activity and health services.

(18) Day activity and health services (DAHS)--Structured program services designed to meet the needs of an adult by providing health, social, and related services in a DAHS facility.

(19) Days--Calendar days, not workdays, unless otherwise noted in the text.

(20) Department--Department of Aging and Disability Services.

(21) DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS.

(22) Dietitian consultant--A registered dietitian; a person licensed by the Texas State Board of Examiners of Dietitians; or a person with a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management.

(23) Direct service staff--An employee of a facility who provides direct services to clients, including the director, a licensed nurse, the activities director, and an attendant. An attendant is a person who may provide direct services to clients of the facility such as a facility bus driver, food service worker, aide, janitor, porter, maid, and laundry worker.

(24) Director--The person responsible for the overall operation of a facility.

(25) Elderly person--A person 65 years of age or older.

(26) Existing building--In these standards, except where defined otherwise, a building either occupied as an adult day care facility at the time of initial inspection by DADS or converted to occupancy as an adult day care facility.

(27) Exploitation--An illegal or improper act or process of a caretaker, family member, or other individual, who has an ongoing relationship with the elderly person or person with a disability, using the resources of an elderly person or person with a disability for monetary or personal benefit, profit, or gain without the informed consent of the elderly person or person with a disability.

(28) Facility--An adult day care facility, unless otherwise specified.

(29) Fence--A barrier to prevent elopement of a client or intrusion by an unauthorized person, consisting of posts, columns, or other support members, and vertical or horizontal members of wood, masonry, or metal.

(30) FM approval--A third-party certification of a product by FM (formerly known as Factory Mutual Insurance Company). FM approval provides third-party certification and testing of products acceptable to DADS.

(31) Fraud--A deliberate misrepresentation or intentional concealment of information to receive or to be reimbursed for service delivery to which an individual is not entitled.

(32) Functional impairment--A condition that requires assistance with one or more personal care services including bathing, dressing, preparing meals, feeding, grooming, taking self-administered medication, toileting, and ambulation.

(33) Handicapped person--As used in this chapter, the term "person with disabilities" is used in place of the term "handicapped person" as that term is used in Texas Human Resources Code, Chapter 103.

(34) Health assessment--A plan of care that identifies the specific needs of a client and how those needs will be addressed by a facility.

(35) Health services--Health services include personal care, nursing, and therapy services. Personal care services include services listed under the definition of functional impairment in this section. Nursing services may include the administration of medications; physician-ordered treatments, such as dressing changes; and monitoring the health condition of the individual. Therapy services may include physical, occupational, or speech therapy.

(36) Human services--All of the following major areas constitute human services:

(A) personal social services (day care, counseling, in-home care, protective services);

(B) health services (home health, family planning, preventive health programs, nursing home, hospice);

(C) education services (all levels of school, Head Start, vocational programs);

(D) housing and urban environment services (Section 8, public housing);

(E) income transfer services (Temporary Assistance for Needy Families, Food Stamps); and

(F) justice and public safety services (parole and probation, rehabilitation).

(37) Human service program--An intentional, organized, ongoing effort designed to provide good to others. The characteristics of human service programs are that they are:

(A) dependent on public resources and are planned and provided by the community;

(B) directed toward meeting human needs arising from day-to-day socialization, health care, and developmental experiences;

(C) used to aid, rehabilitate, or treat those in difficulty or need.

(38) Individual--A person who applies for or is receiving services provided at an adult day care or DAHS facility.

(39) Individual plan of care--A written plan developed by a DAHS facility that documents functional impairment and the health, social, and related support needed by an individual. The plan is developed jointly with and approved by the individual or responsible party.

(40) Licensed vocational nurse (LVN)--A person currently licensed by the Board of Nurse Examiners for the State of Texas who works under the supervision of a registered nurse (RN) or a physician.

(41) Life Safety Code, NFPA 101--The Code for Safety to Life from Fire in Buildings and Structures, NFPA 101, a publication of the National Fire Protection Association, Inc. The Life Safety Code, NFPA 101, addresses those construction, protection, and occupancy features necessary to minimize danger to life from fire, including smoke, fumes, or panic. The Life Safety Code, NFPA 101, establishes minimum criteria for the design of egress features so as to permit prompt escape of occupants from buildings or, where desirable, into safe areas within the building.

(42) Long-term care facility--A facility that provides care and treatment or personal care services to four or more unrelated persons, including a nursing facility, an assisted living facility, and a facility serving persons with mental retardation and related conditions.

(43) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of services. Management services do not include contracts solely for maintenance, laundry, or food services.

(44) Manager--A person having a contractual relationship to provide management services to a facility.

(45) Medicaid-eligible--An individual who is eligible for Medicaid.

(46) Medically-related program--A human services program under the human services-health services category in the definition of human services in this section.

(47) Neglect--The failure to provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness; or the failure of a caregiver to provide these goods or services.

(48) NFPA--The National Fire Protection Association. NFPA is an organization that develops codes, standards, recommended practices, and guides through a consensus standards development process approved by the American National Standards Institute.

(49) NFPA 10--Standard for Portable Fire Extinguishers. A standard developed by NFPA for the selection, installation, inspection, maintenance, and testing of portable fire extinguishing equipment.

(50) NFPA 13--Standard for the Installation of Sprinkler Systems. A standard developed by NFPA for the minimum requirements for the design and installation of automatic fire sprinkler systems, including the character and adequacy of water supplies and the selection of sprinklers, fittings, pipes, valves, and all maintenance and accessories.

(51) NFPA 70--National Electrical Code. A code developed by NFPA for the installation of electric conductors and equipment.

(52) NFPA 72--National Fire Alarm Code. A code developed by NFPA for the application, installation, performance, and maintenance of fire alarm systems and their components.

(53) NFPA 90A--Standard for the Installation of Air Conditioning and Ventilating Systems. A standard developed by NFPA for systems for the movement of environmental air in structures that serve spaces over 25,000 cubic feet or buildings of certain heights and construction types, or both.

(54) NFPA 90B--Standard for the Installation of Warm Air Heating and Air-Conditioning Systems. A standard developed by the NFPA for systems for the movement of environmental air in one- or two-family dwellings and structures that serve spaces not exceeding 25,000 cubic feet.

(55) NFPA 96--Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations. A standard developed by NFPA that provides the minimum fire safety requirements related to the design, installation, operation, inspection, and maintenance of all public and private cooking operations, except for single-family residential usage.

(56) Nurse--A registered nurse (RN) or a licensed vocational nurse (LVN) licensed in the state of Texas.

(57) Nursing services--Services provided by licensed nursing personnel, which include observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(58) Person--An individual, corporation, or association.

(59) Person with a disclosable interest--A person with a disclosable interest is any person who owns five percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Human Resources Code, Chapter 103. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company unless such entity participates in the management of the facility.

(60) Person with disabilities--A person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(61) Physician's orders--An order for DAHS that is signed and dated by a medical doctor (MD) or doctor of osteopathy (DO) who is licensed to practice medicine in the state of Texas. The physician's order must include the physician's license number.

(62) Plan of care--See definition of health assessment.

(63) Protective setting--A setting in which an individual's safety is ensured by the physical environment or personnel (staff).

(64) Registered nurse (RN)--A person currently licensed by the Board of Nurse Examiners for the State of Texas to practice professional nursing.

(65) Related support services--Provision of services to the individual, family member, or other caregivers that may improve their ability to assist with an individual's independence and functioning. Services include information and referral, transportation, teaching caregiver skills, respite, counseling, instruction and training, and support groups.

(66) Responsible party--Anyone the individual designates as his representative.

(67) Safety--Action taken to protect from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the presence of hazardous materials.

(68) Sanitation--Action taken to protect from illness, the transmission of disease, or loss of life due to unclean surroundings, the presence of disease transmitting insects or rodents, unhealthful conditions or practices in the preparation of food and beverage, or the care of personal belongings.

(69) Semi-ambulatory--Mobility relying on walker, crutch, cane, other physical object, or independent use of wheelchair.

(70) Serious injury--An injury requiring emergency medical intervention or treatment by medical personnel, either at a facility or at an emergency room or medical office.

(71) Social activities--Therapeutic, educational, cultural enrichment, recreational, and social activities on site or in the community in a planned program to meet the social needs and interests of the individual.

(72) UL--Underwriters Laboratories, Inc. UL approval provides third-party certification and testing of products acceptable to DADS.

(73) Working with people--Responsible for the delivery of services to individuals either directly or indirectly. Experience as a manager would meet this definition; however, an administrative support position such as a bookkeeper does not. Experience does not have to be in a paid capacity. A person serving as a minister receiving an expense allowance in money plus free housing qualifies for experience in working with people.

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 October 31, 2012.

TRD-201205648

Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: November 20, 2012
Proposal publication date: June 29, 2012
For further information, please call: (512) 438-3734

♦ ♦ ♦

SUBCHAPTER H. DAY ACTIVITY AND HEALTH SERVICES (DAHS) CONTRACTUAL REQUIREMENTS

40 TAC §98.206

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 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; 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; and Texas Human Resources Code, Chapter 103, which provides DADS with the authority to license and regulate adult day care facilities.

§98.206. Program Requirements.

The DAHS facility must provide services that include the following:

(1) Nursing services. Nursing services must include:

(A) assessing, observing, evaluation, and documenting an individual's health condition, and instituting appropriate nursing intervention to stabilize or improve an individual's condition or prevent complications;

(B) ensuring that the individual plan of care appropriately reflects the physician's orders;

(C) assisting the individual to order, maintain, or administer prescribed medications or treatments, as indicated by physician's orders;

(D) counseling the individual on his health need and illness and involving significant others in the discussions of his immediate and long-term health goals; and

(E) providing or supervising personal care services to enable the individual to restore, maintain, or improve his ability to perform personal care tasks. For purposes of this requirement, personal care is defined as assistance with dressing, feeding, grooming, bathing, toileting, transferring/ambulation, or assistance with self-administering medication.

(2) Physical rehabilitative services. Physical rehabilitative services must include:

(A) restorative nursing; and

(B) group and individual exercises, including range of motion exercises.

(3) Nutrition/food service. Nutrition/food service in DAHS facilities is provided under 4 TAC Chapter 25, Subchapter A, concerning the Child and Adult Care Food Program (CACFP) and must include:

(A) one hot noon meal served between the hours of 11:00 a.m. and 1:00 p.m. The meal must:

(i) be suitable in quantity and adequacy to attain and maintain nutritional requirements, including those of an individual with special needs. The CACFP staff monitor the adequacy of a meal by totaling the amount of food produced and cooked by the number of adults fed to determine if the average amount of food meet the following food components: two ounces of meat, 1/2 cup of fruit/vegetables, one cup of milk, and two servings of bread; and

(ii) supply 1/3 of the recommended daily allowance for adults as recommended by the United States Department of Agriculture;

(B) special diets as required by the individual's plan of care;

(C) a supplementary mid-morning and mid-afternoon snack;

(D) dietary counseling and nutrition education for the individual and family; and

(E) assisting the individual with his meals if necessary. This includes:

(i) food texture modification, including grinding meats and mashing vegetables for an individual having trouble chewing; and

(ii) food management, including spoon feeding, bread buttering, and milk opening for an individual with hand deformities, paralysis, or hand tremors.

(4) Other supportive services. Other supportive services must include:

(A) community interaction, cultural enrichment, educational or recreational activities, and other social activities on site or in the community in a planned program to meet an individual's social needs and interests;

(B) providing at least three social activities per day; and

(C) posting a monthly activity calendar at least one week in advance.

(5) Transportation services.

(A) Transportation services must include:

(i) transportation to and from the DAHS facility; and

(ii) transportation to and from a DAHS facility approved to provide therapies, if an individual requires specialized services on days of attendance at the day activity and health services DAHS facility.

(B) If the DAHS facility provides transportation for an individual to a non-therapy medical DAHS facility, the DAHS facility can claim the time spent in transport as part of the unit of services.

(C) If the DAHS facility does not provide transportation, the DAHS facility must coordinate transportation with other resources.

(D) Vehicles used for transportation services must:

(i) be properly operated and maintained in accordance with state law;

(ii) have current inspection and registration;

(iii) have proper heating and cooling systems to maintain reasonable temperature levels inside the vehicle;

(iv) have working seatbelts for each individual unless the vehicle was manufactured without seatbelts;

(v) have a method to secure a wheelchair to ensure an individual's safety during transit; and

(vi) if equipped with a wheelchair lift, have a properly operated and maintained lift.

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 October 31, 2012.

TRD-201205649
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: November 20, 2012
Proposal publication date: June 29, 2012
For further information, please call: (512) 438-3734

♦ ♦ ♦

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES
SUBCHAPTER B. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §700.205

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.205, without changes to the proposed text published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6257). House Bill 3234, enacted by the 82nd Legislature, added Texas Family Code §264.0145, which requires DFPS to establish guidelines by rule for assigning priorities to requests for the redaction and release of confidential client case records, including records requested by former foster youth who are adults at the time of the request. The amendment to §700.205 deletes a sentence relating to the priority handling of requests for CPS records and refers instead to the new records prioritization rule, §702.223 of this title (relating to How does the department prioritize fulfilling requests for copies of confidential client records that require redaction prior to their release?). Section 702.223 is also adopted in this issue of the *Texas Register.*

The amendment will function by ensuring that the public has notice of the priority order in which requests for confidential records are handled.

No comments were received regarding adoption of the amendment.

The amendment is 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 amendment implements §264.0145, Texas Family Code, which requires the department to adopt rules concerning the prioritization of requests for client case records.

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 October 31, 2012.

TRD-201205615
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

CHAPTER 702. GENERAL ADMINISTRATION
SUBCHAPTER B. AGENCY RECORDS AND INFORMATION

40 TAC §702.223

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), new §702.223, without changes to the proposed text published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6258). House Bill 3234, enacted by the 82nd Legislature, added Texas Family Code §264.0145, which requires DFPS to establish guidelines by rule for assigning priorities to requests for the redaction and release of confidential client case records, including records requested by former foster youth who are adults at the time of the request. New §702.223 establishes the order of priority for fulfilling requests for client records in the Child Protective Services (CPS), Child Care Licensing (CCL), and Adult Protective Services (APS) programs, including the priority order for the handling of requests from former foster youth as a stand-alone category of requests. Also in this issue of the *Texas Register,* DFPS is amending §700.205 of this title (relating to Procedures for Requesting Access to Confidential Information), and §705.7111 of this title (relating to When may case records be released under this subchapter?), which currently set similar priorities for client records in the CPS and APS programs, respectively. As amended, these two rules will refer to new §702.223 for information on how requests for records are prioritized.

The new section will function by ensuring that the public has notice of the priority order in which requests for confidential records are handled.

During the comment period, DFPS received one comment from Texans Care for Children, which supports the timely provision of records to an adult who was previously a victim of child abuse or neglect, but expressed concern that such information can be detrimental to the requestor's well-being if not presented in a supportive and therapeutic environment. DFPS recognizes that the case file of a former foster child contains sensitive information that may be detrimental to an individual's emotional well-being. DFPS met the commenter to discuss ways to mitigate this issue without delaying the record's dissemination or incurring additional costs. It was agreed that supportive information would be added to both the acknowledgment letter that is sent to a requestor following the receipt of a request for records, as well as the letter sent to the requestor when the records are released. DFPS will also explore adding supportive information to the website provided for use by former foster youth. No changes were made to the rule as a result of this comment.

The new section is 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 section implements §264.0145, Texas Family Code, which requires the department to adopt rules concerning the prioritization of requests for client case records.

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 October 31, 2012.

TRD-201205616
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER C. CHILD ABUSE AND NEGLECT CENTRAL REGISTRY

40 TAC §§702.251, 702.253, 702.255, 702.257

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), new §§702.251, 702.253, 702.255, and 702.257, without changes to the proposed text published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6259). The justification for the rules is to clarify which findings of child abuse and neglect are appropriately maintained in the DFPS Central Registry. This will provide a clearer understanding of the Central Registry process for the general public and other stakeholders.

New §702.251 states that as required by §261.002 of the Texas Family Code, DFPS maintains the Central Registry, which is a registry of validated cases of child abuse or neglect that is a subset of information in IMPACT, DFPS's automated database system.

New §702.253 states: (1) that the Central Registry contains the names of designated and sustained perpetrators of child abuse or neglect and the supporting investigation case records related to such findings; (2) the records are completed investigations with a disposition of "reason to believe" by Child Protective Services (CPS) or Child Care Licensing (CCL) or "confirmed" by Adult Protective Services (APS); and (3) lists the statutory references for the CPS, APS, and CCL investigations and the relevant rules that further describe how these investigations are conducted, including making validated findings, which then become part of the Central Registry.

New §702.255 states that investigations that result in a validated finding are maintained on the Central Registry for as long as the case file is retained by DFPS under the official Records Retention Schedule.

New §702.257 states that the information in the Central Registry is confidential and not available to the general public.

The new sections will function by providing a clearer understanding of the Central Registry process for the general public and other stakeholders.

No comments were received regarding adoption of the sections.

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 the Texas Family Code §261.002, which requires the department to establish and maintain a central registry of cases of abuse and neglect and to adopt rules as necessary to carry out 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.

Filed with the Office of the Secretary of State on October 31, 2012.

TRD-201205645
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

CHAPTER 705. ADULT PROTECTIVE SERVICES

SUBCHAPTER M. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §705.7111

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §705.7111, without changes to the proposed text published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6261). House Bill 3234, enacted by the 82nd Legislature, added Texas Family Code §264.0145, which requires DFPS to establish guidelines by rule for assigning priorities to requests for the redaction and release of confidential client case records, including records requested by former foster youth who are adults at the time of the request. The amendment to §705.7111 deletes a sentence relating to the priority handling of requests for APS records and refers instead to the new records prioritization rule, §702.223 of this title (relating to How does the department prioritize fulfilling requests for copies of confidential client records that require redaction prior to their release?). Section 702.223 is also adopted in this issue of the *Texas Register.*

The amendment will function by ensuring that the public has notice of the priority order in which requests for confidential records are handled.

No comments were received regarding adoption of the amendment.

The amendment is 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 amendment implements §264.0145, Texas Family Code, which requires the department to adopt rules concerning the prioritization of requests for client case records.

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 October 31, 2012.

TRD-201205617
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

CHAPTER 727. LICENSING OF MATERNITY FACILITIES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of Chapter 727, §§727.101, 727.103, 727.105, 727.107, 727.109, 727.111, 727.201, 727.203, 727.205, 727.207, 727.301, 727.303, 727.305, 727.401, 727.403, 727.405, 727.407, 727.409, and 727.411, concerning Licensing of Maternity Facilities, without changes to the proposed text published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6261). The justification for the repeals is to implement Senate Bill (S.B.) 1178, 82nd Legislature, which deleted references to and definitions of maternity homes as a facility licensed and regulated by DFPS. As set forth in S.B. 1178, beginning September 1, 2012, all maternity homes will either: (1) serve only adults in an unregulated setting; or (2) obtain a residential child-care facility license, if the maternity home wishes to continue serving clients younger than 18 years old. Also in this issue of the *Texas Register,* DFPS is adopting changes to Chapter 745, Licensing, to repeal the additional maternity home minimum standards and delete all references to maternity homes.

The repeals will function by ensuring that Child Care Licensing will focus its efforts on regulating businesses that serve children, not adults, as some maternity homes only serve adult clients. As outlined in S.B. 1178, if a licensed maternity home chooses to serve children after September 1, 2012, the maternity home can apply to convert their license to a residential child-care facility license through an abbreviated application and licensure process without paying any application or license fees. Continuing to regulate the care of children in these facilities, while allowing for an abbreviated licensure conversion process, will ensure that children are still protected in out-of-home care while minimizing or eliminating the impact on businesses.

During the comment period, DFPS received comments from two providers of maternity homes--Gladney Center for Adoption and Lifehouse of Houston. The comments were not specific to any rule that was open for public comment. However, the comments were related to rules in Chapter 748 of this title (relating to General Residential Operations) and Chapter 750 of this title (relating to Independent Foster Homes), which correspond to the types of facilities that former maternity homes now have a license to operate. The comments on these rules and the DFPS's response and rationale follow.

Comment: It appears the minimum standards were written for young children in the conservatorship of DFPS and the needs of clients formerly receiving services at a maternity home are different from clients receiving services at a General Residential Operation (GRO). Many of the clients have lived independently, are in college or are capable of caring for their own basic life needs. The high ratios for these teens, including teens that may be pregnant, is not necessary. GRO minimum standards should be amended as follows:

(1) All standards should be more lenient regarding children who are coming from private homes by choice.

(2) Allow for more situations when young adults can be admitted into care.

(3) Reduce daytime child/caregiver ratios to allow two teens to be counted as one child, if none of the teens require treatment services.

(4) Reduce nighttime child/caregiver ratios from 16:1 to 24:1 for sleeping caregivers if none of the teens require treatment ser-

vices and all of the teens are in their respective sleeping quarters.

(5) Allow operations to be out of ratio at any time to enable a normal home-like environment as long as the care and supervision needs of the teens continue to be met and at least one staff member is on the premises and able to respond during an emergency.

Response: S.B. 1178 deleted maternity homes as a facility type licensed by DFPS as of September 1, 2012. Since the rules open for public comment all relate to the deletion of maternity homes and this comment relates only to recommended changes regarding rules located in Chapter 748 that are not open for public comment, DFPS is recommending that the rules be adopted as proposed.

With that said, Child Care Licensing will contact the commenter to: (1) provide technical assistance to determine if there are any misunderstandings regarding the current rules; (2) review and clarify recommendations for rule changes to determine if there are any viable changes that would improve upon the regulation of private placements (children not in the conservatorship of DFPS), including pregnant minors, young adults (age 18-22 years), and adults (age 23 years and older); and (3) clarify that a facility can request a waiver or variance for any minimum standard at any time. Licensing considers waivers and variances to minimum standards on a case-by-case basis.

Comment: The minimum standards for General Residential Operations and Independent Foster Homes should be amended to add a subsection to allow for prior maternity homes to continue to serve teens, young adults (aged 18-22 years), and adult women (aged 23 years and older) in the same facility, as the minimum standards do not allow them to care for adult women.

Response: S.B. 1178 deleted maternity homes as a facility type licensed by DFPS as of September 1, 2012. Since the rules open for public comment all relate to the deletion of maternity homes and this comment relates only to recommended changes regarding rules located in Chapter 748 and Chapter 750 that are not open for public comment, DFPS is recommending that the rules be adopted as proposed.

With that said, Child Care Licensing will contact the commenter to: (1) provide technical assistance to determine if there are any misunderstandings regarding the current rules; (2) review and clarify recommendations for rule changes to determine if there is a viable change that would allow for prior maternity homes to continue to serve children, young adults, and adult women in the same facility; and (3) clarify that a facility can request a waiver or variance for any minimum standard at any time. Licensing considers waivers and variances to minimum standards on a case-by-case basis.

SUBCHAPTER A. STRUCTURE OF A MATERNITY HOME

40 TAC §§727.101, 727.103, 727.105, 727.107, 727.109, 727.111

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 §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

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 October 31, 2012.

TRD-201205618
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER B. MATERNITY HOME PERSONNEL

40 TAC §§727.201, 727.203, 727.205, 727.207

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 §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

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 October 31, 2012.

TRD-201205619
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER C. SERVICE MANAGEMENT

40 TAC §§727.301, 727.303, 727.305

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 §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

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 October 31, 2012.

TRD-201205620
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER D. CLIENT SERVICES

40 TAC §§727.401, 727.403, 727.405, 727.407, 727.409, 727.411

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 §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

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 October 31, 2012.

TRD-201205621
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §744.105 and §744.501, without changes to the proposed text published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6263). The justification for the amendments is to define health checks and require facilities to add procedures to their operation's policies if they conduct health checks on children in care. Health checks are conducted to identify potential concerns about a child's health, such as signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

The amendments will function by informing consumers of child-care services about a child-care operation's policies and procedures relating to health checks.

No comments were received regarding adoption of the amendments.

SUBCHAPTER A. PURPOSE AND DEFINITIONS

40 TAC §744.105

The amendment is 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 amendment implements HRC §42.042.

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 November 2, 2012.

TRD-201205676
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 4. OPERATIONAL POLICIES

40 TAC §744.501

The amendment is 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 amendment implements HRC §42.042.

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 November 2, 2012.

TRD-201205677
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 2. REQUIRED NOTIFICATIONS

40 TAC §744.305

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §744.305, without changes to the proposed text published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6265). The justification for the amendment is to make the rule consistent with changes concerning background checks adopted in Chapter 745, concerning Licensing. Those rules are also adopted in this issue of the *Texas Register.*

The amendment will function by providing greater protection for children resulting from improved decision-making by operations concerning their employees.

No comments were received regarding adoption of the amendment.

The amendment is 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 amendment implements HRC §42.042 and §42.056.

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 October 31, 2012.

TRD-201205638
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

CHAPTER 745. LICENSING

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§745.1, 745.8001, and 745.8003; and amendments to §§745.21, 745.31, 745.37, 745.41, 745.243, 745.273, 745.345, 745.349, 745.509, and 745.8903, without changes to the proposed text published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6266). The justification for the repeals and amendments is to implement Senate Bill (S.B.) 1178, 82nd Legislature, which deleted references to and definitions of maternity homes as a facility licensed and regulated by DFPS. As set forth in S.B. 1178, beginning September 1, 2012, all maternity homes will either: (1) serve only adults in an unregulated setting; or (2) obtain a residential child-care facility license, if the maternity home wishes to continue serving clients younger than 18 years old. Also in this issue of the *Texas Register,* DFPS is repealing Chapter 727, Licensing of Maternity Facilities.

The sections will function by ensuring that Child Care Licensing will focus its efforts on regulating businesses that serve children, not adults, as some maternity homes only serve adult clients. As outlined in S.B. 1178, if a licensed maternity home chooses to serve children after September 1, 2012, the maternity home can apply to convert their license to a residential child-care facility license through an abbreviated application and licensure process without paying any application or license fees. Continuing to regulate the care of children in these facilities, while allowing for an abbreviated licensure conversion process, will ensure that children are still protected in out-of-home care while minimizing or eliminating the impact on businesses.

During the comment period, DFPS received comments from two providers of maternity homes--Gladney Center for Adoption and Lifehouse of Houston. The comments were not specific to any rule that was open for public comment. However, the comments were related to rules in Chapter 748 of this title (relating to General Residential Operations) and Chapter 750 of this title (relating to Independent Foster Homes), which correspond to the types of facilities that former maternity homes now have a license to operate. The comments on these rules and the DFPS's response and rationale follow.

Comment: It appears the minimum standards were written for young children in the conservatorship of DFPS and the needs of clients formerly receiving services at a maternity home are different from clients receiving services at a General Residential Operation (GRO). Many of the clients have lived independently, are in college or are capable of caring for their own basic life

needs. The high ratios for these teens, including teens that may be pregnant, is not necessary. GRO minimum standards should be amended as follows:

(1) All standards should be more lenient regarding children who are coming from private homes by choice.

(2) Allow for more situations when young adults can be admitted into care.

(3) Reduce daytime child/caregiver ratios to allow two teens to be counted as one child, if none of the teens require treatment services.

(4) Reduce nighttime child/caregiver ratios from 16:1 to 24:1 for sleeping caregivers if none of the teens require treatment services and all of the teens are in their respective sleeping quarters.

(5) Allow operations to be out of ratio at any time to enable a normal home-like environment as long as the care and supervision needs of the teens continue to be met and at least one staff member is on the premises and able to respond during an emergency.

Response: S.B. 1178 deleted maternity homes as a facility type licensed by DFPS as of September 1, 2012. Since the rules open for public comment all relate to the deletion of maternity homes and this comment relates only to recommended changes regarding rules located in Chapter 748 that are not open for public comment, DFPS is recommending that the rules be adopted as proposed.

With that said, Child Care Licensing will contact the commenter to: (1) provide technical assistance to determine if there are any misunderstandings regarding the current rules; (2) review and clarify recommendations for rule changes to determine if there are any viable changes that would improve upon the regulation of private placements (children not in the conservatorship of DFPS), including pregnant minors, young adults (age 18-22 years), and adults (age 23 years and older); and (3) clarify that a facility can request a waiver or variance for any minimum standard at any time. Licensing considers waivers and variances to minimum standards on a case-by-case basis.

Comment: The minimum standards for General Residential Operations and Independent Foster Homes should be amended to add a subsection to allow for prior maternity homes to continue to serve teens, young adults (aged 18-22 years), and adult women (aged 23 years and older) in the same facility, as the minimum standards do not allow them to care for adult women.

Response: S.B. 1178 deleted maternity homes as a facility type licensed by DFPS as of September 1, 2012. Since the rules open for public comment all relate to the deletion of maternity homes and this comment relates only to recommended changes regarding rules located in Chapter 748 and Chapter 750 that are not open for public comment, DFPS is recommending that the rules be adopted as proposed.

With that said, Child Care Licensing will contact the commenter to: (1) provide technical assistance to determine if there are any misunderstandings regarding the current rules; (2) review and clarify recommendations for rule changes to determine if there is a viable change that would allow for prior maternity homes to continue to serve children, young adults, and adult women in the same facility; and (3) clarify that a facility can request a waiver or variance for any minimum standard at any time. Licensing considers waivers and variances to minimum standards on a case-by-case basis.

SUBCHAPTER A. PRECEDENCE AND DEFINITIONS

DIVISION 1. PRECEDENCE

40 TAC §745.1

The repeal is 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 repeal implements §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

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 October 31, 2012.

TRD-201205622
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

DIVISION 3. DEFINITIONS FOR LICENSING

40 TAC §745.21

The amendment is 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 amendment implements §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

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 October 31, 2012.

TRD-201205623

Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER B. CHILD CARE AND OTHER OPERATIONS THAT WE REGULATE

40 TAC §§745.31, 745.37, 745.41

The amendments 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 amendments implement §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

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 October 31, 2012.

TRD-201205624
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER D. APPLICATION PROCESS DIVISION 3. SUBMITTING THE APPLICATION MATERIALS

40 TAC §745.243

The amendment is 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 amendment implements §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

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 October 31, 2012.

TRD-201205625
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

DIVISION 4. PUBLIC NOTICE AND HEARING REQUIREMENTS FOR RESIDENTIAL CHILD-CARE OPERATIONS

40 TAC §745.273

The amendment is 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 amendment implements §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

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 October 31, 2012.

TRD-201205626
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

DIVISION 7. THE DECISION TO ISSUE OR DENY A PERMIT

40 TAC §745.345, §745.349

The amendments 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 amendments implement §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

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 October 31, 2012.

TRD-201205627
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER E. FEES

40 TAC §745.509

The amendment is 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 amendment implements §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

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 October 31, 2012.

TRD-201205628
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER I. MATERNITY HOME MINIMUM STANDARDS

40 TAC §745.8001, §745.8003

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 §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

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 October 31, 2012.

TRD-201205629
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER N. ADMINISTRATOR LICENSING

DIVISION 1. OVERVIEW OF CHILD-CARE ADMINISTRATOR'S LICENSING

40 TAC §745.8903

The amendment is 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 amendment implements §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

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 October 31, 2012.

TRD-201205630

Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER F. BACKGROUND CHECKS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§745.651, 745.655, 745.657, 745.691, 745.693, 745.695, and 745.696; new §§745.651, 745.655 - 745.657, 745.686, 745.688, 745.695, and 745.696; and amendments to §§745.653, 745.659, 745.661, 745.683, 745.685, 745.687, 745.689, 745.699, 745.701, and 745.703, without changes to the proposed text as published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6270).

The justification for the repeals, new sections, and amendments is to establish consistency in the background check process, to provide a more organized and timely risk evaluation process, and to make both processes more easily understood by the public. The primary change is to replace the crimes that are currently enumerated very broadly in rule with charts that specifically enumerate crimes that are monitored by Licensing. These charts will be specific to types of operations and will include information on whether a conviction permanently or temporarily bars a person from being present at an operation while children are in care, whether a person is eligible for a risk evaluation, and whether a person who is eligible for a risk evaluation may be present at the operation pending the outcome of the risk evaluation. The charts will be reviewed and updated every year and published in the "In Addition" section of the *Texas Register* every January. A summary of the changes is described below.

Section 745.651 is repealed and adopted as new. New §745.651: (1) deletes the listing of criminal convictions and adds a reference to the three charts on the DFPS website that contain criminal convictions and information on whether a conviction permanently or temporarily bars a person from being present at one of the relevant operations while children are in care, whether a person is eligible for a risk evaluation, and whether a person who is eligible for a risk evaluation may be present at the operation pending the outcome of the risk evaluation; (2) states the three charts will be reviewed and updated every year and published in the *Texas Register* every January; (3) clarifies that for any felony crime within the last 10 years that is not enumerated in the chart, a person must have an approved risk evaluation before being present at an operation while children are in care; and (4) clarifies that the crimes in the chart also apply to similar other state and federal crimes. In addition, new §745.651 replaces the information that was contained in repealed §745.657 and 745.693.

The amendment to §745.653 changes the title reference to §745.651.

New §745.655 clarifies that a successfully completed deferred adjudication is not considered a conviction for criminal background check purposes except when applying for a permit.

New §745.656 clarifies that a person who is required to register as a sex offender cannot be present at an operation while children are in care.

New §745.657 contains information from repealed §§745.655, 745.657, and 745.695. The new rule: (1) adds information to numbers (3) and (4) in the chart (previously Figure: 40 TAC §745.695) allowing a person's presence at an operation pending a risk evaluation "if the person continued to work at the operation pending the outcome of due process for the designated finding because we had not determined the person's presence at the same operation was an immediate threat or danger to the health or safety of children;" (2) clarifies that for background check purposes a finding of abuse or neglect from another state will be treated the same as a sustained DFPS finding of abuse or neglect; and (3) adds eligibility for a risk evaluation for a physical abuse finding if the finding is more than five years old and the prospective foster or adoptive parent is related to or has a significant longstanding relationship with the foster or adoptive child.

The amendment to §745.659 updates the rule titles cited in the rule and clarifies the rule language.

The amendment to §745.661 clarifies that the operation may need to restrict a person's duties after notification from Licensing, since §745.688 now clarifies that Licensing may place conditions or restrictions on a person's presence at an operation pending the outcome of a risk evaluation.

The amendment to §745.683 clarifies the titles of the individuals responsible for submitting a risk evaluation and adds that a sole proprietor who is an applicant for any type of permit must request his or her own risk evaluation.

The amendment to §745.685 clarifies the language to be more consistent with new §745.686, which specifies the time frames for requesting a risk evaluation.

New §745.686: (1) adds a seven-day time frame for requesting a risk evaluation and a 14-day time frame for completing a risk evaluation packet; (2) allows two 14-day extensions relating to the submission of a risk evaluation packet for "good cause;" (3) adds a consequence for not meeting the time frames. If the requester does not meet the time frames, the requester can continue to pursue a risk evaluation but the person subject to the risk evaluation may not continue to be present at the operation pending the risk evaluation; (4) includes a 14-day time frame for the department to determine whether or not a risk evaluation packet is complete and to notify the operation of the status of the packet; and (5) includes a 21-day time frame for DFPS to make a determination on a risk evaluation after accepting a completed risk evaluation packet. In addition, §745.691 is repealed because the information is now contained in this rule.

The amendment to §745.687: (1) clarifies the language to be more consistent with what the Centralized Background Check Unit (CBCU) is currently asking for via Form 2974, Request for Risk Evaluation Based on Past Criminal History or Central Registry Finding; and (2) adds the requirement of "any additional items requested by the CBCU Manager to assist with the determination of risk."

New §745.688 adds Licensing's authority to place restrictions or conditions on a person's presence at an operation pending the outcome of a risk evaluation.

The amendment to §745.689: (1) clarifies the language to be more consistent with what the CBCU is currently asking for via Form 2974, Request for Risk Evaluation Based on Past Criminal History or Central Registry Finding; (2) adds the requirement for additional information regarding the relationship of the foster or adoptive parents and the child, if any person is eligible for a risk

evaluation and it is a relative foster or adoptive placement or the foster or adoptive placement has a significant longstanding relationship with the child; and (3) adds the requirement of "any additional items requested by the CBCU Manager to assist with the determination of risk."

New §745.695: (1) indicates a licensed administrator must comply with the criminal history requirements in §745.651(a)(1); (2) adds that in addition to §745.651(a)(1), licensed administrators are also monitored for financial crimes. This includes misdemeanors and felonies. Felonies result in a 10 year bar; and (3) indicates a licensed administrator must comply with Central Registry requirements in new §745.657. Also, information from repealed §745.696 is contained in this rule.

New §745.696 clarifies how criminal history or a Central Registry finding may affect a person's ability to have an administrator's license or a licensed administrator's ability to be present at a particular operation, including if a person: (1) has a criminal history or Central Registry finding that bars the person from being present at an operation while children are in care, then the person is prohibited from being a licensed administrator; (2) has a felony conviction of a financial crime within the last 10 years, then the person is prohibited from being a licensed administrator; (3) has a felony conviction of a financial crime older than 10 years or any misdemeanor conviction of a financial crime, then the person is not prohibited from being a licensed administrator. However, Licensing may place restrictions on the person's license, and the person may not be present at the operation while children are in care until the operation requests a risk evaluation for the person and it is approved; and (4) If a person has a criminal history or Central Registry finding that only requires a risk evaluation, then the person is not prohibited from being a licensed administrator. However, Licensing may place restrictions on the person's license, and the person may not be present at the operation while children are in care until the operation requests a risk evaluation for the person and it is approved.

The amendment to §745.699 makes the language more consistent with §745.701.

The amendment to §745.701: (1) clarifies the language for when a person arrested or charged with a crime may be present at an operation while children are in care; and (2) adds subsection (b) for those persons arrested or charged with a crime for which the person would be entitled to a risk evaluation if convicted. This subsection establishes Licensing's authority to place conditions or restrictions on such a person's presence at the operation while children are in care pending the resolution of the criminal matter as Licensing finds necessary to protect the health and safety of children.

The amendment to §745.703 corrects titles to rules that are referenced in this rule.

The sections will function by providing: (1) a clearer understanding of the specific crimes that Licensing monitors for in the background check process; (2) a more organized and timely risk evaluation process; (3) current and accurate information regarding the risk evaluation process for the public's access on the DFPS website; (4) a clearer understanding of the risk evaluation process by stakeholders; (5) an enhanced consistency across both the residential child-care and child day-care programs; and (6) greater protection for children resulting from improved decision-making by operations concerning their employees.

No comments were received regarding adoption of the sections.

DIVISION 3. CRIMINAL CONVICTIONS AND CENTRAL REGISTRY FINDINGS OF CHILD ABUSE OR NEGLECT

40 TAC §§745.651, 745.655, 745.657

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 HRC §42.042 and §42.056.

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 October 31, 2012.

TRD-201205639
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

40 TAC §§745.651, 745.653, 745.655 - 745.657, 745.659, 745.661

The amendments and 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 amendments and new sections implement HRC §42.042 and §42.056.

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 October 31, 2012.

TRD-201205640

Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

DIVISION 4. EVALUATION OF RISK BECAUSE OF A CRIMINAL CONVICTION OR A CENTRAL REGISTRY FINDING OF CHILD ABUSE OR NEGLECT

40 TAC §§745.683, 745.685 - 745.689, 745.695, 745.696, 745.699, 745.701, 745.703

The amendments and 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 amendments and new sections implement HRC §42.042 and §42.056.

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 October 31, 2012.

TRD-201205641
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

40 TAC §§745.691, 745.693, 745.695, 745.696

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 HRC §42.042 and §42.056.

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 October 31, 2012.

TRD-201205642
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§746.105, 746.501, 746.801, 746.2409, and 746.2415, in its Minimum Standards for Child-Care Centers chapter. The amendments to §746.801 and §746.2409 are adopted with changes to the proposed text published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6276). The amendments to §§746.105, 746.501, and 746.2415 are adopted without changes to the proposed text and will not be republished.

The justification for the amendments is to implement new federal regulations passed by the United States Consumer Product Safety Commission (CPSC) related to safety standards for cribs, which include: (1) Traditional drop-side cribs cannot be made or sold; immobilizers and repair kits are not allowed; (2) Wood slats must be made of stronger woods to prevent breakage; (3) Crib hardware must have anti-loosening devices to keep it from coming loose or falling off; (4) Mattress supports must be more durable; and (5) Safety testing must be more rigorous. These mandatory federal requirements apply to all sales of cribs in the United States on or after June 28, 2011, and are mandatory for all cribs utilized by child-care centers, child-care homes, and other places of public accommodation by December 28, 2012. Child-care centers will be required to obtain and maintain documentation that each crib in use by such providers meets the applicable federal rules at Title 16, Code of Federal Regulations (CFR), Parts 1219 and 1220 or is listed and registered as a medical device with the U.S. Food and Drug Administration (FDA).

Child Care Licensing is adopting changes concerning safe sleep practices and requiring written operational policies related to health checks. Changes for safe sleep practices are based on recommendations from *Caring for Our Children* 3rd Edition and American Academy of Pediatrics.

DFPS is also requiring child care centers to add procedures to their operational policies if they conduct health checks on children in care. Health checks are conducted to identify potential concerns about a child's health, such as signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance. A summary of the changes is described below.

The amendment to §746.105 adds the term "health check."

The amendment to §746.501 adds conducting health checks to a center's operational policies to ensure parents are informed if health checks are performed on their children.

The amendment to §746.801 adds the requirement that documentation for cribs be maintained at the center.

The amendment to §746.2409: (1) requires documentation that each crib complies with federal rules at Title 16, CFR, Parts 1219 or 1220 or is listed and registered with the FDA as a medical device; and (2) replaces the word "rails" with "gates" and replaces the word "side" with "drop gate", which provides consistency with the federal rule prohibiting use of traditional drop rails.

The amendment to §746.2415 outlines safe sleep practices for children younger than 12 months of age.

The amendments will function by ensuring that minimum standards reflect and support the mandatory changes in federal law at Title 16, CFR, Parts 1219 and 1220, relating to "Safety Standards for Full-Size Baby Cribs" and "Safety Standards for Non-Full-Size Baby Cribs", respectively. In addition, rule changes modify certain terminology for consistency with the mandatory federal crib safety rules and ensure that appropriate documentation regarding crib safety is maintained by child-care providers. Changes prohibiting the use of loose bedding and other sleeping hazards in the sleeping surfaces for children under 12 months of age will keep children in care safer because they are consistent with safe sleeping practices endorsed by the American Academy of Pediatrics. The justification for rule changes related to health checks is that consumers of child-care services will be informed about child-care operational policies and procedures relating to health checks.

During the public comment period, DFPS received 18 comments from child-care centers, a child care advocate, and a crib manufacturer. A summary of the comments and responses follows.

Comment concerning §746.501: One commenter indicated that the additional training hours will be a financial burden on the commenter's small business. The commenter stated that she pays for the employee's annual training hours. The commenter stated that she did not raise the tuition rates for the current year but may have to increase the rates next year. The commenter expressed concern with parents seeking unregulated in-home care for their children due to the increased cost in child care.

Response: DFPS is adopting this rule without change. The only requirement in this rule related to training requires an operation to have policies requiring annual training for employees related to preventing and responding to abuse and neglect of children. This new requirement was mandated in the last legislative session by S.B. 471, became effective in statute in January 2012, and became effective in administrative rule in March 2012. Child Care Licensing did not propose and is not changing any language related to training requirements or hours at this time.

Comment concerning §746.801: One commenter stated that the CPSC is going to accept the tracking label and registration card in addition to the certificate of compliance to verify that a crib meets compliance with the new federal regulations.

Response: DFPS is adopting this section with a change. After the rule was proposed, the CPSC broadened the types of documentation that are accepted to verify a crib's compliance with the new regulations, by accepting the tracking label, registration card, or certificate of compliance as verification. In order to allow providers additional ways to comply with the new regulations, Licensing is revising the language of the rule from "certificate of compliance" for cribs to "documentation for cribs," as specified in §746.2409 of this title (relating to What specific safety requirements must my cribs meet?).

Comments concerning §746.2409(a): DFPS received 14 comments related to this rule.

(1) One commenter expressed concern with meeting the deadline to replace existing cribs.

(2) One commenter expressed concern with lack of disposal/recycle options of existing cribs.

(3) Two commenters expressed concerns with having to replace cribs that do not have drop-down sides based on the new standards. The commenters stated it is an unnecessary expense.

(4) Ten commenters expressed concerns with having to replace hospital grade cribs, which they stated were superior to the other cribs. The commenters also expressed concerns with the financial burden it will place on operations to have to replace hospital grade cribs. Six of the eleven commenters also stated that hospital grade cribs are registered as medical devices and fall under the jurisdiction of the FDA rather than the CPSC.

Response: DFPS is adopting this section with changes.

(1) These rules implement federal regulations that have been published since June of 2011 and are mandated by December of 2012.

(2) The CPSC website states that cribs not meeting the new standards should not be resold, donated, or given away to a local thrift store. CPSC recommends disassembling the crib before discarding it.

(3) In addition to "drop-side cribs" these regulations improve safety standards for cribs relating to stronger wood slats, crib hardware, mattress supports, and safety testing.

(4) It is true that medical devices fall under the jurisdiction of the FDA rather than the CPSC. As such, DFPS is also allowing this rule to be met by documenting that each crib is a medical device that is listed and registered with the FDA. However, based on information DFPS gathered from the FDA, it does not appear that the FDA believes medical devices (cribs) should be used for healthy children, and it is anticipated that the FDA will eventually adopt regulations regarding the use of cribs as medical devices, which may impact child-care centers. An operation that needs additional time to comply with the minimum standard due to the financial burden of purchasing new cribs may submit a waiver request. A decision regarding a waiver request will be made on an individual basis after assessing an operation's current cribs for safety based on requirements already established in minimum standards.

Based on comments from other rules, DFPS is also revising the rule to allow an operation to maintain documentation, other than a certificate of compliance, to verify that a crib is compliant with new CPSC regulations.

Comments concerning §746.2415(6): DFPS received two comments related to this rule.

(1) One commenter did not agree with adding blankets as an item that is prohibited to be placed in a crib and does not agree with increasing the age of children that the standard applies to from 6 months to 12 months.

(2) One commenter stated that a parent, who wants their child to sleep covered in a receiving blanket, especially during cooler

months, should be able to do so. The commenter stated that comforters or soft bedding are inappropriate but considers a lightweight blanket to be appropriate and should be allowed.

Response: DFPS is adopting this section without change. Quilts, comforters and other types of soft bedding are already prohibited from being placed in cribs. Adding "blankets", "loose" bedding, and "sleep positioning devices" to the rule will help to further clarify what items increase the risk of SIDS. Raising the age in the rule will help to provide a safe sleep environment for infants younger than 12 months of age based on recommendations from the American Academy of Pediatrics and *Caring for Our Children* 3rd Edition.

SUBCHAPTER A. PURPOSE AND DEFINITIONS

40 TAC §746.105

The amendment is 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 amendment implements HRC §42.042.

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 November 2, 2012.

TRD-201205678
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 4. OPERATIONAL POLICIES

40 TAC §746.501

The amendment is 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 amendment implements HRC §42.042.

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 November 2, 2012.

TRD-201205679
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER C. RECORD KEEPING
DIVISION 3. RECORDS THAT MUST BE KEPT ON FILE AT THE CHILD-CARE CENTER

40 TAC §746.801

The amendment is 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 amendment implements HRC §42.042 and Title 16, Code of Federal Regulations, Parts 1219 and 1220.

§746.801. What records must I keep at my child-care center?

You must maintain and make the following records available for our review upon request, during hours of operation. Paragraphs (18), (19), and (20) are optional, but if provided, allow Licensing to avoid duplicating the evaluation of standards that have been evaluated by other state agencies within the past year:

(1) Children's records, as specified in Division 1 of this subchapter (relating to Records of Children);

(2) Infant feeding instructions, if applicable;

(3) Personnel and training records, unless on file at a central administrative location;

(4) Licensing *Child-Care Center Director's Certificate;*

(5) Attendance records for employees;

(6) Children's program activity plans for each age group;

(7) Verification of liability insurance or notice of unavailability, if applicable;

(8) Proof of request for all background checks required by Chapter 745, Subchapter F of this title (relating to Background Checks);

(9) Daily menus;

(10) Medication records;

(11) Playground maintenance checklists;

(12) Pet vaccination records, if applicable;

(13) Fire safety documentation for emergency drills, fire extinguishers, and smoke detectors;

(14) Most recent Licensing inspection report, letter, or notice requiring posting;

(15) Most recent fire inspection report;

(16) Most recent sanitation inspection report;

(17) Most recent gas inspection report, if applicable;

(18) Most recent Department of State Health Services immunization compliance review form, if applicable;

(19) Most recent Texas Department of Agriculture Child and Adult Care Food Program (CACFP) report, if applicable;

(20) Most recent local workforce board Child-Care Services Contractor inspection report, if applicable;

(21) Record of pest extermination, if applicable;

(22) Written approval from the fire marshal to provide care above or below ground level, if applicable;

(23) Most recent DFPS form certifying that you have reviewed each of the bulletins and notices issued by the United States Consumer Product Safety Commission regarding unsafe children's products and that there are no unsafe children's products in use or accessible to children in the child-care center;

(24) System to track when a child's care begins and ends daily; and

(25) Documentation for cribs as specified in §746.2409 of this title (relating to What specific safety requirements must my cribs meet?), if applicable.

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 November 2, 2012.

TRD-201205680
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER H. BASIC CARE REQUIREMENTS FOR INFANTS

40 TAC §746.2409, §746.2415

The amendments 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 amendments implement HRC §42.042 and Title 16, Code of Federal Regulations, Parts 1219 and 1220.

§746.2409. What specific safety requirements must my cribs meet?

(a) All cribs must have:

(1) A firm, flat mattress that snugly fits the sides of the crib. The mattress must not be supplemented with additional foam material or pads;

(2) Sheets that fit snugly and do not present an entanglement hazard;

(3) A mattress that is waterproof or washable;

(4) Secure mattress support hangers, and no loose hardware or improperly installed or damaged parts;

(5) A maximum of 2 3/8 inches between crib slats or poles;

(6) No corner posts over 1/16 inch above the end panels;

(7) No cutout areas in the headboard or footboard that would entrap a child's head or body;

(8) Drop gates, if present, which fasten securely and cannot be opened by a child; and

(9) Documentation that each crib meets the applicable federal rules at Title 16, Code of Federal Regulations, Parts 1219 or 1220, concerning "Safety Standards for Full-Size Baby Cribs" and "Safety Standards for Non-Full-Size Baby Cribs," respectively, or documentation that each crib is a medical device listed and registered with the U.S. Food and Drug Administration.

(b) You must sanitize each crib before a different child uses it and when soiled.

(c) You must never leave children in the crib with the drop gate down.

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 November 2, 2012.

TRD-201205681
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 2. REQUIRED NOTIFICATION

40 TAC §746.305

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §746.305, without changes to the proposed text published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6280). The justification for the amendment is to make the rule consistent with changes concerning background checks adopted in Chapter 745, Licensing. Those rules are also adopted in this issue of the *Texas Register.*

The amendment will function by providing greater protection for children resulting from improved decision-making by operations concerning their employees.

No comments were received regarding adoption of the amendment.

The amendment is 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 amendment implements HRC §42.042 and §42.056.

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 October 31, 2012.

TRD-201205643
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§747.105, 747.501, 747.801, 747.2309, and 747.2315, in its Minimum Standards for Child-Care Homes chapter. The amendments to §747.801 and §747.2309 are adopted with changes to the proposed text published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6280). The amendments to §§747.105, 747.501, and 747.2315 are adopted without changes to the proposed text and will not be republished.

The justification for the amendments is to implement new federal regulations passed by the United States Consumer Product Safety Commission (CPSC) related to safety standards for cribs, which include: (1) Traditional drop-side cribs cannot be made or sold; immobilizers and repair kits are not allowed; (2) Wood slats must be made of stronger woods to prevent breakage; (3) Crib hardware must have anti-loosening devices to keep it from coming loose or falling off; (4) Mattress supports must be more durable; and (5) Safety testing must be more rigorous. These mandatory federal requirements apply to all sales of cribs in the United States on or after June 28, 2011, and are mandatory for all cribs utilized by child-care centers, child-care homes, and other places of public accommodation by December 28, 2012. Child-care homes will be required to obtain and maintain documentation that each crib in use by such providers meets the applicable federal rules at Title 16, Code of Federal Regulations (CFR), Parts 1219 and 1220 or is listed and registered as a medical device with the U.S. Food and Drug Administration (FDA).

Child Care Licensing is also adopting changes concerning safe sleep practices and requiring written operational policies related to health checks. Changes for safe sleep practices are based on recommendations from *Caring for Our Children* 3rd Edition and American Academy of Pediatrics.

DFPS is also requiring that child care homes add procedures to their operational policies if they conduct health checks on children in care. Health checks are conducted to identify potential concerns about a child's health, such as signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance. A summary of the changes is described below.

The amendment to §747.105 adds the term "health check."

The amendment to §747.501 adds conducting health checks to a home's operational policies to ensure parents are informed if health checks are performed on their children.

The amendment to §747.801 corrects several rule titles and adds the requirement that documentation for cribs be maintained at the child care home.

The amendment to §747.2309: (1) requires documentation that each crib complies with the federal rules at Title 16, CFR, Parts 1219 or 1220, or is listed and registered with the FDA as a medical device; and (2) replaces the word "rails" with "gates" and replaces the word "side" with "drop gate," which provides consistency with the federal rule prohibiting use of traditional drop rails.

The amendment to §747.2315 adds additional examples of loose bedding, such as blankets and sleep positioning devices, and increases the age of children that the standards apply to from six months to 12 months. This change is consistent with safe sleep practices endorsed by the American Academy of Pediatrics.

The amendments will function by ensuring that minimum standards reflect and support the mandatory changes in federal law at Title 16, CFR, Parts 1219 and 1220, relating to "Safety Standards for Full-Size Baby Cribs" and "Safety Standards for Non-Full-Size Baby Cribs", respectively. In addition, rule changes modify certain terminology for consistency with the mandatory federal crib safety rules and ensure that appropriate documentation regarding crib safety is maintained by child-care providers. Changes prohibiting the use of loose bedding and other sleeping hazards in the sleeping surfaces for children under 12 months of age will keep children in care safer because they are consistent with safe sleeping practices endorsed by the American Academy of Pediatrics. Changes related to health checks will ensure consumers of child-care services are informed about a child-care operation's policies and procedures relating to health checks.

During the public comment period, DFPS received two comments from child care homes concerning §747.801. One com-

menter stated that with the change, DFPS is protecting manufacturers, making them richer by obligating the home day cares to buy new cribs. The commenter suggested that DFPS get experts to inspect the cribs and extend the certificates of compliance.

One commenter disagreed with the idea of having certificates of compliance for cribs. The commenter reports having newer cribs and states it is unnecessary to require having a certificate for each crib. The commenter suggested having the inspector take a look at the cribs and determine whether or not they need to be replaced. The commenter expressed concern with hidden costs that will become apparent once the rules are set.

Response: DFPS is adopting this section with one change. These rules implement federal regulations that have been published since June 2011 and are mandated by December 2012. However, after the rule was proposed, the CPSC broadened the types of documentation that are accepted to verify a crib's compliance with the new regulations, by accepting the tracking label, registration card, or certificate of compliance as verification. In order to allow providers additional ways to comply with the new regulations, Licensing is revising the language of the rule from "certificate of compliance for cribs" to "documentation for cribs", as specified in §747.2309 of this title (relating to What specific safety requirements must my cribs meet?).

In addition, DFPS is revising §747.2309. The changes allow an operation to obtain and maintain documentation, other than a certificate of compliance, to verify that a crib is compliant with new federal regulations. In addition, this rule may be met by documenting that each crib is a medical device that is listed and registered with the FDA. However, based on information DFPS gathered from the FDA, it does not appear that the FDA believes medical devices (cribs) should be used for healthy children, and it is anticipated that the FDA will eventually adopt regulations regarding the use of cribs as medical devices, which may impact child-care homes. An operation that needs additional time to comply with the minimum standard due to the financial burden of purchasing new cribs may submit a waiver request. A decision regarding a waiver request will be made on an individual basis after assessing an operation's current cribs for safety based on requirements already established in minimum standards.

SUBCHAPTER A. PURPOSE AND DEFINITIONS

40 TAC §747.105

The amendment is 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 amendment implements HRC §42.042.

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 November 2, 2012.

TRD-201205682
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 4. OPERATIONAL POLICIES

40 TAC §747.501

The amendment is 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 amendment implements HRC §42.042.

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 November 2, 2012.

TRD-201205683
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER C. RECORD KEEPING
DIVISION 3. RECORDS THAT MUST BE KEPT ON FILE AT THE CHILD-CARE HOME

40 TAC §747.801

The amendment is 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 amendment implements HRC §42.042 and Title 16, Code of Federal Regulations, Parts 1219 and 1220.

§747.801. What records must I keep at my child-care home?

You must maintain and make the following records available for our review upon request during hours of operation. Paragraphs (10), (11), and (12) are optional, but if provided, will allow Licensing to avoid duplicating the evaluation of standards that have been evaluated by another state agency within the past year:

(1) Children's records, as specified in Division 1 of this subchapter (relating to Records of Children);

(2) Infant feeding instructions, as required in §747.2321 of this title (relating to Must I obtain written feeding instructions for children not ready for table food?), if applicable;

(3) Personnel and training records, as required in §747.901 of this title (relating to What information must I maintain in my personnel records?), and in §747.1327 of this title (relating to What documentation must I provide to Licensing to verify that training requirements have been met?);

(4) Proof of request for all background checks required by Chapter 745, Subchapter F of this title (relating to Background Checks);

(5) Menus, as required in §747.3113 of this title (relating to Must I post and maintain daily menus?);

(6) Medication records, as required in §747.3605 of this title (relating to How must I administer medication to a child in my care?);

(7) Pet vaccination records, as required in §747.3703 of this title (relating to Must I keep documentation of vaccinations for the animals?), if applicable;

(8) Fire safety documentation for emergency drills, fire extinguishers, smoke detectors and emergency evacuation and relocation diagram, as required in §747.5005 of this title (relating to Must I practice my emergency preparedness plans?), §747.5007 of this title (relating to Must I have an emergency evacuation and relation diagram?), §747.5107 of this title (relating to How often must I inspect and service the fire extinguisher?), §747.5115 of this title (relating to How often must the smoke detectors at my child-care home be tested?), and §747.5117 of this title (relating to How often must I have an electronic smoke alarm system tested?);

(9) Most recent Licensing inspection report, letter, or notice;

(10) Most recent Department of State Health Services immunization compliance review form, if applicable;

(11) Most recent Texas Department of Agriculture Child and Adult Care Food Program (CACFP) report, if applicable;

(12) Most recent local workforce board Child-Care Services Contractor inspection report, if applicable;

(13) Written approval from the fire marshal to provide care above or below ground level, if applicable;

(14) Most recent DFPS form certifying that you have reviewed each of the bulletins and notices issued by the United States Consumer Product Safety Commission regarding unsafe children's products and that there are no unsafe children's products in use or accessible to children in the home; and

(15) Documentation for cribs as specified in §747.2309 of this title (relating to What specific safety requirements must my cribs meet?), if applicable.

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 November 2, 2012.

TRD-201205684
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER H. BASIC CARE REQUIREMENTS FOR INFANTS

40 TAC §747.2309, §747.2315

The amendments 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 amendments implement HRC §42.042 and Title 16, Code of Federal Regulations, Parts 1219 and 1220.

§747.2309. What specific safety requirements must my cribs meet?

(a) All cribs must have:

(1) A firm, flat mattress that snugly fits the sides of the crib. The mattress must not be supplemented with additional foam material or pads;

(2) Sheets that fit snugly and do not present an entanglement hazard;

(3) A mattress that is waterproof or washable;

(4) Secure mattress support hangers, and no loose hardware, or improperly installed or damaged parts;

(5) A maximum of 2 3/8 inches between crib slats or poles;

(6) No corner posts over 1/16 inch above the end panels;

(7) No cutout areas in the headboard or footboard that would entrap a child's head or body;

(8) Drop gates, if present, which fasten securely and cannot be opened by a child; and

(9) Documentation that each crib meets the applicable federal rules at Title 16, Code of Federal Regulations, Parts 1219 or 1220, concerning "Safety Standards for Full-Size Baby Cribs" and "Safety Standards for Non-Full-Size Baby Cribs," respectively, or documen-

tation that each crib is a medical device listed and registered with the U.S. Food and Drug Administration.

(b) You must sanitize each crib when soiled and before another child uses the crib.

(c) You must never leave a child in a crib with the drop gate down.

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 November 2, 2012.

TRD-201205685
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 2. REQUIRED NOTIFICATIONS

40 TAC §747.303

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §747.303, without changes to the proposed text published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6284). The justification for the amendment is to make the rule consistent with changes concerning background checks adopted in Chapter 745, Licensing. Those rules are also adopted in this issue of the *Texas Register.*

The amendment will function by providing greater protection for children resulting from improved decision-making by operations concerning their employees.

No comments were received regarding adoption of the amendment.

The amendment is 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 amendment implements HRC §42.042 and §42.056.

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 October 31, 2012.

TRD-201205644
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

CHAPTER 748. GENERAL RESIDENTIAL OPERATIONS
SUBCHAPTER J. CHILD CARE
DIVISION 8. ADDITIONAL REQUIREMENTS FOR INFANT CARE

40 TAC §748.1751, §748.1757

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §748.1751 and §748.1757, in its General Residential Operations chapter. The amendment to §748.1751 is adopted with changes to the proposed text published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6284). The amendment to §748.1757 is adopted without changes to the proposed text and will not be republished.

The justification for the amendments is to implement new federal regulations passed by the United States Consumer Product Safety Commission (CPSC) related to safety standards for cribs, which include: (1) Traditional drop-side cribs cannot be made or sold; immobilizers and repair kits are not allowed; (2) Wood slats must be made of stronger woods to prevent breakage; (3) Crib hardware must have anti-loosening devices to keep it from coming loose or falling off; (4) Mattress supports must be more durable; and (5) Safety testing must be more rigorous. These mandatory federal requirements apply to sales of cribs in the United States on or after June 28, 2011, and are mandatory for all cribs utilized by child-care centers, child-care homes and other places of public accommodation by December 28, 2012. General residential operations will be required to obtain and maintain documentation that each crib in use by such providers meets the applicable federal rules at Title 16, Code of Federal Regulations (CFR), Parts 1219 and 1220, or is listed and registered as a medical device with the U.S. Food and Drug Administration (FDA).

Child Care Licensing is also adopting changes concerning safe sleep practices. Changes for safe sleep practices are based on recommendations from *Caring for Our Children* 3rd Edition and American Academy of Pediatrics.

The amendment to §748.1751: (1) requires documentation that each crib complies with the federal rule at Title 16, CFR, Parts 1219 or 1220, or is listed and registered with FDA as a medical device; and (2) replaces the word "rails" with "gates" and replaces the word "side" with "drop gate," which provides consistency with federal rule prohibiting use of traditional drop rails.

The amendment to §748.1757 adds additional examples of loose bedding, such as blankets and sleep positioning devices, and increases the age of children that the standards apply to from six months to 12 months. This change is consistent with safe sleep practices endorsed by the American Academy of Pediatrics.

The amendments will function by ensuring that minimum standards reflect and support the mandatory changes in federal law at Title 16, CFR, Parts 1219 and 1220, relating to "Safety Standards for Full-Size Baby Cribs" and "Safety Standards for Non-Full-Size Baby Cribs", respectively. In addition, rule changes modify certain terminology for consistency with the mandatory federal crib safety rules and ensure that appropriate documentation regarding crib safety is maintained by child-care providers. Changes prohibiting the use of loose bedding and other sleeping hazards in the sleeping surfaces for children under 12 months of age will keep children in care safer because they are consistent with safe sleeping practices endorsed by the American Academy of Pediatrics.

No comments were received during the public comment period. However, DFPS is adopting §748.1751 with changes. The changes allow an operation to obtain and maintain documentation, other than a certificate of compliance, to verify that a crib is compliant with new federal regulations. In addition, this rule may be met by documenting that each crib is a medical device that is listed and registered with the FDA. However, based on information DFPS gathered from the FDA, it does not appear that the FDA believes medical devices should be used for healthy children, and it is anticipated that the FDA will eventually adopt regulations regarding the use of cribs as medical devices, which may impact general residential operations. An operation that needs additional time to comply with the minimum standard due to the financial burden of purchasing new cribs may submit a waiver request. A decision regarding a waiver request will be made on an individual basis after assessing an operation's current cribs for safety based on requirements already established in minimum standards.

The amendments 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 amendments implement HRC §42.042 and Title 16, Code of Federal Regulations, Parts 1219 and 1220.

§748.1751. What specific safety requirements must my cribs meet?

(a) All cribs must have:

(1) A firm, flat mattress that snugly fits the sides of the crib. The mattress must not be supplemented with additional foam material or pads;

(2) Sheets that fit snugly and do not present an entanglement hazard;

(3) A mattress that is waterproof or washable;

(4) Secure mattress support hangers, and no loose hardware or improperly installed or damaged parts;

(5) A maximum of 2 3/8 inches between crib slats or poles;

(6) No corner posts over 1/16 inch above the end panels;

(7) No cutout areas in the headboard or footboard that would entrap a child's head or body;

(8) Drop gates, if present, which fasten securely and cannot be opened by a child; and

(9) Documentation that each crib meets the applicable federal rules at Title 16, Code of Federal Regulations, Parts 1219 or 1220, concerning "Safety Standards for Full-Size Baby Cribs" and "Safety Standards for Non-Full-Size Baby Cribs," respectively, or documentation that each crib is a medical device listed and registered with the U.S. Food and Drug Administration.

(b) You must sanitize each crib when soiled and before reassigning the crib to a different child.

(c) You must never leave a child in the crib with the drop gate down.

(d) You may not have stackable cribs.

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 November 2, 2012.

TRD-201205686
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 438-3437

♦ ♦ ♦

TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO TEXAS INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

The commissioner of insurance will hold a public hearing to consider a petition by TDI staff under Docket No. 2747 on December 17, 2012, at 9:30 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe St. in Austin, Texas. The commissioner will consider a petition proposing the adoption of (i) revised Texas workers' compensation classification relativities to replace those adopted pursuant to Commissioner's Order No. 11-0125, dated February 9, 2011, and (ii) updated expected loss rates and discount ratios in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance. Staff's petition (reference no. W-1012-08-I) was filed on October 31, 2012.

Staff requests that the proposed revised classification relativities be available for use by insurers immediately, but that their use be mandatory for all policies with an effective date on or after June 1, 2013, unless the insurer files an alternative classification rate basis. Staff further requests that the updated expected loss rates and discount ratios in the manual be made effective for workers' compensation experience modifiers with an effective date on or after June 1, 2013.

Texas Insurance Code Article 5.96 and §2053.051 and §2053.052 authorize the filing of the petition and the action requested of the commissioner. Article 5.96 authorizes TDI to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans, and policy and endorsement forms for various lines of insurance, including workers' compensation insurance. Section 2053.051 requires TDI to determine hazards by class and establish classification relativities applicable to the payroll in each classification for workers' compensation insurance. Section 2053.052 requires the commissioner to adopt a uniform experience rating plan for workers' compensation insurance. Section 2053.051 and §2053.052 provide that the classification system and experience rating plan be revised at least once every five years.

The classification relativities currently in effect are based on experience data reflecting workers' compensation experience from policies with effective dates in calendar years 2003 through 2007. The proposed classification relativities reflect changes in experience based on analysis of experience data from policies with effective dates in calendar years 2005 through 2009.

Staff recommends capping the proposed changes at +25 percent and -25 percent of the current classification relativities.

Modifications to the classification relativities require concurrent changes in the expected loss rates and discount ratios, which are contained in the experience rating plan of the manual. The proposed expected loss rates are based on the anticipated level of the losses that will be used to calculate experience modifiers with an effective date on or after June 1, 2013. Staff proposes to cap changes in the updated expected loss rates at +25 percent and -25 percent of the current expected loss rates. Staff also proposes to revise the discount ratios that will be used to calculate experience modifiers with an effective date on or after June 1, 2013. No cap applies to the changes in the discount ratios.

Copies of the full text of the staff petition, the proposed revised classification relativities, and the proposed updated expected loss rates and discount ratios are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe St., Austin, Texas 78701. For further information, or to request copies of the petition, the proposed revised classification relativities, and the updated expected loss rates and discount ratios, please contact the Office of the Chief Clerk at ChiefClerk@tdi.state.tx.us, (512) 463-6326 (Reference No. W-1012-08-I).

If you wish to comment on the matters to be considered, TDI will accept written testimony and exhibits prior to the public hearing. TDI will also accept interested persons' oral and written testimony at the hearing. Please submit two copies of your written comments no later than 5:00 p.m. on December 17, 2012. Send one copy to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to J'ne Byckovski, Chief Actuary, Property and Casualty Actuarial Office, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-201205741
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: November 7, 2012

♦ ♦ ♦

EXEMPT FILING NOTIFICATION PURSUANT TO TEXAS INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

ADOPTION OF AMENDMENTS TO THE TEXAS BASIC MANUAL OF RULES, CLASSIFICATIONS AND EXPERIENCE RATING PLAN FOR WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE

The commissioner of insurance adopts the amendments proposed by the August 16, 2012, TDI staff petition (Reference No. W-0812-06-I). TDI staff proposed to amend Rule IV A. and Appendix B. of the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance. The commissioner adopts the amendments without changes to the proposed text.

TDI published notice of the proposal in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6941). TDI received no comments and no requests for a hearing on the proposal.

The commissioner adopts the following amendments to the manual:

Rule IV A. is amended to clarify that a carrier may select classification codes to use when issuing a quote or when issuing a new or renewal workers' compensation policy; and a carrier may change, add, and delete classification codes on a workers' compensation policy. When selecting, changing, or adding classification codes for a workers' compensation policy, a carrier may only use classification codes contained in the manual.

Appendix B.1. is amended to delete the provision that requires current policies to show the classifications approved for the expiring policy with payrolls updated to reflect current conditions.

Appendix B.2. is amended to clarify that a carrier may change, add, and delete classification codes on a workers' compensation policy, as long as the carrier uses classification codes contained in the manual.

Appendix B.3. is amended to delete the provision that classification codes assigned by an insurance company to a policy covering an employer who previously was a non-subscriber to the workers' compensation law may be subject to change by TDI. Appendix B.3. is also amended to clarify that a carrier may select classification codes to use when issuing a quote or when issuing a new or renewal workers' compensation policy, as long as the carrier uses classification codes contained in the manual.

Appendix B.4. is deleted.

The commissioner has determined that the amendments to the manual are necessary to better conform the manual's instructions to the statutory requirements for workers' compensation classification codes.

A copy of the full text of the staff petition and related exhibits has been on file with the TDI Office of the Chief Clerk since August 16, 2012, and are incorporated by reference into this commissioner's order.

The commissioner adopts the amendments pursuant to Article 5.96 of the Texas Insurance Code. Article 5.96 exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001), and authorizes TDI to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans, and policy and endorsement forms for various lines of insurance, including workers' compensation.

TDI certifies that the amendments to the manual have been reviewed by legal counsel and found to be a valid exercise of TDI's authority.

TRD-201205740
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: November 7, 2012

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plans

Texas Parks and Wildlife Department

Title 31, Part 2

TRD-201205703
Filed: November 5, 2012

♦ ♦ ♦

Proposed Rule Reviews

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal 16 TAC Chapter 57, concerning For-Profit Legal Service Contract Companies. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or re-adopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Shanna Dawson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register.* The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§57.1. Authority.

§57.10. Definitions.

§57.21. Registration Requirements--Company.

§57.22. Registration Requirements--Sales Representative.

§57.23. Registration Requirements--Administrator.

§57.25. Registration Requirements--Renewal.

§57.70. Responsibilities of Registrants--General.

§57.71. Responsibilities of Registrants--Company.

§57.72. Responsibilities of Registrant--Sales Representative.

§57.80. Fees.

§57.90. Administrative Penalties and Sanctions.

TRD-201205667
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 2, 2012

♦ ♦ ♦

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal 16 TAC Chapter 59, concerning Continuing Education Requirements. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or re-adopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Shanna Dawson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register.* The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§59.1. Authority.

§59.3. Purpose and Applicability.

§59.10. Definitions.

§59.20. Provider Registration.

§59.21. Provider Registration Renewals.

§59.30. Continuing Education Courses.

§59.51. Responsibilities of Providers.

§59.80. Fees.

§59.90. Sanctions--Administrative Sanctions and Penalties.

TRD-201205668
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 2, 2012

♦ ♦ ♦

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal 16 TAC Chapter 60, concerning Procedural Rules of the Commission and the Department. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or re-adopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Shanna Dawson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§60.1. Authority.

§60.10. Definitions.

§60.20. General Powers and Duties of the Commission.

§60.21. Commission Meetings--Procedures.

§60.22. General Powers and Duties of the Department and the Executive Director.

§60.23. Commission and Executive Director--Imposing Sanctions and Penalties.

§60.24. Advisory Boards.

§60.30. Initial License Applications.

§60.31. License Renewal Applications.

§60.32. Licensing for Military Spouses.

§60.40. License Eligibility for Persons with Criminal Convictions.

§60.41. License Eligibility for Persons with Deferred Adjudications or Non-Conviction Activities.

§60.42. Criminal History Evaluation Letters.

§60.50. Examination Rescheduling.

§60.51. Examination Fee Refund.

§60.52. Examination Security.

§60.53. Access to Examinations.

§60.54. Examination Results.

§60.80. Program Fees.

§60.81. Charges for Providing Copies of Public Information.

§60.82. Dishonored Check Fee.

§60.83. Late Renewal Fees.

§60.100. Rulemaking.

§60.101. Negotiated Rulemaking.

§60.102. Petition for Adoption of Rules.

§60.200. Complaints.

§60.300. Purpose and Scope.

§60.301. Filing of Documents.

§60.302. Notice of Alleged Violations.

§60.303. Notice of Other Proceedings.

§60.304. Disposition by Agreement.

§60.305. Place and Nature of Hearings.

§60.306. Failure to Attend Hearing and Defaults.

§60.307. Hearing Costs.

§60.308. Proposals for Decision.

§60.309. Filing of Exception and Replies.

§60.310. Final Orders, Motions for Rehearing, and Emergency Orders.

§60.311. Corrected Orders.

§60.400. Alternative Dispute Resolution--Mediation.

§60.401. Referral of Contested Matter for Mediation.

§60.402. Appointment of Mediator.

§60.403. Qualifications of Mediators.

§60.404. Disqualifications of Mediators.

§60.405. Qualified Immunity of the Mediator.

§60.406. Commencement of Mediation.

§60.407. Stipulations.

§60.408. Agreements.

§60.409. Confidentiality.

TRD-201205669
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 2, 2012

♦ ♦ ♦

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal 16 TAC Chapter 65, concerning Boilers. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or re-adopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Shanna Dawson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§65.1. Authority.

§65.10. Definitions.

§65.20. Licensing/Certification/Registration Requirements.

§65.30. Exemptions.

§65.40. Metrication Policy.

§65.50. Reporting Requirements.

§65.60. Responsibilities of the Department.

§65.65. Boiler Board.

§65.70. Responsibilities of the Licensee/Certificate Holder/Registrant.

§65.80. Fees.

§65.90. Sanctions.

§65.100. Technical Requirements.

TRD-201205670
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 2, 2012

♦ ♦ ♦

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal 16 TAC Chapter 70, concerning Industrialized Housing and Buildings. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or re-adopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Shanna Dawson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§70.1. Authority.

§70.10. Definitions.

§70.20. Registration of Manufacturers, REF builders, and Industrialized Builders.

§70.21. Registration of Design Review Agencies, Third Party Inspection Agencies and Inspectors, and Third Party Site Inspectors.

§70.22. Criteria for Approval of Design Review Agencies.

§70.23. Criteria for Approval of Third Party Inspection Agencies and Inspectors.

§70.24. Criteria for Approval of Third Party Site Inspectors.

§70.25. Permits.

§70.30. Exemptions.

§70.50. Reporting Requirements for Manufacturers, Industrialized Builders, REF Builders, and Permit Holders.

§70.51. Third Party Inspection Reports.

§70.60. Responsibilities of the Department--Plant Certification.

§70.61. Responsibilities of the Department--Monitoring Inspections.

§70.62. Responsibilities of the Local Building Official--Inspections.

§70.63. Council's Responsibilities--Compliance Disputes.

§70.64. Responsibilities of the Department--Proprietary Information Protected.

§70.65. Responsibilities of the Commission--Reciprocity.

§70.70. Responsibilities of the Registrants--Manufacturer's Design Package and REF Builder's Construction Documents.

§70.71. Responsibilities of the Registrants--Data Plates.

§70.72. Responsibilities of the Registrants--In-plant Inspection.

§70.73. Responsibilities of the Registrants--Building Site Construction and Inspections.

§70.74. Responsibilities of the Registrants--Alterations.

§70.75. Responsibilities of the Registrants--Permit/Owner Information.

§70.76. Responsibilities of the Registrants--Proprietary Information Protected.

§70.77. Responsibilities of the Registrants--Decals and Insignia for New Construction.

§70.78. Responsibilities of the Registrants--General.

§70.79. Responsibilities of the Registrants--Site-built REF Construction and Inspection.

§70.80. Commission Fees.

§70.81. Late Renewal Fees.

§70.90. Sanctions--Administrative Sanctions/Penalties.

§70.92. Sanctions for Failure to Comply by Design Review Agencies, Third Party Inspection Agencies, and Third Party Inspectors.

§70.100. Mandatory Building Codes.

§70.101. Amendments to Mandatory Building Codes.

§70.102. Use and Construction of Codes.

§70.103. Alternate Materials and Methods.

§70.120. Intent.

TRD-201205671
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 2, 2012

♦ ♦ ♦

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal 16 TAC Chapter 72, concerning Staff Leasing Services. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or re-adopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Shanna Dawson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§72.1. Authority.

§72.10. Definitions.

§72.20. License Requirements--Full License.

§72.21. License Renewal Requirements--Full License.

§72.22. License Requirements--Limited License.

§72.23. License Renewal Requirements--Limited License.

§72.24. Approval of Assurance Organization.

§72.25. Use of Assurance Organization by Applicant or License Holder.

§72.40. Proof of Positive Working Capital.

§72.70. Responsibilities of Licensee--General.

§72.71. Responsibility of Licensee--Records.

§72.80. Fees.

§72.90. Sanctions--Administrative Sanctions/Penalties.

§72.91. Enforcement Authority.

§72.100. Electronic Filing and Compliance.

TRD-201205672
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 2, 2012

♦ ♦ ♦

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal 16 TAC Chapter 73, concerning Electricians. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or re-adopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Shanna Dawson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§73.1. Authority.

§73.10. Definitions.

§73.20. Licensing Requirements--Applicant and Experience Requirements.

§73.21. Licensing Requirements--Examinations.

§73.22. Licensing Requirements--General.

§73.23. Licensing Requirements--Renewal.

§73.24. Licensing Requirements--Waiver of Examination Requirements.

§73.25. Continuing Education.

§73.26. Documentation of Required On-The-Job Training.

§73.27. Licensing Requirements--Temporary Apprentices.

§73.28. Licensing Requirements--Emergency Licenses.

§73.30. Exemptions.

§73.40. Insurance Requirements.

§73.51. Electrical Contractors' Responsibilities.

§73.52. Electrical Sign Contractors' Responsibilities.

§73.53. Responsibilities of All Persons Performing Electrical Work.

§73.54. Residential Appliance Installation Contractors' Responsibilities.

§73.60. Standards of Conduct for Engaging in Electrical Work.

§73.65. Advisory Board.

§73.70. Responsibility of Licensee--Standards of Conduct.

§73.80. Fees.

§73.90. Sanctions--Administrative Sanctions/Penalties.

§73.91. Enforcement Authority.

§73.100. Technical Requirements.

TRD-201205673

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 2, 2012

♦ ♦ ♦

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal 16 TAC Chapter 85, concerning Vehicle Storage Facilities. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or re-adopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Shanna Dawson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§85.1. Authority.

§85.10. Definitions.

§85.20. Exemptions.

§85.200. License Required--Vehicle Storage Facility.

§85.201. License Requirements--Vehicle Storage Facility License.

§85.202. License Approval--Vehicle Storage Facility.

§85.203. License Requirements--Vehicle Storage Facility License Renewal.

§85.204. License Requirements--Vehicle Storage Facility Employee License.

§85.205. Licensing Requirements--Dual Vehicle Storage Facility Employee and Towing Operator License.

§85.206. License Requirements--Vehicle Storage Facility Employee License Renewal; Dual Vehicle Storage Facility Employee and Towing Operator License.

§85.207. License--Notice of Proposed Denial, Opportunity to Comply.

§85.208. Department Notifications to Licensee.

§85.209. Licenses--License Terms.

§85.400. Insurance Requirements.

§85.450. Inspections--General.

§85.451. Periodic Inspections.

§85.452. Risk-based Inspections.

§85.453. Corrective Actions Following Inspection.

§85.650. Towing, Storage, and Booting Advisory Board.

§85.700. Responsibilities of the Licensee--Proof of Exempt Status.

§85.701. Responsibilities of Licensee--Advertising.

§85.702. Responsibilities of Licensee--Changes to VSF Operator and VSF Employee License.

§85.703. Responsibilities of Licensee--Notice to Vehicle Owner or Lienholder.

§85.704. Responsibilities of Licensee--Second Notice; Consent to Sale.

§85.705. Responsibilities of Licensee--Report to Law Enforcement.

§85.706. Responsibilities of Licensee--Documentation and Records.

§85.707. Responsibilities of Licensee--Notice of Complaint Procedure.

§85.708. Responsibilities of Licensee--Rights of Owner or Authorized Representative.

§85.709. Responsibilities of Licensee--Unpermitted Tow Trucks Prohibited.

§85.710. Responsibilities of Licensee--Release of Vehicles.

§85.711. Responsibilities of Licensee--Forms of Payment for Release of Vehicle.

§85.712. Responsibilities of Licensee--Release of Vehicles; Payment by Lienholder or Insurance Company.

§85.713. Responsibilities of Licensee--Release of Vehicles From Law Enforcement Hold.

§85.714. Responsibilities of Licensee--Provide Insurance Information to Vehicle Owner.

§85.715. Responsibilities of Licensee--Publicly Listed Telephone Number.

§85.716. Responsibilities of Licensee--Inspection of Stored Vehicles.

§85.717. Responsibilities of Licensee--Removal of Parts; Dismantling or Demolishing Stored Vehicles.

§85.718. Responsibilities of Licensee--Use of Stored Vehicles Prohibited.

§85.719. Responsibilities of Licensee--Reasonable Storage Efforts; Impoundment of Stored Vehicles; Impoundment Fees.

§85.720. Responsibilities of Licensee--Repair; Alteration of Stored Vehicles Prohibited.

§85.721. Responsibilities of Licensee--Vehicle Transfers.

§85.722. Responsibilities of Licensee--Storage Fees and Other Charges.

§85.723. Responsibilities of Licensee--Disposal of Certain Vehicles.

§85.724. Responsibilities of Licensee--Disposition of Abandoned Nuisance Vehicle.

§85.725. Responsibilities of Licensee--Drug Testing Policy.

§85.800. Fees.

§85.900. Administrative Sanctions and Penalties.

§85.1000. Technical Requirements--Facility Fencing Requirements.

§85.1001. Technical Requirements--Storage Lot Surface.

§85.1002. Technical Requirements--Storage Lot Lighting.

§85.1003. Technical Requirements--Storage Lot Signs.

§85.1004. Technical Requirements--Company Records.

TRD-201205674
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 2, 2012

♦ ♦ ♦

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal 16 TAC Chapter 86, concerning Vehicle Towing and Booting. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or re-adopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Shanna Dawson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§86.1. Authority and Purpose.

§86.10. Definitions.

§86.200. Tow Truck Permit--Required.

§86.201. Tow Truck Permit--Incident Management Towing.

§86.202. Tow Truck Permit--Private Property Towing.

§86.203. Tow Truck Permit--Consent Towing.

§86.204. Tow Truck Permit--Approval and Issuance.

§86.205. Tow Truck Permit--Renewal.

§86.206. Tow Truck Cab Cards.

§86.207. Licensing Requirements--Towing Operator License.

§86.208. Towing Operator Licensing--Approval and Issuance.

§86.209. Licensing Requirements--Incident Management Towing Operator License.

§86.210. Licensing Requirements--Private Property Towing Operator License.

§86.211. Licensing Requirements--Consent Towing Operator License.

§86.212. Licensing Requirements--Dual Vehicle Storage Facility Employee and Towing Operator License.

§86.213. Licensing Requirements--Towing Operator Training License.

§86.214. Licensing Renewal--Towing Operators.

§86.215. Licensing Requirements--Towing Company License Required.

§86.216. Towing Company License--Approval and Issuance.

§86.217. Towing Company License Renewal.

§86.218. Department Notifications to Licensee or Permit Holder.

§86.250. License Requirements--Towing Operator Continuing Education.

§86.400. Insurance Requirements--Tow Truck Permits.

§86.450. Inspections--General.

§86.451. Periodic Inspections.

§86.452. Risk-based Inspections.

§86.453. Corrective Actions Following Inspection.

§86.455. Private Property Tow Fees.

§86.458. Fees for Nonconsent Tows, Refunds.

§86.500. Reporting Requirements--Towing Company.

§86.650. Towing, Storage, and Booting Advisory Board.

§86.700. Responsibilities of Tow Truck Permit Holder--Storage of Towed Vehicles.

§86.701. Responsibilities of Tow Truck Permit Holder--Tow Truck Signage.

§86.702. Responsibilities of Licensee and Permit Holder--Change Name, Address, or Drug and Alcohol Testing Policy.

§86.703. Responsibilities of Towing Company--Change of Ownership.

§86.705. Responsibilities of Towing Company--Standards of Conduct.

§86.706. Responsibilities of Towing Company--Required Postings at Vehicle Storage Facility (VSF).

§86.708. Responsibilities of Towing Company--Tow Truck License Plates.

§86.709. Responsibilities of Towing Company--Tow Ticket.

§86.710. Responsibilities of Towing Company--Drug and Alcohol Testing Policy.

§86.711. Responsibilities of Towing Company--Honesty, Trustworthiness, and Integrity.

§86.715 Responsibilities of Towing Operators--Standards of Conduct.

§86.800. Fees.

§86.900. Sanctions and Administrative Penalties.

§86.901. Cease and Desist Order.

§86.902. Requirement to Reimburse.

§86.903. Enforcement of Unpaid Judgments.

§86.1000. Technical Requirements--Tow Truck Safety Equipment and Truck Operations.

§86.1001. Technical Requirements--Towing Operator Safety Clothing and Identification.

§86.1002. Technical Requirements--Towing Company Records.

TRD-201205675
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 2, 2012

♦ ♦ ♦

Texas Parks and Wildlife Department

Title 31, Part 2

The Texas Parks and Wildlife Department files this notice of intention to review Texas Administrative Code Title 31, Part 2, as follows:

Chapter 57. Fisheries

Subchapter A. Harmful or Potentially Harmful Exotic Fish, Shellfish, and Aquatic Plants

§57.111. Definitions.

§57.112. General Rules.

§57.113. Exceptions.

§57.114. Health Certification of Harmful or Potentially Harmful Exotic Shellfish.

§57.115. Transportation of Harmful or Potentially Harmful Exotic Species.

§57.116. Exotic Species Transport Invoice.

§57.117. Exotic Species Permit: Application Requirements.

§57.118. Exotic Species Permit Issuance.

§57.119. Exotic Species Permit: Requirements for Permits.

§57.120. Exotic Species Permit: Expiration and Renewal.

§57.121. Exotic Species Permit--Amendment.

§57.122. Appeal.

§57.123. Exotic Species Permit Reports.

§57.124. Triploid Grass Carp; Sale, Purchase.

§57.125. Triploid Grass Carp Permit; Application, Fee.

§57.126. Triploid Grass Carp Permit; Terms of Issuance.

§57.127. Triploid Grass Carp Permit; Denial.

§57.128. Exotic Species Permits, Triploid Grass Carp Permits; Revocation.

§57.129. Exotic Species Permit: Private Facility Criteria.

§57.130. Exotic Species Interstate Transport Permit.

§57.131. Exotic Species Interstate Transport Permit: Application and Issuance.

§57.132. Exotic Species Interstate Transport Permit: Permittee Requirements.

§57.133. Exotic Species Interstate Transport Permit: Expiration and Renewal.

§57.134. Wastewater Discharge Authority.

§57.135. Memorandum of Understanding between the Texas Parks and Wildlife Department, the Texas Commission on Environmental Quality, and the Texas Department of Agriculture.

§57.136. Special Provisions--Water Spinach.

§57.137. Penalties.

Subchapter B. Mussels and Clams

§57.156. Definitions.

§57.157. Mussels and Clams.

§57.158. Penalties.

Subchapter C. Introduction of Fish, Shellfish, and Aquatic Plants

§57.251. Definitions.

§57.252. General Provisions.

§57.253. Permit Application.

§57.254. Denial.

§57.255. Renewal.

§57.256. Amendment.

§57.257. Reporting and Recordkeeping.

§57.258. Prohibited Acts.

§57.259. Violations and Penalties.

Subchapter D. Commercially Protected Finfish

§57.372. Packaging Requirements.

§57.373. Package Labels.

§57.374. Delegation of Authority.

§57.375. Exclusive Economic Zone Regulations.

Subchapter E. Permits to Sell Nongame Fish Taken from Public Fresh Water

§57.377. Definitions.

§57.378. Applicability: Nongame Fishes.

§57.379. Prohibited Acts.

§57.380. Permit Application.

§57.381. Permit Specifications and Requirements.

§57.382. Harvest and Sales Reports.

§57.384. Permit Denial.

§57.385. Appeal.

§57.386. Penalties.

Subchapter F. Collection of Broodfish from Public Waters

§57.391. Definitions.

§57.392. General Rules.

§57.394. Broodfish Collection; Notification.

§57.395. Broodfish Permits; Fees, Terms of Issuance.

§57.396. Broodfish Permit; Expiration.

§57.397. Broodfish Permit; Revocation.

§57.398. Permit Denial.

§57.399. Appeal.

§57.400. Reports.

§57.401. Restitution for Broodfish.

Subchapter G. Marking of Vehicles.

§57.500. Marking of Vehicles.

Subchapter H. Fishery Management Plans

§57.691. Fishery Management Plans.

Subchapter I. Consistency with Federal Regulations in the Exclusive Economic Zone

§58.301. Delegation of Authority.

§58.302. Display of License.

§58.303. License Transfer.

§58.304. License Buyback Program.

Chapter 65. Wildlife

Subchapter A. Statewide Hunting Proclamation

Division 1. General Provisions

§65.1. Application.

§65.3. Definitions.

§65.5. Importation of Wildlife.

§65.7. Harvest Log.

§65.8. Alternative Licensing System.

§65.9. Open Seasons: General Rules.

§65.10. Possession of Wildlife Resources.

§65.11. Lawful Means.

§65.19. Hunting Deer with Dogs.

§65.24. Permits.

§65.25. Wildlife Management Plan (WMP).

§65.26. Managed Lands Deer Permits (MLDP)--White-tailed Deer.

§65.27. Antlerless and Spike-buck Deer Control Permits (control permits).

§65.28. Landowner Assisted Management Permit System (LAMPS).

§65.30. Pronghorn Antelope Permits.

§65.31. Desert Bighorn Sheep Permits.

§65.32. Antlerless Mule Deer Permits.

§65.33. Mandatory Check Stations.

§65.34. Managed Lands Deer Permits (MLDP)--Mule Deer.

Division 2. Open Seasons and Bag Limits

§65.38. Game Animals: Open Seasons and Bag Limits.

§65.40. Pronghorn Antelope: Open Seasons and Bag Limits.

§65.42. Deer.

§65.44. Javelina: Open Seasons and Annual Bag Limits.

§65.46. Squirrel: Open Seasons, Bag, and Possession Limits.

§65.48. Desert Bighorn Sheep: Open Seasons and Annual Bag Limits.

§65.49. Alligators.

§65.54. Game Birds: Open Seasons and Bag Limits.

§65.56. Lesser Prairie Chicken: Open Seasons, Bag, and Possession Limits.

§65.60. Pheasant: Open Seasons, Bag, and Possession Limits.

§65.62. Quail: Open Seasons, Bag, and Possession Limits.

§65.64. Turkey.

§65.66. Chachalacas.

Subchapter C. Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds

§65.101. Definitions.

§65.102. Disease Detection Requirements.

§65.103. Trap, Transport, and Transplant Permit.

§65.104. Permit to Trap, Transplant, and Process Surplus White-Tailed Deer.

§65.105. Urban White-Tailed Deer Removal Permit.

§65.107. Permit Application and Processing.

§65.109. Issuance of Permit.

§65.111. Permit Conditions and Period of Validity.

§65.113. Marking of Game Animals and Game Birds.

§65.115. Notification, Recordkeeping, and Reporting Requirements.

§65.116. Nuisance Squirrels.

§65.117. Prohibited Acts.

§65.119. Penalties.

Subchapter D. Deer Management Permit (DMP)

§65.131. Deer Management Permit (DMP).

§65.132. Permit Application.

§65.133. General Provisions.

§65.134. Facility Standards.

§65.135. Detention of Deer.

§65.136. Release.

§65.137. Disposition of Mortalities.

§65.138. Violations and Penalties.

Subchapter F. Permits for Aerial Management of Wildlife and Exotic Species

§65.150. Applicability.

§65.151. Definitions.

§65.152. General Rules.

§65.153. Application for Permit.

§65.154. Issuance of Permit.

§65.155. Period of Validity of Permit.

§65.156. Amendment of Permit.

§65.157. Renewal of Permit.

§65.158. Permit Not Transferable.

§65.159. Permit Fee.

§65.160. Landowner Authorization.

§65.161. Reports.

§65.162. Penalty.

Subchapter G. Threatened and Endangered Nongame Species

§65.171. General Provisions.

§65.172. Exceptions.

§65.173. Special Provisions.

§65.174. Permanent Identification.

§65.175. Threatened Species.

§65.352. Definitions.

§65.353. General Provisions.

§65.357. Purchase and Sale of Alligators.

§65.358. Alligator Egg Collectors.

§65.359. Possession.

§65.360. Report Requirements.

§65.361. Alligator Farm Facility Requirements.

§65.362. Importation and Exportation.

§65.363. Nuisance Alligator Control.

§65.365. Management Tag--Applicability and Fee.

§65.366. Violations and Penalties.

Subchapter Q. Statewide Fur-bearing Animal Proclamation

§65.371. Application.

§65.372. Definitions.

§65.374. General Rules.

§65.375. Open Seasons; Means and Methods.

§65.376. Possession of Live Fur-bearing Animals.

§65.377. Sale or Purchase of Fur-bearing Animals.

§65.378. Importation, Exportation, and Release of Fur-bearing Animals.

§65.379. Reporting Requirements.

§65.381. Nuisance Fur-bearing Animals.

§65.383. Taxidermy.

§65.385. Penalty.

Subchapter T. Deer Breeder Permits

§65.601. Definitions.

§65.602. Permit Requirement and Permit Privileges.

§65.603. Application and Permit Issuance.

§65.604. Disease Monitoring.

§65.605. Holding Facility Standards and Care of Deer.

§65.608. Annual Reports and Records.

§65.610. Transfer of Deer.

§65.611. Prohibited Acts.

§65.612. Disposition of Deer.

§65.613. Penalties.

Subchapter V. Wildlife Management Association Area Hunting Lease License

§65.801. Definitions.

Subchapter W. Special Permits

§65.901. Cormorant Control Permit.

This review is pursuant to the Texas Government Code, §2001.039. The department will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist. Final consideration of this rule review is scheduled for the Parks and Wildlife Commission on January 24, 2013.

Any questions or written comments pertaining to this notice of intention to review should be directed to Ann Bright, General Counsel, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Commission.

TRD-201205704
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: November 5, 2012

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.

Comptroller of Public Accounts

Notice of Contract Amendment

The Comptroller of Public Accounts (Comptroller) State Energy Conservation Office announces this notice of amendment of a contract awarded to Deloitte & Touche LLP, 400 W. 15th Street, Suite 1700, Austin, Texas 78701, in connection with the Request for Proposals (RFP) #198c for professional certified public accounting services to assist Comptroller in conducting fiscal and technical monitoring services for the stimulus grant program. The total amount of the contract was not to exceed $3,428,070.00. The amendment added fiscal year 2013 funds for a new total amount of not to exceed $3,653,430.00. The term of the contract is October 20, 2010 through December 31, 2012.

The notice of request for proposals (RFP #198c) was published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5604).

TRD-201205660
Jason C. Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: November 1, 2012

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/12/12 - 11/18/12 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 11/12/12 - 11/18/12 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 11/01/12 - 11/30/12 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 11/01/12 - 11/30/12 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-201205715
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 6, 2012

♦ ♦ ♦

Commission on State Emergency Communications

Notice of Rates for the Wireline 9-1-1 Fee and Equalization Surcharge and Allocation of Appropriated Equalization Surcharge Revenue

Notice is hereby given of the Commission on State Emergency Communications (CSEC) rates for the wireline 9-1-1 service fee (wireline fee) and equalization surcharge (surcharge), and the allocation of surcharge revenue under Texas Health and Safety Code Chapter 771. The current wireline fee is $.50 per month, per "local exchange access line or equivalent local exchange access line" as defined by CSEC in 1 TAC §255.4 (access lines). The current surcharge is $0.06 per month on all non-exempt access lines and wireless telecommunications connections. The wireline fee and surcharge were continued at the current rates by CSEC at its October 2012 open meeting. The allocation of appropriated surcharge is authorized by CSEC consistent with the strategies in its approved appropriations bill pattern and as authorized by Health and Safety Code §§771.072, 771.075, and 771.0751.

Interested parties have 45 days from the date this notice is published in the *Texas Register* to file comments. Comments should be submitted to the Public Utility Commission of Texas c/o Central Records, P.O. Box 13326, Austin, Texas 78711-3326. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the Public Utility Commission at (512) 936-7136. **All comments should reference Project Number 40895.**

Wireline Fee and Surcharge

The wireline fee is applicable in the geographic areas within each of Texas' 24 Regional Planning Commissions (RPCs) in which 9-1-1 service is provided through the state 9-1-1 program. This does not include areas for the following counties and cities that are not participating in the state 9-1-1 program. The counties not participating include: Smith, Taylor, Austin, Bexar, Comal, Guadalupe, Brazos, Calhoun, Cameron, Denton, El Paso, Ector, Galveston, Harris, Henderson, Howard, Kerr, Lubbock, McLennan, Medina, Midland, Montgomery, Wichita, Wilbarger, Potter, Randall, Tarrant, Rusk, and Harrison. The cities not participating include: Addison, Aransas Pass, Dallas, Plano, Coppell, DeSoto, Ennis, Cedar Hill, Longview, Wylie, Denison, Duncanville, Farmers Branch, Garland, Highland Park, Mesquite, Richardson, Sherman, University Park, Glenn Heights, Hutchins, Lancaster, Portland, Rowlett, Corpus Christi, Kilgore, and Sunnyvale.

The surcharge is a statewide fee that is applicable irrespective of whether 9-1-1 service is provided by an RPC or by an Emergency Communication District (ECD), as that term is defined in Texas Health and Safety Code §771.001(3).

Allocation of Surcharge

RPCs

CSEC allocates appropriated surcharge to those RPCs whose statutory allocation of appropriated service fees (wireline and wireless fees) is insufficient to fund their CSEC-approved strategic plans for the providing of 9-1-1 service. Allocation of appropriated surcharge is based on need as initially determined by CSEC staff during the strategic plan

process. The requirements of the RPCs' strategic plans are prescribed by CSEC rule (1 TAC §255.1).

The RPCs submit their strategic plans in three stages: Stage 1 is submitted in even-numbered years, reviewed by CSEC, and incorporated as appropriate into CSEC's Legislative Appropriations Request. Stage 2 is submitted in odd-numbered years to correspond with the legislative session and requires detailed planning and financial information to allocate appropriated funding. Stage 3 is required when contingent funding has been certified by the Comptroller. At each stage, CSEC staff reviews and analyzes each plan to ensure that it is in accord with CSEC's hierarchical budget components.

The allocation of surcharge to the RPCs is limited by revised Health and Safety Code §771.072 to "not more than 40 percent" of the revenue derived from the surcharge. CSEC's estimate of available revenue (AR) for surcharge for FY 2013 is $39.405 million. For FY 2013, appropriated surcharge to be allocated to fund the RPCs' strategic plans is within statutory limits at $4,977,402.

Poison Control Program Funding of the state Poison Control Program is appropriated and allocated in accordance with CSEC's legislative bill pattern. As of May 1, 2010, CSEC became the sole administrator of the Poison Control Program. The Texas Legislature has approved the following strategies for funding of poison control services:

B.1.1. Strategy: Poison Call Center Operations;

B.1.2. Strategy: Statewide Poison Network Operations; and

B.1.3. Strategy: CSEC Poison Program Management.

CSEC allocates appropriated surcharge to the six regional poison control centers (e.g., University of Texas Medical Branch at Galveston; Scott and White Memorial Hospital, Temple, Texas) through grants approved in accordance with CSEC rules (1 TAC §254.1 and §254.3. CSEC issues vouchers to reimburse the regional poison control centers for approved costs up to the amount of the approved grants for Poison Call Center Operations; and directly pays vendors for Network Operations and Program Management.

The allocation of surcharge is limited by statute to "not more than 60 percent" of the revenue derived from the surcharge. CSEC's estimate of available revenue (AR) for surcharge for FY 2013 is $39.405 million. For FY 2013, appropriated surcharge to be allocated is within statutory limits at $6.552 million.

Referenced documents can be reviewed through the Public Utility Commission's InterChange at http://interchange.puc.state.tx.us/ by logging-in with the project number provided above. For additional details and related information, contact the Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, (512) 305-6911.

TRD-201205659
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: October 31, 2012

♦ ♦ ♦

Employees Retirement System of Texas

Request for Information for the 401(k) and 457 Plans of the Texa$aver Program International Fund

The Employees Retirement System of Texas ("ERS") is issuing a Request for Information ("RFI") seeking information from qualified Investment Managers/Firms to provide an International Fund benchmarked to the Morgan Stanley Capital International ("MSCI") All Country World Index ("ACWI") ex US Index to Participants of the 401(k) and 457 Plans of the Texa$aver Program in which participants can invest in stock companies predominantly outside of the United States for growth of capital.

ERS may publish a Request for Qualification ("RFQ") to contract for these services depending upon the analysis of responses to the RFI.

The RFI will be available on or after November 20, 2012 on ERS' website and all responses must be received at ERS by 12:00 Noon (CT) on December 20, 2012. To access the RFI from ERS' website, qualified Investment Managers/Firms shall email their request to the attention of iVendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall include the qualified Investment Manager's/Firm's full legal name, physical address, phone and facsimile numbers and email address for the qualified Investment Manager's/Firm's direct point of contact. Upon receipt of this information a user ID and password will be issued to the requesting qualified Investment Manager/Firm that will permit access to the secured RFI.

General questions concerning the RFI should be sent to the iVendor Mailbox where responses, if applicable, are updated frequently.

TRD-201205729
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: November 6, 2012

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency 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 December 17, 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 December 17, 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: A.D.A. GROUP, INCORPORATED dba Chevron 163757; DOCKET NUMBER: 2012-2019-PST-E; IDENTIFIER: RN102480373; LOCATION: Allen, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ Delivery Certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Maggie Dennis, (512) 239-2578; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: ABEST Corporation dba Granbury Chevron; DOCKET NUMBER: 2012-1282-PST-E; IDENTIFIER: RN102445491; LOCATION: Granbury, Hood 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: $6,562; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Addison Enterprises, Incorporated dba C Store Royal; DOCKET NUMBER: 2012-1179-PST-E; IDENTIFIER: RN102755287; 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 tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,550; ENFORCEMENT COORDINATOR: Ana Quinones, (512) 239-2608; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: AHAD ENTERPRISES, INCORPORATED dba Quick & Easy 3; DOCKET NUMBER: 2012-1380-PST-E; IDENTIFIER: RN101868651; LOCATION: El Campo, Wharton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: $3,349; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Amarillo Independent School District; DOCKET NUMBER: 2012-1176-PST-E; IDENTIFIER: RN101733806; LOCATION: Amarillo, Randall County; TYPE OF FACILITY: school district; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ Delivery Certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: American Food Mart, Incorporated dba A F M; DOCKET NUMBER: 2012-1122-PST-E; IDENTIFIER: RN102489333; LOCATION: Longview, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $1,625; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: AMITA INVESTMENTS, INCORPORATED dba Bay City Chevron; DOCKET NUMBER: 2012-1249-PST-E; IDENTIFIER: RN101725133; LOCATION: Bay City, Matagorda County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: $3,959; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Arturo Alemany and San Pedro Canyon Water Company; DOCKET NUMBER: 2012-1128-PWS-E; IDENTIFIER: RN102673167; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.107(e) and §290.113(e), by failing to provide the results of triennial sampling for synthetic organic contaminants and disinfectant by-product contaminant levels to the TCEQ's executive director; 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite sampling to the TCEQ's executive director; 30 TAC §290.108(e), by failing to provide the results of quarterly radionuclide sampling to the TCEQ's executive director; 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 each quarter; and 30 TAC §290.116(b)(2), by failing to complete corrective action or be in compliance with an approved corrective action plan and schedule within 120 days of receiving notification from a laboratory of fecal indicator-positive raw groundwater source samples; PENALTY: $1,373; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(9) COMPANY: B & B True, Incorporated dba Dallas C Store 110; DOCKET NUMBER: 2012-1317-PST-E; IDENTIFIER: RN103025680; LOCATION: Plano, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 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 underground storage tanks (USTs); 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; and 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; PENALTY: $7,008; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Bell County Water Control & Improvement District Number 2; DOCKET NUMBER: 2011-1611-MWD-E; IDENTIFIER: RN101610491 (Academy Plant) and RN101610418 (Little River Plant); LOCATION: Bell 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 WQ0011090001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits at the Academy Plant and the Little River Plant; PENALTY: $210,365; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Bexar County Hospital District; DOCKET NUMBER: 2012-1311-PST-E; IDENTIFIER: RN100579184; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: hospital with an underground storage tank (UST) that was used for an emergency generator; RULE VIOLATED: 30 TAC §334.50(b)(2) and

TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: BLESSINGS, INCORPORATED dba Evergreen Convenience Store; DOCKET NUMBER: 2012-1331-PST-E; IDENTIFIER: RN101726198; LOCATION: Wharton, Wharton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tanks; PENALTY: $2,943; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Canyon West Golf Club, Incorporated; DOCKET NUMBER: 2012-1583-WR-E; IDENTIFIER: RN106421654; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: golf course; RULE VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to diverting, storing, impounding, taking, or using state water; PENALTY: $500; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Central Park Company, L.P. dba 75 & Parker; DOCKET NUMBER: 2012-1368-PST-E; IDENTIFIER: RN101532687; LOCATION: Plano, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST system; PENALTY: $3,882; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Charles Sanderson dba Pronto's Convenience Store; DOCKET NUMBER: 2012-1242-PST-E; IDENTIFIER: RN102033602; LOCATION: Glen Rose, Somervell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the piping associated with the underground storage tank system; PENALTY: $5,754; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: City of Asherton; DOCKET NUMBER: 2011-2329-MWD-E; IDENTIFIER: RN101721348; LOCATION: Asherton, Dimmit County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013746001, Operational Requirements Number 1 and 30 TAC §305.125(1), by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; TPDES Permit Number WQ0013746001, Other Requirements Number 1 and 30 TAC §30.350(d), by failing to employ or contract a licensed individual holding the appropriate level of license to operate the facility; and TPDES Permit Number WQ0013746001, Monitoring and Reporting Requirements Number 11.b. and 30 TAC §305.125(1), by failing to notify the executive director of any substantial change in the volume or character of pollutants being introduced into the Publicly Operated Treatment Works (POTW) by a source introducing pollutants into the POTW at the time of issuance of the permit; PENALTY: $25,680; Supplemental Environmental Project offset amount of $25,680 applied to Wastewater Treatment Plant Improvement Project; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(17) COMPANY: City of Big Lake; DOCKET NUMBER: 2012-0634-MWD-E; IDENTIFIER: RN101611820; LOCATION: Big Lake, Reagan 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 WQ0010038001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $18,340; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(18) COMPANY: City of Edcouch; DOCKET NUMBER: 2012-0646-MWD-E; IDENTIFIER: RN101916377; LOCATION: Edcouch, Hildalgo 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 WQ0014919001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $17,425; Supplemental Environmental Project offset amount of $13,940 applied to Install Primary Clarifier and Expand the Chlorine Contact Basin; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(19) COMPANY: City of Hallsville; DOCKET NUMBER: 2012-1365-MWD-E; IDENTIFIER: RN102181872; LOCATION: Hallsville, Harrison 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 WQ0010460001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $2,462; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: City of Henrietta; DOCKET NUMBER: 2012-1390-MWD-E; IDENTIFIER: RN104662416; LOCATION: Henrietta, Clay County; TYPE OF FACILITY: water treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010454003, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations; and 30 TAC §305.125(1) and (17) and §319.7(d), and TPDES Permit Number WQ0010454003, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring report for the monitoring period ending June 30, 2011, January 31, 2012, February 29, 2012, and March 31, 2012, by the 20th day of the following month; PENALTY: $4,185; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(21) COMPANY: City of Moody; DOCKET NUMBER: 2012-1520-PWS-E; IDENTIFIER: RN102678406; LOCATION: Moody, McLennan County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to install a backflow prevention assembly or an air gap at all residences or establishments where an actual or potential contamination hazard exists, as identified in 30 TAC §290.47(i); PENALTY: $120; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: City of Nocona; DOCKET NUMBER: 2012-1627-MWD-E; IDENTIFIER: RN102181591; LOCATION: Nocona, Montague 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 WQ0010355002, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, by failing to comply with permitted effluent limitations; PENALTY: $3,352; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(23) COMPANY: City of San Augustine; DOCKET NUMBER: 2012-1458-MWD-E; IDENTIFIER: RN101389930; LOCATION: San Augustine, San Augustine County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010268002, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; and TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0010268002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $4,034; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: CLJS, Incorporated dba Speedmax 6; DOCKET NUMBER: 2012-1203-PST-E; IDENTIFIER: RN101569010; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to have the cathodic protection system tested for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.10(b), by failing to maintain underground storage tank records and making them immediately available for inspection upon request by agency personnel; PENALTY: $7,609; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: DALCO SOLVENTS & CHEMICALS, INCORPORATED; DOCKET NUMBER: 2012-1661-DCL-E; IDENTIFIER: RN101555993; LOCATION: Garland, Dallas County; TYPE OF FACILITY: solvent distributor and transporter of dry cleaning solvents; RULE VIOLATED: 30 TAC §337.4(b), by failing to prevent the sale, delivery, or distribution of any dry cleaning solvent to a facility that does not have a valid, current dry cleaning registration certificate; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: DEVELOPMENT II PARTNERS, INCORPORATED dba Katy on the Run; DOCKET NUMBER: 2012-0379-PST-E; IDENTIFIER: RN101889301; LOCATION: Katy, Harris 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 UST; 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 per month (not to exceed 35 days between each monitoring); 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the USTs; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; and 30 TAC §334.10(b), by failing to maintain the required UST records and making them immediately available for inspection at the request of agency personnel; PENALTY: $10,632; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Endeavor Energy Resources, L.P.; DOCKET NUMBER: 2012-1449-AIR-E; IDENTIFIER: RN105016794; LOCATION: Brownfield, Terry County; TYPE OF FACILITY: crude petroleum and natural gas plant; RULE VIOLATED: 30 TAC §122.146(2) and §122.143(4), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O-2919/General Operating Permit Number 514, Site-wide requirements (b)(2), by failing to submit a Permit Compliance Certification no later than 30 days after the end of the certification period; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Linda Ndoping, (512) 239-2569; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(28) COMPANY: Entergy Texas, Incorporated dba Woodlands Service Center; DOCKET NUMBER: 2012-1399-PST-E; IDENTIFIER: RN102055902; LOCATION: The Woodlands, Montgomery County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2012-1127-AIR-E; IDENTIFIER: RN100210319; LOCATION: La Porte, Harris County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(c) and 122.143(4), New Source Review Permit Numbers 18978 and PSDTX752M3, Special Conditions Number 1, Federal Operating Permit Number O2223, Special Terms and Conditions Number 14, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions during an event on March 8, 2012 (Incident Number 165858); PENALTY: $6,563; Supplemental Environmental Project offset amount of $2,625 applied to Barbers Hill Independent School District - Barbers Hill Energy Efficiency Program; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Farmland Fuels, LLC dba Green Spot Market & Fuels; DOCKET NUMBER: 2012-1148-PST-E; IDENTIFIER: RN100710888; 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 per month (not to exceed 35 days between each monitoring); PENALTY: $2,250; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(31) COMPANY: Frankston Rural Water Supply Corporation; DOCKET NUMBER: 2012-1174-PWS-E; IDENTIFIER: RN101440857; LOCATION: Frankston, Anderson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain sanitary control easements for all land within 150 feet of the ground water wells; 30 TAC §290.39(j) and Texas Health and Safety Code (THSC), §341.0351, by failing to

notify the executive director prior to making any significant change to the facility's production, treatment, storage, pressure maintenance, or distribution system; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the groundwater well; 30 TAC §290.42(m), by failing to enclose the water treatment plant and all appurtenances within an intruder-resistant fence or a locked building that is to remain locked during periods of darkness or when the plant is unattended; 30 TAC §290.43(c)(3), by failing to provide ground storage tanks designed in strict accordance with American Water Works Association standards with an overflow pipe that terminates downward with a gravity-hinged and weighted cover tightly fitted with no gap over 1/16 inch; 30 TAC §290.44(h)(1)(A), by failing to prohibit water connection to a residence or establishment where an actual or potential contamination or system hazard exists without an air gap separation or an approved backflow prevention assembly between the public water facilities and the actual or potential contamination or system hazard, as identified in 30 TAC §290.47(i); and 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; PENALTY: $1,277; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(32) COMPANY: Graves Long Mountain Properties, LLC; DOCKET NUMBER: 2012-1437-PWS-E; IDENTIFIER: RN101238137; LOCATION: Buchanan Dam, Llano County; TYPE OF FACILITY: mobile home park; RULE VIOLATED: 30 TAC §290.106(e), by failing to provide the results of triennial metal sampling, cyanide sampling, and quarterly nitrate/nitrite sampling to the executive director; PENALTY: $350; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(33) COMPANY: Gulf Marine Fabricators, L.P.; DOCKET NUMBER: 2012-1415-MWD-E; IDENTIFIER: RN101513406; LOCATION: Aransas Pass, San Patricio 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 WQ0012064001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $2,462; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(34) COMPANY: Hueco Quarry, Incorporated; DOCKET NUMBER: 2012-1499-AIR-E; IDENTIFIER: RN102645272; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: quarry; RULE VIOLATED: 30 TAC §116.115(b)(2)(E)(iii), New Source Review (NSR) Permit Number 75419, General Conditions Number 7, and Texas Health and Safety Code (THSC), §382.085(b), by failing to make records available at the request of the TCEQ; and 30 TAC §116.115(c), NSR Permit Number 75419, Special Conditions Numbers 6.A. and 6.B., and THSC, §382.085(b), by failing to operate spray bars and water all roads to control dust; PENALTY: $1,801; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(35) COMPANY: Huntsman Petrochemical LLC; DOCKET NUMBER: 2012-1230-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O3056, Special Terms and Conditions Number 17, and New Source Review Permit Number 20160, Special Conditions Numbers 1 and 18, by failing to prevent unauthorized emissions; PENALTY: $6,563; Supplemental Environmental Project offset amount of $2,625 applied to Southeast Texas Regional Planning Commission - Southeast Texas Regional Air Monitoring Network Ambient Air Monitoring Station; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(36) COMPANY: IASIS HEALTHCARE CORPORATION dba Odessa Regional Medical Center; DOCKET NUMBER: 2012-2030-PST-E; IDENTIFIER: RN101762532; LOCATION: Odessa, Ector County; TYPE OF FACILITY: medical center; RULE VIOLATED: 30 TAC §334.50(b)(2), by failing to provide piping in a underground storage tank system that shall be monitored in a manner which will detect a release from any portion of the piping system; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(37) COMPANY: Jim Hogg County Water Control & Improvement District Number 2; DOCKET NUMBER: 2012-1233-MWD-E; IDENTIFIER: RN101523512; LOCATION: Hebbronville, Jim Hogg County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010799001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations; and 30 TAC §305.125(1) and (17), and TPDES Permit Number WQ00107990010, Sludge Provisions, by failing to submit a complete sludge report for the monitoring period ending July 31, 2011 by September 1, 2011; PENALTY: $7,790; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(38) COMPANY: KING FUELS, INCORPORATED dba Stubby's 9; DOCKET NUMBER: 2012-1161-PST-E; IDENTIFIER: RN102269537; LOCATION: Corrigan, Polk County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; 30 TAC §334.72(3)(B), by failing to report a suspected release of a regulated substance to the TCEQ within 24 hours of the discovery; 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: $5,850; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(39) COMPANY: Marathon Petroleum Company LP; DOCKET NUMBER: 2012-0685-AIR-E; IDENTIFIER: RN100210608; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: oil refinery; RULE VIOLATED: 30 TAC §116.715(a) and §122.143(4), New Source Review Flexible Permit (NSRFP) Number 22433, Special Conditions (SC) Number 40; Federal Operating Permit (FOP) Number O1380, Special Terms and Conditions (STC) Number 24, and Texas Health and Safety Code (THSC), §382.085(b), by failing to operate the flow meter for the T-301 Caustic Scrubber with less than 5% downtime; and 30 TAC §116.715(a) and §122.143(4); NSRFP Number 22433, SC Number 36; FOP Number O1380, STC Number 24; and THSC, §382.085(b), by failing to operate the Sulfur Recovery Unit Number 1 and Number 2 Tail Gas Incinerators with the required minimum firebox temperature and oxygen (O2) concentrations and by

failing to monitor or record O2 concentrations; PENALTY: $32,450; Supplemental Environmental Project offset amount of $16,225 applied to Texas Parent Teacher Association (PTA) - Texas PTA Clean School Buses; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(40) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2011-2189-MWD-E; IDENTIFIER: RN102287513; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(4), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012587001, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge of wastewater from the collection system into or adjacent to water in the state; and 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0012587001, Operational Requirements Number 4, by failing to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures; PENALTY: $29,800; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(41) COMPANY: Neighborhood Real Estate Holdings, LLC dba Sunco Marketplace 1; DOCKET NUMBER: 2012-0824-PST-E; IDENTIFIER: RN103733176; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide documentation of proper 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 UST for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST system; PENALTY: $5,233; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(42) COMPANY: North Texas Premier Soccer Association, Incorporated; DOCKET NUMBER: 2012-1348-AIR-E; IDENTIFIER: RN106173040; LOCATION: Balch Springs, Dallas County; TYPE OF FACILITY: parking lot and soccer fields; RULE VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent dust emissions from affecting surrounding properties; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Linda Ndoping, (512) 239-2569; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (713) 767-3500.

(43) COMPANY: Ohmstede Ltd.; DOCKET NUMBER: 2012-1104-IWD-E; IDENTIFIER: RN101652667; LOCATION: La Porte, Harris 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 WQ0001318000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $4,170; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(44) COMPANY: Orange County Water Control Improvement District Number 1; DOCKET NUMBER: 2012-1632-MWD-E; IDENTIFIER: RN102183035; LOCATION: Vidor, Orange County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and TWC, §26.121(a), and Texas Pollutant Discharge Elimination System Permit Number WQ0010875003, Effluent Limitations and Monitoring Requirements Numbers 1, 2 and 3, by failing to comply with permitted effluent limits; PENALTY: $9,858; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(45) COMPANY: Ozturk, Incorporated dba Kwik Mart; DOCKET NUMBER: 2012-1482-PST-E; IDENTIFIER: RN102958295; LOCATION: Lewisville, Denton 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: $5,625; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(46) COMPANY: Presbyterian Village North; DOCKET NUMBER: 2012-1497-PST-E; IDENTIFIER: RN102990561; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: property with a backup diesel generator and one underground storage tank (UST); RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A) 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 §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $11,500; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(47) COMPANY: Prestonwood Golf Club LLC; DOCKET NUMBER: 2012-2040-PST-E; IDENTIFIER: RN102058591; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: golf club; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ Delivery Certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Maggie Dennis, (512) 239-2578; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(48) COMPANY: S. N. R. ENTERPRISES, INCORPORATED dba Star Food Mart; DOCKET NUMBER: 2012-1430-PST-E; IDENTIFIER: RN102240173; LOCATION: Bay City, Matagorda County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the pressurized piping associated with the UST; PENALTY: $3,880; ENFORCEMENT COORDINATOR: Maggie Dennis, (512) 239-2578; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(49) COMPANY: SAFEWAY, INCORPORATED; DOCKET NUMBER: 2012-2041-PST-E; IDENTIFIER: RN105789960; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ Delivery Certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Maggie Dennis, (512) 239-2578; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(50) COMPANY: Schumacher International, Incorporated; DOCKET NUMBER: 2012-1085-IHW-E; IDENTIFIER: RN100917970; LO-

CATION: Houston, Harris County; TYPE OF FACILITY: hard chrome and nickel plating; RULE VIOLATED: 30 TAC §335.2(b), by failing to prevent the disposal of industrial hazardous waste at an unauthorized facility; PENALTY: $7,022; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(51) COMPANY: Southern Foods Group, LLC dba Southwest Ice Cream Specialties; DOCKET NUMBER: 2012-1391-PST-E; IDENTIFIER: RN100667617; LOCATION: McKinney, Collin County; TYPE OF FACILITY: ice cream and frozen desserts wholesale and manufacturing facility with an underground storage tank (UST); RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(52) COMPANY: Sportsman's World Municipal Utility District; DOCKET NUMBER: 2012-1360-IWD-E; IDENTIFIER: RN102853850; LOCATION: Strawn, Palo Pinto County; TYPE OF FACILITY: potable water treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d), and Texas Pollutant Discharge Elimination System Permit Number WQ0002461000, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; PENALTY: $1,362; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(53) COMPANY: The Lubrizol Corporation; DOCKET NUMBER: 2012-1110-AIR-E; IDENTIFIER: RN100221589; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Federal Operating Permit Number O1932, Special Terms and Conditions Number 7, Air Permit Number 3921, Special Conditions Number 5A, and Texas Health and Safety Code, §382.085(b), by failing to maintain the required minimum firebox exit temperature of 1,400 degrees Fahrenheit for the incinerator, Emissions Point Number FI-06; PENALTY: $15,350; Supplemental Environmental Project offset amount of $6,140 applied to Harris County - Ambient Air Pollutants Monitoring Study; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(54) COMPANY: The Middlesteadt Shopping Center, LP; DOCKET NUMBER: 2012-1301-MWD-E; IDENTIFIER: RN102186319; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013569001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $3,725; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(55) COMPANY: Thomas, Robert C.; DOCKET NUMBER: 2012-2004-WOC-E; IDENTIFIER: RN104707070; LOCATION: Killeen, Bell County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(56) COMPANY: Valero Refining - Texas, L.P.; DOCKET NUMBER: 2012-1006-AIR-E; IDENTIFIER: RN100219310; LOCATION: Houston, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and §122.143(4), Standard Permit Registration Number 83749, Standard Permit Maximum Emission Rates Table, Federal Operating Permit Number O1381, Special Terms and Conditions Number 19 and General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $50,000; Supplemental Environmental Project offset amount of $25,000 applied to Houston - Galveston Area Emission Reduction Credit Organization's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201205717
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 6, 2012

♦ ♦ ♦

Notice of Public Hearing on Proposed Revisions to the Texas Air Quality State Implementation Plan (SIP)

The Texas Commission on Environmental Quality (TCEQ) will conduct a hearing to receive testimony on the Federal Clean Air Act (FCAA), §110(a)(1) and (2) Infrastructure and Transport SIP Revision for the 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality Standard (NAAQS) under requirements of Texas Health and Safety Code, §382.012 and §382.013; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

The proposed SIP revision identifies how Texas addresses the infrastructure requirements stipulated in FCAA, §110(a)(2)(A) through (M) for the 2010 SO_2 NAAQS. To address the interstate transport requirements of FCAA, §110(a)(2)(D)(i)(I), the revision also demonstrates that Texas does not significantly contribute to nonattainment or interfere with maintenance of the 2010 SO_2 NAAQS in other states.

A public hearing on this proposal will be held in Austin on December 4, 2012 at 10:00 a.m., TCEQ Headquarters, Building E, Room 201S, 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. No open discussion will be allowed during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs should contact Mary Ann Cook, Air Quality Division, at (512) 239-6739. Requests should be made as far in advance as possible.

Comments may be submitted to Mary Ann Cook, Air Quality Division, by mail (MC 206, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087), online (at *http://www5.tceq.texas.gov/rules/ecomments),* or by fax (512-239-6188). File size restrictions apply to comments submitted electronically. Reference "SO_2 Infrastructure and Transport SIP Revision" and Project Number 2012-022-SIP-NR on all comments. The comment period closes December 7, 2012. This proposal is available at *http://www.tceq.texas.gov/airquality/sip/criteria-pollutants/sip-so2.* For additional information, contact Mary Ann Cook at (512) 239-6739.

TRD-201205716

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 6, 2012

♦ ♦ ♦

Notice of Public Hearings on Proposed Revisions to 30 TAC Chapter 117 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct public hearings to receive testimony regarding proposed revisions to 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds, §§117.2103, 117.2130, 117.2135, and 117.2145, and corresponding revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations (CFR) §51.102 of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

The proposed rulemaking would provide an exemption from the emission testing requirements in Chapter 117 for engines that are used exclusively for product testing and personnel training, operate in limited service, and meet the applicable federal emissions standards in 40 CFR Part 89. Engines used in this type of service would be required to install and operate a non-resettable elapsed run time meter, maintain records of daily hours of operation, and maintain records demonstrating compliance with the applicable federal emissions standards. The proposed rulemaking is a follow-up to a petition for rulemaking approved by the commission on May 30, 2012.

The commission will hold public hearings on this proposal in Fort Worth on December 13, 2012 at 2:00 p.m. in the Dallas-Fort Worth (DFW) Regional Office Public Meeting Room at the commission's DFW Regional Office located at 2309 Gravel Dr.; and in Austin on December 18, 2012 at 10:00 a.m. in Building E, Conference Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearings.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2012-031-117-AI. The comment period closes December 19, 2012. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Javier Galván, Air Quality Planning Section, (512) 239-1492.

TRD-201205664
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 2, 2012

♦ ♦ ♦

Notice of Water Quality Applications

The following notices were issued on October 26, 2012, through November 2, 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

UNIMIN CORPORATION which operates the Troup Plant, a ball clay mine, has applied for a major amendment with renewal to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002973000 to reduce the annual sulfate loading from 360,000 lbs/year to 36,000 lbs/year at Outfall 001; to increase daily maximum sulfate limits from 900 mg/L to 1,800 mg/L at Outfalls 001, 002, and 005; to remove daily average sulfate limits at Outfalls 001, 002, and 005; and to remove Outfall 004 from the permit. The current permit authorizes the discharge of mine pit water and stormwater runoff on an intermittent and flow variable basis via Outfalls 001, 002, 004, 005, 006, and 007. The facility is located approximately one mile southwest of the intersection of Farm-to-Market Road 856 and Farm-to-Market Road 13, and 1.8 miles northwest of the Town of Concord, Cherokee County, Texas 75789.

BELL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 2 has applied for a renewal of TCEQ Permit No. WQ0004436000, which authorizes the land application of sewage sludge for beneficial use. The current permit authorizes land application of sewage sludge for beneficial use on 3.27 acres. The sewage sludge land application site is located on Farm-to-Market Road 436, one-half mile east of State Highway 95, in Bell County, Texas 76554.

VLS RECOVERY SERVICES LLC which operates a railcar cleaning facility, has applied for the renewal of TPDES Permit No.WQ0003627000, which authorizes the discharge of storm water on an intermittent and variable basis via Outfall 001. The facility is located at 17020 Premium Drive, within the City of Hockley, Harris County, Texas 77447.

CITY OF SEGUIN has applied for a major amendment to TPDES Permit No. WQ0010277003 to authorize a relocation of outfall from its current location at Geronimo Creek to a downstream point closer to Geronimo Creek's confluence with the Guadalupe River. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,130,000 gallons per day. The facility is located at 450 Seitz Road, approximately one mile east of Farm-to-Market Road 466, 1.8 miles southeast of the intersection of State Highway 123 and U.S. Highway 90A, and 3/4 mile north of the Guadalupe River in Guadalupe County, Texas 78155.

CITY OF GEORGETOWN has applied for a renewal of TPDES Permit No. WQ0010489006, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day via Outfall 001. The current permit also authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day via irrigation of a 150 acres of golf course via Outfall 002. The combined daily average flow from Outfall 001 and 002 shall not exceed 500,000 gallons per day. No discharge of pollutants into water in the state is authorized from Outfall 002. The facility is located at 30002 Briar Crest, Georgetown, Texas, approximately 2,000 feet north-northeast of Williamson Country Road 190 crossing Berry Creek, approximately 4,250 feet northwest of the inter-

section of Interstate Highway 35 and State Highway 195 in Williamson County, Texas 78628. The disposal site is located west of the wastewater treatment facility.

CITY OF MASON has applied for a renewal of TPDES Permit No. WQ0010670001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 420,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 220,000 gallons per day in a newly proposed Interim phase II and a daily average flow not to exceed 350,000 gallons per day Final phase while retaining the existing daily average flow not to exceed 420,000 gallons per day in an Interim I phase. The facility is located at 1604 Landfill Road, approximately 3/4 mile northeast of the intersection of U.S. Highway 87 and Farm-to-Market Road 1723, southeast of the City of Mason in Mason County, Texas 76856.

PONDEROSA JOINT POWERS AGENCY has applied for a renewal of TPDES Permit No. WQ0011081001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,870,000 gallons per day. The facility is located at 17940 Butte Creek Drive in Houston, immediately south of Cypress Creek and approximately 2.3 miles west of Interstate Highway 45 in Harris County, Texas 77090.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 109 has applied for a renewal of TPDES Permit No. WQ0011533001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,000,000 gallons per day. The facility is located at 5003 Atascocita Road, Humble, approximately 0.6 mile south of Farm-to-Market Road 1960 and approximately 2.1 miles west of the intersection of Atascocita Road and Farm-to-Market Road 1960 in Harris County, Texas 77346.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 5 has applied for a renewal of TPDES Permit No. WQ0011824003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located at 14950 Cypress Green Drive, approximately 0.5 mile east of the intersection of Spring Cypress Road and Telge Road in Harris County, Texas 77429.

AMC FACILITIES LP has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0014882001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located at 18874 East Hardy Road, Houston, approximately 1000 feet south of the intersection of Hardy Road and Richey Road in Harris County, Texas 77073.

CW MHP LTD has applied for a renewal of TPDES Permit No. WQ0014886001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located at 20810 Cypresswood Drive in Harris County, Texas 77338.

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-201205735
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 7, 2012

♦ ♦ ♦

Notice of Water Rights Application

Notice issued October 30, 2012.

APPLICATION NO. 05-4649C; Luminant Generation Company LLC, 500 N. Akard Street, Dallas, Texas 75201, Applicant, has applied for an amendment to Certificate of Adjudication No. 05-4649 to increase the maximum diversion and discharge rate of contract water; to use the bed and banks of an exempt mining pond on an unnamed tributary of Dry Creek, Sabine River Basin, to convey groundwater and to divert and transport that groundwater via pipeline to Luminant's Martin Lake Steam Electric Station for industrial use in Panola and Rusk Counties; to delete the volume and source of contract water diverted from the Sabine River for discharge into Martin Lake and conveyance of that water using the bed and banks of Martin Creek (Martin Lake) for subsequent diversion and use for industrial purposes; and to modify Special Conditions to reflect those changes. The application and partial fees were received on April 23, 2012. Additional information and fees were received on June 18, June 21, June 25, and June 26, 2012. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 2, 2012. The TCEQ Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions, including but not limited to, the submittal and maintenance of water supply contracts. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Pub-

lic Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201205736
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 7, 2012

♦ ♦ ♦

Texas Facilities Commission

Request for Proposals #303-4-20358

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-4-20358. TFC seeks a five (5) or ten (10) year lease of approximately 3,534 square feet of office space in Marble Falls, Burnet County, Texas.

The deadline for questions is November 30, 2012, and the deadline for proposals is December 7, 2012, at 3:00 p.m. The award date is January 11, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=103159.*

TRD-201205687
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 2, 2012

♦ ♦ ♦

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 October 29, 2012, through November 2, 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 November 7, 2012. The public comment period for this project will close at 5:00 p.m. on December 7, 2012.

FEDERAL AGENCY ACTIONS:

Applicant: Commissioner Neil Fritsch; Location: The project site is located in Carancahua Bay, along a 1,750-liner-foot section of Port Alto Beach, at County Road 307 in Port Alto, Calhoun County, Texas. The project can be located on the USGS quadrangle map titled: Olivia, Texas. NAD 83, Latitude: 28.66348 North; Longitude; -96.40769 West Project Description: The applicant proposes to place 40,000 cubic yards of clean sand from Fordyce Materials, Murphy Plant in Nursery, Texas, 2,659 cubic yards of rock for a groin, and 3,725 cubic yards of rock/riprap for a breakwater into Carancahua Bay. There will be a total of 46,384 cubic yards of fill material placed below the high tide line (HTL) into approximately 2.18 acres of Carancahua Bay for a shoreline restoration project along a 1,750-linear-foot section of Port Alto Beach. As part of the restoration project, the applicant also proposes to place 1,700 cubic yards on top of the berm, which is a ridge running along the shoreline, to raise the elevation, act as a cap to the berm, and reduce salt water intrusion, into the wetlands. All stockpiled material will be placed above HTL. CMP Project No.: 12-0893 Type of Application: U.S.A.C.E. permit application #SWG-2012-00493 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and Section 404 of the Clean Water Act (CWA).

Applicant: City of Port Aransas; Location: The project is located along the Corpus Christi Ship Channel (CCSC), approximately 4,000 feet west of the Port Aransas Ferry Landing, on the west side of Port Aransas, in Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Port Aransas, Texas. NAD 83, Latitude: 27.83471 North; Longitude: -97.08193 North. Project Description: The applicant proposes to repair and modify an existing shoreline protection project that consists of graded riprap revetment. The proposed repair/modification would extend approximately 2,000 feet along the existing exposed toe of the revetment and would involve placing armor stone to permitted lines and grades. This work would also include placement of stone along the upper slope and crest of the existing revetment as needed to meet permitted lines and grades. Due to ongoing erosion and undermining at the site, additional stone would be required to provide a base to support the existing revetment and repairs. The amount of additional stone would vary along the exposed portion of the revetment due to varying levels of damage, but would be the least amount necessary to accomplish the work, and would likely average 3 cubic yards per linear foot. CMP Project No.: 12-0896 Type of Application: U.S.A.C.E. permit application #SWG-2012-00493 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and Section 404 of the Clean Water Act (CWA).

Applicant: U.S. Department of Transportation; Location: The project site is located in the portion of the Neches River known as McFadden Bend, which is adjacent to the Sabine-Neches Waterway (SNWW), and is located along the border of Orange and Jefferson Counties, Texas. Portions of the shoreward part of this project would be located in wetlands adjacent to the Neches River. The project can be located on the U.S.G.S. quadrangle map titled: TX-TERRY, Texas. NAD 83, Latitude: 30.02756 North; Latitude: -94.00197 West. Project Description: The applicant proposes to construct a layberth facility for eight vessels belonging to the U.S. Department of Transportation, Maritime Administration's Ready Reserve Force. The proposed construction activities include dredging of berths and a basin, the construction of piers with associated mooring and breasting structures, the construction of two small craft docks, the installation of a fire protection system, the construction of a wastewater plant, the installation of a buried telecommunication cable (which would involve temporary impacts to 1 acre of wetlands), and the construction of an access road and approach roads (which would involve permanent impacts to 0.39 acre of emergent freshwater wetlands). The proposed basin and berths comprise a 56.8-acre area along the eastern shore of McFadden Bend, adjacent to the SNWW. The applicant is proposing to dredge the basin and berthing area utilizing both mechanical and hydraulic methods to achieve a depth of -36-foot Mean Low Tide.

This would result in the displacement of approximately 800,000 cubic yards of dredge material. The applicant is requesting permission to place those dredge materials into the following Dredged Material Placement Areas (DMPAs): 21, 22, 23, and 24 (a map of the DMPAs is included as Page 15 of 26 in the project plans). The proposed wastewater plant would be constructed in uplands; however, the associated outfall structure would be located beneath the Mean High Water Mark of the Neches River, and the installation of the outfall structure would temporarily impact 0.09 acre of wetlands. The proposed telecommunications cable would run along the northern shore of McFadden Bend, and would be buried 4 feet deep using open trench excavation methods. CMP Project No.: 12-0888 Type of Application: U.S.A.C.E. permit application #SWG-2012-00493 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 (CWA).

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. Andrea Finch, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873 or via email at andrea.finch@glo.texas.gov. Comments should be sent to Ms. Finch at the above address or by email.

TRD-201205749
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: November 7, 2012

♦ ♦ ♦

Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey described as follows:

A Coastal Boundary Survey, dated January 14, 2011 by William E. Merten, Licensed State Land Surveyor, associated with Texas General Land Office, Lease No. SL20120047. The survey delineates the line of Mean High Water on the left bank of Dickinson Bayou, within the William G. Banks Survey, Abstract 36, in the vicinity of 4452 Scenic Drive, Tropical Gardens Subdivision and includes a privately owned island that is remnant of said Banks Survey, all situated in Galveston County.

This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office, by phone at (512) 463-5223, email bill.o'hara@glo.texas.gov, or fax (512) 475-4619.

TRD-201205750
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: November 7, 2012

♦ ♦ ♦

Notice of Invitation for Offer for Renewal of Major Consulting Services

This Notice of Invitation for Offer for Major Consulting Services replaces an earlier notice that appeared in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8634), TRD-201205396. The new notice corrects the date the contract will take effect.

The Texas General Land Office (GLO) is seeking a consultant to provide services related to outreach and communications support and policy and program management under the Community Development Block Grant - Disaster Recovery Program (Program). The consultant will be responsible for maintaining essential relationships with grant recipients and providing advice in GLO policymaking decisions under the Program.

Pursuant to Government Code §2254.029 and §2254.031, the GLO is seeking to enter into a contract for services previously provided by a subcontractor to another GLO vendor. The contract is expected to take effect no earlier than December 4, 2012 and terminate on December 31, 2016.

It is the intent of the GLO to award this contract to CapStar Program Consulting (CSC) subject to the approval of the Governor's Office of Budget and Planning, as required by Government Code §2254.028. CSC has previously provided these consulting services to the GLO with respect to the Program. Further information may be obtained by contacting Joe James, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78701-1495, telephone (512) 463-6293.

TRD-201205707
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: November 5, 2012

♦ ♦ ♦

Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Grapevine	State of the Heart Cardiology, P.L.L.C.	L06513	Grapevine	00	10/23/12
Pampa	Prime Healthcare Services-Pampa, L.L.C. dba Pampa Regional Medical Center	L06510	Pampa	00	10/16/12
San Antonio	Nix Hospitals System, L.L.C. dba Nix Health Care System	L06512	San Antonio	00	10/28/12

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Anderson	National Oilwell Varco, L.P.	L06094	Anderson	08	10/19/12
Arlington	Columbia Medical Center of Arlington Subsidiary, L.P. dba Medical Center of Arlington	L02228	Arlington	76	10/17/12
Austin	Seton Family of Hospitals dba Seton Medical Center Austin	L02896	Austin	132	10/25/12
Brownsville	Columbia Valley Healthcare System, L.P. dba Valley Regional Medical Center	L02274	Brownsville	48	10/26/12
Cypress	North Cypress Medical Center Operating Company, L.L.C. dba North Cypress Medical Center	L06020	Cypress	23	10/23/12
Dallas	Baylor College of Dentistry	L00323	Dallas	41	10/22/12
Dallas	Texas Oncology, P.A. dba Sammons Cancer Center	L04878	Dallas	48	10/26/12
Dallas	Health Texas Provider Network dba Dallas Heart Group	L06501	Dallas	01	10/25/12
El Paso	Tenet Hospitals Limited dba Providence Memorial Hospital	L02353	El Paso	107	10/29/12
El Paso	Cancer Radiation Specialty Clinics of El Paso	L06095	El Paso	08	10/24/12
Elgin	Alliance Geotechnical Group of Austin, Inc.	L06147	Elgin	01	10/25/12
Houston	The Methodist Hospital	L00457	Houston	184	10/29/12
Houston	Protechnics	L03835	Houston	60	10/16/12
Houston	Wyle Laboratories, Inc.	L04813	Houston	12	10/16/12
Houston	Surefire Industries USA, L.L.C.	L06385	Houston	02	10/17/12
Houston	MH/USON Radiation Management Co., L.L.C.	L06408	Houston	05	10/24/12
Houston	MH/USON Radiation Management Co., L.L.C.	L06408	Houston	06	10/26/12
Irving	Dallas-Ft Worth Veterinary Imaging Center dba Animal Imaging	L04602	Irving	11	10/23/12
Jacksonville	East Texas Medical Center Jacksonville	L00169	Jacksonville	43	10/22/12
La Porte	Occidental Chemical Corporation dba Oxy Vinyls, L.P.	L06131	La Porte	02	10/18/12
Longview	Eastman Chemicals Company	L00301	Longview	117	10/25/12
Longview	Diagnostic Clinic of Longview	L06487	Longview	01	10/26/12
Mission	Mission Hospital, Inc. dba Mission Regional Medical Center	L06192	Mission	02	10/19/12
Mont Belvieu	Belvieu Environmental Fuels	L04679	Mont Belvieu	06	10/23/12
Pampa	Prime Healthcare Services - Pampa, L.L.C. dba Pampa Regional Medical Center	L06510	Pampa	01	10/19/12
Plano	Siemens Medical Solutions USA, Inc.	L05884	Plano	06	10/23/12
Plano	Texas Health Resources dba Heart First	L06480	Plano	02	10/24/12

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Plano	Texas Health Resources dba Heart First	L06480	Plano	01	10/23/12
Port Arthur	BASF Total Petrochemicals, L.L.C.	L05914	Port Arthur	04	10/17/12
San Angelo	Russell T. Gully dba SKG Engineering	L05918	San Angelo	05	10/16/12
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	141	10/17/12
Silsbee	Meadwestvaco Texas, L.L.P.	L01095	Silsbee	59	10/17/12
Stafford	Aloki Enterprise, Inc.	L06257	Stafford	24	10/23/12
Throughout TX	Desert NDT, L.L.C.	L06462	Abilene	04	10/18/12
Throughout TX	Radiation Technology, Inc.	L04633	Austin	28	10/23/12
Throughout TX	Terracon Consultants Inc.	L05268	Dallas	39	10/23/12
Throughout TX	DAE & Associates, Ltd. dba Geotech Engineering	L03923	Houston	22	10/11/12
Throughout TX	IRISNDT Matrix Corporation	L06435	Houston	03	10/18/12
Throughout TX	Multi Phase Meters, Inc.	L06458	Houston	04	10/19/12
Throughout TX	Dialog Wireline Services, L.L.C.	L06104	Kilgore	08	10/23/12
Throughout TX	J. Z. Russell Industries, Inc.	L06459	La Porte	03	10/22/12
Throughout TX	Nabors Completion & Production Services Co.	L06375	Midland	02	10/25/12
Throughout TX	Spectrum Tracer Services, L.L.C.	L06361	Odessa	01	10/16/12
Valley View	Pumpco Energy Services, Inc.	L06507	Valley View	01	10/16/12
Webster	Texas Oncology, P.A. dba Deke Slayton Memorial Cancer Center	L06465	Webster	01	10/24/12

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Fort Worth	Texas Health Harris Methodist Hospital Fort Worth	L01837	Fort Worth	133	10/24/12
Throughout TX	Coastal Testing Laboratories, Inc.	L01945	Houston	30	10/29/12
Throughout TX	City of Killeen	L04668	Killeen	11	10/25/12

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Cornerstone Testing and Engineering, Inc.	L04725	Amarillo	09	10/17/12
Pampa	Signature Pampa Hospital, L.P. dba Pampa Regional Medical Center	L03123	Pampa	25	10/16/12
San Antonio	Accord Medical Management, L.P. dba Nix Health Care System	L03531	San Antonio	34	10/23/12

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201205700
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: November 5, 2012

♦ ♦ ♦

Texas Department of Housing and Community Affairs

HOME Investment Partnerships Program, 2012 HOME Single Family Development Activity, Notice of Funding Availability

(1) Summary.

The Texas Department of Housing and Community Affairs (the "Department" or "TDHCA") announces the availability of approximately $1,291,353 in funding from the HOME Investment Partnerships Program for Community Housing Development Organizations (CHDOs) to develop new and rehabilitate existing single family housing for low-income Texans. The availability and use of these funds is subject to the Department's HOME Program Rule at 10 TAC Chapter 23, concerning Single Family HOME Program ("HOME Rules") in effect at the time the application is submitted, the Department's Single Family Programs Umbrella Rule at 10 TAC Chapter 20 ("Single Family Rules"), the federal HOME regulations governing the HOME program (24 CFR Part 92), and Texas Government Code, Chapter 2306. Other federal regulations may also apply including, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §84.42 and §85.36 for conflict of interest, 24 CFR Part 5, and Subpart A for fair housing. U.S. Department of Housing and Urban Development (HUD) funded assistance connected to construction, rehabilitation, demolition, or other public construction must comply with §3, a HUD requirement (24 CFR Part 135). HUD funds invested in housing and community development activities include among their purposes to give, to the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, job training, employment, contracting and other economic opportunities to §3 residents and §3 business concerns. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

(2) Allocation of HOME Funds.

(a) These funds are made available through the Department's allocation of HOME funds from HUD. These funds have been programmed to create housing options affordable to individuals and families who might otherwise purchase substandard housing. All funds distributed under this Notice of Funding Availability (NOFA) are to be used for the creation of affordable housing for low-income Texans earning 80% or less of the Area Median Family Income (AMFI).

(b) In accordance with 10 TAC §23.23 (relating to Reservation System Participant Review Process), complete applications made under this NOFA will be reviewed and, except in instances of termination in accordance with 10 TAC §23.23(c), Reservation System Agreements will be drafted and presented to the Executive Director for approval in the order in which they are received. $1,291,353 will be available solely through the Reservation System. Reservation System Participants who were awarded a Reservation System Agreement under the 2011 Single Family Development NOFA and successful applicants under the 2012 HOME Single Family Development NOFA will have access to the funds on a first come, first served basis. Balances available for project reservations will be maintained by the Department and can be accessed at www.tdhca.state.tx.us.

(c) Approval for participation in the Reservation System is not a guarantee of funding availability and the Department reserves the right to withdraw funds from the Reservation System.

(d) Applications for Reservation System Participation will be accepted until 5:00 p.m. on **March 15, 2013.**

(e) Reservations for funding will be approved on a first come, first served basis. Reservations for funding available under this NOFA will be accepted until **August 9, 2013,** or until all funds available under this NOFA have been reserved. Any funds available as of August 9, 2013 may be re-programmed.

(f) Reservation System Participants with an active Reservation System Participation Agreement may be eligible to reserve funds made available under subsequent NOFAs in accordance with the current published NOFA.

(g) The Department provides HOME funds as a 0% interest loan to eligible entities for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC §23.71 (relating to Single Family Development (SFD) Program Requirements).

(h) Each CHDO that submits a minimum of three (3) units under the Reservation System may also be eligible to receive a grant of up to $50,000 for CHDO Operating Expenses, which are defined in 24 CFR §92.208, and includes salaries, wages, and other employee compensation and benefits, such as employee education, training, and travel, rent, utilities, communication costs, taxes, insurance, equipment, materials, and supplies.

(3) Eligible and Prohibited Activities.

(a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205 and §92.254 and at 10 TAC §§23.70 - 23.72 (relating to Single Family Development Program), which involve the construction of single family affordable housing.

(b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214.

(c) Development funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the State of Texas Consolidated Plan One-Year Action Plan.

(d) The CHDO must act as the owner, sponsor or developer of the project.

(4) Eligible and Ineligible Applicants. Eligible Applicants are Community Housing Development Organizations (CHDOs) which meet the requirements of 10 TAC §23.80 (relating to Application Procedures for Certification of Community Housing Development Organization (CHDO)) at the time of application. CHDOs must apply for CHDO certification with each request to extend a Reservation System Agreement. CHDOs must be certified as CHDOs by TDHCA. **CHDO Certifications from other Participating Jurisdictions may not be substituted for TDHCA CHDO Certification.**

(5) Public Notifications. Applicants must request a list of Neighborhood Organizations on record with the county and state whose boundaries include proposed Development sites. No later than fourteen (14) days prior to submission of a Reservation or grouping of Reservations, the Applicant must e-mail, fax or mail with registered receipt a completed Neighborhood Organization Request letter to the local elected official, as applicable, based on where the Development is proposed to be located. If the Development is located in an area that has a district based on locally elected officials, or both at-large and district based

locally elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located in an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or it's ETJ, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format.

The Applicant must submit all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state), with the Reservation or grouping of Reservations to be set-up.

The Department shall publicly notify all individuals and entities as required by Texas Government Code, §2306.1114.

(6) Application and Threshold Criteria. An Application must be compliant with the Threshold requirements in 10 TAC §23.24 (relating to General Threshold and Selection Criteria) and §23.70 (relating to Single Family Development (SFD) Threshold and Selection Criteria) and the Threshold Criteria listed in this section at the time of Application submission unless specifically indicated otherwise. In addition, an Application must be consistent with the Program and Administrative requirements in 10 TAC Chapter 23.

(a) Financing Documentation. A written narrative describing the financing plan for the units including the funding sources for the construction of the units. Bona fide commitment letters or term sheets for all sources of construction financing must be provided. If other sources of down payment assistance are proposed, commitment letters evidencing these sources must be provided.

(b) Application Certifications. All Applicants may be required to certify to compliance with the following:

(i) Affirmative Marketing (24 CFR §92.351);

(ii) Davis-Bacon Act (24 CFR §92.354);

(iii) Environmental standards (24 CFR Parts 50 and 58);

(iv) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (49 CFR Part 24) and Section 104(d) of the Housing and Community Development Act of 1974;

(v) Section 3 of the Housing and Urban Development Act of 1968 at 24 CFR Part 135; and

(vi) Lead Safe Housing Rule (24 CFR Part 35).

(vii) Other certifications may be required as specifically stated in the Application Submission Procedures Manual (ASPM) current at the time of Application.

(viii) Audit Certification. An Applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of Application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the Application deadline for funds or other assistance per 10 TAC §1.3(b) (relating to Delinquent Audits and Related Issues).

(c) CHDO Certification. CHDO Certification will be awarded in accordance with the rules and procedures as set forth in the HOME rules at 10 TAC §23.80.

(i) CHDO Certification Applications must be submitted with each application for Single Family Development funds.

(ii) CHDO Certification Applications must meet the requirements of 10 TAC §23.80 at the time of Application submission.

(7) Review Process. All Applications will be reviewed in accordance with 10 TAC §23.23.

(8) Application Submission.

(a) **All applications submitted under this NOFA must be received on or before 5:00 p.m. on March 15, 2013.** The Department will accept applications from 8:00 a.m. to 5:00 p.m. each business day, excluding federal and state holidays, from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Abby Versyp at (512) 475-0908 or via e-mail at abby.versyp@tdhca.state.tx.us.

(b) Applicants must submit the Application materials as detailed in the Final ASPM in effect at the time the application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the Final ASPM in effect at the time the application is submitted.

(c) The application consists of several parts as further described in the Final ASPM. A complete application for each proposed development must be submitted in an electronic PDF format on a recordable compact disc (CD-R). Incomplete applications or improperly compiled applications will not be accepted. Applicants must submit the application materials as detailed in the Final ASPM in effect at the time the application is submitted.

(d) All Application materials including manuals, NOFA, activity guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

(e) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $300.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Texas Government Code, §2306.147(b) requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not a reimbursable cost under the HOME Program.

(f) Applications must be sent **via overnight delivery to:**

HOME Division

Texas Department of Housing and Community Affairs

Attn: Abby Versyp

221 East 11th Street

Austin, Texas 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Abby Versyp

Post Office Box 13941

Austin, Texas 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Single Family Development Activity. For proper completion of the Application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-201205743
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 7, 2012

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by AMERICAN LABOR LIFE INSURANCE COMPANY, a foreign Life, Accident and/or health company. The home office is in Lancaster, Pennsylvania.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201205719
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: November 6, 2012

♦ ♦ ♦

Company Licensing

Application for admission to the State of Texas by ATX PREMIER INSURANCE COMPANY, a foreign Fire and or Casualty company. The home office is in Indianapolis, Indiana.

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-201205720
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: November 6, 2012

♦ ♦ ♦

Company Licensing

Application for admission to the State of Texas by SMART INSURANCE COMPANY, a foreign Life, Accident and/or Health company. The home office is in Phoenix, Arizona.

Application to change the name of PEARLE VISION MANAGED CARE - HMO OF TEXAS INC. to EYEMED VISION CARE HMO OF TEXAS INC., a Domestic Health Maintenance Organization (HMO) company. The home office is in Dallas, 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-201205721
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: November 6, 2012

♦ ♦ ♦

Notice of Public Hearing, 2012 Texas Workers' Compensation Biennial Rate Hearing

Docket No. 2746

To: All insurance companies, corporations, exchanges, mutuals, reciprocals, associations, Lloyds, or other insurers writing workers' compensation and employers' liability insurance in the State of Texas, their agents and representatives, and the public generally

Subject and Scope

The commissioner of insurance will hold a public hearing to review rates charged by insurers for workers' compensation insurance in this state. The hearing will begin at 9:30 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas on December 17, 2012.

The commissioner will consider:

* the impact of House Bill 7, 79th Legislature, Regular Session, 2005 (HB 7) on workers' compensation rates and premiums;

* the participation of employers in certified workers' compensation health care networks;

* the participation of Texas businesses in the workers' compensation system; and

* any other factors that may have affected workers' compensation in Texas since 2005.

Applicable Authority, Jurisdiction, Statutes, and Rules

The commissioner has jurisdiction over this hearing pursuant to Texas Insurance Code Chapter 2053, §31.021 and §2051.002, and Title 5 of the Texas Labor Code.

Texas Insurance Code §2053.056(a) requires the commissioner to conduct a public hearing each biennium to review rates to be charged for workers' compensation insurance written in this state.

Pursuant to §2053.056(a) of the Texas Insurance Code, the public hearing is not a contested case as defined by Texas Government Code §2001.003. Chapter 2053 of the Texas Insurance Code governs this proceeding.

The commissioner will consider written and oral testimony presented and filed by insurers, groups, trusts, agents, consumers, and others related to all aspects of writing workers' compensation insurance in Texas.

Requested Information

The commissioner is interested in receiving input in the following areas:

* the impact of HB 7 on workers' compensation rates and premiums paid by Texas employers, including the projected workers' compensation rate and premium savings realized by employers as a result of the implementation of certified workers' compensation health care networks

* the effect of HB 7 legislative reforms on market competition, carrier loss ratios and combined ratios, and the use and effect of individual risk premium variations

* the percentage of employers who provide workers' compensation insurance coverage for their employees

* the participation of employers in certified workers' compensation health care networks, with particular emphasis on small and medium-sized employers

* the factors affecting changes in workers' compensation losses and premiums in Texas since 2005, including information regarding:

- changes in claim frequency;

- changes in indemnity and medical costs;

- the use of carrier cost-containment and return-to-work strategies;

- the impact of the implementation of return-to-work guidelines;

- treatment guidelines and medical fee guidelines; and

- any other factors influencing workers' compensation losses and premiums since 2005.

* a comparison of workers' compensation experience and average rate and premium levels in Texas with those in other states, and explanations for any differences

Testimony and Exhibits

If you wish to comment on the matters to be considered, Texas Department of Insurance (TDI) will accept written testimony and exhibits prior to the public hearing. TDI will also accept interested persons' oral and written testimony at the hearing. Please submit two copies of your written comments no later than 5:00 p.m. on December 10, 2012. Send one copy to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to J'ne Byckovski, Chief Actuary, Property and Casualty Actuarial Office, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

Deadlines Subject to Change

The commissioner may change any of the deadlines in this notice, subject to the applicable statutes and rules.

TRD-201205742
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: November 7, 2012

♦ ♦ ♦

Texas Lottery Commission

Correction of Error

The Texas Lottery Commission filed for publication Instant Game Number 1506 "Star Trek™". The document was published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8889). Sections 2.2.G and 2.2.L are revised. In both sections, the term "WINNING NUMBER" is changed to "WINNING NUMBERS." No other sections are affected by this revision. The sections are revised, as follows.

"G. No duplicate WINNING NUMBERS will appear on a Ticket."

"L. On "planet" winning Tickets, no YOUR NUMBERS will match any of the WINNING NUMBERS."

TRD-201205733

♦ ♦ ♦

Instant Game Number 1487 "Tons of Fun"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1487 is "TONS OF FUN". The play style is "match 3 of X".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1487 shall be $1.00 per Ticket.

1.2 Definitions in Instant Game No. 1487.

A. Display Printing - That area of the instant game Ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $40.00, $50.00, $100, $200, $1,000 and MOUSE 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. 1487 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$1,000	ONE THOU
MOUSE SYMBOL	WINX2

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. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $40.00, $100 or $200.

H. High-Tier Prize - A prize of $1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1487), a seven (7) digit pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1487-0000001-001.

K. Pack - A pack of "TONS OF FUN" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TONS OF FUN" Instant Game No. 1487 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 "TONS OF FUN" Instant Game is determined once the latex on the Ticket is scratched off to expose 6 (six) Play Symbols. If a player reveals 3 matching prize amount Play Symbols, the player wins that amount. If a player reveals 2 matching prize amount Play Symbols and a "MOUSE" Play Symbol, the player wins DOUBLE that amount! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 6 (six) 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 6 (six) 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 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 6 (six) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets will not have identical play data, spot for spot.

B. No more than two pairs of matching Play/Prize Symbols on a Ticket.

C. No more than three matching Play/Prize Symbols on a Ticket.

D. A Ticket may only win once.

E. No more than one pair of matching Play/Prize Symbols on a Ticket that contains the "MOUSE" (doubler) Play Symbol.

F. The "MOUSE" (doubler) Play Symbol will only appear as dictated by the prize structure.

G. The top prize will appear on every Ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "TONS OF FUN" Instant Game prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $40.00, $100 or $200, 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 $40.00, $100 or $200 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 "TONS OF FUN" Instant Game prize of $1,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TONS OF FUN" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "TONS OF FUN" 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 "TONS OF FUN" 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 12,000,000 Tickets in the Instant Game No. 1487. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1487 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,440,000	8.33
$2	1,120,000	10.71
$3	120,000	100.00
$4	80,000	150.00
$5	80,000	150.00
$6	80,000	150.00
$10	60,000	200.00
$20	40,000	300.00
$40	5,500	2,181.82
$100	1,000	12,000.00
$200	450	26,666.67
$1,000	150	80,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.96. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1487 with-

out 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 Ticket 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. 1487, 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-201205705
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 5, 2012

♦ ♦ ♦

Instant Game Number 1491 "Super 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1491 is "SUPER 7'S". The play style is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1491 shall be $1.00 per Ticket.

1.2 Definitions in Instant Game No. 1491.

A. Display Printing - That area of the instant game Ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 7 SYMBOL, 8, 9, 10, 11, 12, 13, 14, 15, $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $7.00, $10.00, $14.00, $20.00, $21.00, $35.00, $70.00, $100, and $777.

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. 1491 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7 SYMBOL	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$7.00	SEVEN$
$10.00	TEN$
$14.00	FORTN
$20.00	TWENTY
$21.00	TWY ONE
$35.00	THY FIV
$70.00	SEVENTY
$100	ONE HUND
$777	7 HUND 77

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. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $7.00, $14.00, $20.00, or $21.00.

G. Mid-Tier Prize - A prize of $35.00, $70.00, or $100.

H. High-Tier Prize - A prize of $777.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1491), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1491-0000001-001.

K. Pack - A pack of "SUPER 7'S" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SUPER 7'S" Instant Game No. 1491 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 "SUPER 7'S" Instant Game is determined once the latex on the Ticket is scratched off to expose 14 (fourteen) Play Symbols. If a player reveals a "7" Play Symbol in the play area, the player wins the PRIZE below it. 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 14 (fourteen) 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 14 (fourteen) 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 14 (fourteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 14 (fourteen) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Play Symbols on a Ticket.

C. No duplicate non-winning Prize Symbols on a Ticket.

D. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

E. The top prize will appear on every Ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER 7'S" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $7.00, $14.00, $20.00, $21.00, $35.00, $70.00, or $100, 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 $35.00, $70.00, or $100 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 "SUPER 7'S" Instant Game prize of $777, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPER 7'S" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is

not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "SUPER 7'S" 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 "SUPER 7'S" 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 11,040,000 Tickets in the Instant Game No. 1491. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1491 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	956,800	11.54
$2	1,104,000	10.00
$4	184,000	60.00
$5	73,600	150.00
$7	147,200	75.00
$14	36,800	300.00
$20	10,810	1,021.28
$21	3,450	3,200.00
$35	1,380	8,000.00
$70	3,220	3,428.57
$100	690	16,000.00
$777	230	48,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.38. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1491 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 Ticket 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. 1491, 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-201205734
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 7, 2012

♦ ♦ ♦

Instant Game Number 1536 "10X Mega Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1536 is "10X MEGA MONEY". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1536 shall be $10.00 per Ticket.

1.2 Definitions in Instant Game No. 1536.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 6, 7, 8, 9, 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, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 5X SYMBOL, 10X SYMBOL, BURST SYMBOL, MONEY BAG SYMBOL, $10.00, $15.00, $20.00, $30.00, $50.00, $75.00, $100, $200, $1,000, $10,000, $100,000 and $1,000,000.

D. Play Symbols 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. 1536 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
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
41	FTO
42	FFT
43	FTE
44	FRF
45	FRV
46	FRS
47	FSN
48	FRE

49	FNI
50	FTY
5X SYMBOL	TIME$5
10X SYMBOL	TIME$10
BURST SYMBOL	WIN$100
MONEY BAG SYMBOL	DOUBLER
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$75.00	SEVENTY FIV
$100	ONE HUND
$200	TWO HUND
$1,000	ONE THOU
$10,000	TEN THOU
$100,000	HUN THOU
$1,000,000	1 MILLION

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There 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. Low-Tier Prize - A prize of $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $30.00, $75.00, $100 or $200.

H. High-Tier Prize - A prize of $1,000, $10,000, $100,000 or $1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1536), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 1536-0000001-001.

K. Pack - A Pack of "10X MEGA MONEY" Instant Game Tickets contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "10X MEGA MONEY" Instant Game No. 1536 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 "10X MEGA MONEY" Instant Game is determined once the latex on the Ticket is scratched off to expose 65 (sixty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "MONEY BAG" Play Symbol, the player wins DOUBLE the prize amount for that Play Symbol. If a player reveals a "BURST" Play Symbol, the player wins $100 instantly. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the amount for that Play Symbol. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the amount for that Play 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 65 (sixty-five) 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 65 (sixty-five) 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 65 (sixty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 65 (sixty-five) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to thirty (30) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical Play and Prize Symbol patterns. Two (2) Tickets have identical Play and Prize Symbol patterns if they have the same symbols in the same positions.

C. Each Ticket will have five (5) unique "WINNING NUMBERS" Play Symbols.

D. Non-winning YOUR NUMBERS Play Symbols will all be different.

E. Non-winning Prize Symbols will never appear more than four (4) times.

F. The "MONEY BAG", "BURST", "5X" or "10X" Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

G. The "MONEY BAG", "BURST", "5X" and "10X" Play Symbols will only appear as dictated by the prize structure.

H. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

I. The "BURST" Play Symbol will always have a corresponding prize amount of $100.

J. The top Prize Symbol ($1,000,000) will appear on every Ticket unless otherwise restricted.

K. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "10X MEGA MONEY" Instant Game prize of $10.00, $15.00, $20.00, $25.00, $30.00, $75.00, $100 or $200, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $30.00, $75.00, $100 or $200 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 "10X MEGA MONEY" Instant Game prize of $1,000, $10,000, $100,000 or $1,000,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "10X MEGA MONEY" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "10X MEGA MONEY" 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 "10X MEGA MONEY" 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 28,080,000 Tickets in the Instant Game No. 1536. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1536 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	3,931,200	7.14
$15	2,246,400	12.50
$20	1,965,600	14.29
$25	561,600	50.00
$30	446,940	62.83
$75	561,600	50.00
$100	33,696	833.33
$200	7,956	3,529.41
$1,000	2,340	12,000.00
$10,000	200	140,400.00
$100,000	10	2,808,000.00
$1,000,000	10	2,808,000.00

*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 2.88. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1536 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. 1536, 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-201205706
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 5, 2012

♦ ♦ ♦

Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Studsvik (TLLRWDCC #1-0019-00)

151 T.C. Runnion Road

Erwin, TN 37650

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by November 28, 2012. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

3616 Far West Blvd., Suite 117 #294

Austin, Texas 78731

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201205690
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: November 2, 2012

♦ ♦ ♦

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Studsvik (TLLRWDCC #1-0020-00)

151 T.C. Runnion Road

Erwin, TN 37650

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by November 28, 2012. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

3616 Far West Blvd., Suite 117 #294

Austin, Texas 78731

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201205691
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: November 2, 2012

♦ ♦ ♦

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Thomas Gray & Associates (TLLRWDCC #1-0021-00)

3106 S. Faith Home Road

Turlock, CA 95380

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by November 28, 2012. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

3616 Far West Blvd., Suite 117 #294

Austin, Texas 78731

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201205692
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: November 2, 2012

♦ ♦ ♦

Texas Department of Public Safety

Request for Qualifications

The Texas Department of Public Safety (the department) issues this request for qualifications (RFQ) for the purpose of identifying qualified law firms interested in providing legal representation to the department on matters related to certain filings with the Federal Communications Commission (FCC). Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before outside counsel may be employed.

Description: The State of Texas was authorized under FCC Order (DA 12-1432), PS Docket No. 06-229, adopted on August 31, 2012, to deploy a regional public safety wireless broadband network in the 700 MHz public safety broadband spectrum in Harris County. The authorization is conditioned on use of the 3GPP Long Term Evolution (LTE) technology platform and on adherence to other requirements. The governing framework for the deployment and operation of the network is the First Responder Network Authority (FirstNet), an independent authority within the Department of Commerce. FirstNet holds the spectrum license for the network, and is charged with taking "all actions necessary" to build, deploy, and operate the network, in consultation with federal, state, tribal and local public safety entities, and other key stakeholders.

The department intends to engage outside counsel to advise and represent the agency in connection with the development of the statewide public safety wireless broadband network, and related interoperability concerns, by drafting, filing, and presenting to the FCC, National Telecommunications and Information Administration (NTIA), and FirstNet any necessary application, report, response, comment, or correspondence. Outside counsel will provide advice to the department on an as needed, as requested by the department basis in these areas, including providing legal advice and support on comments/answers in response to the FCC, NTIA, or FirstNet's request for comments regarding the development of similar networks or interoperable communications in Texas or other states, and any questions/issues regarding such networks or interoperability in general, if such comments/answers further the interests of the department. The scope further includes such services as the department determines are necessary to represent the department through the conclusion of the development of the statewide public safety wireless broadband network, which is defined as the final action required by FirstNet regarding the network. The department invites responses to this RFQ from qualified firms for the provision of legal services under the direction and supervision of the department's Office of General Counsel. Outside counsel engaged by the department must demonstrate competence and expertise in the foregoing areas. Extensive prior experience in providing legal services related to public safety wireless broadband networks before the FCC, NTIA, FirstNet, or the Public Safety Spectrum Trust (PSST) is required. Advice on specific application or interpretation of Texas law is not anticipated.

Responses: Responses to the RFQ may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFQ should include at least the following information: (1) a description of the firm's qualifications for performing legal services in the matters described previously, the names, experience, education, and expertise of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, locations, and resources of the firm's offices which might serve the department's requirements, including a summary of physical resources that would be assigned to the department, and an organizational chart indicating the relevant areas of responsibility of each attor-

ney assigned to work on these matters; (3) fee information (in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosure of potential conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the department or to the State of Texas or any of its agencies); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Office of the Attorney General of the State of Texas.

Additional Information: The department is particularly concerned with issues pertaining to any potential conflict of interest. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts. If the respondent currently represents contractors or other private entities in relation to these matters, respondent must disclose this information and address how any potential conflicts would be handled in the future.

A copy of the standard outside counsel contract is available upon request. Certain terms of the contract may be negotiated by the parties, subject to approval by the Office of the Attorney General.

Format and Person to Contact: Interested respondents shall submit responses to this RFQ by mail or other delivery, marked "Response to Request for Qualifications," and addressed to D. Phillip Adkins, General Counsel, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, Texas 78752. For questions, contact Pam Smith, Managing Attorney, Contracting, at (512) 424-5936.

Deadline for Submission of Response: All responses to this RFQ must be received by the Texas Department of Public Safety in the Office of General Counsel no later than 5:00 p.m. on December 19, 2012.

TRD-201205737
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Filed: November 7, 2012

♦ ♦ ♦

Public Utility Commission of Texas

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

The Public Utility Commission of Texas received an application on October 29, 2012, to amend a state-issued certificate of franchise authority (SICFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Windjammer Communication, LLC to Terminate Its State-Issued Certificate of Franchise Authority, Project Number 40884.

The requested amendment is to relinquish SICFA Number 90039.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 40884.

TRD-201205708
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2012

♦ ♦ ♦

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

The Public Utility Commission of Texas received an application on November 1, 2012, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Allegiance Communications, LLC to Amend Its State-Issued Certificate of Franchise Authority, Project Number 40918.

The requested amendment is to expand the service area footprint to include the municipalities of DeKalb, Hooks and Miles, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 40918.

TRD-201205712
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2012

♦ ♦ ♦

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

The Public Utility Commission of Texas received an application on November 1, 2012, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of XIT Communications to Amend Its State-Issued Certificate of Franchise Authority; to add City of Dalhart, Project Number 40921.

The requested amendment is to expand the service area footprint to include the municipality of Dalhart, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 40921.

TRD-201205713
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2012

♦ ♦ ♦

Notice of Application for Amendment to Certificate of Operating Authority

On October 31, 2012, an application was filed by TCG Dallas to relinquish its certificate of operating authority (SPCOA) Number 50020.

Docket Title and Number: Application of TCG Dallas to Relinquish its Certificate of Operating Authority, Docket Number 40896.

The Application: TCG Dallas' application in this proceeding results from a *pro forma,* intracorporate restructuring involving only AT&T affiliates. In connection with a corporate restructuring, TCG Dallas, along with Teleport Communications Houston, Inc. (Teleport Houston) will comprise a new entity, Teleport America, and will allow, among other things, AT&T to realize the administrative efficiencies incident to a less complex and more flexible corporate structure, reduce costs of maintaining multiple entities, and enable a greater ability to compete in affected markets. The requested effective date of the restructuring is on or about December 31, 2012, and will be entirely seamless and transparent to customers whose services and associated rates, terms, and conditions of service will not be affected. Once the transaction is complete, the management of services provided by TCG Dallas and Teleport Houston will be provided by Teleport America in the same fashion and will rely upon current resources.

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 November 23, 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 40896.

TRD-201205710
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2012

♦ ♦ ♦

Notice of Application for Amendment to Certificate of Operating Authority

On October 31, 2012, an application was filed by Teleport Communications Houston, Inc. to relinquish its certificate of operating authority (COA) Number 50021.

Docket Title and Number: Application of Teleport Communications Houston, Inc. to Relinquish its Certificate of Operating Authority, Docket Number 40897.

The Application: Teleport Communications Houston, Inc.'s (Teleport Houston) application in this proceeding results from a *pro forma,* intracorporate restructuring involving only AT&T affiliates. In connection with a corporate restructuring, Teleport Houston along with TCG Dallas will comprise a new entity, Teleport America, and will allow, among other things, AT&T to realize the administrative efficiencies incident to a less complex and more flexible corporate structure, reduce costs of maintaining multiple entities, and enable a greater ability to compete in affected markets. The requested effective date of the restructuring is on or about December 31, 2012, and will be entirely seamless and transparent to customers whose services and associated rates, terms, and conditions of service will not be affected. Once the transaction is complete, the management of services provided by Teleport Houston and TCG Dallas will be provided by Teleport America in the same fashion and will rely upon current resources.

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 November 23, 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 40897.

TRD-201205711
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2012

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On November 2, 2012, New Edge Networks, Inc. (applicant) filed an application to amend a service provider certificate of operating authority (SPCOA) Number 60282. Applicant seeks approval for (1) a change in name to EarthLink Business, LLC; and (2) certain *pro forma* intra-company changes.

The Application: Application of New Edge Networks, Inc. for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 40923.

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 November 21, 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 40923.

TRD-201205714
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2012

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On November 5, 2012, First Communications, LLC d/b/a Ohio First Communications LLC (Applicant) filed an application to amend a service provider certificate of operating authority (SPCOA) Number 60772. Applicant seeks approval to transfer ownership/control to Summit Data Services, Inc.

The Application: Application of First Communications, LLC d/b/a Ohio First Communications LLC for Amendment to a Service Provider Certificate of Operating Authority; Docket Number 40933.

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 November 23, 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 40933.

TRD-201205731

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 6, 2012

♦ ♦ ♦

Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of a petition filed with the Public Utility Commission of Texas on October 31, 2012, for designation as an eligible telecommunications carrier (ETC) in the State of Texas for the limited purpose of offering lifeline service to qualified households, pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Boomerang Wireless, LLC for Designation as an Eligible Telecommunications Carrier in the State of Texas for the Limited Purpose of Offering Lifeline Service. Docket Number 40894.

The Application: Boomerang seeks ETC designation solely to provide lifeline service to qualifying Texas households by providing the services supported by and participating in the Low Income Programs of the Universal Service Fund for the purpose of receiving federal universal service support for wireless services. It will not seek access to funds from the federal universal service fund for the purpose of providing service to high cost areas. Boomerang requests ETC designation for wireless operations in all the requested wire centers of the non-rural ILECs AT&T Texas, Verizon and Central Telephone Company of Texas d/b/a CenturyLink. A list of requested wire centers is attached to the application as Exhibit A-1. Boomerang is a common carrier and reseller of commercial mobile radio service (CMRS). Its underlying carriers are Sprint and Verizon Wireless and other GSM carriers.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by December 7, 2012. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989 to reach the commission's toll-free number (888) 782-8477. All comments should reference Docket Number 40894.

TRD-201205709
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2012

♦ ♦ ♦

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 17, 2012, to amend a certificate of convenience and necessity for a proposed transmission line in Midland County, Texas.

Docket Style and Number: Application of Sharyland Utilities, L.P. to Amend a Certificate of Convenience and Necessity for the 1956-Midkiff to Driver 138-kV Transmission Line within Midland County. Docket Number 40645.

The Application: The application of Sharyland Utilities, L.P. (Sharyland) is designated as the 1956-Midkiff to Driver 138-kV Transmission Line Project. The facilities include construction of two new 138-kV transmission lines, constructed on steel or concrete monopole structures, which will provide a loop connection between Sharyland's existing 1956 to Midkiff 138-kV transmission line and a proposed Driver Substation and then back again. If approved, two separate transmission lines will be constructed parallel to one another along the same general route. The total estimated cost for the project ranges from approximately $13,786,000 to $15,376,000 depending on the route chosen. The proposed project is presented with seven alternate routes. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 40645.

TRD-201205730
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 6, 2012

♦ ♦ ♦

Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to P.U.C. Substantive Rule §26.208(h).

Docket Title and Number: Application of Verizon Southwest to Discontinue Asynchronous Transfer Mode (ATM) Service and Frame Relay Service Contained in Its Texas IntraLata Interexchange Services Tariff TXG, Texas Facilities for State Access Tariff TXG and Texas OOF Tariff No. 1; Docket Number 40869.

The Application: On October 18, 2012, pursuant to P.U.C. Substantive Rule §26.208(h), Verizon Southwest (Verizon SW or the Applicant) filed an application with the commission to discontinue and grandfather Asynchronous Transfer Mode (ATM) Service and Frame Relay Service. Verizon SW stated that the vendors producing the underlying network switches which support both ATM and Frame Relay Services, have declared their equipment as being discontinued by the manufacturer. As a result of the discontinued equipment, Verizon SW is discontinuing their services due to lack of vendor support. The Applicant also stated that existing customers may continue to subscribe to ATM/Frame Relay services, but will be prohibited from installing additional circuits, and existing term-commitment renewal options will be removed so that all customers eventually lapse into month-to-month service arrangements for Frame Relay Service and one-year service arrangements for ATM service. In addition, Verizon SW stated that the termination liability for customers disconnecting circuits will be eliminated. The proceedings were docketed and suspended on October 22, 2012, to allow adequate time for review and intervention.

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) at (800) 735-2989. All inquiries should reference Docket Number 40869.

TRD-201205724
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 6, 2012

♦ ♦ ♦

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

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 5, 2012, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Riviera Telephone Company, Inc. for Approval of Extended Local Calling Service Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 40935.

The Application: Riviera Telephone Company, Inc. (Riviera Telephone or the Applicant) filed an application for revisions to its Local Exchange Tariff. Riviera Telephone proposed to offer extended one-way local calling from its existing exchanges of Riviera, Loyola Beach, Sarita, and Armstrong to the remaining exchanges in the Corpus Christi local access and transport area at no charge. Riviera Telephone proposed an effective date of December 1, 2012. The estimated annual revenue decrease recognized by the Applicant is $28,800 of its gross annual intrastate revenues. The Applicant has 1,032 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by December 3, 2012, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 3, 2012. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 40935.

TRD-201205732
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 6, 2012

♦ ♦ ♦

Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Mount Pleasant, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Mount Pleasant Regional Airport during the course of the next five years through multiple grants.

CURRENT PROJECT: City of Mount Pleasant.

TxDOT CSJ No.: 1319MTPLS.

Scope: Provide engineering/design services to construct two 10-unit hangars and construct new hangar access taxiway for new hangars.

The DBE goal for the current project is 7 percent. TxDOT Project Manager is Paul Slusser.

Future scope work items for engineering/design services within the next five years may include the following:

1. Rehabilitate apron
2. Rehabilitate and mark Runway 17-35
3. Relocate segmented circle and wind sock
4. Improve RSA/drainage to C-II standards
5. Rehabilitate taxiway and hangar access taxiway

The City of Mount Pleasant reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at

www.txdot.gov/inside-txdot/division/aviation/projects.html

by selecting "Mount Pleasant Regional Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

www.txdot.gov/inside-txdot/division/aviation/projects.html.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight eight and one half inch by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven inches by seventeen inches and may be folded to an eight and one half inch by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT web site as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Seven completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **December 18, 2012,** 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at

www.txdot.gov/inside-txdot/division/aviation/projects.html

under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Edie Stimach, Grant Manager. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201205746
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 7, 2012

♦ ♦ ♦

Aviation Division - Request for Qualifications for Professional Engineering Services

The City of Caddo Mills, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Caddo Mills Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of Caddo Mills.

TxDOT CSJ No.: 1301CADDO.

Scope: Provide engineering/design services to clean and seal joints and mark Runway; clean and seal taxiway joints; taxiway culvert and pavement repair; and drainage system inventory, evaluation/repair.

The DBE goal for the current project is 4 percent. TxDOT Project Manager is Eusebio Torres, P.E.

Future scope work items for engineering/design services within the next five years may include the following:

1. Rehabilitate Apron
2. Install perimeter fencing
3. Construct 8-unit T-Hangar
4. Rehabilitate auto parking
5. Construct drainage improvements for apron
6. Install PAPI-2 for Runway 17-35
7. Build Terminal Building Level 2
8. Construct Hangar Access Taxiway
9. Install fuel facility (10,000 gal 100 LL)

The City of Caddo Mills reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at

www.txdot.gov/business/opportunities/projects.html

by selecting "Caddo Mills Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

www.txdot.gov/business/opportunities/projects.html.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight eight and one half inch by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven inches by seventeen inches and may be folded to an eight and one half inch by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT web site as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Seven completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **December 18, 2012,** 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at

www.txdot.gov/business/opportunities/projects.html

under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Edie Stimach, Grant Manager. For technical questions, please contact Eusebio Torres, Project Manager.

TRD-201205747
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 7, 2012

♦ ♦ ♦

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, December 11, 2012 at 10:00 a.m. at 118 East Riverside Drive, Room 1B-1A, in Austin, Texas to receive public comments on the November 2012 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2013-2016.

The STIP reflects the federally funded transportation projects in the FY 2013-2016 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed November 2012 Quarterly Revisions to the FY 2013-2016 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5033, and on the department's web site at:

www.txdot.gov/government/programs/stips.html

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Monday, December 10, 2012, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive, Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed November 2012 Quarterly Revisions to the FY 2013-2016 STIP to Marc Williams, P.E., Director of Planning, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, December 17, 2012.

TRD-201205748
Angie Parker
Associate General Counsel
Texas Department of Transportation
Filed: November 7, 2012

♦ ♦ ♦

Request for Proposals - Traffic Safety Program

In accordance with 43 TAC §25.901, et seq., the Texas Department of Transportation (department) is requesting project proposals to support the goals and strategies of the Traffic Safety program to reduce the number of motor vehicle related crashes, injuries, and fatalities in Texas. These goals and strategies form the basis for the Federal Fiscal Year 2014 (FY 2014) Highway Safety Performance Plan (HSPP).

The authority and responsibility of the traffic safety grant program derives from the National Highway Safety Act of 1966 (23 U.S.C. §401, et seq.), and the Texas Traffic Safety Act of 1967 (Transportation Code, Chapter 723). The Traffic Safety Section (TRF-TS) is an integral part of the department and works through 25 districts for local projects. The program is administered at the state level by the department's Traffic Operations Division (TRF). The executive director of the department is the designated Governor's Highway Safety Representative.

The following information relates to the FY 2014 Traffic Safety Grants - Request for Proposals (RFP). Please review the FY 2014 RFP located online at

www.txdot.gov/apps/eGrants/eGrantsHelp/rfp.html for details.

Proposals for Highway Safety Funding are due to TRF-TS no later than **5:00 p.m., January 4, 2013.**

All questions regarding the development of proposals must be submitted by sending an email to

trf_rfp@txdot.gov

by **5:00 p.m. on December 7, 2012.** A list of the questions, with answers (Q&A document) will be posted on this website by **5:00 p.m. on December 13, 2012.**

A webinar on proposal submissions via eGrants will be hosted by the TRF-TS Austin headquarters staff. Please contact a TRF-TS Program Manager (PM) or Traffic Safety Specialist (TSS) at (512) 416-3204 or send an email to

trf_rfp@txdot.gov

to acquire access information. Potential subgrantees should attend the session appropriate to the type of grant proposal they intend to submit. On **November 30, 2012, Selective Traffic Enforcement Program (STEP) Grants** are scheduled from **8:00 a.m. to 12:00 p.m.** and **General Traffic Safety Grants** are scheduled from **1:00 p.m. to 5:00 p.m.**

The Program Needs section of the RFP includes a Performance Measures chart which outlines the goals, strategies, and performance measures for each of the Traffic Safety Program Areas. TRF-TS is seeking proposals in all program areas, but is particularly interested in proposals which address the specific program needs listed in the High Priority Program Needs subsection of the Program Needs section of the RFP.

The proposals must be completed using eGrants:

www.txdot.gov/apps/egrants.

TRD-201205745
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 7, 2012

♦ ♦ ♦

Texas Woman's University

Consultant Contract Award

Pursuant to the provisions of Texas Government Code, Chapter 2254, Texas Woman's University (TWU) is publishing this notice of consultant contract award. The consultant request appeared in the August 3, 2012, issue of the *Texas Register* (37 TexReg 5853). The selected consultant will assist TWU in reviewing the University's compensation processes, models, policies, practices, and pay philosophy related to academic and administrative ranks.

The selected consultant is Sibson Consulting, 1230 W. Washington Street, Suite 501, Tempe, Arizona 85281.

The total value of the contract is $147,500.00.

The beginning date of the contract is November 5, 2012.

TRD-201205718
Dr. Brenda Floyd
Vice President Finance and Administration
Texas Woman's University
Filed: November 6, 2012

♦ ♦ ♦

Texas Workforce Commission

Resolution of the Texas Workforce Commission Establishing the Unemployment Obligation Assessment for Calendar Year 2013

Resolution of the Texas Workforce Commission
Establishing the Unemployment Obligation Assessment
For Calendar Year 2013

Whereas, pursuant to Texas Labor Code, Chapter 203, Subchapter F, the Texas Public Finance Authority Unemployment Compensation Obligation Assessment Series 2010A and Series 2010B (the "Bonds") have been issued on behalf of the Texas Workforce Commission (the "Commission") and will be outstanding; and

Whereas, pursuant to Texas Labor Code, Section 203.105, the Commission shall set the unemployment obligation assessment rate in an amount sufficient to ensure timely payment of Bond Obligations, consisting of the principal, premium if any, interest on the Bonds and bond administrative expenses; and

Whereas, the rate of the unemployment obligation assessment must be based on the formula prescribed in Commission rule 815.132 (40 Tex. Admin. Code, §815.132; and

Whereas, in accordance with the Financing and Pledge Agreement entered into by and between the Commission and the Texas Public Finance Authority (the "Authority"), in connection with the Bonds, the Commission has covenanted to impose an Unemployment Obligation Assessment so long as Bonds are outstanding in an amount not less than 1.50 times the amount of Bond Obligations due in the next calendar year; and

Whereas, the Authority has provided required notification of the amount of the Bond Obligations, including bond administrative expenses, estimated to be due in calendar year 2013;

Now, therefore, the Commission hereby RESOLVES:

1. In accordance with the formula provided in 40 Tex. Admin. Code §815.132 as set out in part in subsection (e):
"(e) The rate of the portion of the assessment that is to be used to pay a bond obligation is a percentage of the product of the unemployment obligation assessment ratio and the sum of the employer's prior year general tax rate, the replenishment tax rate and the deficit tax rate. The percentage to be determined by Commission resolution, shall not exceed 200%." The "percentage" for 2013 is 0.90.

2. The 2013 percentage will generate the $332,097,103.00 that the Authority has informed the Commission is needed to pay bond obligation and bond administrative expenses.

3. The 2013 percentage shall be published in the *Texas Register* on November 16th, 2012.

Further, the Commission hereby CERTIFIES:

1. The 2013 percentage as set herein is set in accordance with the requirements of Chapter 203 of the Texas Labor Code.

2. The 2013 percentage is a rate that will provide at least 1.50 times the amount of Bond Obligations, including estimated bond administrative expenses, as determined by the Authority, due in calendar year 2013.

3. The action of the Commission reflected in this Resolution complies with the requirements Chapter 203 of Texas Labor Code.

Signed this 6th day of November 2012, upon the affirmative vote of a majority of the Commission present and voting.

Andres Alcantar, Chairman
Commissioner Representing
The Public

Ronald G. Congleton
Commissioner Representing
Labor

Tom Pauken
Commissioner Representing
Employers

Attested: _____
(Secretary or other appropriate officer/employee of the Commission)

SWORN AND SUBSCRIBED TO before me this 6th day of November, 2012

_____
Notary Public

KIM BERGMANN
Notary Public, State of Texas
My Commission Expires
April 17, 2015

TRD-201205728
Paul N. Jones
General Counsel
Texas Workforce Commission
Filed: November 6, 2012

♦ ♦ ♦

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*