
TEXAS REGISTER

Volume 37 Number 50

December 14, 2012

Pages 9717 - 9830



Sergio Ledesma

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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.

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

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

TEXAS REGISTER

a section of the
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IN THIS ISSUE

ATTORNEY GENERAL

Opinions9723

TEXAS ETHICS COMMISSION

Ethics Advisory Opinions9725

EMERGENCY RULES

TEXAS PARKS AND WILDLIFE DEPARTMENT

FISHERIES

31 TAC §57.9729727

PROPOSED RULES

TEXAS ETHICS COMMISSION

GENERAL RULES CONCERNING REPORTS

1 TAC §18.239729

LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.19730

TEXAS EDUCATION AGENCY

ASSESSMENT

19 TAC §§101.3011 - 101.30169730

TEXAS STATE BOARD OF PHARMACY

PHARMACIES

22 TAC §291.319733

22 TAC §291.329736

PHARMACISTS

22 TAC §295.89737

DEPARTMENT OF STATE HEALTH SERVICES

EMERGENCY PREPAREDNESS

25 TAC §2.19740

TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

ACCIDENT PREVENTION SERVICES

28 TAC §§166.1 - 166.3, 166.59744

WORKERS' HEALTH AND SAFETY--ACCIDENT PREVENTION SERVICES

28 TAC §§166.2, 166.4, 166.6 - 166.99756

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

GENERAL PROVISIONS

37 TAC §151.89758

TEXAS COMMISSION ON FIRE PROTECTION

TRAINING FACILITY CERTIFICATION

37 TAC §427.3079759

CONTINUING EDUCATION

37 TAC §441.239760

HEAD OF A FIRE DEPARTMENT

37 TAC §449.3, §449.59761

FIRE OFFICER

37 TAC §§451.301, 451.303, 451.3059762

37 TAC §§451.401, 451.403, 451.4059763

HAZARDOUS MATERIALS

37 TAC §§453.3, 453.5, 453.79765

37 TAC §§453.201, 453.203, 453.2059765

WITHDRAWN RULES

TEXAS ALCOHOLIC BEVERAGE COMMISSION

MARKETING PRACTICES

16 TAC §45.929767

ADOPTED RULES

TEXAS ETHICS COMMISSION

REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

1 TAC §20.5559769

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

MEDICAID HEALTH SERVICES

1 TAC §354.1252, §354.12539769

1 TAC §354.1261, §354.12629771

TEXAS MEDICAL BOARD

LICENSURE

22 TAC §§163.1, 163.2, 163.119772

POSTGRADUATE TRAINING PERMITS

22 TAC §171.3, §171.69773

TEMPORARY AND LIMITED LICENSES

22 TAC §172.59773

22 TAC §172.129773

TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS

22 TAC §180.49774

DISCIPLINARY GUIDELINES

22 TAC §190.89774

22 TAC §190.149774

TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

GENERAL ADMINISTRATIVE DUTIES

22 TAC §577.15.....	9775
DEPARTMENT OF STATE HEALTH SERVICES	
MISCELLANEOUS PROVISIONS	
25 TAC §§1.71 - 1.73	9775
COMMUNICABLE DISEASES	
25 TAC §§97.1 - 97.7, 97.11.....	9777
25 TAC §97.14.....	9778
25 TAC §97.255, §97.257.....	9778
TEXAS DEPARTMENT OF CRIMINAL JUSTICE	
GENERAL PROVISIONS	
37 TAC §151.55.....	9778
TEXAS COMMISSION ON FIRE PROTECTION	
ADMINISTRATIVE PRACTICE AND PROCEDURE	
37 TAC §§401.5, 401.11, 401.13	9779
37 TAC §401.17, §401.19.....	9780
37 TAC §401.21, §401.23.....	9780
37 TAC §401.31.....	9780
37 TAC §§401.41, 401.43, 401.45, 401.47, 401.49.....	9781
37 TAC §401.51.....	9781
37 TAC §401.117.....	9781
37 TAC §§401.121, 401.123, 401.125.....	9781
37 TAC §401.129.....	9781
37 TAC §401.131.....	9782
CRIMINAL CONVICTIONS AND ELIGIBILITY FOR CERTIFICATION	
37 TAC §§403.1, 403.3, 403.5, 403.9, 403.11, 403.15.....	9782
CHARGES FOR PUBLIC RECORDS	
37 TAC §§405.1, 405.3, 405.5, 405.7, 405.9, 405.11, 405.15.....	9782
ADMINISTRATION	
37 TAC §407.1.....	9783
STANDARDS FOR CERTIFICATION	
37 TAC §421.17.....	9783
CONTINUING EDUCATION	
37 TAC §§441.3, 441.5, 441.7, 441.11, 441.13, 441.15, 441.17, 441.19, 441.21	9783
DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES	
ADMINISTRATIVE RULES AND PROCEDURES	
40 TAC §101.907, §101.943.....	9786
40 TAC §§101.1107, 101.1109, 101.1113	9786

DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES	
40 TAC §§108.1203, 108.1217, 108.1221	9786
40 TAC §§108.1401, 108.1403, 108.1409, 108.1411, 108.1413, 108.1415, 108.1419, 108.1421, 108.1423, 108.1425	9787
40 TAC §108.1611, §108.1613.....	9787
RULE REVIEW	
Proposed Rule Reviews	
Texas Department of Criminal Justice.....	9789
Texas State Board of Pharmacy.....	9789
Adopted Rule Reviews	
Comptroller of Public Accounts.....	9789
Texas Department of Criminal Justice.....	9790
Texas State Board of Examiners of Psychologists.....	9791
TABLES AND GRAPHICS	
.....	9793
IN ADDITION	
Office of the Attorney General	
Notice of Settlement of a Texas Water Code and Texas Health and Safety Code Enforcement Action.....	9795
Comptroller of Public Accounts	
Notice of Contract Amendment.....	9795
Office of Consumer Credit Commissioner	
Notice of Rate Ceilings.....	9795
Court of Criminal Appeals	
IN THE COURT OF CRIMINAL APPEALS.....	9795
Texas Commission on Environmental Quality	
Agreed Orders.....	9797
Enforcement Orders.....	9803
Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 40266	9812
Notice of Water Quality Applications.....	9812
Notice of Water Rights Application.....	9815
Office of the Governor	
Request for Applications - Drug Court Programs.....	9815
Request for Applications - Justice Assistance Grant Programs.....	9817
Request for Applications - Juvenile Accountability Block Grant Discretionary Solicitation for Drug Court Projects.....	9818
Request for Applications - Juvenile Justice and Delinquency Prevention - Local.....	9819

Request for Applications - Juvenile Justice and Delinquency Prevention - Statewide9820

Request for Applications - Victims of Crime Act - General Victim Services9822

Request for Applications - Violent Crimes Against Women Criminal Justice and Training Projects - Domestic Violence, Sexual Assault, Dating Violence, and Stalking9824

Texas Department of Licensing and Regulation

Public Notice - Deadline Extended for Public Comments.....9826

Public Notice - Deadline Extended for Public Comments.....9826

Public Notice - Deadline Extended for Public Comments.....9827

Public Notice - Deadline Extended for Public Comments.....9827

Public Notice - Deadline Extended for Public Comments.....9827

Public Notice - Deadline Extended for Public Comments.....9827

Public Notice - Deadline Extended for Public Comments.....9827

Public Notice - Deadline Extended for Public Comments.....9828

Public Notice - Deadline Extended for Public Comments.....9828

Public Utility Commission of Texas

Correction of Error.....9828

Notice of Application for Waiver from Requirements.....9828

Notice of Application for Waiver from Requirements.....9828

Notice of Application for Waiver from Requirements in Automatic Dial Announcing Devices (ADAD) Application Form9829

Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services9829

Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/open/index.shtml>

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

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

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

THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Opinions

Opinion No. GA-0979

The Honorable Dennis Bonnen

Chair, Sunset Advisory Commission

Post Office Box 13066

Austin, Texas 78711-3066

Re: Whether the staff of the Sunset Advisory Commission is entitled to receive confidential records, documents, and files and to attend confidential disciplinary hearings, deliberations, and other proceedings of the State Commission on Judicial Conduct (RQ-1066-GA)

SUMMARY

Under article V, section 1-a of the Texas Constitution, papers filed with the State Commission on Judicial Conduct, along with the Commis-

sion's proceedings, are made confidential unless the Legislature enacts a law establishing an exception to the constitutional confidentiality requirement. A court could conclude that the Legislature has not authorized the staff of the Sunset Advisory Commission to review the confidential records, documents, and files of the State Commission on Judicial Conduct or to attend confidential meetings and deliberations of the State Commission on Judicial Conduct.

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

TRD-201206248

Katherine Cary

General Counsel

Office of the Attorney General

Filed: December 5, 2012



TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinions

EAO-506. The Texas Ethics Commission has been asked to consider whether a City council member's refrigerator magnet constitutes political advertising for purposes of section 255.003 of the Election Code. (AOR-571 and AOR-572)

SUMMARY

The refrigerator magnet at issue constitutes "political advertising" for purposes of section 255.003 of the Election Code. The image of the 4" x 6" refrigerator magnet may be viewed at http://www.ethics.state.tx.us/opinions/EAO_506_magnet.pdf.

EAO-507. The Texas Ethics Commission has been asked to consider whether a former employee of a state regulatory agency who worked on a schematic for a particular highway construction project may receive compensation from a private employer for services related to the oversight of the construction project. (AOR-574)

SUMMARY

A former TxDOT employee may perform services on behalf of a private employer regarding a general engineering consultant contract to oversee a design-build contract if the services do not include a review or analysis of any highway design and construction provisions that are

essential components of the design-build contract in which he was involved.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201206198
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Filed: December 4, 2012



EMERGENCY RULES

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §57.972

The Texas Parks and Wildlife Department is renewing the effectiveness of the emergency adoption of the amendment to

§57.972, for a 60-day period. The text of the amended section was originally published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 5865).

Filed with the Office of the Secretary of State on November 26, 2012.

TRD-201206094

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Original effective date: July 30, 2012

Expiration Date: January 25, 2013

For further information, please call: (512) 389-4775



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES

CONCERNING REPORTS

1 TAC §18.23

The Texas Ethics Commission (the commission) proposes an amendment to §18.23, relating to the administrative waiver of fines.

Section 18.23 authorizes the executive director to waive certain late fines. Currently, the executive director is not authorized to reduce late fines. The amendment to §18.23 would allow the executive director to waive a late fine associated with a personal financial statement (PFS) filed by an unopposed candidate in the primary election if the candidate filed the PFS before the primary election.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Reisman has also determined that the rule will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800.

The amendment to §18.23 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission

to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §18.23 affects §571.061 and §571.1731 of the Government Code.

§18.23. Administrative Waiver of Fine.

(a) A filer may request the executive director to waive a late fine by submitting an affidavit to the executive director that states facts that establish that:

(1) the report was filed late because of a medical emergency or condition that involved the filer, a family member or relative of the filer, a member of the filer's household, or a person whose usual job duties include preparation of the report;

(2) the filer of the personal financial disclosure report is not an elected official, a candidate for election, or a salaried public servant, and the late report:

(A) was the first personal financial disclosure report filed late by the filer under Government Code chapter 572; and

(B) was filed no later than 30 days after the individual was notified that the report appeared to be late;

(3) the filer of the personal financial disclosure report was an unopposed candidate in a primary election, and the late report:

(A) was the first personal financial disclosure report filed late by the filer under Government Code chapter 572; and

(B) was filed before the primary election;

(4) ~~[(3)]~~ the filer of the campaign finance report:

(A) had filed all previous reports by the applicable deadline;

(B) had no contributions, expenditures, or loans to report; and

(C) filed the report no later than 30 days after the filer was notified that the report appeared to be late;

(5) ~~[(4)]~~ the filer reasonably relied on incorrect information given to the filer by the agency; or

(6) ~~[(5)]~~ other administrative error by the agency.

(b) If, in the executive director's discretion, the affidavit establishes grounds for a waiver under this section, the executive director shall waive the fine.

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 December 3, 2012.

TRD-201206181
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Earliest possible date of adoption: January 13, 2013
For further information, please call: (512) 463-5800



CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission proposes an amendment to §50.1 to set the legislative per diem as required by the Texas Constitution, Article III, §24a. This section sets the per diem for members of the legislature and the lieutenant governor at \$179 for each day during the regular session and any special session.

David A. Reisman, Executive Director, has determined that for each odd-numbered year of the first five years this rule is in effect there will be a fiscal implication of \$738,920 for the state and no fiscal implication for local government as a result of enforcing or administering this rule. This amount may increase if any special sessions are called.

Mr. Reisman also has determined that for each year of the first five years this rule is in effect the public benefit expected as a result of adoption of the proposed rule is a determination, in compliance with the Texas Constitution, of the per diem entitled to be received by each member of the legislature and the lieutenant governor under the Texas Constitution, Article III, §24, and Article IV, §17, during the regular session and any special session.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to David A. Reisman, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800.

This amendment is proposed under the Texas Constitution, Article III, §24a, and the Government Code, Chapter 571, §571.062.

The amended section affects the Texas Constitution, Article III, §24, Article III, §24a, and Article IV, §17.

§50.1. *Legislative Per Diem.*

(a) The legislative per diem is \$179 [~~\$150~~]. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and for each day during any special session.

(b) If necessary, this rule shall be applied retroactively to ensure payment of the ~~\$179~~ [~~\$150~~] per diem for ~~2013~~ [~~2011~~].

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 December 3, 2012.

TRD-201206186
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Earliest possible date of adoption: January 13, 2013
For further information, please call: (512) 463-5800



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S

RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

DIVISION 1. IMPLEMENTATION OF ASSESSMENT INSTRUMENTS

19 TAC §§101.3011 - 101.3016

The Texas Education Agency (TEA) proposes an amendment to §101.3011 and new §§101.3012-101.3016, concerning student assessment. Section 101.3011 addresses implementation and administration of academic content area assessment instruments. The proposed amendment to §101.3011 would clarify legislatively required changes to the state assessment program with the implementation of the State of Texas Assessments of Academic Readiness (STAAR) program. Additionally, the proposed amendment to §101.3011 would defer the implementation of the 15% course grade requirement specified in the Texas Education Code (TEC), §39.023(c), from the 2012-2013 school year to the 2013-2014 school year. Proposed new §§101.3012-101.3016 would reflect changes to 19 TAC Chapter 101, Assessment, due to statute granting rulemaking authority over the assessment program to the commissioner of education by the Texas Legislature as necessary.

In November 2012, the TEA presented for first reading to the State Board of Education (SBOE) a series of revisions to 19 TAC Chapter 101, Assessment, Subchapters A-E. The revisions would align SBOE rules in 19 TAC Chapter 101 with the TEC as the Texas Legislature granted rulemaking authority over the assessment program to the commissioner of education to implement the TEC, §§28.0211, 39.023, and 39.025. The revisions would also ensure a clear delineation between SBOE and commissioner authority over the assessment program as clarified by the Office of Attorney General (OAG) Opinion No: JC-0478. Proposed revisions to 19 TAC Chapter 101, Assessment, Subchapters A-E, will be presented for second reading and final authorization at the January 2013 SBOE meeting.

In response to the SBOE rules revisions, the proposed commissioner rule actions would replace repealed SBOE rules where necessary. An additional amendment is also proposed to clarify assessment participation for students in Grades 3-8 who test above their enrolled grade level.

The proposed amendment to §101.3011, Implementation and Administration of Academic Content Area Assessment Instruments, would specify that a Grade 3-8 student will not participate in a grade-level assessment if the student is enrolled in a course or subject intended for students in a higher grade or is taking a course for high school credit and will be administered an assessment for that course or subject. The proposed amendment would also state that a student is eligible to take an assessment instrument above his or her grade level only if the student is receiving instruction in the entire curriculum for that subject and, as specified by the TEC, §28.0211(p), a Grade 5 or 8 student being assessed above the enrolled grade in a subject may not be denied promotion on the basis of failure to perform satisfactorily on an assessment instrument above the student's grade level.

As allowed by the TEC, §39.025(f), §101.3011 would also be amended consistent with a concurrent amendment to the House Bill (HB) 3 Transition Plan to specify that the implementation date for the 15% course grade requirement begins in the 2013-2014 school year. This amendment to the HB 3 Transition Plan would defer the implementation of this provision for an additional year, but would not prohibit districts from including end-of-course exams (EOC) in a student's final course grade for the 2012-2013 school year should a district choose to do so.

Proposed new §101.3012, Parent Notification; §101.3013, Accommodations, §101.3014, Scoring and Reporting; §101.3015, Test Development; and §101.3016, National Comparative Data, would incorporate into commissioner's rules provisions being repealed from SBOE rules.

Proposed new §101.3012, Parent Notification, would retain provisions from SBOE rules for the required notification to students and parents of mandated assessments for grade promotion purposes, graduation, and any other state or federally required testing. The TEC, §39.025(f), requires the commissioner to adopt rules for the transition to EOC testing, including the requirement of the TEC, §39.025(g), that students be notified of their graduation requirements by the beginning of Grade 8. Further, Grades 5 and 8 assessment promotion requirements fall under the commissioner's rulemaking authority as specified by the TEC, §28.0211(k), including notification of grade promotion requirements. Any other requirements for parental/student notification of mandated assessments fall under the commissioner's general rulemaking authority over the assessment program.

Proposed new §101.3013, Accommodations, would retain provisions from SBOE rules related to accommodations. Though allowable assessment accommodations are currently covered in state-developed test administrator manuals, retained provisions from SBOE rules in commissioner rules would require districts to provide appropriate accommodations.

Proposed new §101.3014, Scoring and Reporting, would retain provisions from SBOE rules related to scoring and reporting as these requirements fall under the commissioner's general rulemaking authority to fully implement the assessment program. The proposed new rule would require the reporting of assessment results, with appropriate interpretations, to students and parents. Such reporting will be required to be in compliance with the confidentiality requirements of the TEC, §39.030. The pro-

posed rule would also specify that the agency ensure the prompt reporting of the Grades 5 and 8 Student Success Initiative assessments required under the TEC, §28.0211.

Proposed new §101.3015, Test Development, would retain provisions from SBOE rules to require educator, campus, and district participation in the test development process. As specified by OAG Opinion No: JC-0478, test development requirements fall under the commissioner's general rulemaking authority to fully implement the assessment program, which includes construction of valid assessment instruments.

Proposed new §101.3016, National Comparative Data, would retain provisions from SBOE rules to analyze national comparative data. Authority for conducting nationally comparative data studies is given to the state's assessment program by the TEC, §39.028.

The proposed amendment and new sections would have no procedural and reporting implications beyond those that apply to all Texas students with respect to implementation of the state's assessment program. As the majority of the proposed rules are currently implemented by the SBOE, the proposed rule actions would have minimal effect on the paperwork required and maintained by school districts, language proficiency assessment committees, and/or admission, review, and dismissal committees in making and tracking assessment and accommodation decisions for Texas students, parent notification, and test development.

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

Dr. Cloudt has determined that for each year of the first five years the amendment and new sections are in effect the public benefit anticipated as a result of enforcing the amendment and new sections would be updates to the Texas Administrative Code to reflect SBOE and commissioner responsibilities relating to the statewide assessment program and to help ensure that the assessment requirements are clearly defined for students, school districts, and the public. The proposed amendment would also clarify participation of Grades 3-8 students in grade-level assessments for those students taking an assessment above grade level and defer the implementation of the 15% course grade requirement to the 2013-2014 school year. There is no anticipated economic cost to persons who are required to comply with the proposed amendment and new sections.

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

The public comment period on the proposal begins December 14, 2012, and ends January 14, 2013. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 14, 2012.

The amendment and new sections are proposed under the Texas Education Code (TEC), §7.021, which authorizes the agency to administer and monitor compliance with education programs required by federal or state law; the TEC, §28.0211, which authorizes the commissioner to adopt rules as necessary to implement provisions relating to the Student Success Initiative, including notification of grade promotion requirements; the TEC, §39.023, which authorizes the agency to adopt assessment instruments for Grades 3-8 and end-of-course assessment instruments for secondary-level courses identified in the TEC, §39.023(c); the TEC, §39.0231, which requires the agency to ensure the timely scoring and reporting of results of assessment instruments. Assessment reporting is required to be in compliance with confidentiality requirements of the TEC, §39.030; the TEC, §39.025, which authorizes the commissioner to adopt rules concerning end-of-course participation and performance requirements for high school graduation. In addition, the TEC, §39.025(f), authorizes the commissioner to adopt by rule a transition plan to implement the amendments made by Chapter 1312 (S.B. No. 1031), Acts of the 80th Legislature, Regular Session, 2007, replacing general subject assessment instruments administered at the high school level with end-of-course assessment instruments; and the TEC, §39.028, which requires a comparison of state assessment results to national results.

The amendment and new sections implement the TEC, §§7.021, 28.0211, 39.023, 39.0231, 39.025, and 39.028.

§101.3011. Implementation and Administration of Academic Content Area Assessment Instruments.

(a) The Texas Education Agency (TEA) shall administer each assessment instrument under the Texas Education Code (TEC), §39.023(a), (b), (c), and (l), in accordance with the rules governing the assessment program set forth in Chapter 101 of this title (relating to Assessment).

(1) A Grade 3-8 student shall not be administered a grade-level assessment if the student:

(A) is enrolled in a course or subject intended for students above the student's enrolled grade level and will be administered a grade-level assessment instrument developed under the TEC, §39.023(a), that aligns with the curriculum for that course or subject within the same content area; or

(B) is enrolled in a course for high school credit in a subject intended for students above the student's enrolled grade level and will be administered an end-of-course assessment instrument developed under the TEC, §39.023(c), that aligns with the curriculum for that course or subject within the same content area.

(2) A student is only eligible to take an assessment instrument intended for use above the student's enrolled grade if the student is receiving instruction in the entire curriculum for that subject.

(3) As specified in the TEC, §28.0211(p), a Grade 5 or 8 student described by paragraph (1)(A) or (B) of this subsection may not be denied promotion on the basis of failure to perform satisfactorily on an assessment instrument above the student's grade level.

(b) The TEA shall administer alternative assessment instruments under the TEC, §39.023(b), that correspond to:

(1) the assessment instruments required under the TEC, §39.023(a); and

(2) the following assessment instruments required under the TEC, §39.023(c): English I, English II, and English III; Algebra

I and geometry; biology; and world geography, world history, and U.S. history.

(c) The TEA shall administer each appropriate assessment under the TEC, §39.023, as that section existed before amendment by Senate Bill 1031, 80th Texas Legislature, 2007.

(d) Test administration procedures shall be established by the TEA in the applicable test administration materials. A school district, an open-enrollment charter school, or a private school administering the tests required by the TEC, Chapter 39, Subchapter B, shall follow procedures specified in the applicable test administration materials.

(e) In accordance with House Bill 411, Section 5, 78th Texas Legislature, 2003, this subsection is adopted by the commissioner of education for the implementation of the TEC, §39.023(a)(6). The TEA shall administer to students assessments in any other subject and grade required by federal law.

(f) The provisions of this subchapter shall be implemented by school districts beginning in the 2011-2012 school year with the exception of the 15% course grade requirement specified in the TEC, §39.023(c). The 15% course grade requirement specified in §101.3021 of this title (relating to Required Participation in Academic Content Area Assessments and Course Grading) and §101.3023 of this title (relating to Participation, Graduation Assessment, and Cumulative Score Requirements for Students Receiving Special Education Services) shall be implemented by school districts beginning in the 2013-2014 [2012-2013] school year.

§101.3012. Parent Notification.

(a) The superintendent of each school district and chief administrative officer of each charter school shall be responsible for the following in order to provide timely and full notification of graduation requirements:

(1) notifying each student and his or her parent or guardian in writing no later than the beginning of the student's seventh-grade year of the testing requirements for graduation;

(2) notifying each student in Grades 7-12 new to the school district or charter school and his or her parent or guardian in writing of the testing requirements for graduation; and

(3) notifying each student who shall take the tests required for graduation and his or her parent or guardian, as well as out-of-school individuals, of the dates, times, and locations of testing.

(b) The superintendent of each school district and chief administrative officer of each charter school shall be responsible for the following in order to provide timely and full notification of testing requirements for advancement at certain grades:

(1) notifying each student and his or her parent or guardian in writing no later than the beginning of the student's first-grade year or no later than the beginning of the student's kindergarten year, for students attending kindergarten in a public school, of the testing requirements for grade advancement as specified in the Texas Education Code, §28.0211;

(2) notifying each student in Grades 1-8 who is new to the school district or charter school and his or her parent or guardian in writing of the testing requirements for grade advancement; and

(3) notifying each student required to take the grade advancement tests of the dates, times, and locations of testing.

§101.3013. Accommodations.

(a) Testing accommodations on the assessments administered under the Texas Education Code (TEC), Chapter 39, Subchapter B, are

permitted for any student unless they would make a particular test invalid. Decisions regarding testing accommodations shall take into consideration the needs of the student and the accommodations the student routinely receives in classroom instruction.

(b) For a student receiving special education services, the admission, review, and dismissal (ARD) committee shall determine the allowable accommodations necessary for the student to take the assessments administered under the TEC, Chapter 39, Subchapter B, and shall document them in the student's individualized education program.

(c) Permissible testing accommodations shall be described in the appropriate test administration materials.

§101.3014. Scoring and Reporting.

(a) The superintendent of a school district or chief administrative officer of each charter school shall accurately report all test results as required by the Texas Education Code (TEC), §39.030, with appropriate interpretations, to the school district board of trustees according to the schedule in the applicable test administration materials.

(b) A school district, charter school, or private school that administers criterion-referenced tests under the TEC, Chapter 39, Subchapter B, shall notify each of its students and his or her parent or guardian of test results, observing confidentiality requirements in the TEC, §39.030.

(c) All test results shall be included in each student's academic record and shall be furnished for each student transferring to another school district, charter school, or private school.

(d) The scoring contractor will provide school districts with the results of the machine-scorable assessments administered as required by the TEC, §28.0211, within a ten-day period following the receipt of the test materials from the school district or charter school.

§101.3015. Test Development.

(a) Texas educators shall assist Texas Education Agency staff in developing test objectives, assessment guidelines, and test items. Advisory committees composed of Texas educators shall reflect the diversity of the state by region, ethnicity, gender, and type and size of school district.

(b) Each public school and charter school shall assist with field-testing and other activities necessary to implement the requirements of the Texas Education Code, Chapter 39, Subchapter B.

§101.3016. National Comparative Data.

(a) In accordance with the Texas Education Code (TEC), §39.028, the commissioner of education shall develop a schedule to obtain nationally comparative results for the grades and subject areas for which academic content area assessments are adopted under the TEC, §39.023.

(b) The Texas Education Agency will use sampling and other techniques to minimize the disruption to schools and loss of instructional time required of school districts to obtain nationally comparative data.

(c) The nationally comparative data will be collected by using nationally recognized instruments for obtaining valid and reliable normative data from a sample of Texas students.

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 30, 2012.

TRD-201206161

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: January 13, 2013

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.31

The Texas State Board of Pharmacy proposes amendments to §291.31, concerning Definitions. The amendments, if adopted, add definitions for automated checking device, beyond use date, dispensing error, and patient med-pak which were defined elsewhere in the rules but not in the definitions; clarify the definition of electronic prescription drug order to be consistent with DEA requirements; and update definitions to be consistent with other rules.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to update and clarify the definitions for Class A pharmacies. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., January 31, 2013.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.31. Definitions.

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

(1) Accurately as prescribed--Dispensing, delivering, and/or distributing a prescription drug order:

(A) - (B) (No change.)

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including Chapter 562 [Chapters 562 and 563] of the Texas Pharmacy Act.

(2) (No change.)

(3) Advanced practice nurse--A registered nurse approved by the Texas Board of Nursing to practice as an advanced practice nurse on the basis of completion of an advanced education program. The term includes [a] nurse practitioner, [a] nurse midwife, [a] nurse anesthetist, and [a] clinical nurse specialist.

(4) Automated checking device--A device that confirms that the correct drug and strength has been labeled with the correct label for the correct patient prior to delivery of the drug to the patient.

(5) [(4)] Automated compounding or counting device--An automated device that compounds, measures, counts, and/or packages a specified quantity of dosage units of a designated drug product.

(6) [(5)] Automated pharmacy dispensing systems--A [a] mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, labeling, dispensing, and distribution of medications, and which collects, controls, and maintains all transaction information. "Automated pharmacy dispensing systems" does not mean "Automated compounding or counting devices" or "Automated medication supply devices."

(7) Beyond use date--The date beyond which a product should not be used.

(8) [(6)] Board--The Texas State Board of Pharmacy.

(9) [(7)] Carrying out or signing a prescription drug order--The completion of a prescription drug order presigned by the delegating physician, or the signing of a prescription by an advanced practice nurse or physician assistant after the person has been designated with the Texas Medical Board by the delegating physician as a person delegated to sign a prescription. As specified in §157.056, of the Occupations Code, the [The] following information must [shall] be provided on each prescription:

(A) patient's name and address;

(B) the drug to be dispensed including the name, strength, and quantity of the drug [to be dispensed];

(C) directions to the patient regarding the taking of the drug and the dosage [for use];

(D) the intended use of the drug, if appropriate;

(E) the name, address, and telephone number of the physician;

(F) the name, address, telephone number, identification number, and if the prescription is for a controlled substance, the DEA number of the advanced practice nurse or physician assistant completing the prescription drug order;

(G) the date; and

(H) the number of refills permitted.

(10) [(8)] Confidential record--Any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist, such as a patient medication record, prescription drug order, or medication order.

(11) [(9)] Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedules I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(12) [(10)] Dangerous drug--A drug or device that:

(A) is not included in Penalty Group 1, 2, 3, or 4, Chapter 481, Health and Safety Code, and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(13) [(11)] Data communication device--An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch or gateway).

(14) [(12)] Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(15) [(13)] Designated agent--

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner to communicate prescription drug orders to a pharmacist;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a prescription drug order;

(C) an advanced practice nurse or physician assistant authorized by a practitioner to carry out or sign a prescription drug order for dangerous drugs under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code); or

(D) a person who is a licensed vocational nurse or has an education equivalent to or greater than that required for a licensed vocational nurse designated by the practitioner to communicate prescriptions for an advanced practice nurse or physician assistant authorized by the practitioner to sign prescription drug orders under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code).

(16) [(14)] Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(17) Dispensing error--An action committed by a pharmacist or other pharmacy personnel that causes the patient or patient's agent to take possession of a dispensed prescription drug and an individual subsequently discovers that the patient has received an incorrect drug product, which includes incorrect strength, incorrect dosage form, and/or incorrect directions for use.

(18) [(15)] Dispensing pharmacist--The pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(19) [(16)] Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(20) [(17)] Downtime--Period of time during which a data processing system is not operable.

(21) [(18)] Drug regimen review--An evaluation of prescription drug orders and patient medication records for:

- (A) known allergies;
- (B) rational therapy-contraindications;
- (C) reasonable dose and route of administration;
- (D) reasonable directions for use;
- (E) duplication of therapy;
- (F) drug-drug interactions;
- (G) drug-food interactions;
- (H) drug-disease interactions;
- (I) adverse drug reactions; and
- (J) proper utilization, including overutilization or underutilization.

(22) [(19)] Electronic prescription drug order--A prescription drug order that is generated on an electronic application and transmitted as an electronic data file [which is transmitted by an electronic device to the receiver (pharmacy)].

(23) [(20)] Electronic signature--A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

- (A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and
- (B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(24) [(21)] Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or, if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(25) [(22)] Hard copy--A physical document that is readable without the use of a special device [(i.e., cathode ray tube (CRT), microfiche reader, etc.)].

(26) [(23)] Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(27) [(24)] Medical Practice Act--The Texas Medical Practice Act, Subtitle B, Occupations Code, as amended.

(28) [(25)] Medication order--A written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device.

(29) [(26)] New prescription drug order--A prescription drug order that:

- (A) has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year;
- (B) is transferred from another pharmacy; and/or
- (C) is a discharge prescription drug order. (Note: furlough prescription drug orders are not considered new prescription drug orders.)

(30) [(27)] Original prescription--The:

- (A) original written prescription drug order; or

(B) original verbal or electronic prescription drug order reduced to writing either manually or electronically by the pharmacist.

(31) [(28)] Part-time pharmacist--A pharmacist who works less than full-time.

(32) Patient med-pak--A package prepared by a pharmacist for a specific patient comprised of a series of containers and containing two or more prescribed solid oral dosage forms. The patient med-pak is so designed or each container is so labeled as to indicate the day and time, or period of time, that the contents within each container are to be taken.

(33) [(29)] Patient counseling--Communication by the pharmacist of information to the patient or patient's agent in order to improve therapy by ensuring proper use of drugs and devices.

(34) [(30)] Pharmaceutical care--The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(35) [(31)] Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(36) [(32)] Pharmacy technician--An individual who is registered with the board as a pharmacy technician and whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(37) [(33)] Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(38) [(34)] Physician assistant--A physician assistant recognized by the Texas Medical Board as having the specialized education and training required under Subtitle B, Chapter 157, Occupations Code, and issued an identification number by the Texas Medical Board.

(39) [(35)] Practitioner--

(A) a person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state, including a physician, dentist, podiatrist, or veterinarian but excluding a person licensed under this Act [subtitle];

(B) a person licensed by another state, Canada, or the United Mexican States in a health field in which, under the law of this state, a license holder in this state may legally prescribe a dangerous drug;

(C) a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number and who may legally prescribe a Schedule II, III, IV, or V controlled substance, as specified under Chapter 481, Health and Safety Code, in that other state; or

(D) an advanced practice nurse or physician assistant to whom a physician has delegated the authority to carry out or sign prescription drug orders under §§157.0511, 157.052, 157.053, 157.054, 157.0541, or 157.0542, Occupations Code, or, for the purpose of this subchapter, a pharmacist who practices in a hospital, hospital-based clinic, or an academic health care institution and a physician has del-

egated the authority to sign a prescription for a dangerous drug under §157.101, Occupations Code.

(40) [(36)] Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container into a prescription container for dispensing by a pharmacist to the ultimate consumer.

(41) [(37)] Prescription department--The area of a pharmacy that contains prescription drugs.

(42) [(38)] Prescription drug--

(A) a substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(B) a drug or device that under federal law is required, before being dispensed or delivered, to be labeled with the statement:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(C) a drug or device that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a practitioner only.

(43) [(39)] Prescription drug order--

(A) a written order from a practitioner or a verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or a verbal order pursuant to Subtitle B, Chapter 157, Occupations Code.

(44) [(40)] Prospective drug use review--A review of the patient's drug therapy and prescription drug order or medication order prior to dispensing or distributing the drug.

(45) [(41)] State--One of the 50 United States of America, a U.S. territory, or the District of Columbia.

(46) [(42)] Texas Controlled Substances Act--The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(47) [(43)] Written protocol--A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas Medical Board under the Texas Medical Practice Act.

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 30, 2012.

TRD-201206162

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: January 13, 2013

For further information, please call: (512) 305-8028



22 TAC §291.32

The Texas State Board of Pharmacy proposes amendments to §291.32, concerning Personnel. The amendments, if adopted, clarify that pharmacists, while on duty, are responsible for the legal operation of the pharmacy; and correct grammar.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to update and clarify the personnel requirements for Class A pharmacies. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., January 31, 2013.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.32. *Personnel.*

(a) Pharmacist-in-charge.

(1) (No change.)

(2) Responsibilities. The pharmacist-in-charge shall have responsibility for the practice of pharmacy at the pharmacy for which he or she is the pharmacist-in-charge. The pharmacist-in-charge may advise the owner on administrative or operational concerns. The pharmacist-in-charge shall have responsibility for, at a minimum, the following:

(A) educating [~~education~~] and training of pharmacy technicians and pharmacy technician trainees;

(B) (No change.)

(C) disposing of and distributing [~~disposal and distribution of~~] drugs from the Class A pharmacy;

(D) storing [~~storage of~~] all materials, including drugs, chemicals, and biologicals;

(E) - (F) (No change.)

(G) adhering [~~adherence~~] to policies and procedures regarding the maintenance of records in a data processing system such that the data processing system is in compliance with Class A (community) pharmacy requirements;

(H) legally operating [~~legal operation of~~] the pharmacy, including meeting all inspection and other requirements of all state and federal laws or sections governing the practice of pharmacy; and

(I) (No change.)

(b) Owner. The owner of a Class A pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(1) (No change.)

(2) establishment of policies [policies] and procedures for the security of the prescription department including the maintenance of effective controls against the theft or diversion of prescription drugs;

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

(c) Pharmacists.

(1) General.

(A) - (D) (No change.)

(E) All pharmacists, while on duty, shall be responsible for the legal operation of the pharmacy and for complying with all state and federal laws or rules governing the practice of pharmacy.

(F) (No change.)

(2) Duties. Duties which may only be performed by a pharmacist are as follows:

(A) - (B) (No change.)

(C) selecting [selection of] drug products;

(D) - (J) (No change.)

(3) (No change.)

(d) Pharmacy Technicians and Pharmacy Technician Trainees.

(1) (No change.)

(2) Duties.

(A) - (B) (No change.)

(C) Pharmacy technicians and pharmacy technician trainees may perform only nonjudgmental technical duties associated with the preparation and distribution of prescription drugs, as follows:

(i) - (ix) (No change.)

(x) compounding bulk preparations [bulk compounding].

(3) (No change.)

(e) (No change.)

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

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

TRD-201206163

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: January 13, 2013

For further information, please call: (512) 305-8028



CHAPTER 295. PHARMACISTS

22 TAC §295.8

The Texas State Board of Pharmacy proposes amendments to §295.8, concerning Continuing Education Requirements. The amendments, if adopted, update the definitions to include CPE Monitor and to be consistent with ACPE definitions; remove references to requirements regarding pharmacists licensed for 50 years that are not needed; allow pharmacist to receive credit for CME courses; and require pharmacists to obtain at least one hour of CE in Texas pharmacy law.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to update and clarify definitions and CE requirements for pharmacists. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., January 31, 2013.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§295.8. Continuing Education Requirements.

(a) Authority and purpose.

(1) Authority. In accordance with §559.053 [§559.003] of the Texas Pharmacy Act, (Chapters 551 - 566, and 568 - 569, Occupations Code), all pharmacists must complete and report 30 contact hours (3.0 CEUs) of approved continuing education obtained during the previous license period in order to renew their license to practice pharmacy.

(2) (No change.)

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

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

(4) Approved provider--An individual, institution, organization, association, corporation, or agency that is approved by the board [and recognized by ACPE in accordance with its policy and procedures, as having met criteria indicative of the ability to provide quality continuing education programs].

(5) (No change.)

(6) Certificate of completion--A certificate or other official document presented to a participant upon the successful completion of an approved [a] continuing education program. [Certificates presented

by an ACPE approved provider must contain the following information:}]

~~[(A) name of the participant;]~~

~~[(B) title and date of the program;]~~

~~[(C) name of the approved provider sponsoring or cosponsoring the program;]~~

~~[(D) number of contact hours and/or CEUs awarded;]~~

~~[(E) the assigned ACPE universal program number, and for CE obtained on or after January 1, 2009, a "P" designation indicating that the CE is targeted to pharmacists;]~~

~~[(F) a dated certifying signature of the approved provider; and]~~

~~[(G) the official ACPE logo.]~~

(7) Contact hour--A unit of measure of educational credit which is equivalent to approximately [50 to] 60 minutes of participation in an organized learning experience.

(8) (No change.)

(9) CPE Monitor--A collaborative service from the National Association of Boards of Pharmacy and ACPE that provides an electronic system for pharmacists to track their completed CPE credits.

(10) ~~[(9)]~~ Credit hour--A unit of measurement for continuing education equal to 15 contact hours.

(11) Enduring Materials (Home Study)--Activities that are printed, recorded or computer assisted instructional materials that do not provide for direct interaction between faculty and participants.

~~[(10) Home-study and other mediated instruction--Continuing education activities that are not conducted as live programs, including audiotapes, videotapes, cable television, computer assisted instruction, journal articles, or monographs.]~~

(12) ~~[(11)]~~ Initial license period--The time period between the date of issuance of a pharmacist's license and the next expiration date following the initial 30 day expiration date.

(13) ~~[(12)]~~ License period--The time period between consecutive expiration dates of a license.

(14) ~~[(13)]~~ Live programs--Activities that provide for direct interaction between faculty and participants and may include lectures, symposia, live teleconferences, workshops, etc. ~~[On-site continuing education activities including lectures, symposia, live teleconferences, or workshops.]~~

(15) ~~[(14)]~~ Standardized pharmacy examination--The North American Pharmacy Licensing Examination (NAPLEX).

(c) Methods for obtaining continuing education. A pharmacist may satisfy the continuing education requirements by either:

(1) (No change.)

(2) successfully completing during the preceding license period, one credit hour for each year of their license period, which is a part of the professional degree program in a college of pharmacy the professional degree program of which has been accredited by ACPE; or

(3) taking and passing the standardized pharmacy examination (NAPLEX) during the preceding license period, which shall be equivalent to the number of continuing education hours necessary to renew a license as specified in subsection (a)(1) of this section. ~~[; or]~~

~~[(4) having a Texas pharmacist license issued by examination or reciprocity within the previous thirty (30) months.]~~

(d) Reporting Requirements.

(1) Renewal of a pharmacist license. To renew a license to practice pharmacy, a pharmacist must report on the renewal application completion of at least thirty contact hours (3.0 CEUs) ~~[the required number of contact hours]~~ of continuing education. The following is applicable to the reporting of continuing education contact hours.

(A) For renewals received after January 1, 2014, at least one contact hour (0.1 CEU) specified in paragraph (1) of this subsection shall be related to Texas pharmacy laws or rules. ~~[The renewal application issued by the board shall state the number of contact hours the pharmacist must complete in order to be eligible to renew the license.]~~

(B) (No change.)

(2) Failure to report completion of required continuing education. ~~[The license of a pharmacist who fails to report completion of the required number of continuing education contact hours shall not be renewed and the pharmacist shall not be issued a renewal certificate for the license period. A pharmacist who practices pharmacy without a current renewal certificate is subject to all penalties of practicing pharmacy without a license.]~~ The following is ~~[also]~~ applicable if a pharmacist fails to report completion of the required continuing education.

(A) The license of a pharmacist who fails to report completion of the required number of continuing education contact hours shall not be renewed and the pharmacist shall not be issued a renewal certificate for the license period ~~[The pharmacist's license shall not be renewed]~~ until such time as the pharmacist successfully completes the required continuing education and reports the completion to the board.

(B) A pharmacist who practices pharmacy without a current renewal certificate is subject to all penalties of practicing pharmacy without a license including ~~[The pharmacist shall be subject to]~~ the delinquent fees specified in the Act, §559.003.

(3) Extension of time for reporting. A pharmacist who has had a physical disability, illness, or other extenuating circumstances which prohibits the pharmacist from obtaining continuing education credit during the preceding license period may be granted an extension of time to complete the continued education requirement. The following is applicable for this extension:

(A) The pharmacist shall submit a petition to the board with his/her license renewal application which contains:

(i) the name, address, and license number of the pharmacist;

(ii) a statement of the reason for the request for extension; ~~[which includes the dates the pharmacist was incapacitated; and]~~

(iii) if the reason for the request for extension is health related, a statement from the attending physician(s) treating the pharmacist which includes the nature of the physical disability or illness and the dates the pharmacist was incapacitated; and ~~[.]~~

(iv) if the reason for the request for the extension is for other extenuating circumstances, a detailed explanation of the extenuating circumstances and if because of military deployment, documentation of the dates of the deployment.

(B) - (D) (No change.)

(4) Exemptions from reporting requirements.

(A) (No change.)

(B) Pharmacists who are not actively practicing pharmacy shall be granted an exemption to the reporting requirements for continuing education provided the pharmacists submit a completed renewal application for each license period which states that they are not practicing pharmacy. Upon submission of the completed renewal application, the pharmacist shall be issued a renewal certificate which states that pharmacist is inactive. Pharmacists who wish to return to the practice of pharmacy after being exempted from the continuing education requirements as specified in this subparagraph must:

(i) notify the board of their intent to actively practice pharmacy;

(ii) pay the fee as specified in §295.9 of this title (relating to Inactive License); and

(iii) provide copies of completion certificates from approved continuing education programs as specified in subsection (e) of this section for 30 contact hours (3.0 CEUs). Approved continuing education earned within two years prior to the licensee applying for the return to active status may be applied toward the continuing education requirement for reactivation of the license but may not be counted toward subsequent renewal of the license.

~~{(B) Pharmacists who have been licensed for 50 years are subject to the following-}~~

~~{(i) Pharmacists who are actively practicing pharmacy shall complete the continuing education requirements in order to renew their license-}~~

~~{(ii) Pharmacists who are not actively practicing pharmacy shall be granted an exemption to the reporting requirements for continuing education provided the pharmacists submit a completed renewal application for each license period which states that they are not practicing pharmacy. Upon submission of the completed renewal application, the pharmacist shall be issued a renewal certificate which states that pharmacist is inactive-}~~

~~{(iii) Pharmacists who wish to return to the practice of pharmacy after being exempted from the continuing education requirements as specified in clause (ii) of this subparagraph must-}~~

~~{(i) notify the board of their intent to actively practice pharmacy-}~~

~~{(ii) pay the licensing fee as specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees); and}~~

~~{(iii) provide copies of completion certificates from approved continuing education programs as specified in subsection (e) of this section for 30 hours. Approved continuing education earned within two years prior to the licensee applying for the return to active status may be applied toward the continuing education requirement for reactivation of the license but may not be counted toward subsequent renewal of the license-}~~

(e) Approved Programs.

(1) Any program presented by an ACPE approved provider subject to the following conditions.

(A) - (B) (No change.)

(C) Proof of completion of an ACPE course shall contain the following information: ~~[be a certificate of completion as defined by subsection (b)(6) of this section-]~~

(i) name of the participant;

(ii) title and completion date of the program;

(iii) name of the approved provider sponsoring or cosponsoring the program;

(iv) number of contact hours and/or CEUs awarded;

(v) the assigned ACPE universal program number and a "P" designation indicating that the CE is targeted to pharmacists; and

(vi) either:

(I) a dated certifying signature of the approved provider and the official ACPE logo; or

(II) the CPE Monitor logo.

(2) - (7) (No change.)

(8) Attendance at programs presented by the Texas State Board of Pharmacy or courses offered by the Texas State Board of Pharmacy as follows:

(A) Pharmacists shall receive credit for the number of hours for the program or course as stated by the Texas State Board of Pharmacy.

(B) Proof of attendance at a program presented by the Texas State Board of Pharmacy or completion of a course offered by the Texas State Board of Pharmacy shall be a certificate issued by the Texas State Board of Pharmacy.

(9) Pharmacists shall receive credit toward their continuing education requirements for programs or courses approved by other state boards of pharmacy as follows:

(A) Pharmacists shall receive credit for the number of hours for the program or course as specified by the other state board of pharmacy.

(B) Proof of attendance at a program or course approved by another state board of pharmacy shall be a certificate or other documentation that indicates:

(i) name of the participant;

(ii) title and completion date of the program;

(iii) name of the approved provider sponsoring or cosponsoring the program;

(iv) number of contact hours and/or CEUs awarded;

(v) a dated certifying signature of the provider; and

(vi) documentation that the program is approved by the other state board of pharmacy.

(10) [(8)] Completion of an Institute for Safe Medication Practices' (ISMP) Medication Safety Self Assessment for hospital pharmacies or for community/ambulatory pharmacies shall be recognized for continuing education credit as follows.

(A) Pharmacists shall receive credit for three contact hours (0.3 CEUs) towards their continuing education requirement for completion of an ISMP Medication Safety Self Assessment.

(B) Proof of completion of an ISMP Medication Safety Self Assessment shall be:

(i) a continuing education certificate provided by an ACPE approved provider for completion of an assessment; or

(ii) a document from ISMP showing completion of an assessment.

(11) ~~[(9)]~~ Pharmacists shall receive credit for three contact hours (0.3 CEUs) toward their continuing education requirements for taking and successfully passing the initial Geriatric Pharmacy Practice certification examination administered by the Commission for Certification in Geriatric Pharmacy. Proof of successfully passing the examination shall be a certificate issued by the Commission for Certification in Geriatric Pharmacy.

(12) ~~[(10)]~~ Pharmacist shall receive credit for three contact hours (0.3 CEUs) toward their continuing education requirements for taking and successfully passing an initial Board of Pharmaceutical Specialties certification examination administered by the Board of Pharmaceutical Specialties. Proof of successfully passing the examination shall be a certificate issued by the Board of Pharmaceutical Specialties.

(13) Programs approved by the American Medical Association (AMA) as Category 1 Continuing Medical Education (CME) and accredited by the Accreditation Council for Continuing Medical Education subject to the following conditions.

(A) Pharmacists may receive credit for the completion of the same CME course only once during a license period.

(B) Pharmacists who present approved CME programs may receive credit for the time expended during the actual presentation of the program. Pharmacists may receive credit for the same presentation only once during a license period.

(C) Proof of completion of a CME course shall contain the following information:

(i) name of the participant;

(ii) title and completion date of the program;

(iii) name of the approved provider sponsoring or cosponsoring the program;

(iv) number of contact hours and/or CEUs awarded;

(v) a dated certifying signature of the approved provider.

~~[(11) Attendance at programs presented by the Texas State Board of Pharmacy or courses offered by the Texas State Board of Pharmacy as follows:]~~

~~[(A) Pharmacists shall receive credit for the number of hours for the program or course as stated by the Texas State Board of Pharmacy.]~~

~~[(B) Proof of attendance at a program presented by the Texas State Board of Pharmacy or completion of a course offered by the Texas State Board of Pharmacy shall be a certificate issued by the Texas State Board of Pharmacy.]~~

~~[(12) Pharmacists shall receive credit toward their continuing education requirements for programs or courses approved by other state boards of pharmacy as follows:]~~

~~[(A) Pharmacists shall receive credit for the number of hours for the program or course as specified by the other state board of pharmacy.]~~

~~[(B) Proof of attendance at a program or course approved by another state board of pharmacy shall be a certificate or other documentation that indicates:]~~

~~[(i) name of the participant:]~~

~~[(ii) title and date of the program:]~~

~~[(iii) name of the approved provider sponsoring or cosponsoring the program:]~~

~~[(iv) number of contact hours and/or CEUs awarded:]~~

~~[(v) a dated certifying signature of the provider; and]~~

~~[(vi) documentation that the program is approved by the other state board of pharmacy.]~~

~~[(13) Upon demonstrated need the board may establish criteria to approve programs presented by non-ACPE approved providers.]~~

(f) Retention of continuing education records and audit of records by the board.

(1) Retention of records. Pharmacists are required to maintain certificates of completion of approved continuing education for three years from the date of reporting the contact hours on a license renewal application. Such records may be maintained in hard copy or electronic format.

(2) (No change.)

~~[(g) Reinstatement of pharmacist's license.]~~

~~[(1) Any person seeking reinstatement of a license which has been revoked or canceled by the board shall submit documentation of completion of the required number of continuing education contact hours for all years the license has been revoked or canceled prior to reinstatement of the license.]~~

~~[(2) Persons who seek reinstatement of a pharmacist license which has expired shall meet the requirements of §283.10 of this title (relating to Requirements for Application for a Pharmacist License Which Has Expired).]~~

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 30, 2012.

TRD-201206164

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: January 13, 2013

For further information, please call: (512) 305-8028



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 2. EMERGENCY PREPAREDNESS

25 TAC §2.1

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), proposes an amendment to §2.1, concerning the Preparedness Coordinating Council (PCC).

BACKGROUND AND PURPOSE

The amendment is necessary to comply with Health and Safety Code, §11.016, which authorizes the department to establish advisory committees; and Title 42 United States Code, §247d-3a(b), which requires an advisory committee or other similar mechanism to provide the department advice on public health preparedness. The PCC is governed by the Government Code, Chapter 2110, concerning state agency advisory committees.

Government Code, §2001.039, requires that each state agency review and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 2.1 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed.

SECTION-BY-SECTION SUMMARY

Amendments to §2.1 clarify the responsibilities of the PCC in state-level and national preparedness and modify wording and punctuation of the rule. References to the State Health Services Council were removed and replaced with the department in the rule.

Specifically, subsection (c) defines the purpose of the PCC, including multidisciplinary strategic review forum and the role of the PCC related to the National Response Framework, Annex Emergency Support Function (ESF)-8 concerning public health and medical, in providing the structure for coordinating interagency support for response to an incident. Subsection (d) identifies the PCC for providing guidance to better coordination between state and local efforts to carry out strategic and operational tasks as assigned by the department. Amendments to subsection (e) remove time constraints governing the PCC's continuance/abolishment, while clarifying its division of membership between department staff and external membership. The PCC composition and appointment, terms of service, meeting quorum requirements and expectations of the membership are established in the amendments to subsections (g), (h) and (i). Subsection (j) adds that the department or contractors shall provide support for the PCC. Subsection (k) reemphasizes the PCC's commitment to consider the needs of the population with functional and access needs in deliberations and that the department staff or its contractors will take the minutes of the meetings. References to subcommittees and membership were deleted in subsections (l) - (n).

FISCAL NOTE

Bruce Clements, Director, Community Preparedness Section, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Clements has also determined that there will be no adverse effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Clements has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to better prepare the state to respond to public health emergencies.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed 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 Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Priscilla Boston, Community Preparedness Section, Prevention and Preparedness Division, Mail Code 1926, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, telephone (512) 776-6695, or email Priscilla.Boston@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §11.016, which authorizes the Health and Human Services Commission to establish advisory committees; Title 42 United States Code §247d-3a(b), which requires an advisory committee or other similar mechanism to provide the department advice on public health preparedness; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

The amendment affects Health and Safety Code, Chapters 11 and 1001; and Government Code, Chapters 531 and 2001.

§2.1. *Preparedness Coordinating Council.*

(a) The Preparedness Coordinating Council (PCC) [council].

(1) The PCC [Preparedness Coordinating Council (PCC)] shall be appointed under and governed by this section.

(2) (No change.)

(b) (No change.)

(c) Purpose. The purpose of the PCC is to advise and assist the Department of State Health Services (department) as a multidisciplinary strategic review forum concerning topics related to preparedness, response, recovery, and mitigation activities in Texas at the state-level as they pertain to Emergency Support Function (ESF)-8 (Public Health and Medical). [provide advice and assistance to the State Health Services Council (council) and the Department of State Health Services (department) in coordinating efforts to prepare the State of Texas for bioterrorism attacks, other infectious disease outbreaks, and additional public health threats and emergencies.]

(d) Tasks.

(1) The PCC will assist the department by providing strategic guidance to promote better consensus and coordination of state and local efforts to improve public health and medical preparedness. [shall advise the council concerning rules relating to major public health preparedness issues.]

(2) The PCC shall carry out any other tasks assigned by the department as part of department's strategic and operational planning processes. [will assist the department and the council in coordinating preparedness and response planning and expenditures; improving disease surveillance and detection; developing epidemic response capabilities; and addressing other public health emergency activities related to the department.]

~~[(3) The PCC shall carry out any other tasks assigned by the council.]~~

~~[(e) PCC abolished. By January 1, 2011, the Executive Commissioner of the Health and Human Services Commission will initiate and complete a review of the PCC to determine whether the PCC should be continued, consolidated with another council, or abolished. If the PCC is not continued or consolidated, the PCC shall be abolished on that date.]~~

(e) ~~[(f)]~~ Composition. The PCC shall be composed of no fewer than 18 external members and no more than six ad hoc internal department members, so long as total membership does not exceed 24 total members. [The PCC shall be composed of no more than 24 members.]

(1) The composition of the external membership [PCC] shall reflect a broad spectrum of key preparedness partners.

(2) The external members of the PCC shall be appointed by the Executive Commissioner of the Health and Human Services Commission (commission).

(f) ~~[(g)]~~ Terms of office. The term of office of each member shall be six [6] years.

~~[(1)]~~ Members shall be appointed for staggered terms so that the terms of six members will expire on December 31 of each even-numbered year.

~~[(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.]~~

(g) ~~[(h)]~~ Officers. The PCC shall select from its members the presiding officer and an assistant presiding officer.

(1) The presiding officer shall serve until December 31 of each even-numbered year. The assistant presiding officer shall serve

until December 31 of each odd-numbered year. Both the presiding officer and the assistant presiding officer may holdover until his or her replacement is elected by the PCC.

(2) The presiding officer shall preside at all PCC meetings which he or she attends, call meetings in accordance with this section, appoint subcommittees of the PCC as necessary, and cause proper reports to be made to the department [council]. The presiding officer may serve as an ex-officio member of any subcommittee of the PCC.

(3) If the office of presiding officer or assistant presiding officer becomes vacant, it may be filled by vote of the PCC.

(4) A member shall serve no more than two consecutive terms as presiding officer or assistant presiding officer.

(5) The PCC may reference its officers by other terms, such as chairperson and vice-chairperson.

(h) ~~[(i)]~~ Meetings. The PCC shall meet [only] as necessary as determined by the department, but no less than quarterly, to conduct [PCC] business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the PCC.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact PCC members to determine availability for a meeting date and place.

(3) The PCC is not a "governmental body" as defined in the Open Meetings Act.

(4) Each member of the PCC shall be informed of a PCC meeting at least five working days before the meeting.

(5) A simple majority of the appointed external members of the PCC shall constitute a quorum for the purpose of transacting official business.

(6) The PCC is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(7) The agenda for each PCC meeting shall include an opportunity for new business or for any member to address the PCC on matters relating to PCC business. [any person to address the PCC on matters relating to PCC business. The presiding officer may establish procedures for such public comment, including a time limit on each comment.]

(i) ~~[(j)]~~ Attendance. Members shall attend PCC meetings as scheduled. [Members and subcommittee members shall attend meetings of subcommittees to which the members and subcommittee members are assigned.]

(1) A member shall notify the [presiding officer or] appropriate department staff or presiding officer if he or she is unable to attend a scheduled meeting.

(2) PCC members who anticipate the inability to attend or have the need to be represented by an alternate for more than half of the PCC and subcommittee meetings in a 12-month period, should notify their agency of the need to nominate a replacement representative for the duration of their term.

~~[(2) It shall be grounds for removal from the PCC if a member or subcommittee member cannot discharge the member's duties for substantial part of the term for which the member is appointed because of illness or disability, absence from more than half of the PCC and subcommittee meetings during a calendar year, or absence from at least three consecutive PCC meetings.]~~

(3) The validity of an action of the PCC is not affected by the fact that it is taken when a ground for removal of a member exists.

~~(j)~~ [(k)] Staff. Staff support for the PCC shall be provided by the department or its contractors.

(k) [(4)] Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any formal statement, recommendation, or agency level concern [action] taken by the PCC must be approved by a majority vote of the external members present once a quorum is established.

(2) Each external member shall have one vote. Ad hoc members and proxies may not vote.

~~[(3) A member may not authorize another individual to represent the member by proxy.]~~

(3) [(4)] The PCC shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status and shall strive to consider the needs of populations with functional and access needs in their deliberations.

(4) [(5)] Minutes of each PCC meeting shall be taken by department staff or its contractors.

(A) A draft of the minutes approved by the presiding officer shall be provided to the department [council] and each member of the PCC within 30 days of each meeting.

(B) After approval by the PCC, the minutes shall be signed by the presiding officer.

~~[(m) Subcommittees. The PCC may establish subcommittees as necessary to assist the PCC in carrying out its duties.]~~

~~[(1) The presiding officer shall appoint members of the PCC to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer also may appoint nonmembers of the PCC to serve on subcommittees, subject to the approval of the Executive Commissioner of the Health and Human Services Commission.]~~

~~[(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the PCC.]~~

~~[(3) A subcommittee chairperson shall make regular reports to the PCC at each PCC meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.]~~

~~(l)~~ [(n)] Statement by members.

(1) The commission, [the council,] the department, and the PCC shall not be bound in any way by any statement, recommendation, or action on the part of any PCC member [or subcommittee member] except when a statement or action is in pursuit of specific instructions from the commission, [council,] department, or PCC.

(2) The PCC and its members [or subcommittee members] may not participate in legislative activity in the name of the commission, [the council,] the department, or the PCC except with approval through the department's legislative process. PCC members are not prohibited from representing themselves or other entities in the legislative process.

(3) A PCC member [or subcommittee member] should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A PCC member [or subcommittee member] should not disclose confidential information acquired through his or her [committee] membership.

(5) A PCC member [or subcommittee member] should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A PCC member [or subcommittee member] who has a personal or private interest in a matter pending before the department [committee] shall publicly disclose the fact in a council [committee] meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the [committee] member has a direct pecuniary interest in the matter but does not include the [committee] member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(m) [(o)] Reports to the department [council]. The PCC shall file an annual written report with the department [council].

(1) The report shall list the meeting dates of the PCC [and any subcommittees], the attendance records of its members, a brief description of actions taken by the PCC, a description of how the PCC has accomplished the tasks given to the PCC by the department [council], the status of any rules which were recommended by the PCC to the department [council], and anticipated activities of the PCC for the next year.

(2) The report shall identify the costs related to the PCC's existence, including the cost of agency staff time spent in support of the PCC's activities and the source of funds used to support the PCC's activities.

(3) The report shall cover the meetings and activities in the immediately preceding fiscal year and shall be filed with the department [council] each January. The report shall be signed by the presiding officer.

(n) [(p)] Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a PCC member [or subcommittee member] may receive reimbursement for the member's expenses incurred for each day the member engages in official PCC business if authorized by the General Appropriations Act or the budget execution process.

(1) No compensatory per diem shall be paid to PCC members [or subcommittee members] unless required by law.

(2) A PCC member [or subcommittee member] who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) Each member who is to be reimbursed for expenses shall submit to department staff the member's receipts for expenses and any required official forms no later than 14 days after each PCC meeting.

(4) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

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 December 3, 2012.

TRD-201206193



TITLE 28. INSURANCE

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

CHAPTER 166. ACCIDENT PREVENTION SERVICES

28 TAC §§166.1 - 166.3, 166.5

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes amendments to §§166.1, 166.3, and 166.5; and new §166.2, relating to Accident Prevention Services. The Division proposes to repeal existing §§166.2, 166.4, and 166.6 - 166.9, which is published concurrently in this issue of the *Texas Register*.

Chapter 411 of the Labor Code, relating to Workers' Health and Safety, sets forth the requirements for accident prevention services (APS or services) in Subchapter E, §§411.061 - 411.068. These statutes require an insurance company, as a prerequisite for writing workers' compensation insurance in Texas, to maintain or provide accident prevention facilities that are adequate to provide accident prevention services required by the nature of its policyholders' operations. An insurance company is also required to use the accident prevention services in a reasonable manner to prevent injury to employees of its policyholders. These statutes provide an insurance company with some flexibility as to the method in which it may provide qualified accident prevention personnel and services. To provide the personnel and services, an insurance company may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide the personnel and services, or use a combination of these methods. These statutes also require an insurance company to submit to the Division at least once a year detailed information on the type of accident prevention facilities offered to its policyholders. Finally, these statutes give the Division the authority to conduct inspections to determine the adequacy of the required accident prevention services for each insurance company writing workers' compensation insurance in Texas.

Chapter 166 contains the Division's rules that implement the statutory requirements relating to accident prevention services provided by insurance companies. This chapter includes rules specifying what services an insurance company must at a minimum provide to its policyholders, rules setting out the due date and content requirements for the statutorily required annual report, and rules detailing the procedures that apply to a Division inspection of an insurance company's accident prevention services. The proposed amendments and new rule are designed to eliminate provisions that are administratively burdensome and that do not further the provision of quality accident prevention services to policyholders.

The Division is proposing other amendments in addition to the minimum service requirement rules. The proposed rules include delineating in §166.3 that certain data that must be included in an insurance company's annual report. The proposed amendments to §166.5 govern the Division's inspection of an insurance company's accident prevention services facilities and services. These amendments also include recodifying the provisions currently in §166.6 and §166.7 into proposed §166.5 with some amendments to those provisions. These amendments also include eliminating the mandatory requirement that the Division inspect the accident prevention services of each insurance company at least every two years.

The effective date of this rule proposal, if adopted, is anticipated to be September 1, 2013. The initial annual report required by proposed §166.3(a) will be due no later than April 1, 2014. An inspection of the adequacy of an insurance company's services under any new rule will occur no sooner than 90 days after the initial annual report is received. The effective date and deadlines have been proposed to reduce the burden of transitioning to the new and amended rules as much as possible.

The Division published three informal drafts of the new and amended sections on the Division's website on June 8, 2012, August 17, 2012, and November 1, 2012, and received several informal comments. As a result of some of the comments received and other feedback from system participants, the Division made several changes to the proposal as a result of the informal comments.

Proposed Amended Title of Chapter 166.

This proposal amends the title of Chapter 166 from "Workers' Health and Safety--Accident Prevention Services" to "Accident Prevention Services" in order to more succinctly describe the contents of the chapter.

Proposed Amended §166.1.

The proposed amendments to §166.1 revise several definitions applicable to accident prevention services. Proposed §166.1(a)(1) is amended to include "information" as an element of "Accident prevention facilities" in order to include electronic correspondence. The word "maintain" was also added to mirror statutory language. Proposed amendments will remove the definitions for current §166.1(2) "Division," §166.1(3) "Field safety representative," §166.1(4) "Loss ratio," §166.1(6) "On-site visit," and §166.1(7) "Other appropriate services" because these definitions are no longer required by the rules or are not essential for a complete understanding of the rules. The proposed amendment to §166.1(a)(3) revises the definition of "Premium" to match the definition used in the Insurance Code. The proposed amendment to §166.1(a)(4) adds a definition of "Survey" which is defined as an on-site visit to a policyholder's worksite where a risk exists or loss occurred during which APS personnel evaluate and make recommendations to prevent injuries and illnesses. This definition is necessary to clarify what is required by statute to conduct surveys as appropriate.

Proposed New §166.2.

Proposed new §166.2 describes what constitutes adequate accident prevention services and replaces current §166.4, which is proposed for concurrent repeal. Proposed new §166.2 eliminates some of the service requirements in current §166.4 and modifies others. Elements of current §166.4 that were repealed and are not carried forward in this proposal include provision of services based on prescribed premium levels, loss ratios, and

time frames; written solicitation of comments letters; and written notification of claims experience.

Proposed subsection (a) requires an insurance company to maintain accident prevention facilities that are adequate to provide accident prevention services required by the nature of its policyholders' operations. This proposed rule is consistent with the statutory requirements placed upon an insurance company as set out in Labor Code §411.061(a) and §411.068(a)(1). Proposed subsection (a)(1) - (10) sets out the elements that must be included in an insurance company's accident prevention facilities. Subsections (a)(1) - (7) mirror elements found in Labor Code §411.061(b)(1) - (7), which include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene, and industrial health services.

Proposed subsection (a)(8) requires the facilities to include qualified accident prevention personnel which will ensure that the requisite level of accident prevention services are provided to policyholders. Consistent with Labor Code §411.063, proposed subsection (a)(8) states that an insurance company may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide personnel and services, or use a combination of those methods to provide qualified APS personnel and services.

Proposed subsection (a)(9) describes the written procedures an insurance company must maintain and is similar to current §166.4(c)(4). Proposed subsection (a)(9)(A) pertains to notifying policyholders of APS. Proposed subsection (a)(9)(B) matches current §166.4(c)(4)(A) and pertains to determining the appropriate services for a policyholder. Proposed subsection (a)(9)(C) matches current §166.4(c)(4)(B) and pertains to determining the specific time frame and manner for provision of service. Proposed subsection (a)(9)(D) matches current §166.4(c)(4)(C) and pertains to the provision of training programs to policyholders. Proposed subsection (a)(9)(E) and (F) relate to current §166.4(c)(4)(D) and pertain to the provision of reports identifying hazardous conditions and work practices by an insurance company or an independent contractor acting on the company's behalf. Proposed subsection (a)(9)(G) requires written procedures for the accident prevention services submitted on the initial annual report by an insurance company. The written procedures required by proposed subsection (a)(9) are essential to the new regulatory framework the Division is developing. The proposed rule provides an insurance company the authority to develop procedures that are tailored to suit its business model. The procedures will serve as a metric by which to assess whether an insurance company has indeed provided APS in accordance with what it has represented.

Proposed subsection (a)(10) requires written records, reports, and evidence of all APS provided to each policyholder; this provision mirrors current §166.4(c)(5). The recordkeeping component of an APS program is necessary because the documents provide evidence concerning the effectiveness of and accomplishments of an insurance company's APS, as well as evidence concerning whether an insurance company has complied with applicable statutes and Division rules, its written procedures, and the information submitted on the annual report. This recordkeeping will assist the Division and insurance company with ensuring that the company complies with all applicable requirements governing APS.

Proposed subsection (b) implements the requirement in Labor Code §411.068(a)(2) that an insurance company shall utilize the services in a reasonable manner to prevent injury to the employ-

ees of its policyholders. Proposed subsection (b) describes what the Division considers the minimum reasonable use of accident prevention services. This rule is necessary to ensure that the end goal of accident prevention is achieved through proper utilization of services by an insurance company.

In accordance with Labor Code §411.066, proposed subsection (b)(1) requires an insurance company to provide notice of APS and return-to-work coordination services on the information page or on the front of the policy. The specific language required in the notice is included in the rule text. This requirement is similar to the notice requirement found in current §166.4(c)(8)(A) - (B) with the following modifications. Proposed notice text includes seven elements that are included in an APS facility as listed in Labor Code §411.061(b)(1) - (7). Including these elements in this notice is necessary because it provides more specificity for employers regarding which services by law are available to them. Proposed text includes an email address as contact information to assist employers in communicating with an insurance company via email. Proposed text also includes a reference to the availability of the return-to-work reimbursement program under Labor Code §413.022, along with a telephone number and email address, which is necessary to implement Labor Code §413.021 which requires an insurance carrier to notify the employer of the availability of the return-to-work reimbursement program. The last sentence of proposed notice text includes instructions to the employer on how to file a complaint with the Division if an insurance company fails to respond to a request for APS or return-to-work coordination services. The text has been updated to clarify that an insurance company is required to notify an employer that accident prevention services are available, so that the notice meets statutory requirements.

Proposed subsection (b)(2) describes the mandatory procedure following a work-related fatality and is similar to current §166.4(c)(2)(D) which requires a visit to the insured within three working days of notification and/or knowledge of a fatality unless the fatality occurred outside of Texas or was the result of an accident on a common carrier. The proposed subsection also requires an insurance company to contact a policyholder and offer a survey within seven working days of knowledge of a work-related fatality. A survey shall be initiated within 60 days of policyholder acceptance of a survey offer. A survey is mandatory only if the offer of a survey is accepted by the policyholder. This proposed rule is necessary because it ensures that surveys are offered in circumstances in which they are needed, as in the case of a work-related fatality. The proposed rule also allows for the policyholder's participation in determining whether a survey is needed and contains an expanded time frame, which is necessary to allow for accident investigation by outside entities. This will result in a more productive survey. Proof of compliance with this requirement may take the form of a documented survey offer or other verifiable means of attempting to offer a survey to a policyholder.

Proposed subsection (b)(3) requires an insurance company to evaluate a policyholder's need for services and is similar to current §166.4(c)(1)(A) - (C). The evaluation shall be conducted in accordance with the procedures developed by the insurance company under proposed §166.2(a)(9) and must take into consideration the following criteria: generally accepted industry standards and practices, nature of losses, frequency of claims, loss ratio, severity of claims, risk exposure, experience modifier, premium, and other relevant information. This proposed rule is necessary in order to ensure that an insurance company conducts evaluations in a proactive manner to determine

whether accident prevention services are necessary and does so in accordance with the procedures created by the insurance company. These criteria are listed so that an insurance company has proper guidance on which specific elements out of numerous possible considerations should be analyzed during the determination of policyholder need. These criteria are similar to current requirements and are commonly used in the occupational safety and health industry. The specific time frame in the current rule has been removed, and the new time frame will be established by the insurance company's written procedures.

Proposed subsection (b)(4) requires an insurance carrier, after evaluating and determining the policyholder's need for services, to make its offers and provide all services determined to be needed within a reasonable time and in accordance with their written procedures and their annual information submitted to the Division. This proposed rule is necessary because it will ensure that an insurance company acts upon its determination that a policyholder is in need of services and does so within a reasonable period of time. This proposed rule will also ensure that an insurance company meets their requirements, including deadlines, specified in its written procedures and annual information submitted under proposed §166.3(a)(2)(G). The Division recognizes that some services do not require acceptance of an offer, such as providing a brochure or training materials. An insurance company will specify in its written procedures under proposed §166.2(a)(9) which services will involve an offer to a policyholder and which services will not require an initial offer because no acceptance of the services would be necessary.

Proposed subsection (b)(5) states that an insurance company shall provide services to a policyholder within 15 days of a request for services if services can be provided without conducting a survey, and within 60 days if a survey is required. This is similar to current §166.4(c)(2)(A). Changes have been made to track statutory language, which states that services provided must be required by the nature of a policyholder's operations. The deadline for an on-site visit has been extended from 30 days to 60 days. These deadlines are necessary to ensure that meaningful services are provided when desired by a policyholder within a reasonable period of time. These deadlines are also necessary to require an insurance company to be responsive to policyholder needs. This proposed rule retains provisions currently in §166.4(c)(2)(A) which allows requested services to be provided at a later date if circumstances require and the later date is agreed upon by the policyholder. This proposed rule will provide flexibility as there may be situations where the insurance company and policyholder believe it appropriate to provide the requested services after the 15 or 60 day deadline, as applicable.

Service requirements that are part of the current rules, but not part of the proposed rules, are as follows: the requirement in current §166.4(c)(2)(B) for an on-site visit, or provision of other appropriate services, on a periodic basis and at least every 12 months based on premium and loss ratio; the requirement in current §166.4(c)(2)(C) for a mandatory on-site visit on a periodic basis and at least every 12 months based on premium and loss ratio; the requirement in current §166.4(c)(2)(E) for written solicitation of comment letters; the requirement in current §166.4(c)(6) for written notification at least every 12 months to each policyholder of actual claims experience; and the requirement in current §166.4(c)(7) for written documentation of loss analysis at least every 12 months based on premium and loss ratio.

Proposed subsection (c) lists how the Division determines adequacy of APS, which is as follows: (1) the requirements of Chapter 166; (2) generally accepted tools and guidelines of loss control provision; (3) review of initial and subsequent annual reports of annual information; and (4) inspections of accident prevention services and facilities. This proposed rule is necessary because it informs an insurance company of the method by which the Division will examine the adequacy of an insurance company's accident prevention services.

Proposed subsection (d) prohibits an insurance company from charging an additional fee for APS, and corresponds to current §166.4(b). This rule does not change the current requirement. This rule is necessary to ensure that services are made available to each and every policyholder, regardless of ability or willingness to pay an amount in addition to the premium. Subchapter E of Chapter 411 of the Labor Code imposes a duty on an insurance company regarding APS, and this duty is not conditioned on the payment of an additional fee by a policyholder.

Proposed subsection (e) reiterates the statutory mandate placed upon an insurance company to maintain or provide APS for a policyholder. This proposed subsection also prohibits an insurance company from soliciting or obtaining a prospective waiver from policyholders to decline accident prevention services. Subchapter E of Chapter 411 of the Labor Code requires an insurance company to maintain or provide accident prevention facilities that are adequate to provide accident prevention services required by the nature of its policyholders' operations and to use the services in a reasonable manner to prevent injury to employees of its policyholders. A prospective waiver would negate these statutory obligations for an insurance company.

Proposed Amended §166.3.

The proposed amendment to §166.3 codifies Labor Code §411.065, which requires an insurance company to submit to the Division at least once a year detailed information on the type of accident prevention facilities offered to its policyholders. Information that Labor Code §411.065(b) requires to be included on the annual report is: (1) the amount of money spent by the insurance company on accident prevention services; (2) the number of site inspections performed; (3) accident prevention services for which the insurance company contracts; (4) a breakdown of the premium size of the risks to which services were provided; (5) evidence of the effectiveness of and accomplishments in accident prevention; and (6) any additional information required by the commissioner. This proposed rule will require each insurance company to submit an initial annual report and a subsequent annual report April 1st of each calendar year thereafter. The reporting requirements in this proposal have expanded upon current §166.3 by detailing data elements that must be included in initial and subsequent annual reports. The data elements listed in this proposed rule include information already being provided by an insurance company on its annual report under current §166.2, new information tailored to the new program requirements under these proposed rules, and the information required by Labor Code §411.065(b).

Proposed subsection (a) addresses the initial annual report, and proposed subsection (a)(1) states that an insurance company's initial report on its accident prevention services is due not later than April 1, 2014 for an insurance company currently writing workers' compensation insurance. An insurance company that writes its first workers' compensation insurance policy after the effective date of this section must file its initial annual report not later than the effective date of its first workers' compensation in-

insurance policy. The initial report is necessary so that Division staff can review an insurance company's APS program for adequacy.

Proposed subsection (a)(2) lists elements that must be included in the report, which are as follows: insurance company's name; group name; name, email, phone number, and mailing address of the primary loss control contact for Texas; National Association of Insurance Commissioners (NAIC) number; A.M. Best rating; changes in ownership, organizational structure, or management since the last annual report that affect the provision of accident prevention services; for each of the accident prevention services listed in proposed §166.2(a)(1) - (7), the criteria used to determine a policyholder's need for APS, the time frame and manner of making an offer of APS, the time frame and manner of providing APS, specification of each entity that will provide APS, and the method of documentation; the manner of determining a loss ratio; personnel qualification requirements; method for assuring the provision of adequate APS by personnel; number of policies in effect; number of policies sorted by premium group that received APS; amount of money spent on APS; number of requests for APS; number of fulfilled requests for APS; number of surveys performed; number of work-related fatalities; evidence of effectiveness of APS; and an insurance company representative's contact information and certification that the report is correct and complete.

Proposed subsection (a)(2)(A) - (E) solicit basic identification-related information about an insurance company. Proposed subsection (a)(2)(G) - (J) relate to service guidelines, which inform the Division of how an insurance company plans to assess and implement accident prevention services. The other elements solicit information regarding services provided during the previous calendar year. Proposed subsection (a)(2)(K) - (R) pertain to an insurance company's book of business. Proposed subsection (a)(2)(L), (M), (P), (R), and (a)(2)(G)(iv) are required by Labor Code §411.065(b)(1) - (5). Much of the information solicited by the proposed rule is currently required by the Division.

Proposed subsection (a)(2)(F), regarding changes in ownership, specifically refers only to changes in ownership that affect the provision of accident prevention services rather than unrelated changes, such as a new shareholder. Proposed subsection (a)(2)(G)(iv) is intended to garner general information regarding whether the insurance company provided services, contracted with a third party to provide services, or contracted with the policyholder to provide services, rather than the specific name of every individual working for each entity that provided services. Proposed subsection (a)(2)(R) corresponds to Labor Code §411.065(b)(5) and solicits, for example, the following types of information: total number of new workers' compensation claims opened (not by injury date), total amount paid on workers' compensation claims, total amount of workers' compensation reserves being held on December 31, total number of work-related fatalities incurred by policyholders, or other information that the insurance company determines will provide evidence of effectiveness of and accomplishments in accident prevention. These data elements are necessary to adequately inform the Division of an insurance company's provision of services.

Proposed subsection (b) lists requirements for a subsequent annual report submitted by an insurance company. Proposed subsection (b)(1) corresponds to current §166.3(a) - (b), and requires that the annual report on APS be filed no later than April 1 of each calendar year. Proposed subsection (b)(2) specifies the format and manner of the report, and corresponds to cur-

rent §166.3(c). As specified by proposed subsection (b)(2)(A) - (F), a subsequent report must include: the insurance company's name; group name; contact information for the primary loss control contact; NAIC number; information from proposed §166.3(a)(2)(E) - (R) that has changed since the previous annual report; and an insurance company representative's contact information and certification that the report is correct and complete. The annual report should contain information from January 1 through December 31 of the previous year. Amendments to the annual reporting requirements are necessary so the Division has access to updated and complete information needed to effectively evaluate an insurance company's performance as it relates to APS and determine if an inspection is necessary.

Proposed subsection (c) corresponds to current §166.3(e) and prohibits inclusion of the expense or cost of an underwriting visit to a policyholder's premises unless APS are provided during the visit.

Proposed subsection (d) requires an insurance company that is resuming writing workers' compensation insurance in Texas and has not written workers' compensation insurance with exposures in Texas for 12 months or more to submit an initial annual report not later than the effective date of its first workers' compensation policy. Current §166.2(b) only requires an insurance company to notify the Division within 60 days of writing its first new policy. The proposed rule requires the submittal of an initial annual report. This provision is necessary because it affords the Division the opportunity to make a determination of adequacy based on sufficient information.

Proposed subsection (e) clarifies that a report is considered filed with the Division only if it contains all the required, accurate data elements and is received by the Division. This proposed rule is necessary in order to ensure that an insurance company provides the Division with data that is complete and accurate.

Proposed Amended §166.5.

The proposed amendment to §166.5 describes the manner in which the Division will conduct inspections to determine the adequacy of accident prevention facilities and services. Proposed subsection (a) corresponds to both Labor Code §411.064 and current §166.5(a)(1), and states the Division may conduct inspections to determine the adequacy of an insurance company's APS.

Proposed subsection (a)(1) concerns frequency of inspections and differs from current §166.5(a)(1), which requires an inspection at least every two years. The proposed amendment requires one initial inspection and allows additional inspections, but does not require at least one inspection every two years. This proposed amendment is consistent with the statutory authority in Labor Code §411.064 which authorizes the Division to conduct inspections to determine the adequacy of the accident prevention services for each insurance company writing workers' compensation insurance in Texas. Proposed subsection (a)(2) mirrors language in current §166.5(a)(2) and allows affiliated companies of an insurer to be inspected together if they share the same facilities, programs, and personnel. Proposed subsection (a)(3) states the Division shall notify the insurance company in writing at least 90 days prior to an inspection, and the notice shall include the site of inspection. This differs from current §166.5(a)(3) that states the Division shall mail notice at least 60 days prior to an inspection. The Division is increasing the length of time by 30 days in order to give an insurance company additional time to make arrangements for the inspection. Removing the require-

ment for the Division to mail the notice affords it the opportunity to provide notice electronically. Proposed new §166.5(a)(4) states the Division may conduct unannounced on-site visits in accordance with 28 TAC §180.4. This provision is necessary to reflect in these rules the Division's authority set out in Labor Code §414.005 and 28 TAC §180.4 to conduct unannounced on-site visits when reviewing the operations of a person regulated by the Division.

The proposed amendment to subsection (b) replaces language from current subsection (b)(1)(A) concerning agreement by the Division and insurance company as to the site of inspection with language indicating the decision is within the Division's discretion. Proposed subsection (b)(2) removes the option of conducting the inspection at an agreed location if the insurance company has no office in Texas, and clarifies that the Division's Austin headquarters, either in person or via electronic means, is the second option for site of inspection. The proposed amendment to §166.5(b) removes the option of conducting an inspection of an insurance company's APS at a location outside the state of Texas on a reimbursement basis. These amendments are necessary to eliminate inefficiencies when conducting an inspection.

Proposed subsections (c) - (f) recodify provisions in §166.6 and §166.7 which are proposed for repeal elsewhere in this issue of the *Texas Register*. This recodification is necessary in order to include in one rule provisions that govern the same subject matter. The Division is also proposing amendments to the recodified rules which are discussed below.

Proposed subsection (c) corresponds to current §166.6(a), which relates to the pre-inspection exchange of information. Proposed subsection (c)(1) differs from current §166.6(a)(1) in that the proposed amendment requires the insurance company to provide information 60 days prior to the inspection rather than 45 days. This provision is necessary to allow the Division sufficient time to review the information submitted before the inspection occurs. This proposed subsection also requires the information to be provided in the format and manner specified by the Division.

Proposed subsection (c)(1)(A) lists information an insurance company must submit to the Division prior to inspection. The information must be taken from the most current records, be separated by affiliated companies, arranged in descending order by premium, and include all policies for the period of time determined by the Division. An insurance company must submit the following information to the Division under this proposed rule: a list of policyholders for the period of time determined by the Division by name, policy number, effective date or expiration date of the policy, premium, number of fatalities, principal Texas location, indication of whether the insurance company has contracted with the policyholder for APS, and an indication of whether that policyholder has requested APS. The last two elements, whether the insurance company has contracted with the policyholder for APS, and an indication of whether that policyholder has requested APS, are new requirements, as is the number of fatalities. The current rule requires the data element of "Texas locations." This proposed rule modifies the rule to require "principal Texas location." The submission of this information affords the Division the ability to narrow the scope of its inspection to those aspects of an insurance company's APS that require further analysis.

Proposed subsection (c)(1)(B) requires an insurance company to submit to the Division a copy of all APS procedures, including any changes since the insurance company's last annual report.

This provision is necessary because although an insurance company has the latitude to customize its own APS procedures, they must be reviewed by the Division for adequacy.

Removed from the list of data that must be provided by an insurance company during the pre-inspection exchange of information is a list of the name, location, status (whether employee or contractor), and proof of qualifications of each person acting as a field safety representative for the insurance company. This data element has been modified and moved to proposed subsection (d)(6) as information the Division may request during the inspection.

Proposed subsection (c)(2) corresponds to current §166.6(a)(2) and states the Division shall select specific policyholder files for evaluation within 10 days of receipt of the policyholder list. The Division notifies an insurance company of the specific policyholder files it will inspect in order to facilitate a more efficient, less time-consuming review.

Proposed subsection (c)(3) corresponds to current §166.6(a)(4) and requires an insurance company to prepare a worksheet for each policy selected by the Division. These proposed amendments delineate in the rule the data elements that must be included in the worksheet. The worksheet must include data elements described in proposed subsection (c)(3)(A) - (K). These elements are: policyholder name; policy number; number of employees; principal Texas office address; primary NAICS code; A.M. Best Hazard index number; policyholder contact person's name, phone number, and email address; insurance company name; effective date of policy; name of person completing the form and date completed; service and loss information including total premium, number of claims, number of and dates of fatalities, loss ratio, experience modifier, surveys, recommendation letters, training programs, consultations, analyses of accident causes, industrial hygiene services, industrial health services, policyholder requests, underwriting requests, insurance company determinations in accordance with proposed §166.2(b)(4), description of policyholder operations, and comments. The data elements required by this proposed amendment have been selected for verification of adherence to written procedures.

Most of the elements in §166.5(c)(3)(A) - (K) are currently solicited by the Division through an existing form. The proposed rule includes these elements as well as new elements. The proposed rule requires the dates of fatalities, in addition to an experience modifier and underwriting request, both of which may trigger a need for service. The following elements are services an insurance company's accident facilities must by statute include: recommendation letters, training programs, consultations, industrial hygiene services, and industrial health services.

Proposed subsection (c)(4) corresponds to current §166.6(a)(5) and changes the date by which an insurance company must file completed worksheets from five days to ten days prior to the date of inspection. This change in the time frame is intended to allow the Division more time to review information and visit policyholders before an inspection.

Several elements in proposed subsection (c) require relevant dates to be reported. However, the Division is amending Chapter 166 to provide an insurance company the flexibility to establish in its written procedures its own schedule for the provision of adequate APS to a policyholder. These proposed amendments would replace the specific time frames currently dictated by Division rule, which would in turn create greater flexibility for an insurance company. The dates listed in proposed subsection

(c) will be compared to an insurance company's written procedures. These dates are essential to the Division's determination of whether services were provided in accordance with the insurance company's written procedures.

Not included in the proposed amendments is current §166.6(a)(3) which requires the insurance company to provide the Division with a completed Accident Prevention Services Questionnaire at least 35 days prior to the date set for inspection.

Proposed subsection (d) lists information to be made available at the inspection and corresponds to current §166.6(b)(1), but changes the relevant time frame from the date of the last inspection or initiation of coverage to a time frame specified by the Division. Proposed subsection (d)(1) - (6) include the following elements: loss control files corresponding to the requested worksheets; a sample policy declaratory page as evidence that each policyholder has been provided the required notice; a copy of loss runs that includes the number of injuries, accident or illness types, body parts involved, injury causes, and fatalities; a copy of all documentation of services provided in accordance with proposed §166.2(b)(2) - (5); samples of policyholder training materials, audiovisual aids, and training programs; and other information that may include, but is not limited to, records of surveys, consultations, recommendations, training provided, loss analyses, industrial health and hygiene services, return-to-work coordination services information, and the name, location, status (whether employee or contractor), and qualifications of each person that provided APS found in the loss control files being reviewed during the inspection. An insurance company must furnish the information described above because the information is necessary to the Division's determination of adequacy of APS.

Proposed subsection (e) adds a provision stating the Division may contact a policyholder and conduct scheduled visits of a policyholder's jobsite to obtain information about an insurance company's APS. Current §166.7(a)(4) allows for unscheduled inspections of policyholder jobsites. The Division uses such information to determine the effectiveness of APS as it relates to the end user of these services.

Proposed subsection (f) corresponds to current §166.7(b), which relates to the written report of inspection. Proposed subsection (f)(1) requires the Division to prepare a written report of the inspection and provide a copy to the insurance company's management and the Texas Department of Insurance, Loss Control Regulation Division. The amendment deletes the provision regarding completion of the report within 30 days of the inspection. The Division will continue to complete the report in a timely fashion.

Proposed subsection (f)(2) corresponds to current §166.7(b)(2) and requires the Division to include in the report a determination of adequacy with specific findings and required corrective actions in accordance with Labor Code §411.061 and proposed §166.2. The proposed amendment requires one of three findings for an insurance company's APS: final determination of adequacy, initial determination of inadequacy, or final determination of inadequacy. The Division includes the new option of an initial determination of inadequacy to allow an insurance company a meaningful opportunity to cure defects in its services, which may obviate the need for reinspection.

Proposed subsection (f)(3) corresponds to current §166.7(b)(3) and states the Division will provide written notification to the insurance company of specific deficiencies and recommendations

if the company earns an initial determination of inadequacy. The subsection requires an insurance company to provide written documentation that demonstrates compliance with the Division's recommendations. The documentation must include corrective actions taken to address each finding. An insurance company may request an extension to implement the recommendations, if necessary. This provision is necessary because it establishes a procedure that the Division will follow before it issues a final determination.

Proposed subsection (f)(4) corresponds to current §166.7(b)(5) and states the Division shall issue a certificate of inspection to an insurance company whose APS is deemed adequate by inspection.

Proposed subsection (f)(5) clarifies that a certificate of inspection or reinspection may be withheld due to a final determination of inadequacy. This provision is necessary because the Division is responsible for determining the adequacy of the accident prevention services provided by the insurance company.

Proposed subsection (g) concerning reinspections codifies Labor Code §411.064(b) and states the Division shall reinspect the APS of an insurance company that received a final determination of inadequacy not earlier than the 180th day or later than the 270th day after the date the APS were determined inadequate by the Division. Proposed subsection (g)(2) clarifies that information required at the time of initial inspection must also be furnished at the time of reinspection. This is necessary because a reinspection is conducted in the same manner as an initial inspection.

Matthew Zurek, Executive Deputy Commissioner for Health Care Management, has determined that for each year of the first five years the proposed amendments and new rule will be in effect there will be minimal fiscal implications to state or local government as a result of enforcing or administering the amendments and new rule. There will be no measurable fiscal effect on local employment or the local economy as a result of the proposed amendments and new rule.

Increased costs to state government include expenses associated with developing Division procedures to implement the proposal. Division personnel must develop and implement a revised plan for conducting inspections in accordance with the provisions of this rule proposal. However, because the current requirement for an inspection every two years is being modified, the Division will ultimately realize cost savings due to greater flexibility in the frequency of inspections. Mr. Zurek has determined that all duties and responsibilities associated with implementing the proposed amendments and new rule can be accomplished by utilizing existing agency resources.

Local Government and State Government as a Covered Entity. Local government and state government as a covered regulated entity will not be impacted. The proposed amendments and new rule will require minimal adjustments on the part of the Division, but will not affect local governments in an appreciable way.

Mr. Zurek has also determined that for each year of the first five years the proposed amendments and new rule will be in effect the public benefit anticipated as a result of enforcing the rules will be increased flexibility through the use of individualized written procedures and greater clarity in the administration of accident prevention services. Consequently, the proposed amendments and new rule should eventually decrease costs for the system overall.

For the purpose of determining costs relating to this proposal, the Division based its analysis on an annual salary of \$60,000 per employee. Therefore, one hour of work is worth \$28.84. Forty hours constitutes one workweek. This figure is an estimate for costs associated with an average-sized company. This figure may be scaled up or down relative to the size and nature of each insurance company's operations. The Division anticipates that costs will vary among companies depending on such factors as a company's book of business, existing processes, staffing, and service requirements in other states.

The proposed amendments and new rule will require an insurance company to incur a one-time cost as it transitions to the modified program. Both an insurance company that currently writes workers' compensation insurance and an insurance company that begins writing workers' compensation insurance after the effective date of this rulemaking will incur costs related to developing written procedures for their APS in accordance with proposed §166.2(a)(9). It is estimated that these procedures will require one employee five business days to complete. Therefore, the expenditure related to developing written procedures is equivalent to a weekly salary for one employee of an insurance company. A 40-hour workweek will result in an expenditure of \$1,153.85 to develop written procedures.

The proposed amendment to §166.2(b)(1) involves alterations to the notice of APS that an insurance company must provide to a policyholder. This change will require an employee to reprogram one paragraph of text comprising notice to a policyholder, and will result in a minimal one-time cost to an insurance company. The Division estimates a programmer will spend about an hour completing these changes, so the cost will be \$28.84.

The proposed amendment to §166.3(a) requires an insurance company to prepare a more detailed initial annual report than is currently required. Many of the elements in the new rule are already being solicited under the current rules and processes. In addition to current requirements, the amended rule will solicit data concerning an insurance company's qualification requirements for employing or contracting with accident prevention personnel, the number of requests for service, number of requests fulfilled, and number of accounts grouped by premium size. An employee may dedicate five business days reprogramming for an initial annual report for an insurance company. After reprogramming, an employee might spend one business day compiling data for the elements listed in proposed §166.3(a)(2)(A) - (S). Consequently, an insurance company will likely incur a cost equivalent to six days worth of salary for one employee. The total cost will be \$1,384.32.

The proposed amendment to §166.3(b) requires an insurance company to reprogram its procedure for compiling data for a subsequent annual report. This change will result in a minimal one-time cost. The report will likely be completed within two to three business days. The total estimated cost for completing a subsequent annual report is between \$461.44 and \$692.16.

The proposed amendment to §166.5(c)(3) requires an insurance company to complete a worksheet for each policyholder file selected by the Division for review. Changes to the data elements listed on the worksheet will require an insurance company employee to reprogram the method for compiling relevant information. A new tracking system will be necessary to maintain a record of dates, as required by rule. These changes constitute a one-time reprogramming cost to an insurance company that will likely represent one week of work, or \$1,153.85.

Although the amendments and new rule to Chapter 166 will cause regulated entities to incur additional costs, the Division anticipates an overall cost savings due to refinements in its regulatory oversight of an insurance company's APS. The Division will allow an insurance company to establish the time frame in its written procedures for an evaluation of policyholder need under proposed §166.4(c)(1). The Division will no longer require an on-site visit or other services every 12 months under current §166.4(c)(2)(B). The Division will no longer require a written solicitation of comments under current §166.4(c)(2)(E). The Division will no longer require written notification at least every 12 months to each policyholder of actual claims experience and a loss analysis under current §166.4(c)(6) - (7). The Division will no longer automatically inspect each insurance company's APS every two years under current §166.5(a)(1). Taken together, these amendments will result in lower costs for, and allow greater efficiency in, an insurance company's provision of APS.

As required by the Government Code §2006.002(c), the Division has determined that proposed §§166.2(a)(9), 166.2(b)(1), 166.3(a), 166.3(b), and 166.5(c)(3) may have an adverse economic impact on 30 insurance companies that are small and micro businesses.

Specifically, proposed §166.2(a)(9) requires an insurance company to develop written procedures to comply with the new and amended rules in Chapter 166. Written procedures are necessary to ensure consistent, adequate results in an insurance company's provision of APS. Therefore, the Division has determined that the requirement in proposed §166.2(a)(9) cannot be waived. Proposed §166.2(b)(1) requires minor changes to the notice provided to a policyholder, and the resulting cost is minimal. Further, notice to policyholders is required by Labor Code §411.066.

Proposed §166.3(a) requires an insurance company to compile information and submit an initial report to the Division that addresses relevant aspects of an insurance company's business practices. This requirement is vital to the Division's review of an insurance company's APS; therefore, relaxing or suspending this requirement for small or micro businesses would be detrimental to the Legislature's mandate governing APS in Chapter 411, Subchapter E of the Labor Code. Proposed §166.3(b) relates to a subsequent annual report and will require an insurance company to reprogram its procedure for compiling data into the report. These costs are not considered significant, and the Division has determined the need to maintain the integrity of the annual reporting process outweighs any minor burden this requirement imposes on an insurance company. Additionally, an annual report is required by Labor Code §411.065.

Proposed §166.5(c)(3) will also require an insurance company to reprogram its data analysis for the worksheet the Division uses to determine adequacy of APS during an inspection. Reprogramming costs and accurate worksheets are necessary to ensure that the Division has information necessary to conduct a meaningful review and inspection of an insurance company's APS.

In conducting its Regulatory Flexibility Analysis, the Division has determined that scaling back APS requirements would both violate core statutory requirements in Labor Code Chapter 411, Subchapter E and be inconsistent with the health and safety of employees in the state.

The cost of the amendments and new rule will not vary between large businesses and small or micro businesses, and the Division's cost analysis in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro businesses.

The primary purpose of the proposal is to streamline the Division's process for regulating an insurance company's provision of APS. The ultimate result from implementing the entire proposal will likely be a decrease in the costs of compliance for an insurance company.

The amendments discussed above represent core planning, reporting, and review components that are essential to accident prevention services. These requirements are necessary to diminish the risk of work-related injury or illness through the APS program. Therefore, the Division has determined that relaxing or waiving the requirements listed above would inhibit the uniform and efficient provision of APS, and would be contrary to statutory requirements.

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

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on January 15, 2013. Comments may be submitted via the internet through the Division's internet website at www.tdi.texas.gov/wc/rules/proposedrules/index.html, by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. Comments received after the close of the comment period will not be considered.

A public hearing on this proposal will be held on January 4, 2013 at 1:30 p.m. in the Tippy Foster Conference Room of the Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Austin, Texas 78744-1645. The Division provides reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require accommodations in order to attend the hearing please contact Idalia Salazar at (512) 804-4403 at least two business days prior to the confirmed hearing date.

The hearing will also be audio streamed; to listen to the audio stream, access the Public Outreach Events/Training Calendar website at www.tdi.texas.gov/wc/events/index.html. Audio streaming will begin approximately five minutes before the scheduled time of the hearing.

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

The amendments and new rule are proposed under Labor Code §§411.061, 411.063 - 411.068, 413.021, 414.005, 402.00116, 402.00111, 402.061, 402.00128, and 415.021. Section 411.061 requires an insurance company to maintain or provide accident prevention facilities. Sections 411.063 - 411.068 require an insurance company to provide qualified accident prevention personnel; authorize inspections of an insurance company to determine the adequacy of services provided; require an insurance company to submit information to the division; require an insur-

ance company to provide notice of services to a policyholder; require an insurance company to use the services in a reasonable manner to prevent injury to employees of its policyholders; and provide for an administrative penalty for violation of the requirements. Section 402.00116 grants the powers and duties of chief executive and administrative officer to the Commissioner and the authority to enforce the Labor Code, Title 5, and other laws applicable to the Division or Commissioner. Section 413.021 requires an insurance carrier, with the agreement of a participating employer, to provide the employer with return-to-work coordination services. Section 413.021 also requires an insurance carrier to notify the employer of the availability of the return-to-work reimbursement program under Labor Code §413.022. Section 414.005 provides that the Commissioner is not required to announce an on-site visit in advance when conducting a review under §414.005. Section 402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under the Labor Code, Title 5. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Workers' Compensation Act. Section 402.00128 vests general operational powers to the Commissioner including the authority to delegate, and assess and enforce penalties as authorized by the Labor Code, Title 5. Section 415.021 provides for assessment of administrative penalties if a person violates, fails to comply with, or refuses to comply with a rule or the Texas Workers' Compensation Act.

The following statutes are affected by this proposal: Labor Code §411.061 and §§411.063 - 411.068.

§166.1. Definitions of Terms.

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

(1) Accident prevention facilities--All personnel, procedures, equipment, materials, documents, buildings, ~~and~~ programs, ~~and information~~ necessary to maintain or provide accident prevention services to the policyholder.

~~[(2) Division--The Workers' Health and Safety Division of the Texas Workers' Compensation Commission.]~~

~~[(3) Field safety representative--An individual providing accident prevention services to workers' compensation policyholders. Qualification as a field safety representative under this chapter does not qualify the individual as an approved professional source, as described in §164.9 of this title (relating to Approval of Professional Sources for Safety Consultations).]~~

~~[(4) Loss Ratio--Loss ratio is the result of dividing the accumulated claims (including reserves) in a policy year by the premium determined when the policy is written.]~~

(2) ~~[(5)]~~ Nature of the policyholders' operations--Type of business or industry with specific reference to potential for accident, injury or disease determined by the standard hazards associated with the most hazardous industrial operations in which the policyholder is engaged.

~~[(6) On-site visit--A survey or consultation, or training conducted at any premises upon which the policyholder operates a business within the State of Texas.]~~

~~[(7) Other appropriate services--Services provided in lieu of on-site visits which require direct contact between the insurance company and the policyholder and are applicable to the nature and loss history of each policyholders' operations.]~~

(3) Premium--The amount charged for a workers' compensation insurance policy, including any endorsements, after the application of individual risk variations based on loss or expense considerations as defined by Texas Insurance Code §2053.001(2-a).

(4) Survey--An on-site visit to a policyholder's worksite in Texas where the risk exists or the loss occurred and during which the insurance company's accident prevention personnel performs a hazard assessment of the worksite, reviews safety and health programs, and makes recommendations to assist in mitigating risks and preventing injuries and illnesses.

~~[(8) Premium--The premium calculated by using the insurance company's filed rate with the Texas Department of Insurance (TDI) before any adjustments or discounts are applied. This definition applies to the use of premium whenever referenced in this chapter.]~~

(b) This section is effective September 1, 2013.

§166.2. Adequacy of Accident Prevention Services.

(a) Pursuant to Labor Code §411.061 and §411.068(a)(1), an insurance company writing workers' compensation insurance in Texas shall maintain or provide accident prevention facilities that are adequate to provide accident prevention services required by the nature of its policyholders' operations, and must include:

- (1) surveys;
- (2) recommendations;
- (3) training programs;
- (4) consultations;
- (5) analyses of accident causes;
- (6) industrial hygiene;
- (7) industrial health services;

(8) qualified accident prevention personnel. To provide qualified accident prevention personnel and services, an insurance company may:

- (A) employ qualified personnel;
- (B) retain qualified independent contractors;
- (C) contract with the policyholder to provide personnel and services; or
- (D) use a combination of the methods provided in this paragraph;

(9) written procedures. An insurance company shall maintain written procedures for:

- (A) notifying policyholders of the availability of accident prevention services;
- (B) determining the appropriate accident prevention services for a policyholder;
- (C) the specific time frame and manner in which the services will be delivered to a policyholder as required by subsection (b) of this section;
- (D) providing training programs to policyholders;
- (E) providing written recommendations to the policyholders, which identify hazardous conditions and work practices on the policyholder's premises if the insurance company provides accident prevention services;
- (F) providing written reports to the insurance company and policyholders, which identify hazardous conditions and work prac-

tices on the policyholder's premises if the insurance company contracts out the accident prevention services or retains qualified independent contractors; and

(G) items set forth in §166.3(a)(2)(G) of this title (relating to Annual Information Submitted by Insurance Companies); and

(10) written records, reports, and evidence of all accident prevention services provided to each policyholder.

(b) Pursuant to Labor Code §411.068(a)(2), an insurance company shall utilize accident prevention services to prevent injuries to employees of its policyholders in a reasonable manner, which at a minimum, include:

(1) Notice of availability of accident prevention services and return-to-work coordination services. An insurance company shall include a notice on the information page or on the front of the policy containing text identical to the following in at least 10-point bold type for each workers' compensation insurance policy delivered or issued for delivery in Texas: Pursuant to Texas Labor Code §411.066, (name of company) is required to notify its policyholders that accident prevention services are available from (name of company) at no additional charge. These services may include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene, and industrial health services. (Name of company) is also required to provide return-to-work coordination services as required by Texas Labor Code §413.021 and to notify you of the availability of the return-to-work reimbursement program for employers under Texas Labor Code §413.022. If you would like more information, contact (name of company) at (telephone number) and (email address) for accident prevention services or (telephone number) and (email address) for return-to-work coordination services. For information about these requirements call the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) at 1-800-687-7080 or for information about the return-to-work reimbursement program for employers call the TDI-DWC at (512) 804-5000. If (name of company) fails to respond to your request for accident prevention services or return-to-work coordination services, you may file a complaint with the TDI-DWC in writing at <http://www.tdi.texas.gov> or by mail to Texas Department of Insurance, Division of Workers' Compensation, MS-8, at 7551 Metro Center Drive, Austin, Texas 78744-1645;

(2) Contact and surveys following fatalities. An insurance company shall contact the policyholder within seven working days of knowledge of a work-related fatality and offer a survey. Survey offers accepted by the policyholder shall be initiated by the insurance company within 60 days of policyholder acceptance of the survey offer. No offer of a survey is required if the fatality occurred outside of Texas or was the result of an accident on a common carrier, unless the fatality involves an employee of the common carrier during the course and scope of normal job duties;

(3) Insurance company evaluation of need for service. An insurance company shall evaluate a policyholder's need for services in accordance with the procedures required by subsection (a)(9) of this section taking into consideration the following criteria:

(A) generally accepted industry standards and practices governing occupational safety and health, such as: A.M. Best, North American Industry Classification System (NAICS), Bureau of Labor Statistics data, workers' compensation classification codes, occupational safety and health standards, and underwriting requests;

- (B) nature of losses;
- (C) frequency of claims;
- (D) loss ratio;

- (E) severity of claims;
- (F) risk exposure;
- (G) experience modifier;
- (H) premium; and
- (I) any other information relevant under the circumstances;

(4) Services offered and provided by an insurance company. After evaluating and determining the policyholder's need for services, all offers of services and the provision of services shall be rendered to a policyholder within a reasonable period of time and in accordance with the insurance company's written procedures under this section and their annual information submitted under §166.3(a)(2)(G) of this title; and

(5) Services requested by a policyholder. Notwithstanding any other provision of this section, an insurance company shall provide to each policyholder accident prevention services required by the nature of their policyholders' operations within 15 days from the date of a policyholder request for services, if appropriate services can be provided without conducting a survey; and within 60 days from the date of a policyholder request, if a survey is required. Services can be provided at a later date if circumstances require and the later date is agreed upon by the policyholder.

(c) The division may determine adequacy of an insurance company's accident prevention services in accordance with the requirements of this chapter and generally accepted tools and guidelines of loss control provision and through:

(1) review of the initial and subsequent reports of annual information, as required by §166.3 of this title; and

(2) inspections, as specified in §166.5 of this title (relating to Inspections of Adequacy of Accident Prevention Facilities and Services).

(d) Accident prevention services shall be provided to policyholders at no additional charge.

(e) An insurance company shall not solicit nor obtain from its policyholders a prospective waiver declining all accident prevention services. If an insurance company, pursuant to Labor Code §411.063(a)(3), contracts with a policyholder to provide accident prevention personnel or services, this contract does not limit in any way the insurance company's authority or responsibility to comply with any statutory or regulatory requirement contained in this chapter. Insurance companies are responsible for maintaining or providing all services, including contracted services, in accordance with this chapter.

(f) This section is effective September 1, 2013.

§166.3. Annual Information Submitted by Insurance Companies [Report to the Commission].

(a) Initial annual report by insurance company.

(1) [(a)] Not later than April 1, 2014, each [Each] insurance company writing workers' compensation insurance in Texas as of the effective date of this section shall file with the division an initial [must make an] annual report on its accident prevention services [to the commission]. An insurance company that writes its first workers' compensation insurance policy after the effective date of this section shall file with the division an initial annual report on its accident prevention services not later than the effective date of its first workers' compensation insurance policy.

(2) An initial annual report required by this subsection shall be filed in the format and manner prescribed by the division and shall include:

(A) insurance company's name;

(B) group name;

(C) name, email, phone number, and mailing address of the primary loss control contact for Texas;

(D) National Association of Insurance Commissioners (NAIC) number;

(E) company's A.M. Best rating;

(F) changes in ownership, organizational structure, or management of the insurance company since the last annual report that affect the provision of accident prevention services;

(G) for each of the accident prevention services listed in §166.2(a)(1) - (7) of this title (relating to Adequacy of Accident Prevention Services):

(i) criteria, including the specific time frame and manner, that the insurance company will use to evaluate and determine a policyholder's need for accident prevention services required by the nature of its policyholder's operations based on frequency and severity of claims and risk exposures, including how the insurance company will ascertain the date of the final determination;

(ii) the specific time frame and manner in which an insurance company will make an offer of accident prevention services to policyholders once a determination has been made;

(iii) the specific time frame and manner in which services will be provided to policyholders;

(iv) specify each entity that will provide the services, such as the insurance company, contracted provider, or contracted policyholder; and

(v) how the provision of services to policyholders will be documented;

(H) the manner in which an insurance company determines a loss ratio;

(I) insurance company qualification requirements for employing or contracting with accident prevention personnel;

(J) method for assuring that the accident prevention personnel provide the requisite level of service to the insurance company's policyholders;

(K) total number of workers' compensation policies in effect as of December 31 of the report year;

(L) number of policies in the following premium groups that received any type of workers' compensation accident prevention services:

(i) less than \$25,000;

(ii) \$25,000 - \$100,000; and

(iii) more than \$100,000;

(M) total dollar amount spent for accident prevention services for Texas workers' compensation policyholders;

(N) number of policyholder requests for service;

(O) number of policyholder requests for service fulfilled;

- (P) number of surveys performed;
- (Q) number of work-related fatalities incurred by policyholders;
- (R) evidence of the effectiveness of and accomplishments in accident prevention; and
- (S) contact information of and certification by an insurance company representative that the information submitted under this subsection is correct and complete.

(b) Subsequent annual reports by insurance company.

(1) Subsequent to an insurance company's initial annual report under subsection (a) of this section, an insurance company shall file with the division an annual report on its accident prevention services not later than April 1 of each calendar year.

(2) An annual report required by this subsection shall be filed with the division in the format and manner prescribed by the division and shall include the:

- (A) insurance company's name;
- (B) group name;
- (C) name, email, phone number, and mailing address of the primary loss control contact for Texas;
- (D) NAIC number;
- (E) information in subsection (a)(2)(E) - (R) of this section that has changed since the last annual report; and

(F) contact information of and certification by an insurance company representative that the information submitted under this subsection is correct and complete.

~~[(b) The report shall be filed no later than March 1 of each year.]~~

~~[(e) The report shall be made on the form and in the manner prescribed by the commission which it shall require in the annual report by the Texas Labor Code, §411.065.]~~

~~[(d) On December 1 of each year, the division shall issue a list of additional information which it shall require in the annual report under the Texas Labor Code, §411.065. The additional information shall not be required until 12 months have expired.]~~

~~[(e)] (c) The initial and subsequent annual reports [report] shall not include the expenses or the costs of underwriting visits to a policyholder's premises unless accident prevention services are provided during the visit. In that case, the proportionate costs of the accident prevention services may be included in the report.~~

~~[(d) When resuming writing workers' compensation insurance in Texas, any insurance company that has not written workers' compensation insurance with exposures in Texas for 12 months or more shall submit, not later than the effective date of its first workers' compensation policy, the initial annual report required under this section.]~~

~~[(e) Insurance companies are responsible for timely and accurate reporting under this section. A report required by this section is considered filed with the division only when it accurately contains all of the required data elements and is received by the division.]~~

~~[(f) This section is effective September 1, 2013.]~~

~~§166.5. [Required Periodic] Inspections of Adequacy of Accident Prevention Facilities and Services [and Site of Inspection].~~

(a) Inspections. The division may conduct inspections to determine the adequacy of an insurance company's accident prevention services. [Required periodic inspections.]

(1) The division will conduct an initial inspection of each insurance company's accident prevention facilities and the company's use of accident prevention services after the effective date of this section. After the initial inspection, the division may conduct an inspection of an insurance company's accident prevention facilities and the company's use of accident prevention services as often as the division considers necessary to determine compliance with this chapter.

~~[(1) The division shall inspect the accident prevention services of each insurance company at least every two years and may inspect more frequently even though the insurance company has a valid certificate of inspection.]~~

(2) Affiliated companies of an insurer may be inspected together if the same facilities, programs, and personnel are used by each of the companies.

(3) At least 90 [60] days prior to an inspection, the division shall notify the insurance company in writing of the inspection [mail the inspection notification to the insurance company]. The notice shall specify the location of the inspection and the date on which the inspection will occur.

(4) Notwithstanding the provisions of this section, the division may conduct unannounced on-site visits to determine compliance with the Act and division rules in accordance with the procedures governing on-site visits in Chapter 180 of this title (relating to Monitoring and Enforcement).

(b) Site of inspection.

~~[(1)]~~ The inspection of the insurance company's accident prevention services shall take place as determined by the division at:

~~[(1) [(A)] the insurance company office in Texas; as designated and agreed to by the division and the insurance company]; or~~

~~[(2) [(B)] the division's [commission's] Austin headquarters [or other agreed location if the insurance company has no office in Texas].~~

~~[(2) An insurance company may make a written request for its accident prevention services to be inspected at a location outside the state of Texas on a reimbursement basis. If the request is approved by the division, the insurance company shall reimburse the commission pursuant to the Act and the commission rules and policies for the costs of accommodating the request to perform the inspection at the desired location. Reimbursement costs shall include, but not be limited to, transportation, lodging, meals and personnel travel time while en route. No fees shall be charged to the insurance company for the actual inspection of the company's accident prevention services.]~~

(c) Pre-inspection exchange of information.

(1) At least 60 days prior to the date set for inspection, in the format and manner specified by the division, the insurance company shall provide to the division:

(A) a list of policyholders, for the period of time determined by the division, by policyholder name, policy number, effective date or expiration date of the policy, premium, number of fatalities, principal Texas location, indication of whether the insurance company has contracted with the policyholder for accident prevention services, and indication of whether that policyholder has requested accident prevention services. The list shall be taken from the insurance company's most current records, separated by affiliated companies, arranged in descending order by premium, and include all policies; and

(B) a copy of all accident prevention services procedures, including any changes since the insurance company's last annual report.

(2) Within 10 days of receipt of the policyholder list, the division shall select the specific policyholder files to be evaluated and notify the insurance company of those selected files.

(3) For each policy selected by the division, the insurance company shall prepare an accident prevention services worksheet in the format and manner prescribed by the division. The worksheet shall include the:

(A) policyholder name;

(B) policy number;

(C) number of employees;

(D) principal Texas office address or principal corporate office address if there is no principal Texas office address;

(E) primary NAICS code;

(F) A. M. Best Hazard index number;

(G) policyholder contact person's name, phone number, and email address;

(H) insurance company name;

(I) effective date of the policy;

(J) name of person completing the form and date completed;

(K) service and loss information for policy years as requested by the division, including:

(i) total premium;

(ii) number of claims;

(iii) number of and dates of fatalities;

(iv) loss ratio;

(v) experience modifier;

(vi) surveys (list all dates);

(vii) recommendation letters (list all dates);

(viii) training programs (list all dates);

(ix) consultations (list all dates);

(x) analyses of accident causes (list all dates);

(xi) industrial hygiene services (list all dates);

(xii) industrial health services (list all dates);

(xiii) policyholder requests (list all dates requested and dates provided);

(xiv) underwriting requests (list all dates requested and dates provided);

(xv) insurance company determinations in accordance with §166.2(b)(4) of this title (relating to Adequacy of Accident Prevention Services) (list all dates need for services were determined and dates offered);

(xvi) description of policyholder operations; and

(xvii) comments.

(4) At least 10 days prior to the date of the inspection, the insurance company shall file the completed worksheets with the division.

(d) Information to be made available at the inspection. The insurance company shall make available for the time frame specified by the division:

(1) the loss control files corresponding to the requested worksheets;

(2) a sample policy declaratory page as evidence that each policyholder has been provided the notice required by §166.2(b)(1) of this title;

(3) a copy of loss runs for each selected policyholder that includes:

(A) number of injuries;

(B) accident or illness types;

(C) body parts involved;

(D) injury causes; and

(E) fatalities;

(4) a copy of all documentation of services provided in accordance with §166.2(b)(2) - (5) of this title.

(5) samples of policyholder training materials, audiovisual aids, and training programs; and

(6) other information requested by the division which is necessary to complete the inspection. Information requested may include, but is not limited to:

(A) records of surveys;

(B) consultations;

(C) recommendations;

(D) training provided;

(E) loss analyses;

(F) industrial health and hygiene services;

(G) return-to-work coordination services information;

and

(H) the name, location, status (whether employee or contractor), and qualifications of each person that provided accident prevention services in the loss control files being reviewed during the inspection.

(e) Insurance company policyholder visits and contacts. The division may conduct scheduled visits of the jobsite of an insurance company's policyholder and make other off-site contacts with a policyholder to obtain information about the insurance company's accident prevention facilities and use of services.

(f) Written report of inspection.

(1) The division shall prepare a written report of the inspection and shall provide a copy to the insurance company's executive management and to the Texas Department of Insurance, Loss Control Regulation Division.

(2) The inspection report shall contain the division's determination of adequacy in accordance with Labor Code §411.061 and §166.2 of this title, and include specific findings and required corrective actions. The inspection report will indicate whether the division has issued a final determination of adequacy, a final determination of

inadequacy, or an initial determination of inadequacy with regard to an insurance company's accident prevention services.

(3) The division will provide written notification to the insurance company of specific deficiencies and recommendations for corrective action if it assigns an initial determination of inadequacy. Not later than the 60th day after the date of the initial inspection report, the insurance company shall provide written documentation evidencing its compliance with the division's recommendations contained in the initial inspection report. The written documentation shall detail the corrective actions being taken to address each specific finding. If the insurance company believes that it will take more than 60 days to implement the recommendations listed in the initial inspection report, it shall request an extension from the division. After the end of the correction period a final determination of adequacy or inadequacy will be assigned. The division shall provide the insurance company with notification of this final determination.

(4) The division shall issue a certificate of inspection to each insurance company after completion of an inspection in which the accident prevention services are deemed adequate.

(5) In addition to any sanction authorized by law, a final determination of inadequacy may be cause for withholding a certificate of inspection or reinspection.

(g) Reinspection.

(1) After an inspection and a final determination of inadequacy of an insurance company's accident prevention services, the division shall reinspect the accident prevention services of the insurance company not earlier than the 180th day or later than the 270th day after the date the accident prevention services were determined by the division to be inadequate.

(2) Information required under this section to be provided at the time of initial inspection is required to again be provided at the time of reinspection in accordance with the time frames established within this section.

(h) This section is effective September 1, 2013.

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

Filed with the Office of the Secretary of State on December 3, 2012.

TRD-201206188

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: January 13, 2013

For further information, please call: (512) 804-4703



CHAPTER 166. WORKERS' HEALTH AND SAFETY--ACCIDENT PREVENTION SERVICES

28 TAC §§166.2, 166.4, 166.6 - 166.9

(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 Department of Insurance, Division of Workers' Compensation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes the repeal of §§166.2, 166.4, and 166.6 - 166.9, relating to Accident Prevention Services (APS or services). The repeal is necessary for clarity and consistency with proposed new §166.2 and amended §§166.1, 166.3, and 166.5, concerning APS, that are published concurrently in this issue of *Texas Register*. The repeal of §§166.2, 166.4, 166.6, and 166.7 is proposed due to reorganization, re-codification, and updates to APS requirements contained in Chapter 166. The repeal of §166.8 and §166.9 are proposed due to the repeal of Labor Code §411.062 by House Bill 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005 (HB 7).

Chapter 411 of the Labor Code, relating to Workers' Health and Safety, sets forth the requirements for accident prevention services in Subchapter E, §411.061 - 411.068. These statutes require an insurance company, as a prerequisite for writing workers' compensation insurance in Texas, to maintain or provide accident prevention facilities that are adequate to provide accident prevention services required by the nature of its policyholders' operations. An insurance company is also required to use the accident prevention services in a reasonable manner to prevent injury to employees of its policyholders. These statutes provide an insurance company with flexibility as to the method in which it may provide qualified accident prevention personnel and services. To provide the personnel and services, an insurance company may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide the personnel and services, or use a combination of these methods. These statutes also require an insurance company to submit to the Division at least once a year detailed information on the type of accident prevention facilities offered to its policyholders. Finally, these statutes give the Division the authority to conduct inspections to determine the adequacy of the required accident prevention services for each insurance company writing workers' compensation insurance in Texas.

Chapter 166 contains the Division's rules that implement the statutory requirements relating to accident prevention services provided by insurance companies. This chapter includes rules specifying what services an insurance company must at a minimum provide to its policyholders, rules setting out the due date and content requirements for the statutorily required annual report, and rules detailing the procedures that apply to a Division inspection of an insurance company's accident prevention services. The proposed repeal, together with the proposed amendments and new section to Chapter 166 also published in this issue of the *Texas Register*, are chiefly designed to remove administratively burdensome requirements that do not further the provision of quality accident prevention services to policyholders.

This repeal, if adopted, is intended to become effective September 1, 2013 when the amended and new Chapter 166 rules become effective.

Proposed Repealed §166.2.

Current §166.2, concerning Initial Writing and Resumption of Writing of Workers' Compensation Insurance, requires an insurance company prior to writing its initial workers' compensation insurance policy in Texas or with Texas exposure to file with the Division a plan describing the accident prevention services that the company will provide. This rule requires the Division to evaluate the plan's compliance with the requirements listed in §166.4(c) and resolve any discrepancies with the insurance company. An

insurance company may request a hearing at the State Office of Administrative Hearings if the insurance company disagrees with the Division's evaluation of the plan. This rule requires the Division to issue a letter of approval to the insurance company upon completion of the evaluation and successful resolution of any disputes.

This rule is proposed for repeal because the review process in this rule is intended to be replaced by provisions in proposed new §166.2 and amended §166.3 and §166.5. Those proposed rules are discussed in more detail in the preamble for those proposals and generally require an insurance company that writes its first workers' compensation insurance policy after the effective date of those rules to file with the Division an initial annual report on its accident prevention services not later than the effective date of its first workers' compensation insurance policy. Those proposed rules allow the Division to determine adequacy of the insurance company's accident prevention services through review of the initial reports of annual information and inspections as specified in proposed amendments to §166.5.

Proposed Repealed §166.4.

Current §166.4 requires an insurance company writing workers' compensation insurance in Texas to maintain or provide accident prevention facilities and services. This rule also prescribes the service requirements an insurance company's accident prevention service program must at a minimum meet. The repeal of this rule is necessary due to proposed new §166.2, also published in this issue of the *Texas Register*, which proposes amendments to the service requirements applicable to accident prevention programs.

The proposed amendments to the service requirements include retaining certain existing requirements in current §166.4, modifying other existing service requirements in this rule, and eliminating other service requirements. These amendments are more fully described in the preamble for proposed new §166.2 published in this issue of the *Texas Register*.

Proposed Repealed §166.6 and §166.7.

Current §166.6 and §166.7 govern the exchange of information for the inspection of an insurance company's accident prevention services and the inspection of accident prevention services, respectively. The repeal of these sections is necessary in light of the proposed amendments that recodify these rules in §166.5, which also governs inspections of accident prevention services. The Division is also proposing amendments to these recodified rules. The recodification and accompanying amendments are more fully described in the preamble for the proposed amendments to §166.5 published in this issue of the *Texas Register*.

Proposed Repealed §166.8 and §166.9.

Current §166.8 and §166.9 govern the qualification of field safety representatives and approval of occupational health and safety education programs, respectively. The repeal of these rules is necessary due to the repeal of Labor Code §411.062 by HB 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005.

Former Labor Code §411.062 required the Texas Workers' Compensation Commission, the Division's predecessor agency, to by rule establish qualifications for field safety representatives, which include education and experience requirements for those representatives. These rules implemented this former statute and are no longer necessary with its repeal by HB 7.

The Division published three informal drafts of the repealed sections on the Division's website on June 8, 2012, August 17, 2012, and November 1, 2012, and received several informal comments. The Division made no changes to the proposal to repeal §§166.2, 166.4, and 166.6 - 166.9 as a result of the informal comments. Changes made to proposed new §166.2 and amended §§166.1, 166.3, and 166.5, which are published concurrently in this issue of *Texas Register*, are discussed more fully in the preamble to those sections.

Matthew Zurek, Executive Deputy Commissioner for Health Care Management, has determined that for each year of the first five years the proposed repeal will be in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal. There will be no measurable fiscal effect on local employment or the local economy as a result of the repeal.

Mr. Zurek has determined that all duties and responsibilities associated with implementing the proposed repeal can be accomplished by utilizing existing agency resources.

Local Government and State Government as a Covered Entity. Local government and state government as a covered regulated entity will not be impacted by the repeal.

Mr. Zurek has also determined that for each year of the first five years the proposed repeal will be in effect the public benefit anticipated as a result of enforcing the repeal will be increased flexibility and improved efficiency in the provision of accident prevention services. Mr. Zurek has also determined that the proposed repeal will not impose an economic cost to persons who are required to comply with the repeal.

As required by the Government Code §2006.002(c), the Division has determined that the proposal will not have an adverse economic effect on the small and micro-businesses that may be required to comply with the repeal. The cost of compliance with the proposal will not vary between large businesses and small or micro-businesses, and the Division's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses. Because the Division has determined that the repeal will have no adverse economic effect on small or micro-businesses, an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Government Code §2006.002, are not required.

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

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on January 15, 2013. Comments may be submitted via the internet through the Division's internet website at www.tdi.texas.gov/wc/rules/proposedrules/index.html, by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. Comments received after the close of the comment period will not be considered.

A public hearing on this proposal will be held on January 4, 2013 at 1:30 p.m. in the Tippy Foster Conference Room of the Texas

Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Austin, Texas 78744-1645. The Division provides reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require accommodations in order to attend the hearing please contact Idalia Salazar at (512) 804-4403 at least two business days prior to the confirmed hearing date.

The hearing will also be audio streamed; to listen to the audio stream, access the Public Outreach Events/Training Calendar website at www.tdi.texas.gov/wc/events/index.html. Audio streaming will begin approximately five minutes before the scheduled time of the hearing.

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

The repeal is proposed under Labor Code §§411.061, 411.063 - 411.068, 402.00116, 402.00111, 402.061, 402.00128, and 415.021. Section 411.061 requires an insurance company to maintain or provide accident prevention facilities. Sections 411.063 - 411.068 require an insurance company to provide qualified accident prevention personnel; authorize inspections of an insurance company to determine the adequacy of services provided; require an insurance company to submit information to the division; require an insurance company to provide notice of services to a policyholder; require an insurance company to use the services in a reasonable manner to prevent injury to employees of its policyholders; and provide for an administrative penalty for violation of the requirements. Section 402.00116 grants the powers and duties of chief executive and administrative officer to the Commissioner and the authority to enforce the Labor Code, Title 5, and other laws applicable to the Division or Commissioner. Section 402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under the Labor Code, Title 5. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Workers' Compensation Act. Section 402.00128 vests general operational powers to the Commissioner including the authority to delegate, and assess and enforce penalties as authorized by the Labor Code, Title 5. Section 415.021 provides for assessment of administrative penalties if a person violates, fails to comply with, or refuses to comply with a rule or the Texas Workers' Compensation Act.

The following statutes are affected by this proposal: Labor Code §411.061 and §§411.063 - 411.068

§166.2. *Initial Writing and Resumption of Writing of Workers' Compensation Insurance.*

§166.4. *Required Accident Prevention Services and Notification of Return-to-Work Coordination Services.*

§166.6. *Exchange of Information for the Inspection.*

§166.7. *Inspection of Accident Prevention Services: Conducting and Reporting.*

§166.8. *Qualification of Field Safety Representatives.*

§166.9. *Approval of Occupational Health and Safety Education Programs.*

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

Filed with the Office of the Secretary of State on December 3, 2012.

TRD-201206189

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: January 13, 2013

For further information, please call: (512) 804-4703

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.8

The Texas Board of Criminal Justice proposes amendments to §151.8, concerning Advisory Committees. The proposed amendments are necessary to extend the abolishment dates for the advisory committees.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period the rule will be in effect the anticipated public benefit, as a result of enforcing the rule, will be to provide the Texas Board of Criminal Justice an opportunity to receive advice on a variety of issues related to the management of offenders in the criminal justice system upon which sound policy decisions can be made. There will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The amendments are proposed under Texas Government Code §2110.005 and §2110.008.

Cross Reference to Statutes: Texas Government Code §§492.006, 492.013, 493.003, 510.011 - 510.014, and Chapter 2110; and Texas Health and Safety Code §614.002 and §614.009.

§151.8. *Advisory Committees.*

(a) General. This section identifies advisory committees related to the Texas Department of Criminal Justice (TDCJ) and established by or under state law. The TDCJ Business and Finance Division shall annually evaluate each committee's work, usefulness, and costs of existence, and it shall report that information biennially to the Legislative Budget Board.

(b) Judicial Advisory Council (JAC). The JAC exists pursuant to Texas Government Code §493.003(b). The purpose, tasks, and reporting procedures [procedure] for the JAC are described in 37 Texas Administrative Code §161.21 [of this title (relating to Role of the Judicial Advisory Council)]. The JAC is abolished on September 1, 2025 [2011].

(c) Texas State Council for Interstate Adult Offender Supervision (council) [Council]. Pursuant to Texas Government Code Chapter 510, the council [Council] shall advise the administrator for the Interstate Compact for Adult Offender Supervision and the state's commissioner to the Interstate Commission for Adult Offender Supervision, on the state's participation in commission activities and the administration of the compact. Periodic reporting takes place through meetings held prior to or following a National Commission meeting. Through these meetings, the administrator can discuss issues on a national scope with the national commissioner [National Commissioner] and the council [Council] can provide verbal feedback and direction.

(d) Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments (ACOOMMI). Pursuant to Texas Health and Safety Code Chapter 614, the ACOOMMI shall advise the Texas Board of Criminal Justice (TBCJ [or Board]) and the director [Director] of the Texas Correctional Office on Offenders with Medical or Mental Impairments [TCOOMMI] on matters related to offenders with medical or mental impairments. The ACOOMMI shall be given the opportunity to report to the TBCJ at each regularly scheduled meeting. [The Chairman of the ACOOMMI or designee shall have an opportunity to report to the Board by February 1 of each odd numbered year and at the other times as agreed by the Chairman of the ACOOMMI and Chairman of the Board.] The ACOOMMI is abolished on September 1, 2025 [2011].

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 December 3, 2012.

TRD-201206192

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: January 13, 2013

For further information, please call: (512) 463-9693



PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 427. TRAINING FACILITY CERTIFICATION

SUBCHAPTER C. TRAINING PROGRAMS FOR ON-SITE AND DISTANCE TRAINING PROVIDERS

37 TAC §427.307

The Texas Commission on Fire Protection (the commission) proposes an amendment to Chapter 427, Training Facility Certification, Subchapter C, Training Programs for On-Site and Distance

Training Providers, §427.307, concerning On-Site and Distance Training Provider Staff Requirements.

The purpose of the proposed amendment is to add specific language regarding certifications and levels of those certifications required for teaching wildland certification courses. The proposed amendment also adds language requiring course leaders to be present in any class being taught.

Mike Baker, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed amendment is in effect, there will be no fiscal impact on state or local governments.

Mr. Baker has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit from the passage is to provide a clear and concise rule regarding the requirements to teach wildland certification courses and knowing all instructors will carry the same qualifications. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendment is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.028, which provides the commission the authority to certify persons as qualified fire protection personnel instructors.

The proposed amendment implements Texas Government Code §419.008 and §419.028.

§427.307. *On-Site and Distance Training Provider Staff Requirements.*

(a) The chief training officer of a training facility, as a minimum, must possess Fire Service Instructor III certification.

(b) All training instructors (except guest instructors) must possess fire instructor certification. The instructor(s) must be certified in the applicable discipline or be approved by the commission to instruct in the applicable subject.

(c) The lead instructor, as a minimum, shall possess a Fire Service Instructor II certification and must be certified by the commission in the applicable discipline.

(d) Guest instructors are not required to be certified as instructors. A guest instructor is defined as an individual with special knowledge, skill, and expertise in a specific subject area who has the ability to enhance the effectiveness of the training. Guest instructors shall teach under the endorsement of the lead instructor.

(e) In order to teach fire officer certification courses, an individual who does not meet the requirements of subsection (a) or (c) of this section, shall possess a minimum of a bachelor's degree in management or its equivalent.

(f) In order to teach an instructor certification training course for Fire Service Instructor I, an individual must hold one of the following three qualifications:

- (1) Hold a Fire Service Instructor II or higher;[;] or

(2) A Bachelor's degree with the following:

(A) As a minimum, a minor in education;^[5] and

(B) Three years of teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 200 class hours; or

(3) An Associate's degree with the following:

(A) twelve semester hours of education instructional courses;^[5] and

(B) five years of teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 400 class hours.

(g) In order to teach an instructor certification training course for Fire Service Instructor II or III, an individual must hold one of the following three qualifications:

(1) Hold a Fire Service Instructor III; or

(2) A Bachelor's degree with the following:

(A) As a minimum, a minor in education;^[5] and

(B) Three years of teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 200 class hours; or

(3) An Associate's degree with the following:

(A) twelve semester hours of education instructional courses;^[5] and

(B) five years of teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 400 class hours.

(h) In order to teach a certification course for Basic Wildland Fire Protection:

(1) The unit instructor must hold Basic Wildland Fire Protection certification and a Texas Commission on Fire Protection Instructor I certification.

(2) The lead instructor must hold Intermediate Wildland Fire Protection certification and a Texas Commission on Fire Protection Instructor I certification.

(3) The lead instructor must be present in any class being taught.

(i) In order to teach a certification course for Intermediate Wildland Fire Protection:

(1) The unit instructor must hold an Intermediate Wildland Fire Protection certification and a Texas Commission on Fire Protection Instructor I certification.

(2) The lead instructor must hold an Intermediate Wildland Fire Protection certification and a Texas Commission on Fire Protection Instructor I certification.

(3) The lead instructor must be present in any class being taught.

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 28, 2012.

TRD-201206135

Don Wilson

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: January 13, 2013

For further information, please call: (512) 936-3813



CHAPTER 441. CONTINUING EDUCATION

37 TAC §441.23

The Texas Commission on Fire Protection (the commission) proposes a new section to Chapter 441, Continuing Education, §441.23, concerning Continuing Education for Wildland Fire Fighter.

The purpose of the proposed new section is to add specific language regarding continuing education requirements for the new Wildland Fire Fighter certificate holders which will align with other certifications the agency offers.

Mike Baker, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed new section is in effect, there will be no fiscal impact on state or local governments.

Mr. Baker has also determined that for each year of the first five years the proposed new section is in effect, the public benefit from the passage is to provide a clear and concise rule regarding the continuing education requirements specific to renew all Wildland Fire Fighter certifications. There will be no effect on micro businesses, small businesses or persons required to comply with the new section as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed new section may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The new section is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to establish qualifications relating to continuing education or training programs.

The proposed new section implements Texas Government Code §419.008 and §419.032.

§441.23. Continuing Education for Wildland Fire Fighter.

A minimum of four hours of continuing education in Wildland Fire Fighting subjects will be required for individuals certified as a Wildland Fire Fighter. The four hours may be included in the eighteen hours required during the certification renewal period.

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 28, 2012.

TRD-201206141
Don Wilson
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: January 13, 2013
For further information, please call: (512) 936-3813



CHAPTER 449. HEAD OF A FIRE DEPARTMENT

37 TAC §449.3, §449.5

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 449, Head of a Fire Department, §449.3, concerning Minimum Standards for Certification as Head of a Suppression Fire Department, and §449.5, concerning Minimum Standards for Certification as Head of a Prevention Only Department.

The purpose of the proposed amendments is to provide a clear and concise set of rules ensuring that Texas fire chiefs are familiar with state laws and commission rules.

Mike Baker, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Baker has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is it will ensure that all heads of departments are fully aware of the State of Texas requirements for fire service entities and fire protection personnel. There will be no effect on micro businesses, small businesses or persons required to comply with the amended sections as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to establish qualifications for competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

§449.3. Minimum Standards for Certification as Head of a Suppression Fire Department.

(a) Applicants for Head of a Fire Department certification must complete the following requirements: ~~[In order to be certified as a head of a fire department providing fire suppression, an individual must be appointed as head of a fire department; and]~~

(1) must be appointed as head of a fire department; and

(2) complete the Standards Review Assignment for Head of a Fire Department identified in Chapter 11 of the Curriculum Manual; and

(3) arrange a meeting with a Texas Commission on Fire Protection Compliance Officer for review and approval of the Standards Review Assignment; and

(4) attend at least one Texas Commission on Fire Protection regularly scheduled commission meeting or one regularly scheduled fire fighter advisory committee meeting in the first year of appointment; and

(5) ~~[(4)]~~ hold a certification as a fire protection personnel in any discipline that has a commission ~~[Commission-]~~ approved curriculum that requires structural fire protection personnel certification and five years experience in a full-time fire suppression position; or

(6) ~~[(2)]~~ an individual from another jurisdiction who possesses valid documentation of accreditation from the International Fire Service Accreditation Congress that is deemed equivalent to the commission's ~~[Commission's]~~ approved basic fire suppression curriculum and provide documentation in the form of a sworn nonself serving affidavit of five years experience in a full-time fire suppression position; or

(7) ~~[(3)]~~ provide documentation in the form of a nonself serving sworn affidavit of ten years experience as an employee of a local governmental entity in a full-time structural fire protection personnel position in a jurisdiction other than Texas; ~~[and successfully pass a Commission, Head of Department examination as specified in Chapter 439 of this title;]~~ or

(8) ~~[(4)]~~ provide documentation in the form of a sworn nonself serving affidavit of ten years of experience as a certified structural part-time fire protection employee; or

(9) ~~[(5)]~~ provide documentation in the form of a sworn nonself serving affidavit of ten years experience as an active volunteer fire fighter in one or more volunteer fire departments that meet the requirements of subsection (b) of this section ~~[and successfully pass a Commission, Head of Department examination as specified in Chapter 439 of this title].~~

(b) The ten years of volunteer service must include documentation of attendance at 40% of the drills for each year and attendance of at least 25% of a department's emergencies in a calendar year while a member of a volunteer fire department or departments with 10 or more active members that conducts a minimum of 48 hours of drills in a calendar year.

(c) Individuals certified as the head of a fire department must meet the continuing education requirement as provided for in Chapter 441 of this title (relating to Continuing Education).

(d) An individual certified as head of a fire department under this section may engage in fire fighting activities only as the head of a fire department. These activities include incident command, direction of fire fighting activities or other emergency activities typically associated with fire fighting duties, i.e. rescue, confined space and hazardous materials response.

§449.5. Minimum Standards for Certification as Head of a Prevention Only Department.

(a) Applicants for Head of a Fire Department certification must complete the following requirements: ~~[In order to be certified as the head of a fire department providing fire prevention activities only, an individual must be appointed as head of a Fire Prevention Department; and]~~

(1) must be appointed as head of a fire department; and

(2) complete the Standards Review Assignment for Head of a Fire Department identified in Chapter 11 of the Curriculum Manual; and

(3) arrange a meeting with a Texas Commission on Fire Protection Compliance Officer for review and approval of the Standards Review Assignment; and

(4) attend at least one Texas Commission on Fire Protection regularly scheduled commission meeting or one regularly scheduled fire fighter advisory committee meeting in the first year of appointment; and

(5) ~~[(1)]~~ hold a certification as a fire inspector, fire investigator, or arson investigator and have five years of full-time experience in fire prevention activities; or

(6) ~~[(2)]~~ an individual from another jurisdiction who possesses valid documentation of accreditation from the International Fire Service Accreditation Congress that is deemed equivalent to the commission's ~~[Commission's]~~ approved basic arson investigator, fire investigator or fire inspector curriculum and provide documentation in the form of a sworn nonself serving affidavit of five years experience in a full-time fire prevention position; or

(7) ~~[(3)]~~ provide documentation in the form of a sworn nonself serving affidavit of ten years experience as an employee of a local governmental entity in a full-time fire inspector, fire investigator, or arson investigator position in a jurisdiction other than Texas ~~[and successfully pass a Commission, Head of Department examination as specified in Chapter 439 of this title]; or~~

(8) ~~[(4)]~~ provide documentation in the form of a sworn nonself serving affidavit of ten years experience as a certified fire investigator, fire inspector or arson investigator as a part-time fire prevention employee; or

(9) ~~[(5)]~~ provide documentation in the form of a sworn nonself serving affidavit of ten years experience as an active volunteer fire inspector, fire investigator, or arson investigator with ten years experience in fire prevention ~~[and successfully pass a Commission Head of Department examination as specified in Chapter 439 of this title].~~

(b) Individuals certified as the head of a fire department under this section must meet the continuing education requirement as provided for in Chapter 441 of this title (relating to Continuing Education).

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

Filed with the Office of the Secretary of State on November 28, 2012.

TRD-201206136

Don Wilson

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: January 13, 2013

For further information, please call: (512) 936-3813



CHAPTER 451. FIRE OFFICER

The Texas Commission on Fire Protection (the commission) proposes new sections to Chapter 451, Fire Officer, new Subchapter C, Minimum Standards for Fire Officer III, §451.301,

concerning Fire Officer III Certification, §451.303, concerning Minimum Standards for Fire Officer III Certification, and §451.305, concerning Examination Requirements; and new Subchapter D, Minimum Standards for Fire Officer IV, §451.401, concerning Fire Officer IV Certification, §451.403, concerning Minimum Standards for Fire Officer IV Certification, and §451.405, concerning Examination Requirements.

The purpose of the proposed new sections is to identify specific requirements for certification as Fire Officer III and Fire Officer IV being offered by the commission.

Mike Baker, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed new sections are in effect, there will be no fiscal impact on state or local governments.

Mr. Baker has also determined that for each year of the first five years the proposed new sections are in effect, the public benefit from the passage is to provide clear and concise rules regarding the requirements for Fire Officer III and Fire Officer IV certifications. There will be no effect on micro businesses, small businesses or persons required to comply with the new sections as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed new sections may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

SUBCHAPTER C. MINIMUM STANDARDS FOR FIRE OFFICER III

37 TAC §§451.301, 451.303, 451.305

The new sections are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to establish qualifications of persons to assume and discharge the responsibilities of fire protection personnel.

The proposed new sections implement Texas Government Code §419.008 and §419.032.

§451.301. Fire Officer III Certification.

A Fire Officer III is a midlevel supervisor who performs both supervisory and first-line managerial functions who has met all the job performance and certification requirements of Fire Officer II as defined in NFPA 1021, *Standard for Fire Officer Professional Qualifications*. Typical duties of an individual at the Fire Officer III level include: establishing procedures for hiring, assignment, and professional development of personnel; developing public service/partnership and programs; preparing budgets and budget management systems; planning for organizational resource management; evaluating inspection and public safety programs and plans; managing multi-agency plans and operations; serving as Incident Commander at expanding emergency incidents for all hazard types; and developing and managing a departmental safety program.

§451.303. Minimum Standards for Fire Officer III Certification.

(a) In order to be certified as a Fire Officer III an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) hold Fire Officer II certification through the commission; and

(3) hold, as a minimum, Fire Service Instructor II certification through the commission; and

(4) document completion of ICS-300: Intermediate Incident Command System; and

(5) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as Fire Officer III; or

(6) complete a commission approved Fire Officer III program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire Officer III program must consist of one of the following:

(A) completion of a commission approved Fire Officer III Curriculum as specified in Chapter 9 of the commission's Certification Curriculum Manual;

(B) completion of an out-of-state and/or military training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Fire Officer III Curriculum; or

(C) successful completion of 15 college semester hours of upper level coursework from a four-year regionally accredited institution in any of the following subject areas:

(i) Administration/Management

(ii) Budget/Finance

(iii) Planning/Organization

(iv) Leadership/Ethics

(v) Risk Management

(vi) Safety and Health

(vii) Community Risk Reduction

(7) Special temporary provision: Within one year following the effective date of this rule, an individual is eligible to take the commission examination for Fire Officer III upon documentation to the commission that the individual has completed training that covers the requirements of NFPA 1021, Chapter 6. The documentation of completed training must be a certificate of completion from a nationally recognized training provider. During the one year period, the commission examination shall consist of a written exam. The examination requirements in §451.305(b) of this subchapter (relating to Examination Requirements) must still be met. This paragraph expires one year from the effective date of this rule.

(8) The application processing fee for the initial examination is waived for individuals in paragraphs (6) and (7) of this subsection who have completed the training requirement and submit the application for the commission examination for one year from the effective date of this rule. After this date, the application processing fee for examinations will be required.

(b) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 9 (pertaining to Fire Officer) of the commission's Certification Curriculum Manual are met.

§451.305. Examination Requirements.

(a) Examination requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive Fire Officer III certification.

(b) Individuals will be permitted to take the commission examination for Fire Officer III certification by documenting the following: Structure Fire Protection Personnel certification, Fire Service Instructor II certification and Fire Officer II certification through the commission or the equivalent IFSAC seals, and completing a commission approved Fire Officer III program.

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

Filed with the Office of the Secretary of State on November 28, 2012.

TRD-201206137

Don Wilson

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: January 13, 2013

For further information, please call: (512) 936-3813



SUBCHAPTER D. MINIMUM STANDARDS
FOR FIRE OFFICER IV

37 TAC §§451.401, 451.403, 451.405

The new sections are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to establish qualifications of persons to assume and discharge the responsibilities of fire protection personnel.

The proposed new sections implement Texas Government Code §419.008 and §419.032.

§451.401. Fire Officer IV Certification.

A Fire Officer IV is an upper level supervisor who performs both supervisory and managerial functions who has met all the job performance and certification requirements of Fire Officer III as defined in NFPA 1021, *Standard for Fire Officer Professional Qualifications*. Typical duties of an individual at the Fire Officer IV level include: Administering job performance requirements; evaluating and making improvements to department operations; developing long-range plans and fiscal projections; developing plans for major disasters; serving as Incident Commander at major incidents for all hazard types; and administering comprehensive risk management programs.

§451.403. Minimum Standards for Fire Officer IV Certification.

(a) In order to be certified as a Fire Officer IV an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) hold Fire Officer III certification through the commission; and

(3) document completion of ICS-400: Advanced Incident Command System; and

(4) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as Fire Officer IV; or

(5) complete a commission approved Fire Officer IV program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire Officer IV program must consist of one of the following:

(A) completion of a commission approved Fire Officer IV Curriculum as specified in Chapter 9 of the commission's Certification Curriculum Manual;

(B) completion of an out-of-state and/or military training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Fire Officer IV Curriculum; or

(C) successful attainment of a bachelor's degree or higher from a regionally accredited institution in any of the following:

(i) Fire Science/Administration/Management

(ii) Emergency Management

(iii) Public Administration

(iv) Emergency Medicine

(v) Business Management/Administration

(vi) Political Science

(vii) Human Resources Management

(viii) Public Health

(ix) Risk Management

(x) Criminal Justice; or

(xi) a related management/administration/leadership degree

(6) Special temporary provision: Within one year following the effective date of this rule, an individual is eligible to take the commission examination for Fire Officer IV upon documentation to the commission that the individual has completed training that covers the requirements of NFPA 1021, Chapter 7. The documentation of completed training must be a certificate of completion from a nationally recognized training provider. During the one year period, the commission examination shall consist of a written exam. The examination requirements in §451.405(b) of this subchapter (relating to Examination Requirements) must still be met. This paragraph expires one year from the effective date of this rule.

(7) The application processing fee for the initial examination is waived for individuals in paragraphs (5) and (6) of this subsection who have completed the training requirement and submit the application for the commission examination for one year from the effective date of this rule. After this date, the application processing fee for examinations will be required.

(b) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 9 (pertaining to Fire Officer) of the commission's Certification Curriculum Manual are met.

§451.405. Examination Requirements.

(a) Examination requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive Fire Officer IV certification.

(b) Individuals will be permitted to take the commission examination for Fire Officer IV certification by documenting the following: Structure Fire Protection Personnel certification and Fire Officer III certification through the commission or the equivalent IFSAC seals, and completing a commission approved Fire Officer IV program.

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

Filed with the Office of the Secretary of State on November 28, 2012.

TRD-201206138

Don Wilson

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: January 13, 2013

For further information, please call: (512) 936-3813



CHAPTER 453. HAZARDOUS MATERIALS

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 453, Minimum Standards for Hazardous Materials Technician, §453.3, concerning Minimum Standards for Hazardous Materials Technician Certification, §453.5, concerning Examination Requirements, and §453.7, concerning International Fire Service Accreditation Congress (IFSAC) Seal; and new Subchapter B, Minimum Standards for Hazardous Materials Incident Commander, §453.201, concerning Hazardous Materials Incident Commander Certification, §453.203, concerning Minimum Standards for Hazardous Materials Incident Commander, and §453.205, concerning Examination Requirements. The agency also proposes that the current chapter name (Minimum Standards for Hazardous Materials Technician) become Subchapter A and the new chapter name become Hazardous Materials.

The purpose of the proposed amendments and new sections is to establish the requirements for certification as a Hazardous Materials Incident Commander as well as to clearly delineate the duties of a Hazardous Materials Technician versus the duties of a Hazardous Materials Incident Commander.

Mike Baker, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed amendments and new sections are in effect, there will be no fiscal impact on state or local governments.

Mr. Baker has also determined that for each year of the first five years the proposed amendments and new sections are in effect, the public benefit from the passage is to provide clear and concise rules regarding the requirements for Hazardous Materials Technician and Hazardous Materials Incident Commander certifications. There will be no effect on micro businesses, small businesses or persons required to comply with the amendments and new sections as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed amendments and new sections may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov.

Comments will be reviewed and discussed at a future commission meeting.

SUBCHAPTER A. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS TECHNICIAN

37 TAC §§453.3, 453.5, 453.7

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to establish qualifications of persons to assume and discharge the responsibilities of fire protection personnel.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

§453.3. *Minimum Standards for Hazardous Materials Technician Certification.*

(a) In order to be certified as a Hazardous Materials Technician an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and[;]

(2) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Hazardous Materials Technician; or

(3) complete a commission [~~Commission~~]-approved Hazardous Materials Technician program and successfully pass the commission [~~Commission~~] examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Hazardous Materials Technician program must consist of one of the following:

(A) completion of a commission [~~Commission~~]-approved Hazardous Materials Technician Curriculum as specified in Chapter 6 of the commission's [~~Commission's~~] Certification Curriculum Manual.

(B) completion of an out-of-state and/or military training program that has been submitted to the commission [~~Commission~~] for evaluation and found to be equivalent to, or exceeds the commission [~~Commission~~]-approved Hazardous Materials Technician Curriculum.

(b) Out-of-state or military training programs which are submitted to the commission [~~Commission~~] for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 6 (pertaining to Hazardous Materials Technician) of the commission's [~~Commission's~~] Certification Curriculum Manual are met.

§453.5. *Examination Requirements.*

(a) Examination requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive a Hazardous Materials Technician Certification.

(b) Individuals will be permitted to take the commission [~~Commission~~] examination for Hazardous Materials Technician by documenting completion of the NFPA 472 Awareness and Operations level training and completing a commission [~~Commission~~]-approved Hazardous Materials Technician curriculum.

§453.7. *International Fire Service Accreditation Congress (IFSAC) Seal.*

(a) Individuals holding a current commission [~~Commission~~] Hazardous Materials Technician certification received prior to March 10, 2003, may be granted an International Fire Service Accreditation

Congress (IFSAC) seal as a Hazardous Materials Technician by making application to the commission [~~Commission~~] for the IFSAC seal and paying applicable fees.

(b) Individuals completing a commission [~~Commission~~]-approved Hazardous Materials Technician program, documenting an IFSAC seal for Hazardous Materials Awareness Level Personnel; and[;]

(1) Hazardous Materials Operations Level Responders, including the Mission-Specific Competencies for Personal Protective Equipment and Product Control under the current edition; or

(2) NFPA 472 Hazardous Materials Operations prior to the 2008 edition;[;] and

(3) upon passing the applicable state examination, may be granted an IFSAC seal as a Hazardous Materials Technician by making application to the commission [~~Commission~~] for the IFSAC seal and paying applicable fees.

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 28, 2012.

TRD-201206139

Don Wilson

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: January 13, 2013

For further information, please call: (512) 936-3813



SUBCHAPTER B. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS INCIDENT COMMANDER

37 TAC §§453.201, 453.203, 453.205

The new sections are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to establish qualifications of persons to assume and discharge the responsibilities of fire protection personnel.

The proposed new sections implement Texas Government Code §419.008 and §419.032.

§453.201. *Hazardous Materials Incident Commander Certification.*

The hazardous materials incident commander is defined as that person responsible for all incident activities, including the development of strategies and tactics and the ordering and release of resources.

§453.203. *Minimum Standards for Hazardous Materials Incident Commander.*

(a) In order to be certified as Hazardous Materials Incident Commander an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Hazardous Materials Incident Commander; or

(3) complete a commission-approved Hazardous Materials Incident Commander program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Hazardous Materials Incident Commander program must consist of one of the following:

(A) completion of a commission approved Hazardous Materials Incident Commander curriculum as specified in Chapter 6 of the commission's Certification Curriculum Manual.

(B) completion of an out-of-state and/or military training program that has been submitted to the commission for evaluation and found to be equivalent to, or exceeds the commission approved Hazardous Materials Incident Commander Curriculum.

(4) Special temporary provision: Within one year following the effective date of this rule, an individual is eligible to take the commission examination for Hazardous Materials Incident Commander upon documentation to the commission that the individual has completed training that covers the requirements of NFPA 472, Chapter 8. The documentation must be a certificate of completion from a nationally recognized training provider. During the one-year period, the commission examination shall consist of a written exam. The examination requirements in §453.205(b) of this subchapter (relating to Examination Requirements) must still be met. This paragraph expires one year from the effective date of this rule.

(5) The application processing fee for the initial examination is waived for individuals in paragraph (3) of this subsection who have completed the training requirement and submit the application for the commission examination for one year from the effective date of this rule. After this date, the application processing fee for examinations will be required.

(b) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 6 (pertaining to Hazardous Materials Incident Commander) of the commission's Certification Curriculum Manual are met.

§453.205. Examination Requirements.

(a) Examination requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive a Hazardous Materials Incident Commander certification.

(b) Individuals will be permitted to take the commission examination for Hazardous Materials Incident Commander by documenting completion of NFPA 472 Awareness and Operations level training and completing a commission approved Hazardous Materials Incident Commander program.

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

Filed with the Office of the Secretary of State on November 28, 2012.

TRD-201206140

Don Wilson

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: January 13, 2013

For further information, please call: (512) 936-3813



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES SUBCHAPTER C. STANDARDS OF IDENTITY FOR MALT BEVERAGES

16 TAC §45.92

Proposed new §45.92, published in the May 25, 2012, issue of the *Texas Register* (37 TexReg 3774), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on November 27, 2012.

TRD-201206096



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 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER I. RULES APPLICABLE TO A POLITICAL PARTY'S COUNTY EXECUTIVE COMMITTEE

1 TAC §20.555

The Texas Ethics Commission (the commission) adopts an amendment to §20.555, relating to filing requirements for county executive committees. The amendment to §20.555 is adopted without changes to the proposed text as published in the September 21, 2012, issue of the *Texas Register* (37 TexReg 7335).

Section 20.555 sets out campaign finance reporting requirements for a county executive committee (CEC) that accepts contributions or makes expenditures that exceed \$25,000. The amendment to §20.555 relates to the period during which a CEC's general-purpose committee may file a final report to terminate its filing obligations. The amendment to §20.555 also includes non-substantive updates.

The CEC of a political party may designate a general-purpose committee as the principal political committee for that party in the county by filing a campaign treasurer appointment with the commission. A CEC of a political party is required to appoint a treasurer only if it accepts more than \$25,000 in political contributions or makes more than \$25,000 in political expenditures in a calendar year. A CEC may appoint a treasurer even if it is not required to do so. Once a CEC files an appointment of campaign treasurer, the treasurer is required to file campaign finance reports.

The commission adopted a rule setting the reporting requirements for CECs. Under existing §20.555, a CEC that files an appointment of campaign treasurer may file its final report to terminate its filing obligations only in January. The amendment to §20.555 would allow a CEC that has not exceeded one of the \$25,000 thresholds to file a final report at any time.

No comments were received regarding the proposed rule during the comment period.

The amendment to §20.555 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission, and Election Code, Chapter 257, §257.007, which requires the commission to adopt rules to implement Election Code, Chapter 257.

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 December 3, 2012.

TRD-201206180

Natalia Luna Ashley

Special Counsel

Texas Ethics Commission

Effective date: December 23, 2012

Proposal publication date: September 21, 2012

For further information, please call: (512) 463-5800



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 16. MIDWIFE SERVICES

1 TAC §354.1252, §354.1253

The Texas Health and Human Services Commission (HHSC) adopts amended §354.1252, concerning certified nurse-midwives, and new §354.1253, concerning licensed midwives. The rules are adopted with changes to the proposed text as published in the August 3, 2012, issue of the *Texas Register* (37 TexReg 5690) and will be republished.

Background and Justification

Section 1905(l)(3)(C) of the Social Security Act, as amended by Public Law 111-148 (the Affordable Care Act), requires a state to provide Medicaid reimbursement to every provider that the state recognizes as a birth attendant and licenses to provide health care at childbirth. The Texas Midwifery Act, Occupations Code Chapter 203, provides for the licensure of midwives who are not certified nurse-midwives (CNMs) - known as licensed midwives (LMs). The Texas Birthing Center Licensing Act, Health and Safety Code Chapter 244, allows an LM to provide health care at childbirth. Additionally, Texas regulation (Texas Administrative Code, Title 25, §137.2) recognizes LMs, as well as physicians and CNMs, as birth attendants.

Adopted §354.1252 clarifies that the section applies only to CNMs and updates terms and agency names. Adopted

§354.1253 describes the conditions under which an LM may participate in the Texas Medicaid program and receive reimbursement for services provided to clients enrolled in Medicaid.

Comments

The 30-day comment period ended September 2, 2012. During this period, which included a public hearing on August 28, 2012, HHSC received combined comments regarding the proposed rules from the Texas Medical Association (TMA), Texas Academy of Family Physicians (TAFP), Texas Pediatric Society (TPS), Texas Association of Obstetricians and Gynecologists (TAOG), American Congress of Obstetricians and Gynecologists/Texas (ACOG), and Texas Society of Anesthesiologists (TSA). Several individuals also submitted comments.

A summary of the comments and HHSC's responses follow.

Comment: Commenters stated that though they understand that the Affordable Care Act requires HHSC to reimburse LMs for certain pregnancy and birth-related services provided in freestanding birthing centers, they oppose the proposed rules because of concerns that minimal education and training requirements for LMs in Texas threaten client safety. They stated that the rules establish a separate, lower standard of care for women covered by Medicaid.

Response: HHSC acknowledges the comment, but no changes were made to the rules based on this comment. As the commenters recognize, these amendments are necessary to comply with federal Medicaid requirements.

Comment: Several commenters likewise stated that LMs should not be able to receive Medicaid reimbursement. They argued that because LMs receive less education than other providers, including CNMs, LMs may be unable to properly respond in emergency medical situations.

Response: HHSC acknowledges the comment, but made no changes to the rules in response to this comment. As stated previously, these amendments are necessary to comply with federal law.

Comment: Commenters stated that LMs should be required to have and maintain a physician-referral arrangement to facilitate a transfer of a client from the birthing center to the hospital when an urgent medical condition arises and that the ACA does not prohibit the State from establishing this type of qualification. The commenters further stated that without a physician-referral arrangement, more LMs will find themselves involved in direct patient care above and beyond their training, which may endanger the health and well-being of mothers and babies. They further stated that it is imperative that HHSC require written documentation from all parties regarding the acceptance of the relationship.

Response: In response to this comment, HHSC added language to §354.1253 to require LMs to inform HHSC in writing of the identity of a licensed physician or group of physicians with whom the LM has arranged for referral and consultation in the event of medical complications. HHSC also added a definition of the term "consultation" to clarify the rule. If the arrangement changes or if the LM selects a new referral physician or group, the LM must notify HHSC in writing within ten business days of the change. If the referral physician or group is not participating in the Texas Medicaid Program, the LM is required to inform recipients of their potential financial responsibility.

The substance of these additional requirements is substantially identical to requirements with which CNMs already must comply under §354.1252. In addition, HHSC has revised §354.1252 to make applicable to CNMs the requirement that a CNM notify HHSC of any changes within ten days of the change and to insert a definition of "consultation" identical to that in §354.1253.

Comment: Commenters stated that HHSC should develop a formal certification form for physicians to sign and return if they agree to receive referrals from LMs and that this certification should be renewed annually.

Response: In response to this comment, HHSC added language to the rule to require LMs to submit a one-time letter on enrollment with a signature from the physician(s) affirming the referral and consulting agreement. Under federal law, all providers will be required to re-enroll in Medicaid every three to five years; therefore, HHSC is not requiring the LMs to submit a letter annually. They will, however, be required to submit any change to the referral relationship within ten days, as stated previously.

Comment: Commenters stated that to provide safeguards for patients seeking care from an LM or a birthing center, the rules should require the LM to maintain liability insurance.

Response: HHSC acknowledges the comment, but made no changes to the rules in response to this comment. For those Medicaid services that are reimbursed on a fee-for-service basis, HHSC may not require a provider to maintain liability insurance unless state law requires it. State law does not require LMs to have liability insurance. Providers who enroll with a managed care organization generally are required to have liability insurance, however.

Comment: Several commenters indicated that they support the proposed rules because women receiving Medicaid should have a choice of providers and LMs provide high quality care at low cost. The commenters supported LMs receiving reimbursement for pregnancy-related services in freestanding birthing centers.

Response: HHSC acknowledges the comment but made no changes to the rules in response to this comment.

Statutory Authority

The amendment and new section are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.1252. Certified Nurse Midwife: Conditions for Participation.

Subject to the specifications, conditions, requirements, and limitations established by the Texas Health and Human Services Commission or its designee (HHSC), nurse-midwife services that are provided by a certified nurse-midwife (CNM) are a covered benefit under the Texas Medicaid Program and are subject to the following conditions.

- (1) The CNM provides nurse-midwife services according to:
 - (A) requirements in §354.1251 of this division (relating to Benefits and Limitations); and
 - (B) provisions of the state plan.
- (2) The CNM must be enrolled and approved for participation in the Texas Medicaid Program. A CNM must be a licensed registered nurse who is approved by the Texas Board of Nursing as an

advanced practice registered nurse in nurse-midwifery and who is also certified by the American College of Nurse-Midwives.

(3) To participate in the Texas Medicaid Program, a CNM must identify a licensed physician or group of physicians with whom an arrangement has been made for referral and consultation in the event of medical complications. For purposes of this section, "consultation" means discussion of patient status, care, and management.

(A) If the collaborating physician or group is not participating in the Texas Medicaid Program, the CNM must inform recipients of their potential financial responsibility according to the requirements of the Texas Medicaid Program applicable to all Medicaid providers.

(B) If and when the arrangement is changed or cancelled, the CNM must, within ten business days of the cancellation or change, notify HHSC in writing of the identity of the new physician or group and submit a letter from the licensed physician or physician group affirming that agreement.

§354.1253. Licensed Midwife: Conditions for Participation.

(a) Criteria. Subject to the specifications, conditions, requirements, and limitations established by the Texas Health and Human Services Commission (HHSC), the Texas Medicaid Program will reimburse a licensed midwife (LM) for a service in accordance with provisions of the state plan only if:

(1) the LM is licensed and approved by the Texas Midwifery Board under Chapter 203 of the Occupations Code and 22 TAC Chapter 831 (relating to Midwifery);

(2) the LM who performs the service is enrolled in and approved for participation in the Texas Medicaid Program;

(3) the service:

(A) is consistent with rules and protocols promulgated by the Texas Midwifery Board or other appropriate state licensing authority;

(B) is provided in a freestanding birthing center that is licensed under Chapter 244 of the Health and Safety Code and approved by HHSC to participate in the Texas Medicaid Program; and

(C) is within the LM's scope of practice, as defined by state law and permitted by the freestanding birthing center;

(4) the service is one of the following:

(A) prenatal care;

(B) labor and delivery;

(C) postpartum care immediately following delivery and until discharge or transfer from the freestanding birthing center; or

(D) newborn care immediately following delivery and until discharge or transfer from the freestanding birthing center; and

(5) the service is not duplicative of any other service charged to the Texas Medicaid Program.

(b) Reimbursement restrictions.

(1) HHSC does not reimburse an LM for conducting childbirth education classes.

(2) HHSC reimburses only the LM actually performing the covered service.

(c) Referral physician or group.

(1) Upon enrollment in the Texas Medicaid program, an LM must inform HHSC in writing of the identity of a licensed physi-

cian or group of physicians (the "referral physician or group") with whom the LM has arranged for referral and consultation in the event of medical complications and submit a letter from the licensed physician or physician group affirming that agreement. For purposes of this section, "consultation" means discussion of patient status, care, and management.

(2) If the arrangement changes or if the LM selects a new referral physician or group, the LM must, within ten business days of the change or new selection, notify HHSC in writing of the new referral physician or group's identity and submit a letter from the licensed physician or physician group affirming that agreement.

(3) If the referral physician or group is not participating in the Texas Medicaid Program, the LM must inform recipients of their potential financial responsibility according to the requirements of the Texas Medicaid Program applicable to all Medicaid providers.

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 28, 2012.

TRD-201206118

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: January 1, 2013

Proposal publication date: August 3, 2012

For further information, please call: (512) 424-6900



DIVISION 17. BIRTHING CENTER SERVICES
1 TAC §354.1261, §354.1262

The Texas Health and Human Services Commission (HHSC) adopts amended §354.1261 and §354.1262, concerning Medicaid birthing center services, without changes to the proposed text as published in the August 3, 2012, issue of the *Texas Register* (37 TexReg 5692) and will not be republished.

Background and Justification

Section 1396d(l)(3)(C) of the United States Code, as amended by Public Law 111-148 (Affordable Care Act), requires a state to provide Medicaid reimbursement to every provider that the state recognizes as a birth attendant and licenses to provide health care at childbirth. The Texas Midwifery Act, Occupations Code Chapter 203, provides for the licensure of midwives who are not certified nurse-midwives (CNMs) - known as licensed midwives (LMs). The Texas Birthing Center Licensing Act, Health and Safety Code Chapter 244, allows an LM to provide health care at childbirth. Additionally, Texas regulation (Texas Administrative Code, Title 25, §137.2) recognizes LMs, as well as physicians and CNMs, as birth attendants.

Adopted §354.1261 removes language stating that services provided by an LM are not covered or reimbursable by the Texas Medicaid program. Removing this language allows HHSC to reimburse freestanding birthing centers for services that an LM has determined are required during the labor, delivery, and immediate postpartum periods for the mother and newborn following the mother's normal, uncomplicated pregnancy. Because Texas Medicaid is required to reimburse freestanding birthing centers

and birth attendants separately, the amendment also adds language to prohibit services provided by LMs from being considered freestanding birthing center services.

Adopted §354.1262 adds a reference to LMs to the existing language requiring a licensed freestanding birthing center in the Texas Medicaid program to provide a level of service commensurate with the skills of a health care provider acting as a birth attendant, so that it now lists physician, CNM, or LM. Adding this language will allow a birthing center that has on staff an LM, but not necessarily a physician or CNM, to enroll in and receive reimbursement from the Texas Medicaid program.

Comments

The 30-day comment period ended September 2, 2012. During this period, which included a public hearing August 28, 2012, HHSC received combined comments regarding the amended rules from the Texas Medical Association, Texas Academy of Family Physicians, Texas Pediatric Society, Texas Association of Obstetricians and Gynecologists, American Congress of Obstetricians and Gynecologists/Texas, and Texas Society of Anesthesiologists. Several individuals also submitted comments.

A summary of comments and HHSC's responses follow.

Comment: Commenters stated that though they understand that the Affordable Care Act requires HHSC to reimburse LMs for certain pregnancy and birth-related services provided in freestanding birthing centers, they oppose the amended rules because of concerns that minimal education and training requirements for LMs in Texas threaten client safety. They stated that the rules establish a separate, lower standard of care for women covered by Medicaid.

Response: HHSC acknowledges the comment, but no changes were made to the rules based on this comment. As the commenters acknowledge, the amendments are necessary to comply with federal requirements.

Comment: Similarly, several commenters stated that LMs should not be able to receive Medicaid reimbursement. According to the commenters, because LMs receive less education than other providers, including CNMs, LMs may not properly respond in emergency medical situations.

Response: Because the commenters recommended no specific changes, HHSC has made no changes to the rules in response to this comment. And as stated above, the amendments are necessary to comply with federal requirements.

Comment: Several commenters indicated that they support the proposed rules because women receiving Medicaid should have a choice of providers and LMs provide high quality care at low cost. These commenters supported Medicaid reimbursement to LMs who provide pregnancy-related services in freestanding birthing centers.

Response: HHSC acknowledges the comment. Because the commenters suggested no specific changes, HHSC made no changes to the rules in response to this comment.

Statutory Authority

The amendments are adopted 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.

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 28, 2012.

TRD-201206119

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: January 1, 2013

Proposal publication date: August 3, 2012

For further information, please call: (512) 424-6900



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §§163.1, 163.2, 163.11

The Texas Medical Board (Board) adopts amendments to §163.1, concerning Definitions, §163.2, concerning Full Texas Medical License, and §163.11, concerning Active Practice of Medicine, without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8145) and will not be republished.

The amendment to §163.1 amends the definition of two-year training program to delete the provision that residency training required for certification must be acceptable for board certification.

The amendment to §163.2 amends the rule to clarify that licensure applicants who are foreign medical school graduates, including Fifth pathways, must demonstrate board certification at time of application or prior to licensure during the licensure application process if physician intends to use board certification as an alternate grounds for eligibility.

The amendment to §163.11 amends the rule to provide remedies for out of active practice issues and to allow for granting a license under a remedial plan.

One comment was received; however, it was unrelated to the proposed amendments.

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

The amendments are also authorized by §155.001 of Chapter 155 of the Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2012.

TRD-201206173

Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: December 23, 2012
Proposal publication date: October 12, 2012
For further information, please call: (512) 305-7016



CHAPTER 171. POSTGRADUATE TRAINING PERMITS

22 TAC §171.3, §171.6

The Texas Medical Board (Board) adopts amendments to §171.3, concerning Physician-in-Training Permits, and §171.6, concerning Duties of Program Directors to Report, without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8146) and will not be republished.

The amendment to §171.3 amends the rule to exempt applicants for PIT rotator permits from having to submit medical records or otherwise have staff review impairment issues as part of the application process.

The amendment to §171.6 changes a single reference of "PIT holder" to "physician" since program director reporting requirements apply to all participants, not just PIT holders.

No comments were received regarding adoption of the amendments.

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

The amendments are also authorized by §155.105, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2012.

TRD-201206174
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: December 23, 2012
Proposal publication date: October 12, 2012
For further information, please call: (512) 305-7016



CHAPTER 172. TEMPORARY AND LIMITED LICENSES

The Texas Medical Board (Board) adopts amendments to §172.5, concerning Visiting Physician Temporary Permits, and §172.12, concerning Out-of-State Telemedicine License, without changes to the proposed text as published in the October

12, 2012, issue of the *Texas Register* (37 TexReg 8149) and will not be republished.

The amendment to §172.5 allows additional grounds for eligibility for Visiting Physician Temporary Permits, including emergency disaster, forensic psychiatric evaluations for criminal matters, and specialized care, when good cause is shown.

The amendment to §172.12 clarifies that a physician may be denied an out-of-state telemedicine license based on §155.003(e) of the Act.

No comments were received regarding adoption of the amendments.

SUBCHAPTER B. TEMPORARY LICENSES

22 TAC §172.5

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

The amendment is also authorized by Chapter 155, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2012.

TRD-201206175
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: December 23, 2012
Proposal publication date: October 12, 2012
For further information, please call: (512) 305-7016



SUBCHAPTER C. LIMITED LICENSES

22 TAC §172.12

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

The amendment is also authorized by Chapter 155, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2012.

TRD-201206176

Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: December 23, 2012
Proposal publication date: October 12, 2012
For further information, please call: (512) 305-7016



CHAPTER 180. TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS

22 TAC §180.4

The Texas Medical Board (Board) adopts an amendment to §180.4, concerning Operation of Program, without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8150) and will not be republished.

The amendment to §180.4 amends the procedures for the handling of referrals to the Board from the Texas Physician Health Program (TXPHP) for violation of TXPHP agreements with program participants.

No comments were received regarding adoption of the amendments.

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

The amendment is also authorized by Chapter 167, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2012.

TRD-201206177
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: December 23, 2012
Proposal publication date: October 12, 2012
For further information, please call: (512) 305-7016



CHAPTER 190. DISCIPLINARY GUIDELINES

The Texas Medical Board (Board) adopts amendments to §190.8, concerning Violation Guidelines, and §190.14, concerning Disciplinary Sanction Guidelines, without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8151) and will not be republished.

The amendment to §190.8 provides the standard for physician delegation of the performance of nerve conduction studies by individuals who are not licensed as physicians or physical therapists.

The amendment to §190.14 amends the range and scope of sanctions for violations of the Medical Practice Act.

No comments were received regarding adoption of the amendments.

SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

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

The amendments are also authorized by Chapter 164, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2012.

TRD-201206178
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: December 23, 2012
Proposal publication date: October 12, 2012
For further information, please call: (512) 305-7016



SUBCHAPTER C. SANCTION GUIDELINES

22 TAC §190.14

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also authorized by Chapter 164, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2012.

TRD-201206179
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: December 23, 2012
Proposal publication date: October 12, 2012
For further information, please call: (512) 305-7016



PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §577.15, concerning Fee Schedule, with changes to the proposed text as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6887) and will be republished. The rule is adopted with changes to reflect a clerical correction.

The adopted amendment to §577.15 reformats the fees to make them easier to read, adjusts veterinarian renewal fees lower to match current legislative appropriations for the 2013 fiscal year, corrects a calculation mistake in the fee for provisional veterinary licenses, adds inactive equine dental provider fees necessitated by rule changes that created inactive status for equine dental provider licensees, and consolidates all the fixed fees that the Board charges into one schedule.

In the adopted amendment, the application processing fees and examination fees, which appeared as separate line items for each initial license in the previous version of the rule, have been consolidated into the respective initial licenses, and no longer appear as separate fees. The Board adopted this change to clarify the cost of becoming initially licensed in Texas as either a veterinarian or an equine dental provider.

With regard to veterinary licenses, the adopted amendment decreases veterinary license renewal fees to match the appropriations granted to the agency. The adopted rule increases the fee for provisional veterinary licenses to make the provisional license \$50 more expensive than a regular veterinary license, to more accurately reflect the costs and staff time involved in processing and administering the two separate examinations that provisional licensees take on their way to becoming full licensees.

With regard to the new inactive fees for equine dental providers, the adopted amended rule adds renewal fees and inactive status fees to the fee schedule so that in fiscal year 2013, equine dental providers who became licensed for the first time in fiscal year 2012 will have the option to renew their licenses or put their licenses on inactive status. These fees cover the estimated expected costs of regulating licensed equine dental providers.

The adopted amendment also includes several fees in the fee schedule that previously appeared in other rules, such as the fee for duplication of license and the reactivation fees for both veterinary and equine dental provider licenses. With the addition of these fees, the Board intends for this rule to reflect all of the fixed fees that the Board charges. It does not, however, reflect variable fees that the Board has set, such as the fees for transcripts and records of administrative hearings before the State Office of Administrative Hearings as set forth in 22 TAC §575.10 (relating to Costs of Administrative Hearings).

The Board did not receive any comments during the comment period on the proposed amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(e), which states that the Board may adopt rules necessary to implement a jurisprudence examination for licensed equine dental providers, including examination fees; and §801.154(a), which states that the board by rule shall set

fees in amounts that are reasonable and necessary so that the fees, in the aggregate, cover the costs of administering this chapter.

§577.15. Fee Schedule.

The Texas Board of Veterinary Medical Examiners has established the following fixed fees as reasonable and necessary for the administration of its functions. Other variable fees exist, including but not limited to costs as described in §575.10 of this title (relating to Costs of Administrative Hearings), and are not included in this schedule.

Figure: 22 TAC §577.15

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 26, 2012.

TRD-201206090

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Effective date: December 16, 2012

Proposal publication date: August 31, 2012

For further information, please call: (512) 305-7563



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER E. A WOMAN'S RIGHT TO KNOW

25 TAC §§1.71 - 1.73

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §§1.71 - 1.73, concerning the review and revision process for the "A Woman's Right to Know" informational materials. New §1.73 is adopted with changes to the proposed text as published in the August 24, 2012, issue of the *Texas Register* (37 TexReg 6457). New §1.71 and §1.72 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

In 2003, the 78th Texas Legislature passed the Woman's Right to Know Act, Health and Safety Code, Chapter 171, which provides that no person may perform an abortion without the voluntary and informed consent of the woman on whom the abortion is to be performed and specifies the content of informational materials that must be offered to a woman to support her informed consent. The department created the "A Woman's Right to Know Information Material" (booklet) and the "A Woman's Right to Know Resource Directory" to provide the required informational materials. The new sections comply with Health and Safety Code, §171.014(d), which requires the department to adopt rules necessary for considering and making changes to the informational materials.

SECTION-BY-SECTION SUMMARY

New §1.71 outlines the purpose of the rules. New §1.72 provides definitions pertaining to the review and revision of the materials. New §1.73 provides information about the process for review and revision of the materials, including the time period for annual review and solicitation of stakeholder input for the booklet content.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The comments were received from the Texas Medical Association, and the suggested changes/revisions were submitted by the Chair of the Committee on Maternal and Perinatal Health. The commenter was not against the rules in their entirety; however, the commenter suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning the opportunity for stakeholder input on the department's decision to revise the materials, the commenter recommended new language to include formal stakeholder notification of the department's decision and a 30-day comment period concerning stakeholder's decision to comment.

Response: The commission disagrees with this comment. The addition of rule language to allow for 30 days of stakeholder comment is not necessary as comments may be submitted year round according to rule language in §1.73(c)(5), "The department will accept and review stakeholder input, including any suggested changes to the booklet, throughout the year." Additionally, language currently exists that speaks to notifying the stakeholders of the review process in §1.73(c)(4). No change was made to the rules as a result of this comment.

Comment: Concerning the sources used to propose revisions to the booklet, the commenter stated the language should be revised to include "peer-reviewed medical journals" or "made available through public health and science organizations." The commenter also recommended the department consult with "appropriate national and state medical organizations" and "cite references for any scientific statements in patient materials."

Response: The commission disagrees with the comments. Regarding the inclusion of specific peer-reviewed medical journals and specific public health, science and medical organizations, the information identified in the comment is included in the information already covered in §1.73(c)(1) and (7). Including citations in the materials would be burdensome and could require the materials and rule language to be changed continuously. No change was made to the rules as a result of this comment.

Comment: Concerning the notice to the public regarding the review process in §1.73(d), the commenter stated that the word "will" should be changed to "shall," and that the language regarding how to be added to the email distribution list should be removed in §1.73(c)(4).

Response: The commission has agreed to change the word "will" to "shall" in §1.73(d). However, the commission disagrees with the comment to remove the language in §1.73(c)(4), "The department notification will include instructions on how to be added to the email distribution list." The decision to retain the statement is intended to ensure that the department includes stakeholders who wish to be involved.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, §171.014(d), which requires the department to adopt rules necessary for considering and making changes to the "A Woman's Right to Know" informational materials; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§1.73. *Review Process.*

(a) As required by Health and Safety Code, §171.014(d), the department will review the materials annually to determine if changes to the content of the booklet are necessary.

(b) The department shall update programs and services listed in the resource directory as needed and post on the Woman's Right to Know website in English and Spanish.

(c) If changes are necessary to the booklet, the department will propose revisions in accordance with the following methods and procedures.

(1) The department shall propose revisions to the booklet based on current and relevant science and evidence-based literature, medical professional resources, and government health and medical resources.

(2) The department shall make current and relevant science and evidence-based literature reviewed available upon request.

(3) The department shall also review the booklet to ensure that information on available assistance and services is current and that it is consistent with state and federal law.

(4) The department will notify stakeholders of the annual review process through a public posting on the department's Woman's Right To Know website and the email distribution list. The department notification will include instructions on how to be added to the email distribution list.

(5) The department will accept and review stakeholder input, including any suggested changes to the booklet, throughout the year.

(6) The proposed revisions to the booklet will be posted on the department's Woman's Right To Know website and will be available for stakeholder comment for 30 days. The department will consider comments provided by stakeholders that pertain to the revisions being proposed by the department.

(7) Revisions to the booklet will be guided by peer-reviewed scientific and medical literature, resources from professional medical organizations, and government health sources.

(d) Upon annual review of the booklet, the department shall announce the release of the booklet as revised, and shall post the revised edition on the department's Woman's Right To Know website. The department will make the document available in print in English and in Spanish.

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 30, 2012.

TRD-201206160

Lisa Hernandez
General Counsel

Department of State Health Services

Effective date: December 20, 2012

Proposal publication date: August 24, 2012

For further information, please call: (512) 776-6972



CHAPTER 97. COMMUNICABLE DISEASES

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§97.1 - 97.7 and 97.11, the repeal of §97.14, concerning the control of communicable diseases, and amendments to §97.255 and §97.257, concerning the Respiratory Syncytial Virus (RSV), without changes to the proposed text as published in the August 24, 2012, issue of the *Texas Register* (37 TexReg 6458) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act), according to the schedule listed therein. Sections 97.1 - 97.13 and 97.251 - 97.257 have been reviewed, and the department has determined that the rules should continue to exist, because rules on this subject are needed. Section 97.14 has been reviewed and is being repealed because the statute (Health and Safety Code, §81.0445) requiring the pilot reporting program on methicillin-resistant *Staphylococcus aureus* expired on September 1, 2011.

SECTION-BY-SECTION SUMMARY

These are rules concerning the control of communicable diseases and Respiratory Syncytial Virus located in Chapter 97, Subchapters A and K of this title.

The amendments to §97.1 update definitions by adding, deleting, and revising text as necessary for clarity.

The amendment to §97.2 adds an advanced practice nurse and a physician assistant to clarify who should report.

The amendments to §97.3 update legacy agency references, add amebic meningitis and encephalitis, anaplasmosis, babesiosis, Chagas' disease, novel influenza, and poliovirus infection, non-paralytic to the notifiable conditions list, update diseases requiring submission of specimens to the department's laboratory, remove encephalitis and meningitis and specific types of hepatitis from the list of notifiable conditions, and clarify which types of hemorrhagic *E. coli* should be reported. These amendments will allow the department to conduct more relevant and efficient disease surveillance.

Amendments to §97.4 change reporting time frames for *Haemophilus influenzae* type b infection, novel influenza, and

any outbreak, exotic disease, and unusual presentations of disease. Also, poliovirus infection, non-paralytic were added to the notifiable conditions, legacy agency references were updated, and *E. coli* reporting times were clarified.

Amendments to §97.5 update legacy agency references and clarify submission of *E. coli* isolates.

Amendments to §97.6 update a rule reference and rule title.

Amendments to §97.7 update guidance for diseases requiring exclusion from child-care facilities and schools.

Amendments to §97.11 clarify which types of *E. coli* require notification of emergency responders.

Section 97.14 is repealed as it concerns a pilot reporting program on methicillin-resistant *Staphylococcus aureus* that expired on September 1, 2011.

Amendments to §97.255 and §97.257 update the responsibilities of the sentinel surveillance program for RSV infection in children and update the capacity of the database affiliated with that program.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

25 TAC §§97.1 - 97.7, 97.11

STATUTORY AUTHORITY

The amendments are adopted by Health and Safety Code, §81.004, which authorizes rules necessary for the effective administration of the Communicable Disease Prevention and Control Act; §81.042, which requires a rule on the exclusion of children from schools; §81.050, which requires a rule to prescribe criteria that constitute exposure to reportable diseases; and §96.005, which requires rules to implement Health and Safety Code, Chapter 96, on Respiratory Syncytial Virus; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201206153

Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: December 20, 2012
Proposal publication date: August 24, 2012
For further information, please call: (512) 776-6972



25 TAC §97.14

STATUTORY AUTHORITY

The repeal is adopted by Health and Safety Code, §81.004, which authorizes rules necessary for the effective administration of the Communicable Disease Prevention and Control Act; §81.042, which requires a rule on the exclusion of children from schools; §81.050, which requires a rule to prescribe criteria that constitute exposure to reportable diseases; and §96.005, which requires rules to implement Health and Safety Code, Chapter 96, on Respiratory Syncytial Virus; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the section implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201206154
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: December 20, 2012
Proposal publication date: August 24, 2012
For further information, please call: (512) 776-6972



SUBCHAPTER K. RESPIRATORY SYNCYTIAL VIRUS

25 TAC §97.255, §97.257

STATUTORY AUTHORITY

The amendments are adopted by Health and Safety Code, §81.004, which authorizes rules necessary for the effective administration of the Communicable Disease Prevention and Control Act; §81.042, which requires a rule on the exclusion of children from schools; §81.050, which requires a rule to prescribe criteria that constitute exposure to reportable diseases; and §96.005, which requires rules to implement Health and Safety Code, Chapter 96, on Respiratory Syncytial Virus; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of

Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201206155
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: December 20, 2012
Proposal publication date: August 24, 2012
For further information, please call: (512) 776-6972



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.55

The Texas Board of Criminal Justice adopts amendments to §151.55, concerning the Disposal of Surplus Agricultural Goods and Agricultural Personal Property, without changes to the proposed text as published in the September 14, 2012, issue of the *Texas Register* (37 TexReg 7268).

The amendments are necessary to change the method of transmission of the surplus agricultural goods and personal property report.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §497.113.

Cross Reference to Statutes: Texas Government Code §492.013.

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 December 3, 2012.

TRD-201206172
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Effective date: December 23, 2012
Proposal publication date: September 14, 2012
For further information, please call: (512) 463-9693



PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 401. ADMINISTRATIVE PRACTICE AND PROCEDURE

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 401, Practice and Procedure, Subchapter A, General Provisions and Definitions, §401.5, concerning Delegation of Authority, §401.11, concerning Conduct of Commission and Advisory Meetings, and §401.13, concerning Computation of Time; Subchapter B, Rulemaking Proceedings, §401.17, concerning Requirements, and §401.19, concerning Petition for Adoption of Rules; Subchapter C, Examination Appeals Process, §401.21, concerning Examination Challenge, and §401.23, concerning Examination Waiver Request; Subchapter D, Disciplinary Proceedings, §401.31, concerning Disciplinary Proceedings in Contested Cases; Subchapter E, Prehearing Proceedings, §401.41, concerning Preliminary Staff Conference, §401.43, concerning Prehearing Conferences, §401.45, concerning Interim Orders, §401.47, concerning Appeal of an Interim Order, and §401.49, concerning Prehearing Statements; Subchapter F, Contested Cases, §401.51, concerning Preliminary Notice and Opportunity for Hearing; Subchapter H, Reinstatement, §401.117, concerning Commission Action Possible upon Reinstatement; and Subchapter I, Notice and Processing Periods for Certificate Applications, §401.121, concerning Purpose of Establishing Time Periods, §401.123, concerning Notice of Deficiency, and §401.125, concerning Processing Periods. In addition, the commission adopts new Subchapter J, Charges for Public Records, §401.129, concerning Charges for Public Records; and new Subchapter K, Historically Underutilized Businesses, §401.131, concerning Historically Underutilized Businesses. The commission also changes the title of Chapter 401 to Administrative Practice and Procedure. The amendments to §§401.5, 401.13, 401.17, 401.21, 401.23, 401.31, 401.41, 401.43, 401.45, 401.47, 401.49, 401.51, 401.117, 401.121, 401.123, and 401.125 and new 401.129 and 401.131 are adopted without changes to the proposed text as published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6245) and will not be republished. The amendments to §401.11 and §401.19 are adopted with changes to the proposed text as published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6245).

The amendments are adopted to make grammatical changes and other minor wording changes which should help clarify existing requirements. The adoption also includes the creation of new Subchapter J, Charges for Public Records, which adopts by reference the Texas Attorney General's schedule for charging for public records, and new Subchapter K, which adopts by reference the Texas Comptroller's Historically Underutilized Businesses (HUB) program.

The adopted amendments and new sections will provide clear and concise rules regarding the agency's administrative practice and procedures used in performing its statutorily required duties and responsibilities.

No comments were received from the public regarding the proposed amendments and new sections.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

37 TAC §§401.5, 401.11, 401.13

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and

duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

§401.11. Conduct of Commission and Advisory Meetings.

(a) Statements concerning items which are part of the commission's posted agenda. Persons who desire to make presentations to the commission concerning matters on the agenda for a scheduled commission or fire fighter advisory committee meeting shall complete registration cards which shall be made available at the entry to the place where the scheduled meeting is to be held. The registration cards shall include blanks in which all of the following information must be disclosed:

- (1) name of the person making a presentation;
- (2) a statement as to whether the person is being reimbursed for the presentation; and if so, the name of the person or entity on whose behalf the presentation is made;
- (3) a statement as to whether the presenter has registered as a lobbyist in relationship to the matter in question;
- (4) a reference to the agenda item which the person wishes to discuss before the commission;
- (5) an indication as to whether the presenter wishes to speak for or against the proposed agenda item; and
- (6) a statement verifying that all factual information to be presented shall be true and correct to the best of the knowledge of the speaker.

(b) Discretion of the presiding officer. The presiding officer of the commission or the advisory committee, as the case may be, shall have discretion to employ any generally recognized system of parliamentary procedures, including, but not limited to Robert's Rules of Order for the conduct of commission or committee meetings, to the extent that such parliamentary procedures are consistent with the Texas Open Meetings Act or other applicable law and these rules. The presiding officer shall also have discretion in setting reasonable limits on the time to be allocated for each matter on the agenda of a scheduled commission meeting or advisory committee meeting and for each presentation on a particular agenda item. If several persons wish to address the commission or advisory committee on the same agenda item, it shall be within the discretion of the chair to request that persons who wish to address the same side of the issue coordinate their comments, or limit their comments to an expression in favor of views previously articulated by persons speaking on the same side of an issue.

(c) Requests for issues to be placed on an agenda for discussion. Persons who wish to bring issues before the commission shall first address their request in writing to the Executive Director. Such requests should be submitted at least 15 days in advance of commission or fire fighter advisory committee meetings. The decision whether to place a matter on an agenda for discussion before the full commission, or alternatively before the fire fighter advisory committee, or with designated staff members, shall be within the discretion of the appropriate presiding officer.

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 28, 2012.

TRD-201206120

Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: December 18, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 936-3813



SUBCHAPTER B. RULEMAKING PROCEEDINGS

37 TAC §401.17, §401.19

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

§401.19. *Petition for Adoption of Rules.*

(a) Any person may petition the commission requesting the adoption of a new rule or an amendment to an existing rule as authorized by the APA, §2001.021.

(b) Petitions shall be sent to the executive director. Petitions shall be deemed sufficient if they contain:

- (1) the name and address of the person or entity on whose behalf the application is filed;
- (2) specific reference to the existing rule which is proposed to be changed, amended, or repealed;
- (3) the exact wording of the new, changed, or amended proposed rule with new language underlined and deleted language dashed out;
- (4) the proposed effective date; and
- (5) a justification for the proposed action set out in narrative form with sufficient particularity to inform the commission and any other interested person of the reasons and arguments on which the petitioner is relying.

(c) The executive director shall direct that the petition for adoption of rules be placed on the next agenda for discussion by the commission or the fire fighter advisory committee with subject matter jurisdiction in accordance with §401.11 of this title (relating to Conduct of Commission and Advisory Meetings).

(d) A request for clarification of a rule shall be treated as a petition for a rule change. The commission staff may request submission of additional information from the applicant to comply with the requirements of subsection (b) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 28, 2012.

TRD-201206121

Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: December 18, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 936-3813



SUBCHAPTER C. EXAMINATION APPEALS PROCESS

37 TAC §401.21, §401.23

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

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 28, 2012.

TRD-201206122

Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: December 18, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 936-3813



SUBCHAPTER D. DISCIPLINARY PROCEEDINGS

37 TAC §401.31

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

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 28, 2012.

TRD-201206123

Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: December 18, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 936-3813



SUBCHAPTER E. PREHEARING PROCEEDINGS

37 TAC §§401.41, 401.43, 401.45, 401.47, 401.49

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

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 28, 2012.

TRD-201206124
Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: December 18, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 936-3813



SUBCHAPTER F. CONTESTED CASES

37 TAC §401.51

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

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 28, 2012.

TRD-201206125
Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: December 18, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 936-3813



SUBCHAPTER H. REINSTATEMENT

37 TAC §401.117

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

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 28, 2012.

TRD-201206126
Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: December 18, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 936-3813



SUBCHAPTER I. NOTICE AND PROCESSING PERIODS FOR CERTIFICATE APPLICATIONS

37 TAC §§401.121, 401.123, 401.125

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

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 28, 2012.

TRD-201206127
Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: December 18, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 936-3813



SUBCHAPTER J. CHARGES FOR PUBLIC RECORDS

37 TAC §401.129

The new rule is adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

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 28, 2012.

TRD-201206128

Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: December 18, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 936-3813



SUBCHAPTER K. HISTORICALLY UNDERUTILIZED BUSINESSES

37 TAC §401.131

The new rule is adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

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 28, 2012.

TRD-201206129
Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: December 18, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 936-3813



CHAPTER 403. CRIMINAL CONVICTIONS AND ELIGIBILITY FOR CERTIFICATION

37 TAC §§403.1, 403.3, 403.5, 403.9, 403.11, 403.15

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 403, Criminal Convictions and Eligibility for Certification, §403.1, concerning Purpose; §403.3, concerning Scope; §403.5, concerning Access to Criminal History Record Information; §403.9, concerning Mitigating Factors; §403.11, concerning Procedures for Suspension, Revocation, or Denial of a Certificate to Persons with Criminal Backgrounds; and §403.15, concerning Report of Convictions by an Individual or a Department. The amendments are adopted without changes to the proposed text as published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6251) and will not be republished.

The amendments are adopted to make grammatical changes and other minor wording changes which will help clarify existing requirements. The adopted changes will also strengthen existing requirements to notify the commission of criminal convictions.

The adopted amendments will provide clear and concise rules regarding criminal convictions and the eligibility for certification by the agency.

No comments were received from the public regarding the proposed amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; §419.032, which provides the commission the authority to adopt rules to establish qualifications for fire protection personnel; and §419.0325, which provides the commission the authority to obtain criminal history record information before certifying fire protection personnel.

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 28, 2012.

TRD-201206130
Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: December 18, 2012
Proposal publication date: August 17, 2012
For further information, please call: (512) 936-3813



CHAPTER 405. CHARGES FOR PUBLIC RECORDS

37 TAC §§405.1, 405.3, 405.5, 405.7, 405.9, 405.11, 405.15

The Texas Commission on Fire Protection (the commission) adopts the repeal of Chapter 405, Charges for Public Records, §405.1, concerning General Provisions Regarding Charges for Public Records; §405.3, concerning Definitions; §405.5, concerning Charges for Providing Copies of Public Information; §405.7, concerning Access to Information Where Copies Are Not Requested; §405.9, concerning Format for Copies of Public Information; §405.11, concerning Estimates and Waivers of Public Information Charges; and §405.15, concerning the Texas Commission on Fire Protection Charge Schedule. The repeal is adopted without changes to the proposal as published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6254) and will not be republished.

The repeal is adopted to streamline the commission's rules. The commission is adopting by reference Title 1, Part 3, Chapter 70, Cost of Copies of Public Information, as promulgated by the Office of the Attorney General, into Chapter 401, Practice and Procedures, new Subchapter J, Charges for Public Records, in this issue of the *Texas Register*. The commission feels the content of Chapter 405 would be more appropriate in Chapter 401 of the commission's rules.

The adopted repeal will provide clear and concise rules with regards to the administration, practice, and procedures of the commission.

No comments were received from the public regarding the proposed repeal.

The repeal is adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties.

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 28, 2012.

TRD-201206131

Don Wilson

Executive Director

Texas Commission on Fire Protection

Effective date: December 18, 2012

Proposal publication date: August 17, 2012

For further information, please call: (512) 936-3813



CHAPTER 407. ADMINISTRATION

37 TAC §407.1

The Texas Commission on Fire Protection (the commission) adopts the repeal of Chapter 407, Administration, §407.1, concerning Historically Underutilized Businesses. The repeal is adopted without changes to the proposal as published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6254) and will not be republished.

The repeal is adopted to streamline the commission's rules. The commission is adopting by reference Title 34, Part 1, Chapter 20, Texas Procurement and Support Services, Subchapter B, Historically Underutilized Business Program, as promulgated by the Comptroller of Public Accounts into Chapter 401, Practice and Procedures, new Subchapter K, Historically Underutilized Businesses, in this issue of the *Texas Register*. The commission feels the content of Chapter 407 would be more appropriate in Chapter 401 of the commission's rules.

The adopted repeal will provide clear and concise rules with regards to the administration, practice, and procedures of the commission.

No comments were received from the public regarding the proposed repeal.

The repeal is adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties.

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 28, 2012.

TRD-201206132

Don Wilson

Executive Director

Texas Commission on Fire Protection

Effective date: December 18, 2012

Proposal publication date: August 17, 2012

For further information, please call: (512) 936-3813



CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.17

The Texas Commission on Fire Protection (the commission) adopts an amendment to Chapter 421, Standards for Certification, §421.17, concerning Requirement to Maintain Certification. The amendment is adopted without changes to the proposed text as published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6255) and will not be republished.

The amendment is adopted to add specific language referencing the Texas Education Code, §57.491 regarding license renewal and default on student loans which all certifying and licensing state agencies must conform to.

The adopted amendment will provide clear and concise rules regarding renewal of certifications by an individual who is in default on any student loans identified by the Texas Guarantee Student Loan Corporation.

No comments were received from the public regarding the proposed amendment.

The amendment is adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; §419.022, which provides the commission the authority to establish minimum education, training, physical, and mental standards for admission to employment as fire protection personnel; and §419.034 and §419.0341, which provides the commission the authority to adopt rules to establish requirements for renewing all certifications held by an individual.

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 28, 2012.

TRD-201206133

Don Wilson

Executive Director

Texas Commission on Fire Protection

Effective date: December 18, 2012

Proposal publication date: August 17, 2012

For further information, please call: (512) 936-3813



CHAPTER 441. CONTINUING EDUCATION

37 TAC §§441.3, 441.5, 441.7, 441.11, 441.13, 441.15, 441.17, 441.19, 441.21

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 441, Continuing Education, §441.3, concerning Definitions; §441.5, concerning Requirements; §441.7, concerning Continuing Education for Structure Fire Protection Personnel; §441.11, concerning Continuing Education for Marine Fire Protection Personnel; §441.13, concerning Continuing Education for Fire Inspection Personnel; §441.15, concerning Continuing Education for Arson Investigator or Fire Investigator; §441.17, concerning Continuing Education for Hazardous Materials Technician; §441.19, concerning Continuing Education for Head of a Fire Department; and §441.21, concerning Continuing Education for Fire Service Instructor. The amendments to §441.3 and §441.17 are adopted without changes to the proposed text as published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6255) and

will not be republished. The amendments to §§441.5, 441.7, 441.11, 441.13, 441.15, 441.19, and 441.21 are adopted with changes to the proposed text as published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6255) and will be republished.

The amendments are adopted to rename Track A and Track B continuing education to Level 1 and Level 2, thus clarifying confusion with A List and B List courses that are used as training credit for higher levels of certification. In addition, the commission also adopts amendments to reduce the "general" continuing education requirement from 20 to 18 hours and mandating 2 hours of "discipline specific" continuing education for certifications held by an individual appointed to a certain discipline.

The adopted amendments will provide clear and concise rules regarding continuing education for higher levels of certification as well as clarifying the specific number of continuing education hours needed for certification renewal depending on the discipline the individual is assigned to.

No comments were received from the public regarding the proposed amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; §419.022, which provides the commission the authority to establish minimum education, training, physical, and mental standards for admission to employment as fire protection personnel; and §419.032, which provides the commission the authority to adopt rules to establish qualifications for fire protection personnel.

§441.5. *Requirements.*

(a) Continuing education shall be required in order to renew certification.

(b) The continuing education requirement for renewal shall consist of a minimum of 18 hours of training to be conducted during the certification period. All documentation of training used to satisfy the continuing education requirements must be maintained for a period of three years from the date of the training. Continuing education records shall be maintained by the department in accordance with the Texas State Library and Archives Commission, State and Local Records Management Division, Records Schedule, Local Schedule (GR 1050-28), whichever is greater.

(c) Level 1 training must be conducted by a certified instructor. Interactive computer-based continuing education training that is supervised and verified by a certified instructor is acceptable.

(d) The continuing education program of a regulated entity must be administered and maintained in accordance with commission rule by a certified instructor.

(e) No more than four hours per year in any one subject of Level 1 training may be counted toward the continuing education requirement for a particular certification.

(f) There shall be no "hour per subject limit" placed on Level 2 courses, except that emergency medical courses shall be limited to four hours per year.

(g) The head of a fire department may select subject matter for continuing education appropriate for a particular discipline.

(h) The head of a fire department must certify whether or not the individuals whose certificates are being renewed have complied with the continuing education requirements of this chapter on the cer-

tification renewal document. Unless exempted from the continuing education requirements, an individual who fails to comply with the continuing education requirements in this chapter shall be notified by the commission of the failure to comply.

(i) After notification from the commission of a failure to comply with continuing education requirements, an individual who holds a certificate is prohibited from performing any duties authorized by a required certificate until such time as the deficiency has been resolved and written documentation is furnished by the department head for approval by the commission, through its Fire Service Standards and Certification Division director. Continuing education hours obtained to resolve a deficiency may not be applied to the continuing education requirements for the current certification period.

(j) Any person who is a member of a paid or volunteer fire department who is on extended leave for a cumulative period of six months or longer due to a documented illness, injury, or activation to military service may be exempted from the continuing education requirement for the applicable renewal period(s). Such exemptions shall be reported by the head of the department to the commission at renewal time, and a copy kept with the department continuing education records for three years.

(k) Any individual who is not a member of a paid or volunteer fire department who is unable to perform work, substantially similar in nature as would be performed by fire protection personnel appointed to that discipline, may be exempted from the continuing education requirement for the applicable renewal period(s). Commission staff shall determine the exemption using documentation of the illness or injury that cumulatively lasts six months or longer, which is provided by the individual and the individual's treating physician or by documentation of activation to military service.

(l) In order to renew certification for any discipline which has a continuing education requirement stated in this chapter, an individual holder of a certificate not employed by a regulated entity must comply with the continuing education requirements for that discipline. Only 20 total hours of continuing education for each certification period in Level 1 or Level 2 subjects relating to the certification being renewed shall be required to renew all certificates the individual holds, except as provided in §441.17 of this title (relating to Continuing Education for Hazardous Materials Technician).

(m) An individual certificate holder, not employed by a regulated entity, shall submit documentation of continuing education training upon notification by the commission. An example of documentation of continuing education training may include, but not be limited to a Certificate of Completion, a college or training facility transcript, a fire department training roster, etc. Commission staff will review and may approve or disapprove such documentation of training in accordance with applicable commission rules and/or procedures. The training for a resident of Texas at the time the continuing education training is conducted shall be administered by a commission instructor, commission certified training facility, an accredited institution of higher education, or a military or nationally recognized provider of training. The training for a nonresident of Texas, shall be delivered by a state fire academy, a fire department training facility, an accredited institution of higher education, or a military or nationally recognized provider of training. The individual must submit training documentation to the commission for evaluation of the equivalency of the training required by this chapter. The individual certificate holder is responsible for maintaining all of his/her training records for a period of three years from the date of the training.

(n) If an individual has completed a commission approved academy in the 12 months prior to his or her certification expiration

date, a copy of that certificate of completion will be acceptable documentation of continuing education for that certification renewal period.

§441.7. Continuing Education for Structure Fire Protection Personnel.

(a) A minimum of two hours of continuing education in structure fire protection subjects in addition to the continuing education requirements in §441.5(b) of this title (relating to Requirements) will be required for personnel certified as structure fire protection personnel and who are appointed to structure fire protection duties.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Level 1, Level 2, or a combination of the two.

§441.11. Continuing Education for Marine Fire Protection Personnel.

(a) A minimum of two hours of continuing education in marine fire protection subjects in addition to the continuing education requirements in §441.5(b) of this title (relating to Requirements) will be required for personnel certified as marine fire protection personnel and who are appointed to marine fire protection duties for any certification period beginning after October 31, 1993.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Level 1, Level 2, or a combination of the two.

§441.13. Continuing Education for Fire Inspection Personnel.

(a) A minimum of two hours of continuing education in fire inspection subjects in addition to the continuing education requirements in §441.5(b) of this title (relating to Requirements) will be required for personnel certified as fire inspection personnel and who are appointed to fire inspection duties.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Level 1, Level 2, or a combination of the two.

§441.15. Continuing Education for Arson Investigator or Fire Investigator.

(a) A minimum of two hours of continuing education in arson or fire investigation subjects in addition to the continuing education requirements in §441.5(b) of this title (relating to Requirements) will be required for personnel certified as arson investigation or fire investigation personnel and who are appointed to arson or fire investigation duties.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Level 1, Level 2, or a combination of the two.

§441.19. Continuing Education for Head of a Fire Department.

(a) A minimum of two hours of continuing education in fire administration subjects in addition to the continuing education requirements in §441.5(b) of this title (relating to Requirements) will be required for personnel certified as head of a fire department and who are appointed as head of a department.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Level 1, Level 2, or a combination of the two.

§441.21. Continuing Education for Fire Service Instructor.

(a) A minimum of two hours of continuing education in fire service instruction subjects in addition to the continuing education requirements in §441.5(b) of this title (relating to Requirements) will be required for individuals certified as a fire service instructor and who are appointed to fire service instructor duties.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Level 1, Level 2, or a combination of the two.

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 28, 2012.

TRD-201206134

Don Wilson

Executive Director

Texas Commission on Fire Protection

Effective date: December 18, 2012

Proposal publication date: August 17, 2012

For further information, please call: (512) 936-3813



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

SUBCHAPTER E. APPEALS AND HEARING PROCEDURES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopts amendments to Chapter 101, Administrative Rules and Procedures, Subchapter E, Appeals and Hearing Procedures, Division 1, General Rules, §101.907, Filing a Request for Review, and §101.943, Motion for Reconsideration, and Division 3, Division for Early Childhood Intervention Services, §101.1107, Administrative Hearings Concerning Individual Child Rights, and §101.1109, Motion for Reconsideration; and adopts a new rule in Subchapter E, Appeals and Hearing Procedures, Division 3, Division for Early Childhood Intervention Services, §101.1113, Computation of Time. The amendments and new rule are adopted without changes to the proposed text as published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7051) and will not be republished.

DARS adopts the amendments and new rule to comply with guidance received by DARS from the U.S. Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, concerning the Individuals with Disabilities Education Act (IDEA), Part C, State Application and Assurances. The adopted amendments and new rule relate to due process administrative appeal and hearing procedures in DARS' Early Childhood Intervention program.

The adopted amendments and new rule are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the IDEA, as amended, 20 USC §1400 et seq. and its implementing regulations, 34 CFR Part 303, as amended.

No comments were received regarding adoption of the rules.

DIVISION 1. GENERAL RULES

40 TAC §§101.907, §101.943

The amendments are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2012.

TRD-201206167

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: December 31, 2012

Proposal publication date: September 7, 2012

For further information, please call: (512) 424-4050



DIVISION 3. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES

40 TAC §§101.1107, 101.1109, 101.1113

The amendments and new rule are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2012.

TRD-201206168

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: December 31, 2012

Proposal publication date: September 7, 2012

For further information, please call: (512) 424-4050



CHAPTER 108. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopts amendments to DARS rules in 40 Texas Administrative Code (TAC) Part 2, Chapter 108, Division for Early Childhood Intervention Services, Subchapter L, Transition, §§108.1203, 108.1217, and 108.1221; Subchapter N, System of Fees, §§108.1401, 108.1403, 108.1409, 108.1411, 108.1413, 108.1415, 108.1419, 108.1421, 108.1423, and 108.1425; and Subchapter P, Contract Requirements, §108.1611 and §108.1613. The amendments are adopted without changes to the proposed text as published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7053) and will not be republished.

DARS adopts amendments to §108.1203 to move programmatic requirements related to a Community Transition Meeting from the definitions rule to §108.1221 and move the programmatic requirements related to a LEA Transition Conference from the definitions rule to §108.1217; amendments to §§108.1401, 108.1403, 108.1409, 108.1411, 108.1413, and 108.1415 to correct terminology; amendments to §108.1409 and §108.1411 to clarify requirements related to children eligible for auditory or visual impairments; amendments to §108.1423 to correct terminology; and amendments to §108.1611 and §108.1613 to correct internal TAC cross-reference citations. The name of Subchapter N is changed from "System of Fees" to "Family Cost Share System."

The adopted rule amendments are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400, et seq., and its implementing regulations, 34 CFR Part 303, as amended.

No comments were received regarding adoption of the amended rules.

SUBCHAPTER L. TRANSITION

40 TAC §§108.1203, 108.1217, 108.1221

The amendments are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2012.

TRD-201206169

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: December 31, 2012

Proposal publication date: September 7, 2012

For further information, please call: (512) 424-4050



SUBCHAPTER N. FAMILY COST SHARE SYSTEM

40 TAC §§108.1401, 108.1403, 108.1409, 108.1411, 108.1413, 108.1415, 108.1419, 108.1421, 108.1423, 108.1425

The amendments are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2012.

TRD-201206170
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: December 31, 2012
Proposal publication date: September 7, 2012
For further information, please call: (512) 424-4050



SUBCHAPTER P. CONTRACT REQUIREMENTS

40 TAC §108.1611, §108.1613

The amendments are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 2012.

TRD-201206171
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: December 31, 2012
Proposal publication date: September 7, 2012
For further information, please call: (512) 424-4050



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §151.8, concerning Advisory Committees. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously proposes an amendment to §151.8.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this notice.

TRD-201206191

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Filed: December 3, 2012



Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy files this notice of intent to review Chapter 291 (§§291.120, 291.121, 291.123, 291.125, 291.127, 291.129, 291.131, and 291.133) concerning Pharmacies, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

All comments regarding the rule review may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., January 31, 2013.

TRD-201206165

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Filed: November 30, 2012



The Texas State Board of Pharmacy files this notice of intent to review Chapter 297 (§§297.1 - 297.9) concerning Pharmacy Technicians

and Pharmacy Technician Trainees, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

All comments regarding the rule review may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., January 31, 2013.

TRD-201206166

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Filed: November 30, 2012



Adopted Rule Reviews

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts adopts the review of Texas Administrative Code, Title 34, Part 1, Chapter 3, concerning Tax Administration, pursuant to Government Code, §2001.039. The review assessed whether the reason for adopting the chapter continues to exist.

The comptroller received no comments on the proposed review, which was published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7757).

Relating to the review of Chapter 3, Subchapters D, E, H, I, J, X, Y, AA, BB, CC, DD, JJ, LL, and MM continue to exist and the comptroller readopts the sections without changes in accordance with the requirements of Government Code, §2001.039.

As a result of the review of Chapter 3, the following subchapters are being amended, Subchapter A, §§3.3 - 3.9; Subchapter B, §3.18 and §3.23; Subchapter F, §§3.61, 3.64, 3.68 - 3.75, 3.78 - 3.80, 3.82, 3.84, 3.86, 3.88, 3.90, and 3.94 - 3.96; Subchapter G, §3.102; Subchapter K, §3.161 and §3.162; Subchapter M, §§3.225 - 3.230; Subchapter O, §§3.281, 3.282, 3.284 - 3.303, 3.305, 3.306, 3.308, 3.311 - 3.314, 3.316, 3.318 - 3.324, 3.329 - 3.333, 3.337 - 3.339, 3.342, 3.343, 3.347, 3.354, 3.355, 3.357, 3.358, 3.360 - 3.362, 3.364 - 3.367, and 3.369; Subchapter S, §§3.432, 3.433, 3.436, and 3.438; Subchapter T, §3.481; Subchapter U, §3.511; Subchapter V, §§3.584, 3.588, 3.591, and 3.594; Subchapter W, §3.601; Subchapter Z, §3.692; Subchapter EE, §3.741; Subchapter GG, §§3.809, 3.811, 3.820, 3.822, 3.828, and 3.830 - 3.834; Subchapter HH, §3.1001; Subchapter KK, §3.1251; and Subchapter NN, §3.1281. The sections will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act.

As a result of the review of Chapter 3, the comptroller will propose the repeal of Subchapters N, P, and R in a separate rulemaking in accordance with the Texas Administrative Procedure Act.

As a result of the review of Chapter 3, the comptroller will propose the repeal of Subchapter C, §3.36 and §3.38; Subchapter F, §§3.65, 3.66, and 3.67; Subchapter O, §3.283 and §3.356; and Subchapter V, §§3.541, 3.544 - 3.563, 3.565 - 3.570, 3.575, 3.576, and 3.578 - 3.580 in a separate rulemaking in accordance with the Texas Administrative Procedure Act.

This concludes the review of Texas Administrative Code, Title 34, Part 1, Chapter 3.

TRD-201206232
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: December 5, 2012



Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice adopts the review of §151.6, concerning Petition for the Adoption of a Rule, pursuant to Texas Government Code §2001.039.

The proposed rule review was published in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5641).

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist and the agency readopts the section.

TRD-201206183
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 3, 2012



The Texas Board of Criminal Justice (Board) adopts the review of §151.55, concerning Disposal of Surplus Agricultural Goods and Agricultural Personal Property, pursuant to the Texas Government Code §2001.039.

The proposed rule review was published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7207).

In the September 14, 2012, issue of the *Texas Register* (37 TexReg 7268), the Board proposed amendments to §151.55. Elsewhere, in this issue of the *Texas Register*, the Board adopts those amendments to §151.55.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist and the agency readopts the section.

TRD-201206182
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 3, 2012



The Texas Board of Criminal Justice adopts the review of §151.71, concerning Marking of State Vehicles of the Department of Criminal Justice, pursuant to Texas Government Code §2001.039.

The proposed rule review was published in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5641).

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist and the agency readopts the section.

TRD-201206184
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 3, 2012



The Texas Board of Criminal Justice adopts the review of §151.73, concerning Texas Department of Criminal Justice Vehicle Assignments, pursuant to Texas Government Code §2001.039.

The proposed rule review was published in the August 24, 2012, issue of the *Texas Register* (37 TexReg 6701).

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist and the agency readopts the section.

TRD-201206185
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 3, 2012



The Texas Board of Criminal Justice adopts the review of §155.21, concerning Naming of a Texas Department of Criminal Justice Owned Facility, pursuant to Texas Government Code §2001.039.

The proposed rule review was published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6943).

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist and the agency readopts the section.

TRD-201206187
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 3, 2012



The Texas Board of Criminal Justice adopts the review of §163.5, concerning Waiver to Standards, pursuant to Texas Government Code §2001.039.

The proposed rule review was published in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5641).

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist and the agency readopts the section.

TRD-201206190

Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 3, 2012



Texas State Board of Examiners of Psychologists

Title 22, Part 21

The Texas State Board of Examiners of Psychologists files notice of the completion of review of the Texas Administrative Code, Title 22, Part 21, Texas State Board of Examiners of Psychologists.

Chapter 461. General Rulings.

Chapter 463. Applications and Examinations.

Chapter 465. Rules of Practice.

Chapter 469. Complaints and Enforcement.

Chapter 470. Administrative Procedure.

Chapter 471. Renewals.

Chapter 473. Fees.

This review is conducted pursuant to the Texas Government Code §2001.039. The Board reviewed and received no comments on the proposed review, which was published in the September 14, 2012, issue of the *Texas Register* (37 TexReg 7301). The Texas State Board of Examiners of Psychologists has determined that the reasons for adopting rules continue to exist.

This concludes and completes the review of Chapters 461, 463, 465, 469, 470, 471 and 473.

TRD-201206225

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Filed: December 4, 2012



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §577.15

(a) APPLICATION FOR INITIAL LICENSE

Type of License Application	Total Fee
Veterinary Regular License	\$555
Veterinary Special License	\$555
Veterinary Provisional License	\$605
Veterinary Temporary License	\$300
Equine Dental Provider License	\$200

(b) LICENSE RENEWALS

(1) Current License Renewals

Type of License	Board Fees	Professional Fees	Total Fee
Veterinary Regular License	\$169	\$200	\$369
Veterinary Special License	\$164	\$200	\$364
Veterinary Inactive License	\$169	\$0	\$169
Equine Dental Provider License	\$200	\$0	\$200
Equine Dental Provider Inactive License	\$100	\$0	\$100

(2) Expired License Renewals - Less Than 90 Days Delinquent

Type of License	Board Fees	Professional Fees	Total Fee
Veterinary Regular License	\$249	\$200	\$449
Veterinary Special License	\$244	\$200	\$444
Veterinary Inactive License	\$249	\$0	\$249
Equine Dental Provider License	\$300	\$0	\$300
Equine Dental Provider Inactive License	\$150	\$0	\$150

(3) Expired License Renewals - Greater Than 90 Days and Less Than 1 Year Delinquent

Type of License	Board Fees	Professional Fees	Total Fee
Veterinary Regular License	\$329	\$200	\$529
Veterinary Special License	\$324	\$200	\$524
Veterinary Inactive License	\$329	\$0	\$329
Equine Dental Provider License	\$400	\$0	\$400
Equine Dental Provider Inactive License	\$200	\$0	\$200

(c) SPECIALIZED LICENSE CATEGORIES

Type of License	Total Fee
Veterinary Reinstatement	\$369
Veterinary Re-Activation	\$225
Equine Dental Provider Re-Activation	\$25

(d) OTHER FIXED FEES AND CHARGES

- (1) Criminal History Evaluation Letter: \$32
- (2) Returned Check Fee: \$25
- (3) Duplication of License: \$40
- (4) Open Records Requests: Charges for all open records and other goods/services such as tapes and discs, will be in accordance with the Office of the Attorney General 1 TAC §§70.1 - 70.12 (relating to Cost of Copies of Public Information).

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of a Texas Water Code and Texas Health and Safety Code Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and the Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *Harris County, Texas and the State of Texas acting on behalf of the Texas Commission on Environmental Quality, A Necessary and Indispensable Party v. INEOS Polyethylene North America*, Cause No. 2012-71174, in the 133rd Judicial District Court of Harris County, Texas.

Nature of Defendant's Operations: Defendant INEOS Polyethylene North America ("INEOS") operates a plastic manufacturing facility in Houston, Texas. Defendant violated the Texas Water Code by discharging plastic pellets and flakes at its facility into or adjacent to water of the State.

Proposed Agreed Judgment: The proposed Agreed Final Judgment is in favor of Harris County, Texas and the State in the amount of Seventy Thousand Dollars (\$70,000.00) in civil penalties to be equally divided between Harris County and the State of Texas. Defendant is also required to pay attorney fees in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) to Harris County, Texas, and Two Thousand Five Hundred Dollars (\$2,500.00) to the State of Texas.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201206245
Katherine Cary
General Counsel
Office of the Attorney General
Filed: December 5, 2012

Comptroller of Public Accounts

Notice of Contract Amendment

The Comptroller of Public Accounts (Comptroller) announces this notice of amendment of a consulting services contract awarded to AKF Consulting, LLC dba AKF Consulting Group, 186 Riverside Drive,

Suite 600, New York, NY 10024, under Request for Proposals (RFP) 198a to assist the Texas Prepaid Higher Education Tuition Board with administering the state's prepaid tuition plans. The Notice of RFP was published in the May 14, 2010 issue of the *Texas Register* (35 TexReg 3877). The Notice of Award was published in the December 24, 2010 issue of the *Texas Register* (35 TexReg 11737). The total amount of the contract is not to exceed \$100,000.00. The term of the contract was December 10, 2010 through December 31, 2012. The amendment extends the term through December 31, 2013.

TRD-201206201
Jennifer W. Sloan
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: December 4, 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 12/10/12 - 12/16/12 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/10/12 - 12/16/12 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 12/01/12 - 12/31/12 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 12/01/12 - 12/31/12 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-201206197
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 4, 2012

Court of Criminal Appeals

IN THE COURT OF CRIMINAL APPEALS

Misc. Docket No. 12-001

ORDER ADOPTING AMENDMENTS TO THE TEXAS RULES OF APPELLATE PROCEDURE 9, 38, 49, 52, 53, 55, 64, 68, 70 AND 71
ORDERED that:

1. Pursuant to Section 22.108 of the Texas Government Code, the Court of Criminal Appeals adopts the amendments to Rules 9, 38, 49, 52, 53, 55, 64, 68, 70 and 71 of the Texas Rules of Appellate Procedure, as follows, effective December 1, 2012.

2. The Clerk of the Court of Criminal Appeals is directed to:

- a. file a copy of this Order with the Secretary of State;
- b. cause a copy of this Order to be published in the *Texas Bar Journal*;
- c. submit a copy of the Order for publication in the *Texas Register*.

Dated: November 30, 2012.

Sharon Keller, Presiding Judge

Lawrence E. Meyers, Judge

Tom Price, Judge

Paul Womack, Judge

Cheryl Johnson, Judge

Michael E. Keasler, Judge

Barbara Parker Hervey, Judge

Cathy Cochran, Judge

Elsa Alcalá, Judge

Rule 9. Papers Generally

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9.4. Form

Except for the record, a document filed with an appellate court must--unless the court accepts another form in the interest of justice--be in the following form:

* * *

(c) *Typeface.* A document must be printed in standard 10-character-per-inch (cpi) nonproportionally spaced Courier typeface or in 13-point or larger proportionally spaced typeface. But if the document is printed in a proportionally spaced typeface, footnotes may be printed in typeface no smaller than 10-point. A document produced on a computer must be printed in a conventional typeface no smaller than 14-point except for footnotes, which must be no smaller than 12-point. A typewritten document must be printed in standard 10-character-per-inch (cpi) monospaced typeface.

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(i) *Length.*

(1) *Contents Included and Excluded.* In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: cap-

tion, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service, certification, certificate of compliance, and appendix.

(2) *Maximum Length.* The documents listed below must not exceed the following limits:

(A) A brief and response in a direct appeal to the Court of Criminal Appeals in a case in which the death penalty has been assessed: 37,500 words if computer-generated, and 125 pages if not.

(B) A brief and response in an appellate court (other than a brief under subparagraph (A)) and a petition and response in an original proceeding in the court of appeals: 15,000 words if computer-generated, and 50 pages if not. In a civil case in the court of appeals, the aggregate of all briefs filed by a party must not exceed 27,000 words if computer-generated, and 90 pages if not.

(C) A reply brief in an appellate court and a reply to a response to a petition in an original proceeding in the court of appeals: 7,500 words if computer-generated, and 25 pages if not.

(D) A petition and response in an original proceeding in the Supreme Court, a petition for review and response in the Supreme Court, a petition for discretionary review and response in the Court of Criminal Appeals, and a motion for rehearing and response in an appellate court: 4,500 words if computer-generated, and 15 pages if not.

(E) A reply to a response to a petition for review in the Supreme Court, a reply to a response to a petition in an original proceeding in the Supreme Court, and a reply to a response to a petition for discretionary review in the Court of Criminal Appeals: 2,400 words if computer-generated, and 8 pages if not.

(3) *Certificate of Compliance.* A computer-generated document must include a certificate by counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

(4) *Extensions.* A court may, on motion, permit a document that exceeds the prescribed limit.

(i) *Nonconforming Documents.* Unless every copy of a document conforms to these rules, the court may strike the document and return all nonconforming copies to the filing party. The court must identify the error to be corrected and state a deadline for the party to resubmit the document in a conforming format. If another nonconforming document is filed, the court may strike the document and prohibit the party from filing further documents of the same kind. The use of footnotes, smaller or condensed typeface, or compacted or compressed printing features to avoid the limits of these rules are grounds for the court to strike a document.

Comment to 2012 Change: Rule 9 is revised to consolidate all length limits and establish word limits for documents produced on a computer. All documents produced on a computer must comply with the word limits. Page limits are retained for documents that are typewritten or otherwise not produced on a computer.

Rule 38. Requisites of Briefs

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38.4. Length of Briefs

An appellant's brief or appellee's brief must be no longer than 50 pages, exclusive of the pages containing the identity of parties and counsel, any statement regarding oral argument, the table of contents, the index of authorities, the statement of the case, the issues presented, the sig-

nature, the proof of service, and the appendix. A reply brief must be no longer than 25 pages, exclusive of the items stated above. But in a civil case, the aggregate number of pages of all briefs filed by a party must not exceed 90, exclusive of the items stated above. The court may, on motion, permit a longer brief.

Rule 49. Motion and Further Motion for Rehearing

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49.10. Length of Motion and Response

A motion or response must be no longer than 15 pages.

Rule 52. Original Proceedings

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52.6. Length of Petition, Response, and Reply

Excluding those pages containing the identity of parties and counsel; the table of contents; the index of authorities; the statement of the case; the statement of jurisdiction; the issues presented; the signature; the proof of service; the certification; and the appendix, the petition and response must not exceed 50 pages each if filed in the court of appeals; or 15 pages each if filed in the Supreme Court. A reply may be no longer than 25 pages if filed in the court of appeals or 8 pages if filed in the Supreme Court, exclusive of the items stated above. The court may, on motion, permit a longer petition, response, or reply.

Rule 53. Petition for Review

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53.6. Length of Petition, Response, and Reply

The petition and any response must be no longer than 15 pages each, exclusive of pages containing the identity of parties and counsel; the table of contents; the index of authorities; the statement of the case; the statement of jurisdiction; the issues presented; the signature; the proof of service; and the appendix. A reply may be no longer than 8 pages, exclusive of the items stated above. The Court may, on motion, permit a longer petition, response, or reply.

Rule 55. Brief on the Merits

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55.6. Length of Briefs

A brief on the merits or brief in response must not exceed 50 pages, exclusive of pages containing the identity of parties and counsel; the table of contents; the index of authorities; the statement of the case; the statement of jurisdiction; the issues presented; the signature; and the proof of service. A brief in reply may be no longer than 25 pages, exclusive of the items stated above. The Court may, on motion, permit a longer brief.

Rule 64. Motion for Rehearing

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64.6. Length of Motion and Response

A motion or response must be no longer than 15 pages.

Rule 68. Discretionary Review With Petition

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68.5. Length of Petition and Reply

The petition must be no longer than 15 pages, exclusive of pages containing the table of contents; the index of authorities; the statement regarding oral argument; the statement of the case; the statement of procedural history; and the appendix. A reply may be no longer than 8

pages, exclusive of the items stated above. The Court may, on motion, permit a longer petition or reply.

Rule 70. Brief on the Merits

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70.3. Brief Contents and Form

Briefs must comply with the requirements of Rules 9 and 38, except that they need not contain the appendix (Rule 38.1(k)). Copies must be served as required by Rule 68.11.

Rule 71. Direct Appeals

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71.3. Briefs

Briefs in a direct appeal should be prepared and filed in accordance with Rules 9 and 38, except that the brief need not contain an appendix (Rule 38.1(k)); and the brief in a case in which the death penalty has been assessed may not exceed 125 pages. All briefs must be filed in the Court of Criminal Appeals. The brief must include a short statement of why oral argument would be helpful, or a statement that oral argument is waived.

TRD-201206196

Abel Acosta

Clerk of the Court

Court of Criminal Appeals

Filed: December 3, 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 January 14, 2013. 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 January 14, 2013. 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: ACATEX LLC dba Acatex Food Mart; DOCKET NUMBER: 2012-1274-PST-E; IDENTIFIER: RN101780294; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and also by failing to provide proper release detection for the piping associated with the USTs; and 30 TAC §334.10(b)(1)(B), by failing to maintain all UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$4,755; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Atlas Roofing Corporation; DOCKET NUMBER: 2012-1556-AIR-E; IDENTIFIER: RN101633287; LOCATION: Daingerfield, Morris County; TYPE OF FACILITY: roofing shingle manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O2303, General Terms and Conditions, by failing to submit the annual permit compliance certification within 30 days after the end of the certification period; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O2303, Special Terms and Conditions (STC) Number 6, and New Source Review (NSR) Permit Number 88397, Special Conditions Numbers 13 and 17, by failing to utilize a boot/shroud while receiving surfacing material via trucks and also by failing to physically identify and mark equipment that has the potential of emitting air contaminants with facility identification numbers and emission point numbers; and 30 TAC §116.115(b)(2)(E)(i) and §122.143(4), THSC, §382.085(b), FOP Number O2303, STC Number 6, and NSR Permit Number 52827, General Conditions Number 7, by failing to maintain a copy of NSR permit; PENALTY: \$16,163; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: BK and Brothers, Incorporated dba Jubilee Mart; DOCKET NUMBER: 2012-1571-PST-E; IDENTIFIER: RN101570299; LOCATION: Mansfield, Tarrant 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 and also by failing to provide corrosion protection; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: BUC-EES LTD; DOCKET NUMBER: 2012-1969-PST-E; IDENTIFIER: RN105661425; LOCATION: Wharton, Wharton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2012-1607-AIR-E; IDENTIFIER: RN103919817; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Texas Health and Safety Code, §382.085(b), and New Source Review Permit Number 46783, General Conditions Number 8, by failing to prevent unauthorized emissions. Since this emissions event could have been

avoided by better design and operational practices, the Respondent is precluded from asserting an affirmative defense under 30 TAC §101.222; PENALTY: \$6,563; ENFORCEMENT COORDINATOR: Linda Ndoping, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: City of Alice; DOCKET NUMBER: 2012-1186-AIR-E; IDENTIFIER: RN102558848; LOCATION: Alice, Jim Wells County; TYPE OF FACILITY: air curtain incinerator; RULE VIOLATED: Federal Operating Permit Number O3201/General Operating Permit Number 518, Terms and Conditions Numbers (b)(4)(D)(i) and (ii), 30 TAC §122.143(4) and §122.146(1) and (2), and Texas Health and Safety Code, §382.085(b), by failing to submit an annual compliance certification within 30 days after the end of the certification period; PENALTY: \$1,063; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(7) COMPANY: City of Archer City; DOCKET NUMBER: 2012-1271-MWD-E; IDENTIFIER: RN104443411; LOCATION: Archer City, Archer County; TYPE OF FACILITY: domestic wastewater treatment system; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014549001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$8,280; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 852-3422; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: City of Cumby; DOCKET NUMBER: 2012-0264-MWD-E; IDENTIFIER: RN102845773; LOCATION: Cumby, Hopkins 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 Permit Number WQ0013792001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with the permitted effluent limitations; PENALTY: \$14,800; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: City of Gonzales; DOCKET NUMBER: 2012-2087-WQ-E; IDENTIFIER: RN105066724; LOCATION: Gonzales, Gonzales County; TYPE OF FACILITY: municipal services; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(10) COMPANY: City of Newcastle; DOCKET NUMBER: 2012-1826-WR-E; IDENTIFIER: RN104071451; LOCATION: Newcastle, Young County; TYPE OF FACILITY: reservoir; RULE VIOLATED: 30 TAC §297.11, TWC, §11.122(a), and Certificate of Adjudication Number 12-3452, by failing to obtain from the commission authority to change the place of use, purpose of use, point of diversion, rate of diversion, acreage to be irrigated, or otherwise alter a water right; PENALTY: \$750; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(11) COMPANY: City of Normangee; DOCKET NUMBER: 2011-0456-MWD-E; IDENTIFIER: RN101916385; LOCATION: Leon County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and 17, and §319.7(d) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014787001, Monitoring and Reporting Requirements

Number 1, by failing to submit the discharge monitoring reports (DMRs) for the monitoring periods ending August 31, 2010 - November 30, 2010, by the 20th day of the following month; 30 TAC §305.125(1) and (17) and §319.1 and TPDES Permit Number WQ0014787001, Monitoring and Reporting Requirements Number 1, by failing to submit a complete DMR for the monitoring period ending January 31, 2010; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0014787001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2010; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0014787001, Operational Requirements Number 1, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; and 30 TAC §305.125(1) and §30.331(b) and TPDES Permit Number WQ0014787001, Other Requirements Number 1, by failing to employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operation companies holding a valid license or registration; PENALTY: \$46,826; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: City of Stamford; DOCKET NUMBER: 2012-0700-MWD-E; IDENTIFIER: RN101920189; LOCATION: Fort Worth, Jones County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010472002, Monitoring and Reporting Requirements Number 1, by failing to correctly report effluent data on the discharge monitoring reports; 30 TAC §305.125(1) and (5), TPDES Permit Number WQ0010472002, Operational Requirements Number 1, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and §30.331(b) and TPDES Permit Number WQ0010472002, Other Requirements Number 1, by failing to employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operation companies holding a valid license or registration; and TWC, §26.121(a)(1), 30 TAC §305.125(4), and TPDES Permit Number WQ0010472002, Permit Conditions Number 2.d, by failing to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment; PENALTY: \$17,655; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(13) COMPANY: City of Tenaha; DOCKET NUMBER: 2012-1893-PWS-E; IDENTIFIER: RN101389039; LOCATION: Tenaha, Shelby County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the running annual average; PENALTY: \$172; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2012-1125-IWD-E; IDENTIFIER: RN101619179; LOCATION: Sweeny, Brazoria 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 WQ0000721000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, Outfall Numbers 003 and 011, by failing to comply with permitted effluent limits; PENALTY: \$37,500; Supplemental Environmental Project offset amount of \$15,000 applied to Friends of the River San Bernard - Friends of the River San Bernard Natural

Area Acquisition and Conservation Program; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: D & K Development Corporation; DOCKET NUMBER: 2012-1519-MWD-E; IDENTIFIER: RN102287109; LOCATION: Burleson, Tarrant County; TYPE OF FACILITY: domestic wastewater treatment system; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013518001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 3, by failing to comply with permitted effluent limits; PENALTY: \$4,375; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: DALTON OIL, INCORPORATED; DOCKET NUMBER: 2012-2113-PST-E; IDENTIFIER: RN101436541; LOCATION: Hudson Oaks, Parker County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Durham School Services, L.P. dba Durham Transportation; DOCKET NUMBER: 2012-1469-PST-E; IDENTIFIER: RN100546951; LOCATION: Lewisville, Denton County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,188; Supplemental Environmental Project offset amount of \$637 applied to Texas Association of Resource Conservation and Development (RC&D) Areas, Incorporated - Household Hazardous Waste Clean-Up and Supplemental Environmental Project offset amount of \$638 applied to Texas Association of RC&D Areas, Incorporated - Cleanup of Unauthorized Trash Dumps; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: E.I. DuPont de Nemours and Company; DOCKET NUMBER: 2012-1198-IWD-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County; TYPE OF FACILITY: domestic wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0000475000, Effluent Limitations and Monitoring Requirements Number 1 for Outfall 201, by failing to comply with permitted effluent limits; PENALTY: \$107,500; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Exide Technologies; DOCKET NUMBER: 2011-1712-IHW-E; TCEQ ID NUMBER: RN100218643; LOCATION: 7471 South Fifth Street, Frisco, Collin County; TYPE OF FACILITY: lead and lead bearing waste reclamation facility RULES VIOLATED: 30 TAC §335.4 and TWC, §26.121, by failing to prevent the unauthorized discharge or imminent threat of discharge of industrial solid and hazardous waste (IHW) to water in the state; 30 TAC §335.152(a)(10) and 40 Code of Federal Regulations (CFR) §264.250(a) and §264.251, by failing to meet the requirements for storage of hazardous waste in a waste pile; 30 TAC §335.431, 40 CFR §268.34(b), by failing to meet the treatment standards for hazardous waste that is restricted from land disposal; 30 TAC §335.4 and

§335.69(a)(1)(B) and 40 CFR §265.190(a), by failing to assure that the tank system contained no free liquids and thus failed to prevent the threat of a release of solid waste; 30 TAC §335.152(a)(1) and 40 CFR §264.16(c) and (d) and IHW Permit Number 50206, Permit Section (PS) III.B, by failing to have the facility personnel take part in an annual review of the initial program of classroom instruction or on-the-job training; 30 TAC §335.152(a)(1) and (4), 40 CFR §264.15(b)(1) and (d) and §264.73(b)(5), and IHW Permit Number 50206, PSs I.B and III.D, by failing to record facility inspections in an inspection log or summary regarding possible error, malfunction or deterioration; 30 TAC §§335.62, 335.503(a), and 335.504 and 40 CFR §262.11, by failing to conduct a hazardous waste determination and waste classification; 30 TAC §335.6, by failing to update the facility's Notice of Registration; 30 TAC §335.152(a)(7), 40 CFR §264.175(b)(1) and (2), and IHW Permit Number 50206, PP V.B.3, by failing to have a container storage area containment system that is free of cracks or gaps and that is sloped or designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation; 30 TAC §335.152(a)(20), 40 CFR §264.1100(a) and (e), and §264.1101(c)(1)(iii), and IHW Permit Number 50206, PP V.C.1, by failing to prevent the tracking of liquid in contact with hazardous waste out of a containment building; 30 TAC §335.152(a)(20), 40 CFR §264.1100(a), and §264.1101(a)(1) and (2), and IHW Permit Number 50206, PP V.C.1, by failing to completely enclose a containment building to prevent exposure to the elements and assure containment of managed wastes; and 30 TAC §335.152(a)(1) and (4), 40 CFR §264.13 and §264.73(b)(3), and IHW Permit Number 50206, PS IV.A, by failing to have a waste analysis plan for all incoming non-exempt, solid waste; PENALTY: \$592,868, Supplemental Environmental Project offset amount of \$296,434 applied to Texas Association of Resource Conservation and Development Areas, Inc. - Tire Collection Events and Cleanup of Abandoned Tire Sites; ENFORCEMENT COORDINATOR: Thomas Greimel, Enforcement Division, MC 128, (512) 239-5690; STAFF ATTORNEY: Margaret Ligarde, Office of Legal Services, MC 218, (512)239-3426 REGIONAL OFFICE: Dallas/Fort Worth Regional Office, 2309 Gravel Rd., Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Federal Bureau of Prisons; DOCKET NUMBER: 2012-2279-PST-E; IDENTIFIER: RN102894904; LOCATION: Houston, Harris County; TYPE OF FACILITY: detention center with 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 underground storage tank system; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Forged Products, Incorporated; DOCKET NUMBER: 2012-1670-AIR-E; IDENTIFIER: RN100668722; LOCATION: Houston, Harris County; TYPE OF FACILITY: metal forging; RULE VIOLATED: 30 TAC §122.143(4), §122.145(2)(A) and (B), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O3329, General Terms and Conditions (GTC), by failing to submit semi-annual deviation reports; 30 TAC §122.143(4) and §122.146(2), THSC, §382.085(b), and FOP Number O3329, GTC, by failing to submit a complete and accurate annual permit compliance certification within 30 days of the end of the certification period; 30 TAC §122.143(4) and §122.144(1), THSC, §382.085(b), and FOP Number O3329, GTC, by failing to maintain records of quarterly visible emissions monitoring; and 30 TAC §122.132 and THSC, §382.085(b), by failing to include applicable regulations in a permit application; PENALTY: \$9,757; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921;

REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Fritz Industries, Incorporated; DOCKET NUMBER: 2012-1845-AIR-E; IDENTIFIER: RN100218023; LOCATION: Mesquite, Dallas County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §§122.121, 122.133(2), and 122.241(b) and Texas Health and Safety Code, §382.054 and §382.085(b), by failing to submit a permit renewal application at least six months prior to the permit expiration date; PENALTY: \$26,775; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Gulf Chemical & Metallurgical Corporation; DOCKET NUMBER: 2012-0922-AIR-E; IDENTIFIER: RN100210129; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: catalyst recovery plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 1157C, Special Conditions Number 1, Federal Operating Permit (FOP) Number O1337, Special Terms and Conditions (STC) Number 8, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions. Since this event could have been avoided by better operational practices and it was not properly reported, the Respondent is precluded from asserting an affirmative defense under 30 TAC §101.222; and 30 TAC §101.201(a)(1) and §122.143(4), FOP Number O1337, STC Number 2, and THSC, §382.085(b), by failing to submit the initial notification of an emissions event within 24 hours after discovery of the event; PENALTY: \$28,362; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: IOM ENTERPRISE, INCORPORATED dba Moes Mini Mart; DOCKET NUMBER: 2012-1693-PST-E; IDENTIFIER: RN101541670; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and also by failing to provide release detection for the piping associated with the USTs; PENALTY: \$3,959; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: JANG & COMPANY, INCORPORATED dba Ace Mart 1; DOCKET NUMBER: 2012-1509-PST-E; IDENTIFIER: RN101444180; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of the discovery; and 30 TAC §334.74, by failing to immediately investigate a suspected release of a regulated substance after two consecutive months inventory control records indicated a suspected release; PENALTY: \$35,800; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(26) COMPANY: K T T ENTERPRISE, INCORPORATED dba Orem Food Mart; DOCKET NUMBER: 2012-1653-PST-E; IDENTIFIER: RN105164024; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A) and (B), by failing to submit a

properly completed underground storage tank (UST) registration and self-certification form to obtain a UST delivery certificate; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$875; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Knife River Corporation - South; DOCKET NUMBER: 2012-1405-AIR-E; IDENTIFIER: RN104859178; LOCATION: Waco, McLennan County; TYPE OF FACILITY: permanent hot mix asphalt plant; RULE VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code, §382.085(b) and Standard Permit Number 77897L001, General Requirements Number (1)(L), by failing to comply with the opacity limit of 5% averaged over a six-minute period; PENALTY: \$2,875; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(28) COMPANY: KSS ENTERPRISES, INCORPORATED dba BEST STOP 2; DOCKET NUMBER: 2012-1706-PST-E; IDENTIFIER: RN101432342; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once a month (not to exceed 35 days between each monitoring); PENALTY: \$3,050; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: L FAKIR, INCORPORATED dba West Hardy Diamond; DOCKET NUMBER: 2012-1654-PST-E; IDENTIFIER: RN102435146; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(2) and (3) and Texas Health and Safety Code, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and also by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: \$3,621; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Leading Edge Completion Center, LLC; DOCKET NUMBER: 2012-1580-AIR-E; IDENTIFIER: RN100787712; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: aircraft maintenance hangar; RULE VIOLATED: 30 TAC §106.433(7) and §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain permit authorization for sources of air emissions or satisfy the conditions of a Permit By Rule prior to the commencement of operations of a facility which emits air contaminants; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(31) COMPANY: LISANTI REALTY CORPORATION dba Lisanti Food Service; DOCKET NUMBER: 2012-0950-PST-E; IDENTIFIER: RN102047289; LOCATION: Irving, Dallas County; TYPE OF FACILITY: wholesale food distributing service; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a delivery certificate by submitting a properly completed underground storage tank (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 (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the

UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and also by failing to provide release detection for the piping associated with the UST; 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: \$8,491; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(32) COMPANY: LyondellBasell Acetyls, LLC; DOCKET NUMBER: 2012-1526-AIR-E; IDENTIFIER: RN100224450; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: Federal Operating Permit Number O1375, Special Terms and Conditions Number 20, New Source Review Permit Number 4751, Special Conditions Number 6, 30 TAC §§115.722(c)(1), 116.115(c), and 122.143(4), and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions. Since this emissions event could have been avoided through better operational practices, the Respondent is precluded from asserting an affirmative defense under 30 TAC §101.222; PENALTY: \$7,125; Supplemental Environmental Project offset amount of \$2,850 applied to Barbers Hill Independent School District - Barbers Hill Energy Efficiency Program; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: M SIDDIQI & SON'S, INCORPORATED dba B-Z SHOP 2; DOCKET NUMBER: 2012-0852-PST-E; IDENTIFIER: RN101431781; LOCATION: Dallas, Dallas 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 underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and also by failing to provide proper release detection for the pressurized piping associated with the UST system; PENALTY: \$2,379; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(34) COMPANY: Magellan Terminals Holdings, L.P.; DOCKET NUMBER: 2012-1333-IWD-E; IDENTIFIER: RN102536836; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: bulk petroleum storage terminal; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0002070000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: \$7,552; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(35) COMPANY: MAISAH ENTERPRISE, LLC dba Maisah Food Mart; DOCKET NUMBER: 2012-1625-PST-E; IDENTIFIER: RN105621163; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$5,100; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(36) COMPANY: Masud Reza dba Valley View Station; DOCKET NUMBER: 2012-1508-PST-E; IDENTIFIER: RN105571921; LO-

CATION: Valley View, Cooke 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 product piping associated with the underground storage tank; PENALTY: \$2,941; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(37) COMPANY: Merito Retail, Incorporated dba Step In; DOCKET NUMBER: 2012-1622-PST-E; IDENTIFIER: RN102469012; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.72(3), by failing to report a suspected release to the TCEQ within 24 hours after an inconclusive statistical inventory reconciliation (SIR) report for November 2010; and 30 TAC §334.74, by failing to immediately investigate a suspected release of a regulated substance after an inconclusive SIR report for November 2010; PENALTY: \$17,725; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(38) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2012-1941-MWD-E; IDENTIFIER: RN102287513; LOCATION: Montgomery 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 WQ0012587001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$4,012; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(39) COMPANY: NANCY N. RABB PROPERTIES, LTD.; DOCKET NUMBER: 2012-1272-EAQ-E; IDENTIFIER: RN104555271; LOCATION: Liberty Hill, Williamson County; TYPE OF FACILITY: commercial rental property; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain authorization prior to beginning regulated activities over the Edwards Aquifer Contributing Zone; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Steve Vilatoro, (512) 239-4930; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-1808, (512) 339-2929.

(40) COMPANY: NSBK Services, Incorporated dba BK Mart; DOCKET NUMBER: 2012-1378-PST-E; IDENTIFIER: RN106145188; LOCATION: Katy, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(7)(A), by failing to maintain Stage II records at the station and making them immediately available for review upon request by agency personnel; 30 TAC §115.245(1)(C) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment within 30 days of installation; and 30 TAC §115.242(3)(M) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; PENALTY: \$10,282; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(41) COMPANY: NuStar Logistics, L.P.; DOCKET NUMBER: 2012-1929-PST-E; IDENTIFIER: RN102793023; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: aircraft refueling; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(42) COMPANY: P. F. & E. OIL COMPANY dba Food Plaza 10; DOCKET NUMBER: 2012-2066-PST-E; IDENTIFIER: RN101554442; LOCATION: Stephenville, Erath 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: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(43) COMPANY: PRASEK'S HILLJE SMOKEHOUSE, INCORPORATED dba Hillje Smokehouse; DOCKET NUMBER: 2012-1379-PST-E; IDENTIFIER: RN102278181; LOCATION: El Campo, Wharton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), 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; PENALTY: \$875; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(44) COMPANY: Senna Hills Municipal Utility District and Senna Hills, Ltd.; DOCKET NUMBER: 2012-0889-MWD-E; IDENTIFIER: RN100822691; LOCATION: Austin, Travis County; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(4) and (5), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013238001, Permit Conditions (PC) 2(g), by failing to prevent the unauthorized discharge of partially treated sewage at the facility; TWC, §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0013238001, Interim Phase I and II, Effluent Limitations and Monitoring Requirements A, by failing to comply with permitted effluent limits; 30 TAC §305.125(1), and TPDES Permit Number WQ0013238001, Monitoring Requirements Number 7(c), by failing to provide noncompliance notification when effluent violations deviate by more than 40% of the permitted effluent limit; 30 TAC §319.5(a), and TPDES Permit Number WQ0013238001, Effluent Limitations and Monitoring Requirements B, by failing to collect the chlorine disinfection samples at the location specified in the permit; 30 TAC §305.125(1), and TPDES Permit Number WQ0013238001, PC, Operational Requirements Number 3(b), by failing to provide a closure plan for the original wastewater treatment plant to the Municipal Permits Team at least 90 days prior to conducting closure activity; and 30 TAC §305.125(1), and TPDES Permit Number WQ0013238001, Interim Phase II, Special Provisions Number 23, by failing to provide notification prior to completion of the Interim II phase for the wastewater treatment plant; PENALTY: \$11,986; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 852-3422; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-1808, (512) 339-2929.

(45) COMPANY: South Main Grocery, Incorporated; DOCKET NUMBER: 2012-1859-PST-E; IDENTIFIER: RN102356946; LOCATION: Gladewater, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and also by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: \$3,879; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(46) COMPANY: Southern Star Concrete, Incorporated; DOCKET NUMBER: 2012-1985-PST-E; IDENTIFIER: RN100248913; LO-

CATION: Richardson, Dallas County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.49(a)(1), by failing to provide corrosion protection; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(47) COMPANY: Sreesai, Incorporated dba HWY 21 Food Mart; DOCKET NUMBER: 2012-0188-PST-E; IDENTIFIER: RN105807689; LOCATION: Caldwell, Burleson 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: \$5,129; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(48) COMPANY: STARKEY PLUMBING COMPANY; DOCKET NUMBER: 2012-1736-PST-E; IDENTIFIER: RN101739373; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(49) COMPANY: Tommy Hefner dba JT Cattle; DOCKET NUMBER: 2012-0974-AGR-E; IDENTIFIER: RN105233373; LOCATION: Bovina, Parmer County; TYPE OF FACILITY: concentrated animal feeding operation; RULE VIOLATED: 30 TAC §321.37(d) and TCEQ General Permit Number TXG920959, Part III, Section A., Number 6, by failing to construct, operate, and maintain retention control structures to contain all wastewater including the runoff and direct precipitation from the 25-year, 24-hour rainfall event; PENALTY: \$2,040; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(50) COMPANY: ViaWest, Incorporated dba Plano Data Center; DOCKET NUMBER: 2012-1507-PST-E; IDENTIFIER: RN100549146; LOCATION: Plano, Collin County; TYPE OF FACILITY: emergency generator; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii), (5)(A)(i) and (B)(ii), by failing to renew a delivery certificate by submitting a properly completed underground storage tank (UST) registration and self-certification form at least 30 days before the expiration date and also by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance in the UST; PENALTY: \$1,313; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(51) COMPANY: Webber, LLC; DOCKET NUMBER: 2012-1712-IWD-E; IDENTIFIER: RN106315112; LOCATION: Palmer, Ellis County; TYPE OF FACILITY: concrete production; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d) and Texas Pollutant Discharge Elimination System General Permit Number TXG111147, Part IV, Standard Permit Conditions Number 7.f, by failing to timely submit monitoring results at the intervals specified in the permit; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201206258

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 5, 2012



Enforcement Orders

An agreed order was entered regarding Harris County Fresh Water Supply District 1B, Docket No. 2011-0608-UTL-E on November 8, 2012, assessing \$262 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRISTAR CONVENIENCE STORES, INC. dba Handi Stop 75, Docket No. 2011-1241-PST-E on November 8, 2012, assessing \$2,679 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Juan C. Gracia dba Lonestar Landscaping Management Company, Docket No. 2011-1431-LII-E on November 8, 2012, assessing \$188 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Niranjan S. Patel dba Aldine Express, Docket No. 2011-2015-PST-E on November 8, 2012, assessing \$2,886 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McJunkin Red Man Corporation fka LaBarge Pipe & Steel Company, Docket No. 2011-2206-MWD-E on November 8, 2012, assessing \$714 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALAMO RECYCLE CENTERS LLC, Docket No. 2011-2278-MSW-E on November 8, 2012, assessing \$1,983 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Star Tex Gasoline & Oil Distributors, Inc, Docket No. 2011-2333-MSW-E on November 8, 2012, assessing \$1,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R&K FABRICATING INC., Docket No. 2011-2363-IHW-E on November 8, 2012, assessing \$4,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALAMO RECYCLE CENTERS LLC, Docket No. 2012-0016-MSW-E on November 8, 2012, assessing \$1,310 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NABIHA ENTERPRISES, L.L.C. dba Boyd Pit Stop, Docket No. 2012-0118-PST-E on November 8, 2012, assessing \$2,624 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tho Qui Hang dba Pappys Gas & Grocery, Docket No. 2012-0132-PST-E on November 8, 2012, assessing \$2,004 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Woodside Tuscan Oaks, LLC and Tuscan Oaks, Inc., Docket No. 2012-0157-EAQ-E on November 8, 2012, assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MORIZ INVESTMENTS LLC dba Buddy's, Docket No. 2012-0220-PST-E on November 8, 2012, assessing \$4,473 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SALIMA, INC. dba Dairyway Store 7, Docket No. 2012-0229-PST-E on November 8, 2012, assessing \$2,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TAHIR ENTERPRISES, INC. dba Buy N Bye Drive In, Docket No. 2012-0540-PST-E on November 8, 2012, assessing \$6,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thobani International, Inc. dba Port Arthur Shell, Docket No. 2012-0547-PST-E on November 8, 2012, assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AB Grocery, Inc., Docket No. 2012-0657-PST-E on November 8, 2012, assessing \$5,040 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dana Swearingin dba Holiday Harbor Subdivision and Diane Pieper dba Holiday Harbor Subdivision, Docket No. 2012-0697-PWS-E on November 8, 2012, assessing \$165 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ACRES ENTERPRISES, INC. dba Rebels Food Market, Docket No. 2012-0706-PST-E on November 8, 2012, assessing \$2,630 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nadeem Noorali dba Shell Classic, Docket No. 2012-1673-PST-E on November 8, 2012, assessing \$2,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Golden & Silver Enterprises, Inc. dba Stop N Joy, Docket No. 2011-0800-PST-E on November 9, 2012, assessing \$1,925 in administrative penalties with \$385 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. Department of the Army, Docket No. 2011-1352-AIR-E on November 9, 2012, assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petroleum Group, LLC, Docket No. 2011-1537-PST-E on November 9, 2012, assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tri Gaz 6, Inc. dba Tiger Mart 36, Docket No. 2011-2037-PST-E on November 9, 2012, assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Palo Duro Service Company, Inc., Docket No. 2011-2318-PWS-E on November 9, 2012, assessing \$3,630 in administrative penalties with \$726 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COUSIN BROTHERS CORPORATION dba Express Truck Stop, Docket No. 2012-0212-PST-E on November 9, 2012, assessing \$5,129 in administrative penalties with \$1,025 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KK IRISH 66 LLC, Docket No. 2012-0318-PST-E on November 9, 2012, assessing \$2,630 in administrative penalties with \$526 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Leroy Hunt, Jr. dba Reliable Rain Sprinkler Company, Docket No. 2012-0479-LII-E on November 9, 2012, assessing \$929 in administrative penalties with \$185 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Texas, Inc., Docket No. 2012-0606-PWS-E on November 9, 2012, assessing \$1,860 in administrative penalties with \$372 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BVM ENTERPRISE INC dba Hobby Gas Station, Docket No. 2012-0615-PST-E on November 9, 2012, assessing \$5,600 in administrative penalties with \$1,120 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Skinner Lands Carrollton, LLC, Docket No. 2012-0693-MSW-E on November 9, 2012, assessing \$3,925 in administrative penalties with \$785 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-

3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Seven Star Enterprises LLC dba Thompson Oil 4, Docket No. 2012-0712-PST-E on November 9, 2012, assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAL-ALI INC. dba Valero, Docket No. 2012-0722-PST-E on November 9, 2012, assessing \$3,850 in administrative penalties with \$770 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical, LLC, Docket No. 2012-0738-AIR-E on November 9, 2012, assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Moon dba A-1 Dry Cleaners, Docket No. 2012-0745-DCL-E on November 9, 2012, assessing \$210 in administrative penalties with \$42 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALTO BUSINESS LLC dba Stop N Shop #4, Docket No. 2012-0753-PST-E on November 9, 2012, assessing \$5,129 in administrative penalties with \$1,025 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Murvaul Water Supply Corporation, Docket No. 2012-0758-IWD-E on November 9, 2012, assessing \$6,950 in administrative penalties with \$1,390 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of George West, Docket No. 2012-0783-MWD-E on November 9, 2012, assessing \$2,360 in administrative penalties with \$472 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HAIDER & SONS ENTERPRISES INC. dba SWIF-T, Docket No. 2012-0796-PST-E on November 9, 2012, assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BIG BEND TELEPHONE COMPANY, INC., Docket No. 2012-0800-PST-E on November 9, 2012, assessing \$5,861 in administrative penalties with \$1,172 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MAT-J, L.L.C. dba Lone Star Exxon 1, Docket No. 2012-0811-PST-E on November 9, 2012, assessing \$7,134 in administrative penalties with \$1,426 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert D. Gaines dba Lakeshore Store and Baithouse, Docket No. 2012-0831-PST-E on November 9, 2012, assessing \$3,955 in administrative penalties with \$791 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hidalgo County, Docket No. 2012-0841-AIR-E on November 9, 2012, assessing \$3,600 in administrative penalties with \$720 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.K. TENG CORP. dba K & S Food Mart, Docket No. 2012-0850-PST-E on November 9, 2012, assessing \$4,008 in administrative penalties with \$801 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HRH Investments, LP dba Texaco Lake June, Docket No. 2012-0851-PST-E on November 9, 2012, assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Waste Management of Texas, Inc., Docket No. 2012-0879-IWD-E on November 9, 2012, assessing \$1,040 in administrative penalties with \$208 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding K.L. COMFORT PARK, LTD. dba Bird Creek Mobile Home Park, Docket No. 2012-0886-PWS-E on

November 9, 2012, assessing \$1,393 in administrative penalties with \$278 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DEE & DEE OIL CO. dba Deesway 26, Docket No. 2012-0895-PST-E on November 9, 2012, assessing \$3,900 in administrative penalties with \$780 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MIDWAY PITSTOP, INC. dba Spunky's Valero, Docket No. 2012-0902-PST-E on November 9, 2012, assessing \$3,851 in administrative penalties with \$770 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ibrahim Retail Group Inc dba Buy and Ride Food Store, Docket No. 2012-0912-PST-E on November 9, 2012, assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paradime Inc dba Roadhouse Cafe, Docket No. 2012-0936-PST-E on November 9, 2012, assessing \$3,508 in administrative penalties with \$701 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Class Enterprises, Inc. dba Square D Food Mart, Docket No. 2012-0978-PST-E on November 9, 2012, assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHAMSA ENTERPRISES INC., Docket No. 2012-0988-PST-E on November 9, 2012, assessing \$4,012 in administrative penalties with \$802 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Barbara Wilke dba J-N-B Quick Shop 2, Docket No. 2012-0999-PST-E on November 9, 2012, assessing \$1,754 in administrative penalties with \$350 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Karishma Properties, Inc. dba Quick N Easy Stop, Docket No. 2012-1004-PST-E on November 9, 2012, assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arif M. Khan dba Kwick Food Mart, Docket No. 2012-1015-PST-E on November 9, 2012, assessing \$3,005 in administrative penalties with \$601 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tho T. Nguyen dba Family Discount Store 2, Docket No. 2012-1025-PST-E on November 9, 2012, assessing \$2,005 in administrative penalties with \$401 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bobak Automotive Center, L.L.C. dba Mitras Texaco, Docket No. 2012-1030-PST-E on November 9, 2012, assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LAYAL SAROSHA INC. dba Fleming Food Store, Docket No. 2012-1032-PST-E on November 9, 2012, assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Consolidated Communications Services Company, Docket No. 2012-1039-PST-E on November 9, 2012, assessing \$1,876 in administrative penalties with \$374 deferred.

Information concerning any aspect of this order may be obtained by contacting Maggie Dennis, Enforcement Coordinator at (512) 239-2578, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vipul, Inc. dba Dearls Grocery, Docket No. 2012-1043-PST-E on November 9, 2012, assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WALIA FUEL INC. dba Sunny Food Mart 3, Docket No. 2012-1076-PST-E on November 9, 2012, assessing \$3,825 in administrative penalties with \$765 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Manuel Guevara, Docket No. 2012-1080-LII-E on November 9, 2012, assessing \$792 in administrative penalties with \$158 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Westlex Corporation dba Westside Lexus, Docket No. 2012-1082-PST-E on November 9, 2012, assessing \$3,081 in administrative penalties with \$616 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tae Kil Kim dba Bok Food Mart and Washateria, Docket No. 2012-1147-PST-E on November 9, 2012, assessing \$4,080 in administrative penalties with \$816 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lam Nguyen dba A & D Discount Store, Docket No. 2012-1154-PST-E on November 9, 2012, assessing \$3,508 in administrative penalties with \$701 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Military Highway Water Supply Corporation, Docket No. 2012-1165-MWD-E on November 9, 2012, assessing \$2,375 in administrative penalties with \$475 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRINITY SO GP, L.L.C., Docket No. 2012-1166-MWD-E on November 9, 2012, assessing \$1,776 in administrative penalties with \$355 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Northwest Texas Healthcare System, Inc., Docket No. 2012-1210-PST-E on November 9, 2012, assessing \$1,541 in administrative penalties with \$308 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David E. Shivers dba Shan D Water Supply, Docket No. 2012-1226-PWS-E on November 9, 2012, assessing \$202 in administrative penalties with \$40 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pierce Metals, LLC, Docket No. 2012-1253-MLM-E on November 9, 2012, assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Anderson Merchandisers, L.P., Docket No. 2012-1259-PST-E on November 9, 2012, assessing \$2,944 in administrative penalties with \$588 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BIVA ENTERPRISES, INC. dba Papa Keith's 2, Docket No. 2012-1288-PST-E on November 9, 2012, assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Baptist/St. Anthony's Health System, Docket No. 2012-1302-PST-E on November 9, 2012, assessing \$3,563 in administrative penalties with \$712 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bir Hanuman, Inc. dba Dazu Food Mart, Docket No. 2012-1308-PST-E on November 9, 2012, assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Angelina Water Supply Corporation, Docket No. 2012-1392-MWD-E on November 9, 2012, assessing \$1,060 in administrative penalties with \$212 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Lynn Lenderman, Docket No. 2012-1608-WOC-E on November 9, 2012, assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding James D. Wimberley, Docket No. 2012-1609-WOC-E on November 9, 2012, assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Daniel Robins, Docket No. 2012-1610-WOC-E on November 9, 2012, assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Richard D. Caillouet, Jr., Docket No. 2012-1611-WOC-E on November 9, 2012, assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Roy Licatino, Docket No. 2012-1612-WOC-E on November 9, 2012, assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Salvador Ruiz, Docket No. 2012-1613-WOC-E on November 9, 2012, assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Katie Paske, Docket No. 2012-1614-WOC-E on November 9, 2012, assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Jim Schultz, Docket No. 2012-1615-WOC-E on November 9, 2012, assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Stephen Hebert, Docket No. 2012-1616-WOC-E on November 9, 2012, assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Eric Krall, Docket No. 2012-1617-WOC-E on November 9, 2012, assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding City of Copperas Cove, Docket No. 2012-1638-WQ-E on November 9, 2012, assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding City of Copperas Cove, Docket No. 2012-1639-WQ-E on November 9, 2012, assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Graham Tank Trucks Inc., Docket No. 2012-1640-WQ-E on November 9, 2012, assessing \$350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Saylor General Contractors Inc., Docket No. 2012-1641-WQ-E on November 9, 2012, assessing \$350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Newcastle ISD, Docket No. 2012-1642-WQ-E on November 9, 2012, assessing \$350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding City of Copperas Cove, Docket No. 2012-1651-WQ-E on November 9, 2012, assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Cecil Butler, Docket No. 2012-1716-WOC-E on November 9, 2012, assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding George DeVries dba DeVries Dairy, Docket No. 2010-0508-AGR-E on November 19, 2012, assessing \$8,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J&S Water Company, L.L.C., Docket No. 2010-1581-MWD-E on November 19, 2012, assessing \$39,325 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fred Jackson, Docket No. 2010-1897-PST-E on November 19, 2012, assessing \$2,625 in administrative penalties with \$2,625 deferred.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jason Castoria dba American Auto Care, Docket No. 2011-0380-AIR-E on November 19, 2012, assessing \$3,210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jason Castoria dba American Auto Care, Docket No. 2011-0490-MLM-E on November 19, 2012, assessing \$11,502 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Burleson, Docket No. 2011-1002-WQ-E on November 19, 2012, assessing \$12,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Richard Allen Keenan dba K & B Waterworks, Docket No. 2011-1163-PWS-E on November 19, 2012, assessing \$2,042 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Indian Petro Corp., Docket No. 2011-1344-MWD-E on November 19, 2012, assessing \$16,830 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bulldog Tire Recycling, Inc., Docket No. 2011-1549-MSW-E on November 19, 2012, assessing \$45,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding Ghanshayam Enterprise LLC dba Sunmart 140, Docket No. 2011-1555-PST-E on November 19, 2012, assessing \$7,822 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lindberg Collision Incorporated, Docket No. 2011-1561-AIR-E on November 19, 2012, assessing \$11,550 in administrative penalties with \$1,775 deferred.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. Army Corps of Engineers, Docket No. 2011-1599-MWD-E on November 19, 2012, assessing \$52,830 in administrative penalties with \$10,566 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Terry Lee Middleton dba Five Star Lawn & Landscape, Docket No. 2011-1630-LII-E on November 19, 2012, assessing \$275 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fruitvale Independent School District, Docket No. 2011-2117-MWD-E on November 19, 2012, assessing \$7,560 in administrative penalties with \$1,512 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kennard, Docket No. 2012-0026-MWD-E on November 19, 2012, assessing \$54,502 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ayman International, Inc. dba Eagle Mart 2, Docket No. 2012-0042-PST-E on November 19, 2012, assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding BENTON RAINEY, INC., Docket No. 2012-0062-PST-E on November 19, 2012, assessing \$2,629 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jesus Acuna dba Country Boy Store 1, Docket No. 2012-0116-PST-E on November 19, 2012, assessing \$8,139 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leona Bullock dba Blue Ridge Mobile Home Park, Docket No. 2012-0149-PWS-E on November 19, 2012, assessing \$2,088 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Coolidge, Docket No. 2012-0152-MWD-E on November 19, 2012, assessing \$19,146 in administrative penalties with \$3,829 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Whit R. Ogilvie, Docket No. 2012-0243-WOC-E on November 19, 2012, assessing \$1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Marlin, Docket No. 2012-0270-SLG-E on November 19, 2012, assessing \$9,000 in administrative penalties with \$1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Magnolia Shell Truck Stop, Inc., Docket No. 2012-0330-IWD-E on November 19, 2012, assessing \$54,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding Cindy Mettlen dba Midway, Docket No. 2012-0333-PST-E on November 19, 2012, assessing \$2,884 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammad Y. Hossain dba West Davis Food Mart, Docket No. 2012-0365-PST-E on November 19, 2012, assessing \$14,890 in administrative penalties with \$2,978 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding HSBM Retail Management, LLC dba I-45 Quick Stop, Docket No. 2012-0389-PST-E on November 19, 2012, assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SUPER VILLAGE ENTERPRISE INC dba Super Food Mart, Docket No. 2012-0419-PST-E on November 19, 2012, assessing \$3,634 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Wendell Reese dba Pecan Shadows Water Supply Company, Docket No. 2012-0424-PWS-E on November 19, 2012, assessing \$2,188 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Erasmo Garcia, Docket No. 2012-0450-OSS-E on November 19, 2012, assessing \$3,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Andy Ngo, Docket No. 2012-0457-WQ-E on November 19, 2012, assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc., Docket No. 2012-0480-MWD-E on November 19, 2012, assessing \$30,482 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Billy Don Hughes, Docket No. 2012-0484-PST-E on November 19, 2012, assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Rene Navarette dba Tire Enterprise Towing & Recovery, Docket No. 2012-0494-MLM-E on November 19, 2012, assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lake Hills DTP II, LLC, Docket No. 2012-0517-PWS-E on November 19, 2012, assessing \$2,572 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ADICO ENTERPRISES INC. dba Anas Shell, Docket No. 2012-0531-PST-E on November 19, 2012, assessing \$12,044 in administrative penalties with \$2,408 deferred.

Information concerning any aspect of this order may be obtained by contacting Maggie Dennis, Enforcement Coordinator at (512) 239-2578, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SWEA GARDENS ESTATES UTILITY, INC., Docket No. 2012-0571-PWS-E on November 19, 2012, assessing \$3,742 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2012-0665-AIR-E on November 19, 2012, assessing \$25,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lefors, Docket No. 2012-0679-MWD-E on November 19, 2012, assessing \$8,980 in administrative penalties with \$1,796 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Structures of America, Inc., Docket No. 2012-0692-AIR-E on November 19, 2012, assessing \$18,450 in administrative penalties with \$3,690 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding BKK Holdings Inc. dba Four Foxes 1, Docket No. 2012-0710-PST-E on November 19, 2012, assessing \$8,881 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Angler's Lodge, LLC, Docket No. 2012-0720-PWS-E on November 19, 2012, assessing \$4,840 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trend Gathering & Treating, LLC, Docket No. 2012-0734-AIR-E on November 19, 2012, assessing \$10,875 in administrative penalties with \$2,175 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources Corpus Christi, LLC, Docket No. 2012-0736-AIR-E on November 19, 2012, assessing \$14,063 in administrative penalties with \$2,812 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carolyn Crawford dba Little Texans Public Water System, Docket No. 2012-0818-PWS-E on November 19, 2012, assessing \$1,095 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monroe Center, Inc. dba First Stop Food Store 16, Docket No. 2012-0864-PST-E on November 19, 2012, assessing \$13,172 in administrative penalties with \$2,634 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A order to terminate an agreed order was entered regarding City of Lubbock, Docket No. 2012-1903-MWD-E on November 19, 2012, assessing \$84,000 in administrative penalties with \$42,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201206242

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 5, 2012



Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 40266

Application. The City of Canton, 290 E. Tyler, Canton, Texas 75103, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40266, to expand the existing Type V municipal solid waste transfer station. The facility, City of Canton Transfer Station Facility, is located at 1810 County Road 3121, 75103, in Van Zandt County. The Applicant is requesting authorization for structural upgrades and design improvements to the existing transfer station to collect and transfer municipal solid waste which includes residential or household municipal solid waste; commercial municipal solid waste; Class 2 and 3 industrial solid waste; and certain approved special wastes. The registration application is available for viewing and copying at the City of Canton

Administration Office, 24980 Hwy 64 East, Suite 1, Canton, Texas and may be viewed online at www.cantontx.gov. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.58833&lng=-95.85667&zoom=13&type=r>.

For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, mail code MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to <http://www10.tceq.texas.gov/epic/ecmnts/>. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Further information may also be obtained from The City of Canton at the address stated above or by calling Mr. Lonny Cluck, Interim City Manager, at (903) 567-1841.

TRD-201206241

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 5, 2012



Notice of Water Quality Applications

The following notices were issued on November 16, 2012, through November 30, 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

US STEEL TUBULAR PRODUCTS INC 9518 East Mount Houston Road, Houston, Texas 77050, which operates the U.S. Steel Tubular Products, Inc., Tubular Threading and Inspection Services Division, a facility for threading and inspecting tubular pipes for the oilfield industry, has applied for a minor modification and renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004690000, to authorize the removal of Outfalls 001, 002, 004, 005, and 006 and remove sewage water as an authorized wastestream for discharge via Outfall 003 from the permit. The existing permit authorizes the discharge of stormwater and hydrostatic test water at an intermittent and flow variable rate via Outfalls 001, 002, 004, 005, and 006; previously monitored effluent (phosphate process wastewater, ultrasonic wastewater, and wastewater from pipe cleaning and cooling monitored at internal Outfall 301), hydrostatic test water, sewage water, machinery washwater, and stormwater at an intermittent and flow variable rate via Outfall 003. The facility is located at 9518 East Mount Houston Road, in an area north of Interstate Highway 10 and east of Interstate Highway 45, approximately 0.25 mile west of Greens Bayou, and 2.5 miles west of East Beltway 8, Harris County, Texas 77050.

ZAPATA COUNTY has applied for a renewal of TPDES Permit No. WQ0010462001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of a 66 acre golf course. The facility is located approximately 1/2 mile west of U.S. Highway 83 on Sewer Plant Road in the City of Zapata in Zapata County, Texas 78076.

CITY OF NEW BOSTON has applied for a renewal of TPDES Permit No. WQ0010482001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,700,000 gallons per day. Based on new information, the whole effluent toxicity (WET) limits for Pimephales promelas that were added to the first version of the draft permit Outfall 001 have been removed in the final version of the draft permit. The facility is located 2,500 feet southeast of the intersection of State Highway 8 and Farm-to-Market Road 1840 and approximately 1.75 miles southeast of the City of New Boston in Bowie County, Texas 75570.

CITY OF TOMBALL has applied for a renewal of TPDES Permit No. WQ0010616001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 615 East Huffsmith Road, approximately 1,400 feet north of the intersection of Neal Street and East Huffsmith Road in the City of Tomball in Harris County, Texas 77375.

CITY OF TOMBALL has applied for a renewal of TPDES Permit No. WQ0010616002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located south of Holderrieth Road approximately 2,100 feet north of Willow Creek and approximately 4,300 feet east of the intersection of State Highway 249 and Holderrieth Road in Harris County, Texas 77375.

CITY OF BLUM has applied for a renewal of TPDES Permit No. WQ0010820001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 62,000 gallons per day. The facility is located at 518 West 4th Street, on the east side of the Farm-to-Market Road 933, approximately 1,200 feet southeast of

the intersection of Farm-to-Market Road 933 and the Nolan River in Hill County, Texas 76627.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 92 has applied for a renewal of TPDES Permit No. WQ0010908001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. TCEQ received this application on August 31, 2012. The facility is located at 25515 Holyoke, at the northeast end of Bell Chase Lane, approximately 2 miles east of the City of Spring in Harris County, Texas 77373.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 116 has applied for a renewal of TPDES Permit No. WQ0010955001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The facility is located at 5335 Strack Road approximately 5,000 feet west from the intersection of Strack Road and Stuebner-Airline Road in Harris County, Texas 77069.

SUNBELT FRESH WATER SUPPLY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011231001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 9310 Ella Boulevard, approximately 1,600 feet south-southwest of the intersection of Farm-to-Market Road and Veterans Memorial Drive on the west side of Harris County Flood Control District Ditch P-118-32-00 in Harris County, Texas 77038.

DOWDELL PUBLIC UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011404001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 22631A Creek Branch Lane, in the northwest quadrant of the intersection of Kuykendahl Road and Dowdell Road, approximately one mile east of Farm-to-Market Road 2920 and approximately seven miles west of Interstate Highway 45 in Harris County, Texas 77375.

CITY OF KOSSE has applied for a renewal of TPDES Permit No. WQ0011405001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 1,650 feet northeast of the intersection of West Filmore Street and the Union Pacific Railroad on the west side of Burleson Branch in Limestone County, Texas 76653.

HUNTERS GLEN MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011618003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,400,000 gallons per day. The facility is located at 21603 Fox Trail Lane, west of and adjacent to Fox Trail Lane, approximately 3,400 feet east of Cypresswood Drive and 5,000 feet north of Farm-to-Market Road 1960 in Harris County, Texas 77338.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0011630001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 24770 Kuykendahl Road, on the south side of London Way Drive, approximately 400 feet east of the intersection of London Way Drive and Kuykendahl Road in Harris County, Texas 77389.

BOYS AND GIRLS COUNTRY OF HOUSTON INC has applied for a renewal of TPDES Permit No. WQ0011814001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at a point approximately 1.7 miles north of the intersection of U.S. Highway 290 and Roberts Road, approximately 2.0 miles northeast of the City of Hockley in Harris County, Texas 77447.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 110 has applied for a renewal of TPDES Permit No. WQ0011964001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility is located at 627 Cypress Oaks Drive, Spring, Texas, 1,200 feet north of Cypress Creek and approximately 1,400 feet west of Interstate Highway 45 and U.S. Highway 75 in Harris County, Texas 77388.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 24 has applied for a renewal of TPDES Permit No. WQ0011988002, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 7010 Oakwood Glen Circle, approximately 4,000 feet north of Louetta Road, and approximately 2,000 feet east of Stuebner Airline Road in the Community of Spring in Harris County, Texas 77379.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 24 has applied for a renewal of TPDES Permit No. WQ0011988003, which authorizes the discharge of filter backwash water at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 18519 Stuebner Airline, approximately 7,500 feet north of Louetta Road, and the west side of Stuebner Airline Road in the Community of Spring in Harris County, Texas 77379.

RICHEY ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0012378002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located at 1820 Candle Ridge Park, approximately 3,300 feet northeast of the intersection of Hardy Toll Road and W.W. Thorne Drive, and three miles south-southwest of the City of Westfield in Harris County, Texas 77073.

HOUSTON METRO RV PARK INC has applied for a renewal of TPDES Permit No. WQ0012617001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located at 1719 Gault Road, approximately 1,200 feet west of the intersection of Gault Road and Aldine-Westfield Road in Harris County, Texas 77039.

LAURA REDOW KARBALAI has applied for a renewal of TPDES Permit No. WQ0012692001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located at 9110 Mount Houston Road immediately southeast of the intersection of East Mount Houston Road and East Houston Road in Harris County, Texas 77050.

MAXEY ROAD WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013503001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located at 7302 Gregdale Road, on the east side of Gregdale Road approximately 300 feet south of the intersection of Gregdale Road and U.S. Highway 90 in Harris County, Texas 77049.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 249 has applied for a renewal of TPDES Permit No. WQ0013765001, 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 931 East Cypresswood Drive, Spring, approximately 1,500 feet south-southwest of the confluence of Wunsche Gully and Lemm Gully, approximately 3,000 feet east of Interstate Highway 45 and approximately 3,800 feet west of the Hardy Toll Road in the northern portion of Harris County, Texas 77373.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT 383 has applied for a renewal of TPDES Permit No. WQ0013875002, which

authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 9060 Gleannlock Forest, approximately 2.3 miles northeast of the intersection of State Highway 249 and Spring Cypress Road, 1.8 miles west of the intersection of Stuebner-Airline Road and Spring Cypress Road in Harris County, Texas 77379.

AQUA TEXAS INC has applied for a renewal of TPDES Permit No. WQ0014141001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located at 32515 Farm-to-Market Road 2978, 1/8 mile southeast of the intersection of Farm-to-Market Road 1488 and Farm-to-Market Road 2978 in Montgomery County, Texas 77354.

CREEK PARK CORPORATION has applied for a major amendment to TPDES Permit No. WQ0014556001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 6,100 gallons per day to a daily average flow not to exceed 9,000 gallons per day and to relocate the facility within the owner's same property. The facility is located at 6105 County Road 1022, 0.75 mile south of the intersection of Farm-to-Market Road 917 and Farm-to-Market Road 1902, approximately 1/4 mile west of the intersection of Pleasant Oaks Road and County Road 1022 and approximately 2 miles east-southeast of the City of Joshua in Johnson County, Texas 76058.

CANYON REGIONAL WATER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0014872001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 383 High Point Ridge, approximately 9,365 feet northeast of the intersection of Farm-to-Market Road 1117 and County Road 442, and approximately 12,600 feet directly north of the intersection of Tidwell Creek and an unnamed tributary, Seguin in Guadalupe County, Texas 78155.

CLOVERCREEK MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0014907001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located at 29331 Nichols-Sawmill Road, approximately 2 miles south of Magnolia, Texas (south of the intersection of Country Place Road and Nichols-Sawmill Road) in Montgomery County, Texas 77355.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 500 has applied for a renewal of TPDES Permit No. WQ0014936001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 280,000 gallons per day. The facility will be located 1,400 feet south of the intersection of US Highway 290 and Skinner Road in Northwest Harris County, Texas 77433.

GRIMES CO WATER RECLAMATION, LLC has applied for a new permit, Proposed TCEQ Permit No. WQ0015032001, to authorize the disposal of treated domestic wastewater (septage), between May and September only, at a daily average flow not to exceed 80,000 gallons per day via surface irrigation of 35 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located at 16005 B and R Lane, approximately 3.9 miles southwest of the intersection of Farm-to-Market Road 1774 and County Road 302 in Grimes County, Texas 77363.

CITY OF EDGEWOOD has applied for a new permit, proposed TPDES Permit No. WQ0015053001, to authorize the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 72,000 gallons per day. The facility is located at 339 Van Zandt County Road 3507, approximately 1600 feet northeast

of the intersection of County Road 3507 and County Road 3504 in Van Zandt County, Texas 75117.

WHITEOAK SHORES SEWER SERVICE CORPORATION has applied for a renewal of TPDES Permit No. WQ0014851001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 11,000 gallons per day. The facility is located at 6435 N. Farm-to-Market Road 17, Yantis, Texas, approximately 2.5 miles southwest of the City of Yantis, approximately 3/8 mile north-east of Lake Fork, adjacent to White Oak Drive and approximately 90 feet south of the intersection of White Oak Drive and Farm-to-Market Road 17 in Wood County, Texas 75497.

TERRA VERDE UTILITY COMPANY LLC has applied for a renewal of TPDES Permit No. WQ0014901001, 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 22602 Hegar Road on the southwest end of the Houston Oaks Country Club Lake, Hockley in Waller County, Texas 77447.

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-201206239
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 5, 2012



Notice of Water Rights Application

Notices issued December 4, 2012.

APPLICATION NO. 4161A; Joyce Ann Anderson, 3803 Skylark, San Antonio, Texas 78215, Applicant, has applied to amend Water Use Permit No. 4161 to add a use; add a place of use; request an exempt inter basin transfer; add a diversion point on the San Antonio River, San Antonio River Basin; and add off-channel storage. The application and a portion of the fees were received on July 22, 2011. Additional information and fees were received on July 27, July 29, September 30, and October 3, 2011. The application was declared administratively complete and filed with the Office of the Chief Clerk on February 1, 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, metering requirements. The application 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 submitted to the Office of Chief Clerk, at the address provided in the information section below, by December 27, 2012.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a con-

tested 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 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 Public Education Program 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-201206240
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 5, 2012



Office of the Governor

Request for Applications - Drug Court Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting competitive applications for projects that support eligible specialty drug court programs during the state fiscal year 2014 grant cycle.

Purpose: The purpose of the Specialty Court Program is to support drug courts as defined in Chapter 469 of the Texas Health and Safety Code, which incorporates the following ten essential characteristics:

- 1) The integration of alcohol and other drug treatment services in the processing of cases in the judicial system;
- 2) The use of a non-adversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;
- 3) Early identification and prompt placement of eligible participants in the program;
- 4) Access to a continuum of alcohol, drug, and other related treatment and rehabilitative services;
- 5) Monitoring of abstinence through weekly alcohol and other drug testing;
- 6) A coordinated strategy to govern program responses to participants' compliance;
- 7) Ongoing judicial interaction with program participants;
- 8) Monitoring and evaluation of program goals and effectiveness;
- 9) Continuing interdisciplinary education to promote effective program planning, implementation, and operations; and

10) Development of partnerships with public agencies and community organizations.

Available Funding: This solicitation may be funded from the following state and federal funding sources:

1) State funds: Texas Code of Criminal Procedure, §102.0178. This section authorizes state funding for the purpose of funding drug courts and designates CJD as the administering agency. Funds received under this article are deposited to the credit of the drug court account in the general revenue fund.

2) State funds: Texas Code of Criminal Procedure, §102.056 and Texas Government Code, §772.006. This provision authorizes the use of state funds to support criminal justice projects including drug courts, and designates CJD as the administering agency. The source of funding is a biennial appropriation by the Texas Legislature from funds collected through court costs and fees. All awards are subject to the availability of funds appropriated by the Texas Legislature for the 2014-2015 biennium.

3) Federal funds: Federal funds are authorized under the Edward Byrne Memorial Justice Assistance Grant (JAG) Program 42 U.S.C. §3751(a). JAG funds are made available through a Congressional appropriation to the United States Department of Justice. All awards are subject to the availability of appropriated federal funds and any modifications or additional requirements that may be imposed by law.

Funding Levels:

Minimum: \$10,000

Maximum: None

Match Requirement: None

Standards: Grantees must comply with the standards applicable to this funding source cited in the *Texas Administrative Code* (1 TAC Chapter 3), and all statutes, requirements, and guidelines applicable to this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

- 1) inherently religious activities such as prayer, worship, religious instruction, or proselytization;
- 2) lobbying;
- 3) vehicles or equipment for government agencies that are for general agency use;
- 4) weapons, ammunition, explosives or military vehicles;
- 5) admission fees or tickets to any amusement park, recreational activity or sporting event;
- 6) promotional gifts;
- 7) food, meals, beverages, or other refreshments;
- 8) membership dues for individuals;
- 9) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (e.g., supplanting);
- 10) fundraising;
- 11) construction, remodeling or renovation;
- 12) medical services; and
- 13) transportation, lodging, per diem or any related costs for participants when grant funds are used to develop and conduct training.

Eligible Applicants:

- 1) Counties; and
- 2) Judicial districts.

Eligibility Requirements:

- 1) Pursuant to Texas Health and Safety Code, §469.006, counties with populations of more than 200,000 are required to establish a drug court;
 - 2) The court must be registered with CJD as required in the Texas Health and Safety Code, §469.003, and must maintain a current registration throughout the grant period;
 - 3) The court must also be registered with the Texas Department of State Health Services, Clinical Management for Behavioral Health Services database. Information about registration procedures may be accessed at <http://www.dshs.state.tx.us/cmbhs/default.shtm>;
 - 4) The presiding judge of a drug court funded through this program must be an active judge holding elective office, an associate judge or magistrate assigned to preside over drug court, or a retired judge available as a sitting judge;
 - 5) Any portion of fees collected from program participants and retained by the grantee is considered generated program income (GPI) and must be applied to the grant through a grant adjustment. GPI must be used to offset project costs and must be expended prior to seeking payment from CJD;
 - 6) In order for an applicant to be eligible, the county (or counties) in which the applicant is located must have a 90% average on both adult and juvenile criminal history dispositions to the Texas Department of Public Safety for calendar years 2007 through 2011. This requirement must be met by August 1, 2013;
 - 7) Applicants funded under the JAG program must ensure that their law enforcement agency is current on reporting Part 1 violent crime data to the Texas Department of Public Safety for inclusion in the annual Uniform Crime Report (UCR) and that the agency has been current for the three previous years;
 - 8) Applicants must have a DUNS (Data Universal Numbering System) number assigned to its agency (to request a DUNS number, go to <http://fedgov.dnb.com/webform/displayHomePage.do>);
 - 9) Eligible applicants must be registered in the federal System for Award Management (SAM) database located at <https://www.sam.gov/portal/public/SAM/> and maintain an active registration throughout the grant period; and
 - 10) Applicants funded under the JAG program must assure that if its agency was eligible to apply, it did apply for a direct award from the Bureau of Justice Assistance for JAG funds under the Edward Byrne Memorial Justice Assistance Formula Grant Program.
- Project Period:** Grant-funded projects must begin on or after September 1, 2013, and expire on or before August 31, 2014.
- Application Process:** Applicants must access CJD's grant management website at <https://egrants.governor.state.tx.us> to register and apply for funding.
- Preferences:** Preference will be given to mandated drug courts under Texas Health and Safety Code, §469.006.
- Closing Date for Receipt of Applications:** All applications must be submitted via CJD's eGrants website on or before February 28, 2013.
- Selection Process:** Applications will be reviewed and prioritized by the Specialty Courts Advisory Council (Council) who will make funding recommendations to CJD. CJD will make all final funding deci-

sions based on eligibility, Council recommendations, reasonableness, availability of funding, and cost-effectiveness. A copy of the scoring elements to be used by the Council is available under the Forms link at <https://egrants.governor.state.tx.us/updates.aspx>.

Contact Person: If additional information is needed, contact the eGrants help desk at egrants@governor.state.tx.us or (512) 463-1919.

TRD-201206247

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: December 5, 2012



Request for Applications - Justice Assistance Grant Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that reduce crime and improve the criminal justice system during the state fiscal year 2014 grant cycle.

Purpose: The purpose of this solicitation is to reduce crime and improve the criminal justice system.

Available Funding: Federal funds are authorized under the Edward Byrne Memorial Justice Assistance Grant Program (JAG), 42 U.S.C. §3751(a). JAG funds are made available through a Congressional appropriation to the United States Department of Justice. All awards are subject to the availability of appropriated federal funds and any modifications or additional requirements that may be imposed by law.

Funding Levels:

Minimum: \$10,000

Maximum: None

Match Requirement: None

Standards: Grantees must comply with the standards applicable to this funding source cited in the *Texas Administrative Code* (1 TAC Chapter 3), and all statutes, requirements, and guidelines applicable to this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

- 1) supplanting or use of grant funds to replace any other existing federal, state or local funds;
- 2) inherently religious activities such as prayer, worship, religious instruction, or proselytization;
- 3) lobbying;
- 4) any portion of the salary of, or any other compensation for, an elected or appointed government official;
- 5) non-law enforcement vehicles or equipment for government agencies that are for general agency use;
- 6) weapons, ammunition, explosives or military vehicles;
- 7) admission fees or tickets to any amusement park, recreational activity or sporting event;
- 8) promotional gifts;
- 9) food, meals, beverages, or other refreshments;
- 10) membership dues for individuals;
- 11) fundraising;
- 12) construction, renovation or remodeling;

13) medical services;

14) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training; and

15) legal services for adult offenders.

Eligible Applicants:

- 1) State agencies;
- 2) Units of local government;
- 3) Independent school districts;
- 4) Native American tribes;
- 5) Public universities;
- 6) Public colleges; and
- 7) Community supervision and corrections departments.

Eligibility Requirements:

- 1) Projects must focus on reducing crime and improving the criminal justice system;
- 2) Eligible applicants must provide law enforcement, corrections, or judicial services;
- 3) In order for an applicant to be eligible, the county (or counties) in which the applicant is located must have a 90% average on both adult and juvenile criminal history dispositions to the Texas Department of Public Safety for calendar years 2007 through 2011. This requirement must be met by August 1, 2013;
- 4) Eligible applicants operating a law enforcement agency must be current on reporting Part I violent crime data to the Texas Department of Public Safety for inclusion in the annual Uniform Crime Report (UCR) and must have been current for the three previous years;
- 5) Eligible applicants must have a DUNS (Data Universal Numbering System) number assigned to its agency (to request a DUNS number, go to <http://fedgov.dnb.com/webform/displayHomePage.do>); and
- 6) Eligible applicants must be registered in the federal System for Award Management (SAM) database located at <https://www.sam.gov/portal/public/SAM/> and maintain an active registration throughout the grant period.

Project Period: Grant-funded projects must begin on or after September 1, 2013, and expire on or before August 31, 2014. Grant-funded equipment only projects are generally awarded for a six month grant period.

Application Process: Applicants must access CJD's grant management website at <https://eGrants.governor.state.tx.us> to register and apply for funding.

Preferences: Preference will be given to projects that support one or more of the following areas:

- 1) Enhanced patrols along and near the Texas-Mexico border;
- 2) Drug and human trafficking;
- 3) Disruption of adult gangs;
- 4) Technology that promotes electronic discovery for defense counsel;
- 5) Regional information sharing systems for law enforcement;
- 6) Conversion of crime data from the UCR format to the National Incident Based Reporting System (NIBRS) format; and
- 7) Cost effective programs that compliment the criminal justice system.

Closing Date for Receipt of Applications: All applications must be certified via CJD's grant management website on or before February 28, 2013.

Selection Process:

- 1) For eligible local and regional projects:
 - a) Applications will be forwarded by CJD to the appropriate regional council of governments (COG).
 - b) The COG's criminal justice advisory committee will prioritize all eligible applications based on state priorities, identified community priorities, cost and program effectiveness.
 - c) CJD will accept priority listings that are approved by the COG's executive committee.
 - d) CJD will make all final funding decisions based on eligibility, COG priorities, reasonableness, availability of funding, and cost-effectiveness.
- 2) For state discretionary projects, applications will be reviewed by CJD staff members or a review group selected by the executive director. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost-effectiveness.

Contact Information: If additional information is needed, contact the eGrants Help Desk at eGrants@governor.state.tx.us or (512) 463-1919.

TRD-201206246
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: December 5, 2012



Request for Applications - Juvenile Accountability Block Grant Discretionary Solicitation for Drug Court Projects

The Criminal Justice Division (CJD) of the Governor's Office is soliciting discretionary applications for projects that promote greater accountability in the juvenile justice system for the state fiscal year 2014 grant cycle.

Purpose: The purpose of the Juvenile Accountability Block Grant (JABG) Program is to reduce juvenile offending through accountability-based programs focused on the juvenile offender and the juvenile justice system.

Available Funding: Federal funds are authorized under the Omnibus Crime Control and Safe Streets Act of 2002, Public Law 107-273, 42 U.S.C. §§3796 et seq. All grants awarded from this fund must comply with the requirements contained therein. All awards are subject to the availability of appropriated funds and any modifications or additional requirements that may be imposed by law.

Funding Levels:

Minimum: \$5,000
Maximum: None

Required Match: Grantees must provide matching funds of at least ten percent (10%) of total project expenditures. This requirement must be met through cash contributions.

Standards: Grantees must comply with the standards applicable to this funding source cited in the *Texas Administrative Code* (1 TAC Chapter 3), and all statutes, requirements, and guidelines applicable to this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

- 1) proselytizing or sectarian worship;
- 2) lobbying;
- 3) any portion of the salary of, or any other compensation for, an elected or appointed government official, except in the case of a juvenile court or drug court;
- 4) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;
- 5) vehicles or equipment for government agencies that are for general agency use;
- 6) weapons, ammunition, explosives or military vehicles;
- 7) admission fees or tickets to any amusement park, recreational activity or sporting event;
- 8) promotional gifts;
- 9) food, meals, beverages, or other refreshments;
- 10) membership dues for individuals;
- 11) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (i.e., supplanting);
- 12) fundraising;
- 13) medical services; and
- 14) construction.

Eligible Applicants:

- 1) Units of local government; and
- 2) Native American Tribal Governments.

Eligibility Activities: Projects must address the following JABG Purpose Area - Juvenile Drug Courts: This solicitation invites communities to propose the implementation or continuation of a juvenile drug court program, using best practices in substance abuse treatment.

Eligibility Requirements:

- 1) In order for an applicant to be eligible, the county (or counties) in which the applicant is located must have an overall 90% average on reporting adult and juvenile criminal history dispositions to the Texas Department of Public Safety for calendar years 2006 through 2010. This requirement must be met by August 1, 2013.
- 2) Eligible applicants must have a DUNS (Data Universal Numbering System) number assigned to its agency (to request a DUNS number, go to <http://fedgov.dnb.com/webform/displayHomePage.do>); and
- 3) Eligible applicants must be registered in the federal System for Award Management (SAM) database located at www.sam.gov/portal/public/sam/ and maintain an active registration throughout the grant period.

Project Period: Grant-funded projects must begin on or after September 1, 2013, and expire on or before August 31, 2014.

Application Process: Applicants must access CJD's grant management website at <https://egrants.governor.state.tx.us> to register and apply for funding.

Preferences: Preference will be given to those applicants that demonstrate cost effective programs focused on proven or promising approaches to service provision.

Closing Date for Receipt of Applications: All applications must be certified via CJD's grant management website on or before February 28, 2013.

Selection Process: Applications will be reviewed and prioritized by the Specialty Courts Advisory Council (Council) who will make funding recommendations to Juvenile Justice Advisory Board and CJD. CJD will make all final funding decisions based on eligibility, recommendations of the Council and Juvenile Justice Advisory Board, reasonableness, availability of funding, and cost-effectiveness. A copy of the scoring elements to be used by the Council is available under the Forms link at <https://egrants.governor.state.tx.us/updates.aspx>.

Contact Person: If additional information is needed, contact the eGrants help desk at egrants@governor.state.tx.us or (512) 463-1919.

TRD-201206251

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: December 5, 2012



Request for Applications - Juvenile Justice and Delinquency Prevention - Local

The Criminal Justice Division (CJD) of the Governor's Office is soliciting local applications for projects that support juvenile justice and delinquency prevention during the state fiscal year 2014 grant cycle.

Purpose: The purpose of the program is to support programs that prevent violence in and around schools and to improve the juvenile justice system and develop effective education, training, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency.

Available Funding: This solicitation is funded from authorized state and federal sources and will be administered in accordance with regulations required by these sources.

1) State funds are authorized under §102.056 of the Texas Code of Criminal Procedure, and §772.006 of the Texas Government Code designates CJD as the administering agency. The source of funding is a biennial appropriation by the Texas Legislature from funds collected through court costs and fees; and

2) Federal funding is authorized for these projects under the Juvenile Justice and Delinquency Prevention Act of 2002, Public Law 107-273. Congress has not finalized federal appropriations for federal fiscal year 2013. All awards are subject to the availability of appropriated federal funds and any modifications or additional requirements that may be imposed by law.

Funding Levels:

Minimum: None

Maximum: None

Match Requirement: None

Standards: Grantees must comply with the standards applicable to this funding source cited in the *Texas Administrative Code* (1 TAC Chapter 3), and all statutes, requirements, and guidelines applicable to this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

1) inherently religious activities such as prayer, worship, religious instruction, or proselytization;

2) lobbying;

3) any portion of the salary of, or any other compensation for, an elected or appointed government official;

4) vehicles or equipment for government agencies that are for general agency use;

5) weapons, ammunition, explosives or military vehicles;

6) admission fees or tickets to any amusement park, recreational activity or sporting event;

7) promotional gifts;

8) food, meals, beverages, or other refreshments;

9) membership dues for individuals;

10) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (i.e., supplanting);

11) fundraising;

12) construction;

13) medical services;

14) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;

15) legal services for adult offenders; and

16) overtime pay.

Eligible Applicants:

1) State agencies;

2) Units of local government;

3) Independent school districts;

4) Indian tribes performing law enforcement functions;

5) Universities; and

6) Colleges.

Eligible Activities:

1) Diversion - Programs to divert at-risk juveniles from entering the juvenile justice system. For this funding opportunity, CJD has defined at-risk as having had documented discipline problems in the school system or contact with law enforcement or juvenile probation. Preference will be given to programs that:

a) provide for case workers or social workers to continue working with juveniles upon completion of the diversion program; and

b) provide juvenile probation officers to work in the school system.

2) Job Training - Projects to enhance the employability of juveniles or prepare them for future employment. Such programs may include job readiness training, apprenticeships, and job referrals.

3) Professional Therapy and Counseling/Mental Health - Services include, but are not limited to, the development and/or enhancement of diagnostic, treatment, and prevention instruments; psychological and psychiatric evaluations; counseling services; and/or family support services. Preference will be given to programs that:

a) incorporate academically researched, peer reviewed, or evidenced based practices;

b) utilize a multi disciplinary team to assist with planning and implementation of the program;

c) provide a Licensed Professional Counselor for aftercare, re-entry, or front of system services; and

d) provide parent training reinforced with the use of case managers.

4) School Based Delinquency Prevention - Education programs and/or related services to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education. Preference will be given to programs that:

a) provide school liaisons working between the juvenile justice system and the school system;

b) provide school police officers or school resource officers; and

c) provide juvenile probation officers to work in the school system.

5) Substance Abuse - Programs, research, or other initiatives to address the use and abuse of illegal and other prescription and nonprescription drugs and the use and abuse of alcohol. Programs include control, prevention, and treatment.

Note: Juvenile drug court programs will not be considered for funding under this solicitation and should instead apply under the Juvenile Accountability Block Grant Discretionary Request for Applications.

Eligibility Requirements:

1) In order for an applicant to be eligible, the county (or counties) in which the applicant is located must have an overall 90% average on reporting adult and juvenile criminal history dispositions to the Texas Department of Public Safety for calendar years 2006 through 2010. This requirement must be met by August 1, 2013;

2) Eligible applicants operating a law enforcement agency must be current on reporting Part I violent crime data to the Texas Department of Public Safety for inclusion in the annual Uniform Crime Report (UCR) and must have been current for the three previous years;

3) Eligible applicants must have a DUNS (Data Universal Numbering System) number assigned to its agency (to request a DUNS number, go to <http://fedgov.dnb.com/webform/displayHomePage.do>); and

4) Eligible applicants must be registered in the federal System for Award Management (SAM) database located at www.sam.gov/portal/public/sam/ and maintain an active registration throughout the grant period.

Project Period: Grant-funded projects must begin on or after September 1, 2013, and expire on or before August 31, 2014.

Application Process: Applicants must access CJD's grant management website at <https://egrants.governor.state.tx.us> to register and apply for funding.

Preferences: Preferences will be given to those applicants that:

1) demonstrate cost effective programs focused on proven or promising approaches to services provision; and

2) Target serious and violent juvenile offender populations.

Closing Date for Receipt of Applications: All applications must be certified via CJD's eGrants website on or before February 28, 2013.

Selection Process:

For eligible local and regional projects:

1) Applications will be forwarded by CJD to the appropriate regional council of governments (COG);

2) The COG's criminal justice advisory committee will prioritize all eligible applications based on state priorities, identified community priorities, cost and program effectiveness;

3) CJD will accept priority listings that are approved by the COG's executive committee;

4) CJD will make all final funding decisions based on approved eligibility, COG priorities, reasonableness, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact the eGrants help desk at egrants@governor.state.tx.us or (512) 463-1919.

TRD-201206249

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: December 5, 2012



Request for Applications - Juvenile Justice and Delinquency Prevention - Statewide

The Criminal Justice Division (CJD) of the Governor's Office is soliciting statewide applications for projects that support juvenile justice and delinquency prevention during the state fiscal year 2014 grant cycle.

Purpose: The purpose of the program is to support programs that prevent violence in and around schools and to improve the juvenile justice system and develop effective education, training, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency.

Available Funding: This solicitation is funded from authorized state and federal sources and will be administered in accordance with regulations required by these sources.

1) State funds are authorized under §102.056 of the Texas Code of Criminal Procedure, and §772.006 of the Texas Government Code designates CJD as the administering agency. The source of funding is a biennial appropriation by the Texas Legislature from funds collected through court costs and fees.

2) Federal funding is authorized for these projects under the Juvenile Justice and Delinquency Prevention Act of 2002, Public Law 107-273. Congress has not finalized federal appropriations for federal fiscal year 2013. All awards are subject to the availability of appropriated federal funds and any modifications or additional requirements that may be imposed by law.

Funding Levels:

Minimum: None

Maximum: None

Match Requirement: None

Standards: Grantees must comply with the standards applicable to this funding source cited in the *Texas Administrative Code* (1 TAC Chapter 3), and all statutes, requirements, and guidelines applicable to this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

1) inherently religious activities such as prayer, worship, religious instruction, or proselytization;

2) lobbying;

3) any portion of the salary of, or any other compensation for, an elected or appointed government official;

4) vehicles or equipment for government agencies that are for general agency use;

- 5) weapons, ammunition, explosives or military vehicles;
- 6) admission fees or tickets to any amusement park, recreational activity or sporting event;
- 7) promotional gifts;
- 8) food, meals, beverages, or other refreshments;
- 9) membership dues for individuals;
- 10) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (i.e., supplanting);
- 11) fundraising;
- 12) construction;
- 13) medical services;
- 14) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;
- 15) legal services for adult offenders; and
- 16) overtime pay.

Eligible Applicants:

- 1) State agencies;
- 2) Units of local government;
- 3) Independent school districts;
- 4) Nonprofit corporations;
- 5) Indian tribes performing law enforcement functions;
- 6) Universities;
- 7) Colleges; and
- 8) Faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Eligible Activities:

1) Diversion - Programs to at-risk divert juveniles from entering the juvenile justice system. For this funding opportunity, CJD has defined at-risk as having had documented discipline problems in the school system or contact with law enforcement or juvenile probation. Preference will be given to programs that:

- a) provide for case workers or social workers to continue working with juveniles upon completion of the diversion program; and
- b) provide juvenile probation officers to work in the schools system.

2) Job Training - Projects to enhance the employability of juveniles or prepare them for future employment. Such programs may include job readiness training, apprenticeships, and job referrals.

3) Professional Therapy and Counseling/Mental Health - Services include, but are not limited to, the development and/or enhancement of diagnostic, treatment, and prevention instruments; psychological and psychiatric evaluations; counseling services; and/or family support services. Preference will be given to programs that:

- a) incorporate academically researched, peer reviewed, or evidenced based practices;
- b) utilize a multi disciplinary team to assist with planning and implementation of the program;
- c) provide a Licensed Professional Counselor for aftercare, re-entry, or front of system services; and

d) provide parent training reinforced with the use of case managers.

4) School Based Delinquency Prevention - Education programs and/or related services to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education. Preference will be given to programs that:

- a) provide school liaisons working between the juvenile justice system and the school system;
- b) provide school police officers or school resource officers; and
- c) provide juvenile probation officers to work in the school system.

5) Substance Abuse - Programs, research, or other initiatives to address the use and abuse of illegal and other prescription and nonprescription drugs and the use and abuse of alcohol. Programs include control, prevention, and treatment.

6) Training and Technology/Juvenile Justice System Improvement - Programs, research, and other initiatives to examine issues or improve practices, policies, or procedures on a systemwide basis (e.g., examining problems affecting decisions from arrest to disposition and detention to corrections).

Eligibility Requirements:

1) In order for an applicant to be eligible, the county (or counties) in which the applicant is located must have an overall 90% average on reporting adult and juvenile criminal history dispositions to the Texas Department of Public Safety for calendar years 2006 through 2010. This requirement must be met by August 1, 2013.

2) Eligible applicants operating a law enforcement agency must be current on reporting Part I violent crime data to the Texas Department of Public Safety for inclusion in the annual Uniform Crime Report (UCR) and must have been current for the three previous years.

3) Eligible applicants must have a DUNS (Data Universal Numbering System) number assigned to its agency (to request a DUNS number, go to <http://fedgov.dnb.com/webform/displayHomePage.do>).

4) Eligible applicants must be registered in the federal System for Award Management (SAM) database located at www.sam.gov/portal/public/sam/ and maintain an active registration throughout the grant period.

Project Period: Grant-funded projects must begin on or after September 1, 2013, and expire on or before August 31, 2014.

Application Process: Applicants must access CJD's grant management website at <https://egrants.governor.state.tx.us> to register and apply for funding.

Preferences: Preferences will be given to those applicants that:

- 1) Demonstrate cost effective programs focused on proven or promising approaches to services provision; and
- 2) Target serious and violent juvenile offender populations.

Closing Date for Receipt of Applications: All applications must be certified via CJD's eGrants website on or before February 28, 2013.

Selection Process:

All statewide applicants applying for funding may be invited to participate in a 15-20 minute presentation demonstrating the effectiveness of their program. The presentation will be conducted in Austin, Texas and scored by the Juvenile Justice Advisory Board. Each statewide applicant will receive instructions from CJD at least 30 days prior to the event. CJD will make all final funding decisions based on the recommendations of the Juvenile Justice Advisory Board.

Contact Person: If additional information is needed, contact the eGrants help desk at egrants@governor.state.tx.us or (512) 463-1919.

TRD-201206250

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: December 5, 2012



Request for Applications - Victims of Crime Act - General Victim Services

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that provide services to victims of crime under the state fiscal year 2014 grant cycle.

Purpose: The purpose of this program is to provide services and assistance directly to victims of crime to speed their recovery and aid them through the criminal justice process. Services may include the following:

- 1) responding to the emotional and physical needs of crime victims;
- 2) assisting victims in stabilizing their lives after a victimization;
- 3) assisting victims to understand and participate in the criminal justice system; and
- 4) providing victims with safety and security.

Available Funding: Federal funding is authorized for these projects under the Victims of Crime Act of 1984 (VOCA) as amended, 42 U.S.C. 10601, and under the Violence Against Women Act of 2005 (VAWA 2005) 42 U.S.C. 3796gg through 3796gg-5 as amended. Congress has not finalized federal appropriations for federal fiscal year 2013. All awards are subject to the availability of appropriated federal funds and any modifications or additional requirements that may be imposed by law.

Funding Levels:

Minimum: \$5,000

Maximum: None

Required Match: Grantees, other than Native American Tribes, may be required to provide matching funds of at least twenty percent (20%) of total project expenditures. Native American Tribes may be required to provide a five percent (5%) match. This requirement may be met through either cash or in-kind contributions or a combination of both. Please note: projects that are awarded with match above the required amount will be held to the higher amount.

Standards: Grantees must comply with the standards applicable to this funding source cited in the *Texas Administrative Code* (1 TAC Chapter 3), and all statutes, requirements, and guidelines applicable to this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

- 1) inherently religious activities such as prayer, worship, religious instruction, or proselytization;
- 2) lobbying and administrative advocacy;
- 3) perpetrator rehabilitation and counseling or services to incarcerated individuals;
- 4) needs assessments, surveys, evaluations, and studies;
- 5) prosecution activities;

6) reimbursing crime victims for expenses incurred as a result of the crime;

7) most medical costs. Grantees may not use grant funds for nursing-home care (except for short-term emergency), home health-care costs, in-patient treatment costs, hospital care, or other types of emergency or non-emergency medical or dental treatment;

8) relocation expenses. Grant funds may not support relocation expenses for crime victims such as moving expenses, security deposits on housing, rent, and mortgage payments;

9) administrative staff expenses. Grantees may not use grant funds to pay salaries, fees and reimbursable expenses associated with administrators, board members, executive directors, consultants, coordinators, and other individuals unless the grantee incurs the expense while providing direct services to crime victims;

10) costs of sending individual crime victims to conferences;

11) activities exclusively related to crime prevention or community awareness;

12) non-emergency legal representation such as for divorces, court ordered mediation or civil restitution recovery efforts;

13) victim-offender meetings that serve to replace criminal justice proceedings;

14) management and administrative training for executive directors, board members, and other individuals that do not provide direct services;

15) training to persons or groups outside the applicant agency;

16) indirect organization costs. To include liability insurance on buildings, capital improvements, security guards and body guards, property losses and expenses, real estate purchases, mortgage payments, renovations and construction of any kind;

17) any activities or related costs for diligent search;

18) job skills training;

19) in-patient alcohol and drug abuse treatment;

20) fundraising activities;

21) property loss. Grant funds may not be used to reimburse crime victims for expenses incurred as a result of a crime, such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills;

22) any portion of the salary of, or any other compensation for, an elected or appointed government official;

23) purchase or leasing of vehicles;

24) purchase of equipment for governmental agencies that are for general agency use;

25) admission fees or tickets to any amusement park, recreational activity, or sporting event;

26) promotional gifts, cash payments, gift cards or fuel vouchers;

27) non-emergency food, meals, beverages, or other refreshments;

28) membership dues or professional fees for individuals;

29) development of protocols, interagency agreements and other working agreements;

30) generated program income;

31) employee allowances covering routine expenses (i.e., cell phone allowances or vehicle allowances);

32) purchasing prepaid credit/debit or store cards for either agency or victim use; and

33) salaries for licensed peace officers funded at greater than 90% of overall salary.

Eligible Applicants:

- 1) State agencies;
- 2) Units of local government;
- 3) Hospital districts;
- 4) Nonprofit corporations with an active charter number from the Texas Secretary of State;
- 5) Native American tribes;
- 6) Universities;
- 7) Colleges;
- 8) Community supervision and corrections departments;
- 9) Councils of governments that offer direct services to victims of crime;
- 10) Hospital and emergency medical facilities that offer crisis counseling, support groups, and/or other types of victims services; and
- 11) Faith-based organizations that provide direct services to victims of crime. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Eligible Activities:

- 1) Crisis Services;
- 2) Forensic Interviews;
- 3) Legal Advocacy;
- 4) Multi-Disciplinary Teams and Case Coordination;
- 5) Peer Support Groups;
- 6) Professional Therapy and Counseling;
- 7) Protective Order Assistance;
- 8) Public Presentations (designed to help identify victims);
- 9) Shelter; and
- 10) Victim-offender meetings.

Eligibility Requirements:

- 1) In order for an applicant to be eligible, the county (or counties) in which the applicant is located must have a 90% average on both adult and juvenile criminal history dispositions to the Texas Department of Public Safety for calendar years 2007 through 2011. This requirement must be met by August 1, 2013.
- 2) Eligible applicants must have a DUNS (Data Universal Numbering System) number assigned to its agency, to request a DUNS number (go to <http://fedgov.dnb.com/webform/displayHomePage.do>); and
- 3) Eligible applicants must be registered in the federal system for award and management (SAM) database located at www.sam/portal/public/sam/ and maintain an active registration throughout the grant period.
- 4) Applicants must explain how their organization is culturally competent when providing services to victims. Here are some guidelines to follow: Victim service providers must have the ability to blend cultural knowledge and sensitivity with victim restoration skills for a more effective and culturally appropriate recovery process. Cultural compe-

teny occurs when: a) cultural knowledge, awareness and sensitivity are integrated into action and policy; b) the service is relevant to the needs of the community and provided by trained staff, board members, and management; and c) an advocate or organization recognizes each client is different with different needs, feelings, ideas and barriers.

5) Applicants must certify that they will comply with the following requirements:

- a) Services to Victims of Crime - Applicant agrees to provide services to victims of crime which include: responding to the emotional and physical needs of crime victims; assisting victims in stabilizing their lives after victimization; assisting victims to understand and participate in the criminal justice system; and providing victims with safety and security.
- b) Effective Services - Applicant must demonstrate a record of providing effective services to crime victims. If the applicant cannot yet demonstrate a record of providing effective services, the applicant must demonstrate that at least 25 percent of its financial support comes from non-federal sources.
- c) Volunteers - Applicant agrees to use volunteers to support either the project or agency-wide services, unless CJD determines that a compelling reason exists to waive this requirement.
- d) Community Efforts - Applicant agrees to promote community efforts to aid crime victims. Applicants should promote, within the community, coordinated public and private efforts to aid crime victims. Coordination efforts qualify an organization to receive these funds, but are not activities that can be supported with these funds.
- e) Crime Victims' Compensation - Applicant agrees to assist crime victims in applying for crime victims' compensation benefits.
- f) Records - Applicant agrees to maintain daily time and attendance records specifying the time devoted to allowable victim services.
- g) Civil Rights Information - Applicant agrees to maintain statutorily required civil rights statistics on victims served by race, national origin, sex, age, and disability of victims served, within the timeframe established by CJD. This requirement is waived when providing services, such as telephone counseling, where soliciting the information may be inappropriate or offensive to the crime victim.
- h) Victims of Federal Crime - Applicant agrees to provide equal services to victims of federal crime. (Note: A victim of a federal crime is a victim of an offense that violates a federal criminal statute or regulation. Federal crimes also include crimes that occur in an area where the federal government has jurisdiction, such as Indian reservations, some national parks, some federal buildings, and military installations.)
- i) No Charge - Applicant agrees to provide grant-funded services at no charge to victims of crime.
- j) Confidentiality - Applicant agrees to maintain the confidentiality of client-counselor information and research data, as required by state and federal law.
- k) Discrimination - Applicant agrees not to discriminate against victims because they disagree with the State's prosecution of the criminal case.
- l) Forensic Medical Examination Payments - Health care facilities shall conduct a forensic medical examination of a victim of an alleged sexual assault if the victim arrived at the facility within 96 hours after the assault occurred and the victim consents to the examination. The victim is not required to participate in the investigation or prosecution of an offense as a condition of receiving a forensic medical examination, nor pay for the forensic examination or the evidence collection kit. The evidence collection portion of the exam is to be paid by law enforcement per state law. Crime Victim Compensation funds may be used to

pay for the medical portion of the exam unless the victim of sexual assault is required to seek reimbursement for the examination from their insurance carrier. If a health care facility does not provide diagnosis or treatment services for sexual assault victims, the facility is required to refer the victim to a facility that provides those services.

m) Protection Orders - Victims applying for a protective order or their attorney may not bear the costs associated with the filing of an order of protection.

n) Nondisclosure of Confidential or Private Information - Personally identifying information or individual information collected in connection with services requested, utilized, or denied may not be disclosed; or revealed without informed, written, reasonably time-limited consent of the person about whom information is sought. If release of information is compelled by statutory or court mandate, reasonable attempts to provide notice to victims affected by the disclosure of information will be made and necessary steps will be taken to protect the privacy and safety of the persons affected by the release of information.

Project Period: Grant-funded projects may begin on or after September 1, 2013, and expire on or before August 31, 2014.

Application Process: Applicants can access CJD's eGrants website at <https://egrants.governor.state.tx.us> to register and apply for funding.

Preferences: Preference will be given to applicants that provide core services to victims and that promote comprehensive victim restoration while incorporating an emphasis on cultural competency in underserved populations. Applicants are also strongly encouraged to streamline administrative and reporting processes by consolidating grant requests whenever possible in lieu of submitting multiple applications.

Closing Date for Receipt of Applications: All applications must be certified via CJD's grant management website on or before February 28, 2013.

Selection Process:

1) For eligible local and regional projects:

a) Applications will be forwarded by CJD to the appropriate regional council of governments (COG).

b) The COG's criminal justice advisory committee will prioritize all eligible applications based on State priorities, identified community priorities, cost and program effectiveness.

c) CJD will accept priority listings that are approved by the COG's executive committee.

d) CJD will make all final funding decisions based upon eligibility, approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.

2) For state discretionary projects, applications will be reviewed by CJD staff members or a review group selected by the executive director. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost-effectiveness.

Contact Information: If additional information is needed, contact the eGrants Help Desk at eGrants@governor.state.tx.us or (512) 463-1919.

TRD-201206244

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: December 5, 2012



Request for Applications - Violent Crimes Against Women Criminal Justice and Training Projects - Domestic Violence, Sexual Assault, Dating Violence, and Stalking

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that promote a coordinated, multidisciplinary approach to improving the criminal justice system's response to violent crimes against women during the state fiscal year 2014 grant cycle.

Purpose: The purpose of this funding is to assist in developing and strengthening effective law enforcement, prosecution and court strategies to combat family violence, sexual assault, dating violence and stalking crimes against women and to develop and strengthen victim services in such cases.

Available Funding: Federal funding is authorized for these projects under the Violence Against Women Act of 2005 (VAWA 2005), 42 U.S.C. 3796gg through 3796gg-5 as amended. Congress has not finalized federal appropriations for federal fiscal year 2013. All awards are subject to the availability of appropriated federal funds and any modifications or additional requirements that may be imposed by law.

Funding Levels:

Minimum: \$5,000

Maximum: None

Required Match: Grantees must provide matching funds of at least thirty-five percent (35%) of total project expenditures. This requirement may be met through either cash or in-kind contributions or a combination of both. Please note: projects that are awarded with match above the required amount will be held to the higher amount.

Standards: Grantees must comply with the standards applicable to this funding source cited in the *Texas Administrative Code* (1 TAC Chapter 3), and all statutes, requirements, and guidelines applicable to this funding.

Prohibitions: Grantees may not use grant funds or program income to support the following services, activities, and costs:

1) inherently religious activities such as prayer, worship, religious instruction, or proselytization;

2) lobbying;

3) any portion of the salary of, or any other compensation for, an elected or appointed government official;

4) purchase or leasing of vehicles;

5) admission fees or tickets to any amusement park, recreational activity, or sporting event;

6) promotional gifts;

7) non-emergency food, meals, beverages, or other refreshments;

8) membership dues or professional fees for individuals;

9) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state, or local funds (e.g., supplanting), including the Texas Crime Victims Compensation Fund;

10) fundraising;

11) overtime;

12) cash payments to victims, gift cards or fuel vouchers;

13) legal assistance and representation in civil matters other than protective orders;

- 14) legal defense services for perpetrators of violence against women;
- 15) liability insurance on buildings;
- 16) major maintenance on buildings, including minor renovations, lawn care, landscaping, painting, plumbing and HVAC repair;
- 17) property loss. Grant funds may not be used to reimburse victims for expenses incurred as a result of a crime, such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills;
- 18) services for programs that primarily focus on children and/or men;
- 19) activities exclusively related to violence prevention, such as media campaigns to educate the general public about violence against women, public awareness and community education campaigns are also prohibited;
- 20) criminal defense work, including for women who assault, kill, or otherwise injure their abusers;
- 21) services to any person incarcerated for committing a crime of domestic violence, dating violence, sexual assault, or stalking;
- 22) relocation expenses. Grant funds may not support expenses for victims of domestic violence, sexual assault, or stalking such as moving household goods to a new location in another state or acquiring furniture or housing in a new location;
- 23) creation of a voucher program. Grant funds may not support the creation of a voucher program where victims are directly given vouchers for such services as housing or counseling;
- 24) prosecution of child sexual abuse when the victim is now an adult;
- 25) law enforcement equipment that is standard department issue including uniforms, safety vest, shields, weapons and ammunition;
- 26) chemical dependency or alcohol abuse programs for offenders that are not an integral part of court mandated Batterers Intervention Prevention Program;
- 27) activities that may compromise victim safety such as: pre-trial diversion programs or the placement of offenders in these programs;
- 28) development or presentation of a domestic violence, sexual assault, dating violence or stalking curriculum for primary or secondary schools. Educating students from an existing curriculum would also be prohibited;
- 29) employee allowances covering routine expenses (i.e., cell phone allowances or vehicle allowances); and
- 30) purchasing prepaid credit/debit or store cards for either agency or victim use.

Eligible Applicants:

- 1) Community supervision and corrections departments;
- 2) Councils of governments (COGs);
- 3) Indian tribal governments;
- 4) Nonprofit corporations with an active charter number from the Texas Secretary of State;
- 5) Universities and colleges;
- 6) State agencies; and
- 7) Units of local government;

Note: Nonprofit agencies seeking to provide direct victim services will not be considered for funding under this solicitation and should instead

apply under the General Victim Assistance - Direct Services Request for Applications.

Eligible Activities:

- 1) Court Services/Improvements (including specialized courts except drug courts);
- 2) Crisis Services;
- 3) Investigation;
- 4) Legal Advocacy;
- 5) Multi-Disciplinary Teams and Case Coordination;
- 6) Prosecution;
- 7) Protective Order Assistance;
- 8) Training;
- 9) Victim-offender meetings;
- 10) Technology; and
- 11) Forensic Interviews.

Eligibility Requirements:

- 1) In order for an applicant to be eligible, the county (or counties) in which the applicant is located must have a 90% average on both adult and juvenile criminal history dispositions to the Texas Department of Public Safety for calendar years 2007 through 2011. This requirement must be met by August 1, 2013;
- 2) Eligible applicants operating a law enforcement agency must be current on reporting Part I violent crime data to the Texas Department of Public Safety for inclusion in the annual Uniform Crime Report (UCR) and must have been current for the three previous years;
- 3) Eligible applicants must have a DUNS (Data Universal Numbering System) number assigned to its agency (to request a DUNS number, go to <http://fedgov.dnb.com/webform/displayHomePage.do>);
- 4) Eligible applicants must be registered in the federal System for Award Management (SAM) database located at www.sam.gov/portal/public/sam/ and maintain an active registration throughout the grant period;
- 5) Applicants must explain how their organization is culturally competent when providing services to victims. Here are some guidelines to follow: Victim service providers must have the ability to blend cultural knowledge and sensitivity with victim restoration skills for a more effective and culturally appropriate recovery process. Cultural competency occurs when: a) cultural knowledge, awareness and sensitivity are integrated into action and policy; b) the service is relevant to the needs of the community and provided by trained staff, board members, and management; and c) an advocate or organization recognizes each client is different with different needs, feelings, ideas and barriers;
- 6) Applicant agrees to implement comprehensive strategies that are sensitive to the concerns and safety of the victims and hold offenders accountable for their crimes. Applicants must indicate the percentage of their project that benefits Victim Services, Law Enforcement, Prosecution, Courts or other areas. Program emphasis decisions should be made based on the beneficiary of the funded activities. For example, a victim services coalition who provides training to police throughout the state would fall under the "law enforcement" category because the training is to benefit law enforcement; and
- 7) Applicants must certify that they will comply with the following requirements:

a) Forensic Medical Examination Payments - Health care facilities shall conduct a forensic medical examination of a victim of an alleged sexual assault if the victim arrived at the facility within 96 hours after the assault occurred and the victim consents to the examination. The victim is not required to participate in the investigation or prosecution of an offense as a condition of receiving a forensic medical examination, nor pay for the forensic examination or the evidence collection kit. The evidence collection portion of the exam is to be paid by law enforcement per state law. Crime Victim Compensation funds may be used to pay for the medical portion of the exam unless the victim of sexual assault is required to seek reimbursement for the examination from their insurance carrier. If a health care facility does not provide diagnosis or treatment services for sexual assault victims, the facility is required to refer the victim to a facility that provides those services.

b) Polygraph Testing Prohibition - A peace officer or attorney representing the state may not require an adult or child victim of an alleged sex offense to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an offense. In addition, the refusal of a victim to submit to a polygraph or other truth telling examination will not prevent the investigation, charging, or prosecution of an alleged sex offense or on the basis of the results of a polygraph examination.

c) Protection Orders - Neither victims applying for a protective order nor their attorney may bear the costs associated with the filing of an order of protection.

d) Judicial Notification - Offenders involved in a protection order are not allowed to possess a firearm unless the offender is a peace officer who is actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

e) Criminal Charges - In connection with the prosecution of any misdemeanor or felony domestic violence offense, the victim may not bear the costs associated with the filing of criminal charges against a domestic violence offender, issuance or service of a warrant, or witness subpoena.

f) Nondisclosure of Confidential or Private Information - Personally identifying information or individual information collected in connection with services requested, utilized, or denied may not be disclosed or revealed without informed, written, reasonably time-limited consent of the person about whom information is sought. If release of information is compelled by statutory or court mandate, reasonable attempts to provide notice to victims affected by the disclosure of information will be made and necessary steps will be taken to protect the privacy and safety of the persons affected by the release of information.

g) Applicants must meet one of the follows statewide priorities:

i) Improve the criminal justice system response to victims of violence against women;

ii) Improve court services regarding domestic violence, sexual assault, dating violence, and stalking;

iii) Strengthen victim restoration; or

iv) Increase collaboration and communication across all levels of government and among all victim services.

Project Period: Grant-funded projects must begin on or after September 1, 2013, and expire on or before August 31, 2014.

Application Process: Applicants can access CJD's eGrants website at <https://egrants.governor.state.tx.us> to register and apply for funding.

Preferences: Preference will be given to applicants that promote comprehensive victim restoration while incorporating an emphasis

on cultural competency in underserved populations. Applicants are also strongly encouraged to streamline administrative and reporting processes by consolidating grant requests whenever possible in lieu of submitting multiple applications.

Closing Date for Receipt of Applications: All applications must be certified via CJD's grant management website on or before February 28, 2013.

Selection Process:

1) For eligible local and regional projects:

a) Applications will be forwarded by CJD to the appropriate regional council of governments (COG).

b) The COG's criminal justice advisory committee will prioritize all eligible applications based on State priorities, identified community priorities, cost and program effectiveness.

c) CJD will accept priority listings that are approved by the COG's executive committee.

d) CJD will make all final funding decisions based on eligibility, approved COG priorities, reasonableness, availability of funding, and cost-effectiveness.

2) For state discretionary projects, applications will be reviewed by CJD staff members or a review group selected by the executive director. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost-effectiveness.

Contact Information: If additional information is needed, contact the eGrants Help Desk at eGrants@governor.state.tx.us or (512) 463-1919.

TRD-201206243

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: December 5, 2012

◆ ◆ ◆
Texas Department of Licensing and Regulation

Public Notice - Deadline Extended for Public Comments

In the November 16, 2012, issue of the *Texas Register* (37 TexReg 9145), the Texas Department of Licensing and Regulation filed a notice of intent to review existing rules at 16 TAC Chapter 57, regarding the For-Profit Legal Service Contract Companies program.

The deadline for receipt of public comments in response to the notice of intent to review was originally set for December 17, 2012. This notice is to extend the public comment period to 5:00 p.m. on January 4, 2013.

Any questions or written comments pertaining to the notice of intent to 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, by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

TRD-201206144

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: November 30, 2012

◆ ◆ ◆
Public Notice - Deadline Extended for Public Comments

In the November 16, 2012, issue of the *Texas Register* (37 TexReg 9145), the Texas Department of Licensing and Regulation filed a notice of intent to review existing rules at 16 TAC Chapter 59, regarding Continuing Education Requirements.

The deadline for receipt of public comments in response to the notice of intent to review was originally set for December 17, 2012. This notice is to extend the public comment period to 5:00 p.m. on January 4, 2013.

Any questions or written comments pertaining to the notice of intent to 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, by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

TRD-201206145
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 30, 2012



Public Notice - Deadline Extended for Public Comments

In the November 16, 2012, issue of the *Texas Register* (37 TexReg 9146), the Texas Department of Licensing and Regulation filed a notice of intent to review existing rules at 16 TAC Chapter 60, regarding the Procedural Rules of the Commission and the Department.

The deadline for receipt of public comments in response to the notice of intent to review was originally set for December 17, 2012. This notice is to extend the public comment period to 5:00 p.m. on January 4, 2013.

Any questions or written comments pertaining to the notice of intent to 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, by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

TRD-201206146
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 30, 2012



Public Notice - Deadline Extended for Public Comments

In the November 16, 2012, issue of the *Texas Register* (37 TexReg 9146), the Texas Department of Licensing and Regulation filed a notice of intent to review existing rules at 16 TAC Chapter 65, regarding the Boilers program.

The deadline for receipt of public comments in response to the notice of intent to review was originally set for December 17, 2012. This notice is to extend the public comment period to 5:00 p.m. on January 4, 2013.

Any questions or written comments pertaining to the notice of intent to 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, by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

TRD-201206147

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 30, 2012



Public Notice - Deadline Extended for Public Comments

In the November 16, 2012, issue of the *Texas Register* (37 TexReg 9147), the Texas Department of Licensing and Regulation filed a notice of intent to review existing rules at 16 TAC Chapter 70, regarding the Industrialized Housing and Buildings program.

The deadline for receipt of public comments in response to the notice of intent to review was originally set for December 17, 2012. This notice is to extend the public comment period to 5:00 p.m. on January 4, 2013.

Any questions or written comments pertaining to the notice of intent to 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, by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

TRD-201206148
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 30, 2012



Public Notice - Deadline Extended for Public Comments

In the November 16, 2012, issue of the *Texas Register* (37 TexReg 9148), the Texas Department of Licensing and Regulation filed a notice of intent to review existing rules at 16 TAC Chapter 72, regarding the Staff Leasing Services program.

The deadline for receipt of public comments in response to the notice of intent to review was originally set for December 17, 2012. This notice is to extend the public comment period to 5:00 p.m. on January 4, 2013.

Any questions or written comments pertaining to the notice of intent to 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, by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

TRD-201206149
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 30, 2012



Public Notice - Deadline Extended for Public Comments

In the November 16, 2012, issue of the *Texas Register* (37 TexReg 9148), the Texas Department of Licensing and Regulation filed a notice of intent to review existing rules at 16 TAC Chapter 73, regarding the Electricians program.

The deadline for receipt of public comments in response to the notice of intent to review was originally set for December 17, 2012. This notice is to extend the public comment period to 5:00 p.m. on January 4, 2013.

Any questions or written comments pertaining to the notice of intent to 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, by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

TRD-201206150

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: November 30, 2012



Public Notice - Deadline Extended for Public Comments

In the November 16, 2012, issue of the *Texas Register* (37 TexReg 9149), the Texas Department of Licensing and Regulation filed a notice of intent to review existing rules at 16 TAC Chapter 85, regarding the Vehicle Storage Facilities program.

The deadline for receipt of public comments in response to the notice of intent to review was originally set for December 17, 2012. This notice is to extend the public comment period to 5:00 p.m. on January 4, 2013.

Any questions or written comments pertaining to the notice of intent to 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, by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

TRD-201206151

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: November 30, 2012



Public Notice - Deadline Extended for Public Comments

In the November 16, 2012, issue of the *Texas Register* (37 TexReg 9150), the Texas Department of Licensing and Regulation filed a notice of intent to review existing rules at 16 TAC Chapter 86, regarding the Vehicle Towing and Booting program.

The deadline for receipt of public comments in response to the notice of intent to review was originally set for December 17, 2012. This notice is to extend the public comment period to 5:00 p.m. on January 4, 2013.

Any questions or written comments pertaining to the notice of intent to 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, by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

TRD-201206152

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: November 30, 2012



Public Utility Commission of Texas

Correction of Error

The Public Utility Commission of Texas proposed the repeal of existing 16 TAC §25.238 and new §25.238 in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9421). The preamble to the proposal outlines five questions for public consideration and comment. In questions 4 and 5 on page 9421, second column, the references to "question 2" are incorrect. The references should be to "question 3". The corrected paragraphs read as follows:

"4. If the commission establishes the review process described in question 3, should such a process be available for both bilateral, wholesale market purchases as well as purchases made pursuant to a tariff of a Regional Transmission Organization and/or Independent System Operator (RTO/ISO)?"

"5. If the commission establishes the review process described in question 3, should it limit the frequency of such reviews in order to limit the intervenor and commission resources devoted to such reviews?"

TRD-201206143



Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on November 21, 2012, with the Public Utility Commission of Texas for waiver from the requirements in P.U.C. Substantive Rule §26.420(f)(3)(A).

Docket Style and Number: Application of CGKC&H #2 Rural Limited Partnership d/b/a West Central Wireless and d/b/a Right Wireless for Waiver to Apply Safe-Harbor Percentage to Calculate Texas Universal Service Fund Assessment Pursuant to P.U.C. Substantive Rule §26.420(f). Docket Number 40973.

The Application: CGKC&H #2 Rural Limited Partnership d/b/a West Central Wireless and d/b/a Right Wireless (CGKC&H #2 or applicant) is a commercial mobile radio service (CMRS) provider. Applicant has elected to use the safe-harbor percentage approved by the commission for its classification of telecommunications service provided. Applicant indicated it has no method to determine assessable Texas Universal Service Fund (TUSF) intrastate receipts other than by the use of the safe-harbor percentage. Applicant requests that the commission grant it a permanent waiver under the P.U.C. Substantive Rule §26.420(f)(3)(B)(ii) from the requirements contained in P.U.C. Substantive Rule §26.420(f)(3)(A) to allow applicant to use the commission-ordered safe-harbor TUSF assessment methodology to calculate TUSF assessments.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by December 28, 2012, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 40973.

TRD-201206156

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 30, 2012



Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on November 21, 2012, with the Public Utility Commission of Texas for waiver from the requirements in P.U.C. Substantive Rule §26.420(f)(3)(A).

Docket Style and Number: Application of CT Cube L.P. d/b/a West Central Wireless and d/b/a Right Wireless for Waiver to Apply Safe-Harbor Percentage to Calculate Texas Universal Service Fund Assessment Pursuant to P.U.C. Substantive Rule §26.420(f). Docket Number 40974.

The Application: CT Cube L.P. d/b/a West Central Wireless and d/b/a Right Wireless (CT Cube or applicant) is a commercial mobile radio service (CMRS) provider. Applicant has elected to use the safe-harbor percentage approved by the commission for its classification of telecommunications service provided. Applicant indicated it has no method to determine assessable Texas Universal Service Fund (TUSF) intrastate receipts other than by the use of the safe-harbor percentage. Applicant requests that the commission grant it a permanent waiver under the P.U.C. Substantive Rule §26.420(f)(3)(B)(ii) from the requirements contained in P.U.C. Substantive Rule §26.420(f)(3)(A) to allow applicant to use the commission-ordered safe-harbor TUSF assessment methodology to calculate TUSF assessments.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by December 28, 2012, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 40974.

TRD-201206157
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2012



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

Notice is given to the public of an application filed on November 26, 2012, with the Public Utility Commission of Texas (commission) for waiver from the requirements in the commission prescribed application for a permit to operate automatic dial announcing devices.

Docket Style and Number: Application of TXU Energy Retail Company LLC for a Waiver to the Federal Registration Number Requirement of the ADAD Application Form, Docket Number 40977.

The Application: TXU Energy Retail Company LLC (TXU Energy) filed a request for a waiver of the registration number requirement, in the Public Utility Commission of Texas prescribed application for a permit to operate automatic dial announcing devices (ADAD). Specifically, Question 11(e) of the application requires the Federal Registration Number (FRN) issued to the ADAD manufacturer or programmer either by the Federal Communications Commission (FCC) or Administrative Council Terminal Attachments (ACTA).

TXU Energy stated that it uses a web-based platform with calls made over a Voice over Internet Protocol (VoIP) platform and does not have an FRN and therefore is requesting a waiver.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 40977.

TRD-201206158
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2012



Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Reagan County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services described below.

The following is a listing of proposed projects at Reagan County Airport during the course of the next five years through multiple grants.

Current Project: Reagan County. TxDOT CSJ No.: 1307BGLKE. Scope: Provide engineering/design services to pave and mark Runway 9/27; construct turnaround Runway 16; clear and grub 15 acres in RPZ Runway 9; and install fence.

The HUB goal for the current project is 8 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. Replace MIRLs Runway 16-34
2. Rehabilitate entrance road
3. Rehabilitate terminal building parking area

Reagan County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your 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 "Reagan County 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-PI-LOT (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 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 website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

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 January 24, 2013, 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 Beverly Longfellow.

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 commit-

tee 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 Beverly Longfellow, Grant Manager. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201206257

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: December 5, 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)