
TEXAS REGISTER

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*Angel Banda
6th Grade*



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IN THIS ISSUE

ATTORNEY GENERAL	
Requests for Opinions.....	447
Opinions.....	447
Request for Open Records Decision.....	447
PROPOSED RULES	
TEXAS ETHICS COMMISSION	
REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES	
1 TAC §20.61.....	449
TEXAS ANIMAL HEALTH COMMISSION	
TUBERCULOSIS	
4 TAC §43.2, §43.7.....	451
EQUINE	
4 TAC §49.5.....	455
DOMESTIC AND EXOTIC FOWL REGISTRATION	
4 TAC §54.9.....	457
STATE SECURITIES BOARD	
REGISTRATION OF SECURITIES	
7 TAC §113.14.....	459
TEXAS FILM COMMISSION	
MEDIA PRODUCTION DEVELOPMENT ZONES	
13 TAC §§123.1 - 123.10.....	460
TEXAS EDUCATION AGENCY	
STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS	
19 TAC §§66.1301, 66.1307, 66.1309, 66.1311, 66.1313, 66.1325, 66.1327.....	463
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY	
MUNICIPAL SOLID WASTE	
30 TAC §330.7.....	471
30 TAC §§330.671, 330.673, 330.675.....	474
GROUNDWATER PROTECTION RECOMMENDATION LETTERS AND FEES	
30 TAC §§339.1 - 339.3.....	478
TEXAS DEPARTMENT OF MOTOR VEHICLES	
MOTOR CARRIERS	
43 TAC §218.71.....	480
ADOPTED RULES	
TEXAS DEPARTMENT OF AGRICULTURE	
MARKETING AND PROMOTION	
4 TAC §§17.20, 17.21, 17.23 - 17.25.....	483
COTTON PEST CONTROL	
4 TAC §20.16.....	483
TEXAS ANIMAL HEALTH COMMISSION	
TRICHOMONIASIS	
4 TAC §38.2.....	484
FEVER TICKS	
4 TAC §41.1, §41.8.....	484
APPROVED PERSONNEL	
4 TAC §§47.1 - 47.6.....	485
AUTHORIZED PERSONNEL	
4 TAC §§47.1 - 47.9.....	486
4 TAC §§47.11 - 47.15.....	487
ANIMAL DISEASE TRACEABILITY	
4 TAC §50.3.....	488
ENTRY REQUIREMENTS	
4 TAC §51.8.....	490
POULTRY	
4 TAC §57.13.....	491
STATE SECURITIES BOARD	
TRANSACTIONS EXEMPT FROM REGISTRATION	
7 TAC §109.6.....	491
7 TAC §109.13.....	492
SECURITIES DEALERS AND AGENTS	
7 TAC §115.18.....	493
INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES	
7 TAC §116.18.....	493
FORMS	
7 TAC §133.4.....	494
7 TAC §133.4.....	494
EXEMPTIONS BY RULE OR ORDER	
7 TAC §139.23.....	495
7 TAC §139.24.....	495
TEXAS FUNERAL SERVICE COMMISSION	
LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE	
22 TAC §201.3.....	496
LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES	

22 TAC §203.3	497	Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 40271	516
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY		Notice of District Petition	517
CONTROL OF AIR POLLUTION FROM VISIBLE EMISSIONS AND PARTICULATE MATTER		Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions	517
30 TAC §111.211	497	Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions	519
TEXAS DEPARTMENT OF MOTOR VEHICLES		Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions	520
MOTOR VEHICLE DISTRIBUTION		Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 330 and 339	521
43 TAC §215.58	501	Notice of Water Quality Applications.....	521
43 TAC §215.138	501	Texas Health and Human Services Commission	
MOTOR VEHICLE DISTRIBUTION		Public Notice of Intent to Engage in Negotiated Rulemaking.....	523
43 TAC §215.304	502	Texas Higher Education Coordinating Board	
43 TAC §§215.500 - 215.503	503	Notice of Intent to Engage in Negotiated Rulemaking - Toward Excellence, Access and Success Grant Program (Public Universities and Health-Related Institutions Only).....	524
VEHICLE TITLES AND REGISTRATION		Texas Department of Insurance	
43 TAC §§217.21, 217.23, 217.24, 217.26, 217.29	503	Company Licensing	525
OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS		Texas Lottery Commission	
43 TAC §219.31	504	Instant Game Number 1586 "Lucky Symbols"	526
RULE REVIEW		Public Utility Commission of Texas	
Agency Rule Review Plan		Notice of Application for a Service Provider Certificate of Operating Authority	530
Texas Animal Health Commission	507	Notice of Application for Retail Electric Provider Certification	531
Proposed Rule Reviews		Notice of Application for Retail Electric Provider Certification	531
Texas Animal Health Commission	507	Notice of Application for Service Area Exception	531
Adopted Rule Reviews		Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider.....	531
Texas Department of Insurance, Division of Workers' Compensation	507	Request for Proposals to Provide Technical Consulting Services ...	532
IN ADDITION		Supreme Court of Texas	
Comptroller of Public Accounts		IN THE SUPREME COURT OF TEXAS.....	532
Notice of Request for Proposals	509	Texas Department of Transportation	
Notice of Request for Proposals	509	Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services	533
Notice of Request for Proposals	509	Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services	533
Notice of Request for Proposals	510	Public Notice - Advertising in Texas Department of Transportation's Travel Literature and <i>Texas Highways</i> Magazine	534
Credit Union Department		Texas Water Development Board	
Application to Amend Articles of Incorporation	510	Applications for January 2014	540
Notice of Final Action Taken.....	510		
Texas Commission on Environmental Quality			
Agreed Orders.....	511		
Enforcement Orders	513		
Light-Duty Motor Vehicle Purchase or Lease Incentive Program, Manufacturer's Annual Report	516		

THE ATTORNEY GENERAL

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

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

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

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

Requests for Opinions

RQ-1179-GA

Requestor:

The Honorable Judith Zaffirini
Chair, Committee on Government Organization
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether a city that has a current tax rate of zero is subject to a rollback election under section 26.07 of the Tax Code or an ad-valorem tax-freeze election under article VIII, section 1-b(h) of the Texas Constitution (RQ-1179-GA)

Briefs requested by February 5, 2014

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

TRD-201400201
Katherine Cary
General Counsel
Office of the Attorney General
Filed: January 21, 2014



Opinions

Opinion No. GA-1038

The Honorable Robert Duncan
Chair, Committee on State Affairs
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether statutory records retention requirements apply to model lesson plans developed and maintained by the Texas Education Service Center Curriculum Collaborative (RQ-1140-GA)

SUMMARY

A court would have reason to defer to the conclusion of the State Library and Archives Commission that the model lesson plans maintained

by Regional Education Service Centers are local government records subject to the Local Government Records Act. In addition, Education Service Centers must comply with Government Code chapter 441, subchapter J with regard to the maintenance of model lesson plans.

The State Library and Archives Commission's Local Schedule SD applies to the retention of lesson plans maintained by Regional Education Service Centers. Local Schedule SD requires that lesson plans be maintained for as long as administratively valuable. Any final disposition of lesson plans must comport with the absolute right of parents to access teaching materials used in the classroom of the parents' child pursuant to subsection 26.006(a) of the Education Code.

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

TRD-201400225
Katherine Cary
General Counsel
Office of the Attorney General
Filed: January 22, 2014



Request for Open Records Decision

ORQ-73

Requestor: The Honorable John J. Specia, Jr., Commissioner, Texas Department of Family and Protective Services, P.O. Box 149030, Austin, Texas 78714-9030.

Re: Questions concerning the applicability of section 552.1085 of the Government Code to information subject to the rules of the Texas Department of Family and Protective Services

Briefs Requested by February 21, 2014.

For further information, please contact the Open Records Division at (512) 936-6736.

TRD-201400189
Katherine Cary
General Counsel
Office of the Attorney General
Filed: January 17, 2014



Carsyn Fernandez
7th Grade



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 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.61

The Texas Ethics Commission (the commission) proposes an amendment to §20.61, relating to the description of an expenditure.

Section 20.61 provides the method for disclosing the purpose of a political expenditure, requiring the separate reporting of office-holder expenses for living in Austin, Texas.

Natalia Luna Ashley, Interim Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mrs. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity in the law. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The Texas Ethics Commission invites comments on the proposed amendment 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 or on the Texas Ethics Commission's website at www.ethics.state.tx.us.

The amendment to §20.61 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 proposed amendment to §20.61 affects the Election Code, Title 15, §254.031.

§20.61. Purpose of Expenditure.

(a) For reporting required under §254.031 of the Election Code, the purpose of an expenditure means:

(1) A description of the category of goods, services, or other thing of value for which an expenditure is made. Examples of acceptable categories include:

- (A) advertising expense;
- (B) accounting/banking;
- (C) consulting expense;
- (D) contributions/donations made by candidate/office-holder/political committee;
- (E) event expense;
- (F) fees;
- (G) food/beverage expense;
- (H) gifts/awards/memorials expense;
- (I) legal services;
- (J) loan repayment/reimbursement;
- (K) office overhead/rental expense;
- (L) polling expense;
- (M) printing expense;
- (N) salaries/wages/contract labor;
- (O) solicitation/fundraising expense;
- (P) transportation equipment and related expense;
- (Q) travel in district;
- (R) travel out of district;
- (S) other political expenditures; and

(2) A brief statement or description of the candidate, office-holder, or political committee activity that is conducted by making the expenditure and an additional indication if the expenditure is an office-holder expenditure for living in Austin, Texas. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure.

(b) The description of a political expenditure for travel outside of the state of Texas must provide the following:

- (1) The name of the person or persons traveling on whose behalf the expenditure was made;
- (2) The means of transportation;

(3) The name of the departure city or the name of each departure location;

(4) The name of the destination city or the name of each destination location;

(5) The dates on which the travel occurred; and

(6) The campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event.

(c) Except as provided by subsection (d) of this section, this [This] rule applies to expenditures made on or after July 1, 2010.

(d) The requirement to include an additional indication if an expenditure is an officeholder expenditure for living in Austin, Texas, applies to an expenditure made on or after July 1, 2014.

(e) [(d)] Comments: The purpose of an expenditure must include both a description of the category of goods or services received in exchange for the expenditure and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. A description of an expenditure that merely states the item or service purchased is not adequate because doing so does not allow a person reading the report to know the allowable activity for which an expenditure was made. The following is a list of examples that describe how the purpose of an expenditure may be reported under §20.61. This list is for illustrative purposes only. It is intended to provide helpful information and to assist filers in reporting the purpose of an expenditure under this rule. However, it is not, and is not intended to be, an exhaustive or an exclusive list of how a filer may permissibly report the purpose of an expenditure under this rule. The rule does not require the candidate or officeholder to identify by name or affiliation an individual or group with whom the candidate or officeholder meets.

(1) Example: Candidate X is seeking the office of State Representative, District 2000. She purchases an airline ticket from ABC Airlines to attend a campaign rally within District 2000. The acceptable category for this expenditure is "travel in district." The candidate activity that is accomplished by making the expenditure is to attend a campaign rally. An acceptable brief statement is "airline ticket to attend campaign event."

(2) Example: Candidate X purchases an airline ticket to attend a campaign event outside of District 2000 but within Texas, the acceptable category is "travel out of district." The candidate activity that is accomplished by making the expenditure is to attend a campaign event. An acceptable brief statement is "airline ticket to attend campaign or officeholder event."

(3) Example: Candidate X purchases an airline ticket to attend an officeholder related seminar outside of Texas. The acceptable method for the purpose of this expenditure is by selecting the "travel out of district" category and completing the "Schedule T" (used to report travel outside of Texas).

(4) Example: Candidate X contracts with an individual to do various campaign related tasks such as work on a campaign phone bank, sign distribution, and staffing the office. The acceptable category is "salaries/wages/contract labor." The candidate activity that is accomplished by making the expenditure is to compensate an individual working on the campaign. An acceptable brief statement is "contract labor for campaign services."

(5) Example: Officeholder X is seeking re-election and makes an expenditure to purchase a vehicle to use for campaign purposes and permissible officeholder purposes. The acceptable category is "transportation equipment and related expenses" and an acceptable brief description is "purchase of campaign/officeholder vehicle."

(6) Example: Candidate X makes an expenditure to repair a flat tire on a campaign vehicle purchased with political funds. The acceptable category is "transportation equipment and related expenses" and an acceptable brief description is "campaign vehicle repairs."

(7) Example: Officeholder X purchases flowers for a constituent. The acceptable category is "gifts/awards/memorials expense" and an acceptable brief description is "flowers for constituent."

(8) Example: Political Committee XYZ makes a political contribution to Candidate X. The acceptable category is "contributions/donations made by candidate/officeholder/political committee" and an acceptable brief description is "campaign contribution."

(9) Example: Candidate X makes an expenditure for a filing fee to get his name on the ballot. The acceptable category is "fees" and an acceptable brief description is "candidate filing fee."

(10) Example: Officeholder X makes an expenditure to attend a seminar related to performing a duty or engaging in an activity in connection with the office. The acceptable category is "fees" and an acceptable brief description is "attend officeholder seminar."

(11) Example: Candidate X makes an expenditure for political advertising to be broadcast by radio. The acceptable category is "advertising expense" and an acceptable brief description is "political advertising." Similarly, Candidate X makes an expenditure for political advertising to appear in a newspaper. The acceptable category is "advertising expense" and an acceptable brief description is "political advertising."

(12) Example: Officeholder X makes expenditures for printing and postage to mail a letter to all of her constituents, thanking them for their participation during the legislative session. Acceptable categories are "advertising expense" OR "printing expense" and an acceptable brief description is "letter to constituents."

(13) Example: Officeholder X makes an expenditure to pay the campaign office electric bill. The acceptable category is "office overhead/rental expense" and an acceptable brief description is "campaign office electric bill."

(14) Example: Officeholder X makes an expenditure to purchase paper, postage, and other supplies for the campaign office. The acceptable category is "office overhead/rental expense" and an acceptable brief description is "campaign office supplies."

(15) Example: Officeholder X makes an expenditure to pay the campaign office monthly rent. The acceptable category is "office overhead/rental expense" and an acceptable brief description is "campaign office rent."

(16) Example: Candidate X hires a consultant for fundraising services. The acceptable category is "consulting expense" and an acceptable brief description is "campaign services."

(17) Example: Candidate/Officeholder X pays his attorney for legal fees related to either campaign matters or officeholder matters. The acceptable category is "legal services" and an acceptable brief description is "legal fees for campaign" or "for officeholder matters."

(18) Example: Candidate/Officeholder X makes food and beverage expenditures for a meeting with her constituents. The acceptable category is "food/beverage expense" and an acceptable brief statement is "meeting with constituents."

(19) Example: Candidate X makes food and beverage expenditures for a meeting to discuss candidate issues. The acceptable category is "food/beverage expense" and an acceptable brief statement is "meeting to discuss campaign issues."

(20) Example: Officeholder X makes food and beverage expenditures for a meeting to discuss officeholder issues. The acceptable category is "food/beverage expense" and an acceptable brief statement is "meeting to discuss officeholder issues."

(21) Example: Candidate/Officeholder X makes food and beverage expenditures for a meeting to discuss campaign and officeholder issues. The acceptable category is "food/beverage expense" and an acceptable brief statement is "meeting to discuss campaign/officeholder issues."

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 15, 2014.

TRD-201400150

Natalia Luna Ashley

Interim Director/Special Counsel

Texas Ethics Commission

Earliest possible date of adoption: March 2, 2014

For further information, please call: (512) 463-5800



TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 43. TUBERCULOSIS

SUBCHAPTER A. CATTLE AND BISON

4 TAC §43.2, §43.7

The Texas Animal Health Commission (commission) proposes an amendment to §43.2, concerning General Requirements, and new §43.7, concerning Authorized Calf Ranch/Authorized Grower Facility, in Chapter 43 which is entitled "Tuberculosis".

The purpose of the amendment to §43.2 is to put in place a recordation requirement for cattle that carry an M-Brand which indicates the animal has resided in Mexico. There are risks associated with Tuberculosis (TB) in roping/rodeo cattle imported from Mexico and the amendment will require that Mexican origin cattle be indicated as such on any certificate of veterinary inspection or test document issued by an accredited veterinarian.

The purpose of the new §43.7 is to aid business continuity through provisions to allow bovine TB-exposed heifers to eventually be returned to the dairy of origin for use as breeding cows and for male calves to reap as close to full value as possible for calves originating from dairy herds under quarantine for TB. This concept may also be utilized for other diseases or conditions in the future as determined appropriate by the commission, even though the initial concept is derived for TB.

An Authorized Calf Ranch is a facility that may feed restricted cattle less than six months of age. An Authorized Grower Facility is a facility that may feed restricted cattle over six months of age. Restricted cattle are classified as such due to potential exposure to TB or other communicable diseases as defined by the commission. These facilities will establish necessary biosecurity protocols, testing standards, and other processes as approved by the commission to provide safeguards against disease spread

while calves are raised for feeding or breeding use in drylot conditions.

The new rule provides for a designation agreement to be recognized as an Authorized Calf Ranch or Authorized Grower Facility indicating that the facility can meet the necessary standards to accept and manage restricted cattle. The agreement will contain standards and procedures which the facility must meet in order to be approved. The agreement will provide for the isolation of restricted animals to prevent contact from any non-restricted animals within the facility through adequate fencing, geographic separation, consideration of pen drainage, and utilization of appropriate cleaning and disinfection processes between use of common facilities such as working chutes or sick pens. The use of common sick pens may also be prohibited. Other necessary protocols will include use of official identification; and maintenance of acceptable recordkeeping requirements, which will include adherence to defined protocols for all animals entering and leaving a facility. The restricted animals will also be subject to testing requirements based on sex and risk of exposure from the herd of origin. The number of TB tests required, as well as who will conduct the testing (commission personnel and/or private veterinarians at owner expense), will be based upon the unique herd risk considerations and level of risk, as determined by the commission.

The new rule provides for creation of an individual herd plan(s) between the approved facility and the commission for the prevention of the spread of TB within a facility. A herd plan will be developed for an authorized calf ranch or an authorized grower facility and will be developed by a Designated Tuberculosis State-Federal epidemiologist in consultation with the owner of the restricted cattle and his veterinarian (if so requested by the owner) and the calf ranch or grower facility management.

The new rule also provides that the approved status must be renewed by the operator every two years, provided the requirements specified in these regulations and the approved agreement continue to be met by the facility. If the Executive Director determines the authorized facility fails to comply with the agreement or these regulations, then he/she can rescind the agreement.

FISCAL NOTE

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. An Economic Impact Statement (EIS) is required if the proposed rules have an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and, therefore, there is no need to do an EIS. The recordation requirements are minimal and focused on accredited veterinarians, and the calf ranch requirements are intended to have risk reduction measures in place that would allow a facility to handle those that are exposed to TB. Implementation of these rules poses no significant fiscal impact on small or micro-businesses, or to individuals

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to protect our livestock industry from exposure to TB by ensuring these animals are properly tested.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

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

STATUTORY AUTHORITY

The amendment and new section are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized through §161.041(b) to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. Pursuant to §161.054 entitled "Regulation of Movement of Animals", the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. Pursuant to §161.048 entitled "Inspection of Shipment of Animals or Animal Products", an agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.0415 entitled "Disposal of Diseased or Exposed Livestock", the commission by order may require the slaughter of livestock, under the direction of the commission, or the sale of livestock for immediate slaughter. Pursuant to §161.044 entitled "Regulation of Livestock Movement from Stockyards or Railway Shipping Pens", the commission may regulate the movement of livestock out of stockyards or railway shipping pens and require treatment or certification of those animals as reasonably necessary to protect against communicable diseases. Pursuant to §161.046 entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter. Pursuant to §161.049 entitled "Dealer Records", the commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. Pursuant to §161.0545 entitled "Movement of Animal Products", the commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body

parts, and waste material. The commission by rule may provide terms and conditions for the issuance, renewal, and revocation of a certification under this section. Pursuant to §161.055 entitled "Slaughter Plant Collection", the commission may require slaughter plants to collect and submit blood samples and other diagnostic specimens for testing for disease.

Pursuant to §161.061 entitled "Establishment", if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals. Pursuant to §161.081 entitled "Importation of Animals", the commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. Pursuant to §161.101 entitled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the diseases, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.113 entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission. Pursuant to §161.114 entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

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

§43.2. *General Requirements.*

(a) Tuberculosis: This subchapter [Subchapter A of this chapter] shall govern procedures for the prevention, surveillance, control, management and eradication of bovine tuberculosis in Texas. For the purpose of controlling and eradicating tuberculosis the following documents are incorporated by reference: The January 1, 2005, Edition of "Bovine Tuberculosis Eradication Uniform Methods and Rules" (UM&R) and the Code of Federal Regulations, Title 9, Parts 71, 77, and 161.

(b) Movement Restrictions: Whenever the Texas Animal Health Commission (Commission) has reason to believe that any livestock or exotic livestock have been exposed to or is infected with tuberculosis, that premises and all livestock and exotic livestock thereon shall have movement restricted, using either a "hold order" or "quarantine," subject to a determination or results of tuberculosis test conducted [conducted] by authorized personnel or as directed by the Designated Tuberculosis Epidemiologist or the Executive Director. Movement of livestock or exotic livestock under movement

restrictions must be authorized by the Designated Tuberculosis Epidemiologist or the Executive Director and accompanied by a written permit. The permit will list:

- (1) the reactor tag number or official ear tag number in the case of reactor, suspect, or exposed livestock;
- (2) the owner's name and address;
- (3) origin and destination locations;
- (4) number of animals covered;
- (5) the purpose of the movement; and
- (6) if the animals are required to be shipped under seal then the permit should also show the number on the seal. If a change in destination becomes necessary, a new permit must be issued by authorized personnel. No diversion from the destination on the permit is allowed.

(c) Official Tests: All official tuberculosis [tuberculosis's] tests shall be conducted by a designated personnel employed by the Commission, or the United States Department of Agriculture (USDA) or by an accredited veterinarian designated to perform approved tuberculosis tests [test] by the Executive Director of the Commission. Each individual designated to conduct official tuberculin tests shall meet a performance standard, as referenced in the UM&R - Appendix C; entitled "Performance Standards for Caudal Fold Tuberculin (CFT) Testing". Each individual authorized to conduct official CFT tests shall be in compliance with these standards for the CFT.

(d) Reporting: All official tests shall be reported on VS Form 6-22 and continuation sheet VS Form 6-22B and mailed to the Commission within seven days of reading the results. The information on the VS Form 6-22B, shall include:

- (1) the official individual identification;
- (2) the name and post office address of the owner;
- (3) the location of the premises and the animals;
- (4) the dates of injection and reading of the test;
- (5) the kind of test conducted;
- (6) the result of the test;
- (7) the reason for testing (i.e., [ie] Herd Accreditation, Sale or Show, Other); and [;]
- (8) the signature and accreditation number of the testing veterinarian.

(e) Identification. All animals tested must be permanently individually identified by an official identification device, an official registration tattoo or an official registration brand as specifically recognized or authorized by the commission.

(f) Tuberculin Test Interpretation, Classification, and Reporting Requirements.

(1) The site of administration of a tuberculin test shall be examined at 72 (+/- 6) hours following injection. Examination shall be made by visual observation and palpation. Observation without palpation shall constitute cause for removal of veterinary accreditation.

(2) Any animal with a visible or palpable response at the site of injection shall be classified as a Suspect by the testing veterinarian.

(3) Any animal classified as a Suspect shall:

(A) be reported by the testing veterinarian to the appropriate Area Office within 48 hours following examination; [;] and

(B) the [The] reporting veterinarian shall inform the owner or caretaker that the herd is restricted from movement until a determination of disease status has been made by the Commission.

(g) Disposition of Suspects and Reactors:

(1) Reactors shall remain on the premise where they were disclosed until a State or Federal permit for movement has been obtained. Movement for immediate slaughter shall be within 15 days of classification and shall be directly to a slaughtering establishment where approved State or Federal inspection is maintained. Alternatively, the animals may be destroyed on the premises or in a postmortem examination facility under the direct supervision of a State or Federal animal health veterinarian to ensure that a proper postmortem examination is conducted; that the carcasses are disposed of by deep burial or burning, and that the facilities are adequately cleaned and disinfected.

(2) Herds containing suspects to the CFT test shall be quarantined until the suspect animals are:

(A) Negative to a CCT test; or

(B) Negative on the bovine interferon gamma assay; or

(C) Shipped, under permit, directly to slaughter in accordance with State and Federal laws and regulations with postmortem examinations conducted according to requirements outlined in paragraph (5) of this subsection.

(3) Suspects to the CCT test must be:

(A) Negative to a CCT retest 60 or more days after the previous CCT injection; or

(B) Shipped under permit directly to slaughter.

(4) Animals positive on the bovine interferon gamma assay and classified as suspect must be:

(A) Negative on a bovine interferon gamma assay retest conducted within 30 days of the CFT injection (the DTE or Regional Tuberculosis Epidemiologist must concur with the retest); or

(B) Shipped, under permit, directly to slaughter for postmortem examination.

(5) Postmortem examinations shall be witnessed by a State or Federal animal health veterinarian and selected tissue specimens, to include any tissue with granulomatous appearing lesions and representative head and thoracic lymph nodes, must be submitted for laboratory examination.

(h) Requirements on Dealer Recordkeeping: Any dealer must maintain records of livestock and exotic livestock that are purchased or sold. Such records shall show the buyer's and seller's name and address, county of origin, number of animals, and a description of each animal, including sex, age, color, breed, brand, and official identification. Records at auctions and commission firms shall show the delivery vehicle license number. These records must be maintained for a minimum of five [(5)] years. Such records must be made available to State or Federal animal health officials, upon request, during normal business hours.

(i) Slaughter Plant Collections and Submissions: Slaughter plants for cattle are required to collect and submit diagnostic specimens for the purpose of testing for tuberculosis as directed by state or federal inspection personnel. The slaughter of cattle shall be conducted so that the carcass and any diagnostic specimens can be identified as being derived from a particular animal. Handling shall include, but is not limited to, the retention of official eartags, official backtags, herd identification ear tags, ear bangles, electronic implants, and other man made identifying devices affixed to the animal, in a way that correctly

relates the diagnostic specimen to the carcass from which it was taken. All identification devices shall be included with the documentation submitted with a diagnostic specimen to an approved laboratory.

(j) Retesting and release of movement restrictions.

(1) Sale of feeder calves from quarantined herds will be restricted. Feeder calves under 12 months of age that have passed a CFT test within 60 days prior to movement may be "S" branded and permitted to move intrastate to an approved feedlot or approved pens in a feedlot.

(2) Herds in which *Mycobacterium bovis* [~~Myceobacterium bovis~~] infection has been confirmed shall be depopulated; or shall remain under quarantine until all requirements of an individual herd plan have been completed in accordance with procedures prescribed in the UM&R.

(3) Herds in which NGL reactor(s) only occur and no evidence of *Mycobacterium bovis* infection has been disclosed may be released from movement restrictions [~~movement restrictions~~] after a 60 day negative retest on the entire herd.

(4) Herds in which Suspect animal(s) are disclosed shall remain under movement restrictions until the Suspect(s) have been retested and classified negative, or are shipped direct to slaughter under permit and no evidence of *Mycobacterium bovis* [~~M. bovis~~] infection is disclosed. If animals are slaughtered as suspects but show no gross lesions and selected tissues, to include representative head and thoracic lymph nodes, are found negative on histopathology and bacteriological culture for *Mycobacterium bovis* [~~M. bovis~~] and a complete epidemiologic investigation, including a herd test of all eligible animals, fails to disclose evidence of infection with or exposure to bovine tuberculosis, the herd, with the concurrence of the DTE and Regional Tuberculosis Epidemiologist, may be considered free of bovine tuberculosis.

(k) A person may protest an initial test or a herd plan each herd classified as increased risk for Tuberculosis:

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

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

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

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

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

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

(4) If the Executive Director determines, based on epidemiological principles, that immediate action is necessary, the Executive Director may shorten the time limits to not less than five days. The herd owner must be provided with written notice of any time limits so shortened.

(l) Tuberculosis accredited herd. A herd must meet the standards of the UM&R [Uniform Methods and Rules (UM&R)] as provided in Part IV.

(m) Interstate Movement Requirements: See §51.8 of this title (relating to Cattle).

(n) Intrastate Movement of Dairy Cattle. All dairy cattle being transported within Texas shall be identified prior to movement with official identification device or identification device approved by the commission.

(o) Requirements for cattle originating from Mexico: Any certificate, form, record, report or chart issued by an authorized person for cattle that originate from Mexico, have resided in Mexico or are "M" branded shall include the statement, "the cattle represented on this document are of Mexican origin."

§43.7. Authorized Calf Ranch/Authorized Grower Facility.

(a) Definitions:

(1) Authorized Calf Ranch--A facility that is approved by the Executive Director of the commission for the feeding of restricted cattle under six months of age.

(2) Authorized Grower Facility--A facility that is approved by the Executive Director of the commission for feeding restricted cattle that are being raised for breeding or feeding purposes in drylot conditions over six months of age.

(3) Restricted animals--Animals determined to be exposed or at risk of exposure to diseases or conditions of regulatory interest as defined by the commission.

(b) Designation To Handle Restricted Animals. A facility that is feeding or raising calves that are classified as restricted. This facility has the necessary protocols and testing standards in place to provide for minimal risk of disease spread while allowing for the designated cattle upon completion of the herd plan to move in commerce for their intended use.

(c) Designation Agreement. In order to be recognized as an Authorized Calf Ranch or Authorized Grower Facility, there shall be a signed designation agreement with the commission indicating that the facility can meet the necessary standards to accept restricted cattle. The agreement will contain standards including, but not limited to, provisions for isolation of animals through geographic separation, adequate fencing, consideration of drainage, use of official identification, biosecurity standards, testing protocols, recordkeeping requirements, and adherence with all movement restrictions for animals entering and leaving a facility.

(d) Individual Herd Plan(s) for Prevention of Tuberculosis. The plan is developed between the authorized calf ranch/authorized grower facility, the owner of the cattle, and the commission. The plan shall be developed by a Designated Tuberculosis State-Federal epidemiologist (DTE) representing the commission to consider all necessary standards and procedures.

(e) Standards and Procedures:

(1) Geographic separation. Adequate isolation of animals to prevent the spread of disease as determined by a DTE.

(2) Official identification. All animals entering and leaving the facility must be officially identified and that information is to be recorded and maintained as required by paragraph (4) of this subsection.

(3) Biosecurity standards. Biosecurity standards for Authorized Calf Ranches and Authorized Grower Facilities will be de-

terminated by the commission upon consultation with calf ranch management and herd owner, based upon generally accepted disease prevention principles, and any unique disease risk considerations of the individual herd. Approved facilities may be required to be cleaned and disinfected between use by different groups of cattle. Vacation of facilities may also be required in certain situations where TB has been detected in the lot or as directed by a DTE.

(4) Recordkeeping requirements. An approved facility shall maintain records for five years which indicate:

(A) Animal Owner/Operator's name and address;

(B) Number of animals;

(C) Description of each animal including sex, age, breed and official identification, date of entry into the facility, and date the animals are shipped from the facility, as well as correlating identification any retagged animals;

(D) Origin and destination of the animals;

(E) Records on waste milk feed to calves, including source and pasteurization status; and

(F) Records for pasteurization of milk, including method, time, and temperature.

(f) Renewal/Revocation. The approved status must be renewed by the operator every two years provided that the requirements specified in this section and the approved agreement continue to be met by the authorized facility. If the Executive Director determines the authorized facility has failed to comply with the agreement, the status may be revoked.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: March 2, 2014

For further information, please call: (512) 719-0724



CHAPTER 49. EQUINE

4 TAC §49.5

The Texas Animal Health Commission (commission) proposes amendments to §49.5, concerning Piroplasmosis: Testing, Identification of Infected Equine, in Chapter 49 which is entitled "Equine". The purpose of the amendments is to require animals known to be reactors for Equine Piroplasmosis (EP) to be implanted with a radio frequency microchip identification device.

EP is a tick-borne protozoal infection of horses. At least one tick species, *Amblyomma cajennense*, has proven capable of transmitting the blood parasite. This species of tick is endemic to South Texas and several other southern states. Also, the disease may be spread between horses by unsafe animal husbandry practices such as sharing needles or equipment that is contaminated with EP positive blood. While EP can be a fatal

disease, many horses may display vague signs of illness, such as fever, inappetence or jaundice.

In the past, EP infected animals were required to be quarantined or euthanized. Through research, a treatment protocol has been developed that can clear the infection and allow the quarantine to be released for those successfully treated animals. However, because EP positive animals can potentially expose any equine that unknowingly associates with the positive equine, the commission believes it is prudent to require an EP reactor to be implanted with a radio frequency microchip identification device that provides unique identification for each individual animal. The commission also believes it is reasonable to require EP reactors to have a second form of identification. In addition to existing forms of identification (e.g., brands, tattoos, and other identification devices) the commission may permit EP reactors to be identified by digital photographs that are sufficient to identify the individual equine.

FISCAL NOTE

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

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to protect the livestock industry, specifically Equidae (horses, donkeys, mules and zebras), from exposure to EP by ensuring EP reactors are permanently identified.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

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

STATUTORY AUTHORITY

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

H.B. 2311 was passed during the 83rd Texas Legislative Session and amends §161.056. Section 161.056(a) authorizes the commission, in order to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, to develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the commission to by a two-thirds vote adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.046 entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.048 entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.054 entitled "Regulation of Movement of Animals", the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.081 entitled "Importation of Animals", the commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

Pursuant to §161.101 entitled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the diseases, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.113 entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. If the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

Pursuant to §161.114 entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock

are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

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

§49.5. *Piroplasmosis: Testing, Identification of Infected Equine.*

(a) Official Equine Piroplasmosis [Pirop~~l~~am~~o~~s~~i~~s] Test: A test for Equine Piroplasmosis applied and reported by a laboratory approved by the Commission. The sample must be collected by or under the direct supervision of an accredited veterinarian. A completed Equine Piroplasmosis Laboratory Test chart (Form 10-07) must be submitted with the sample, listing the description of the equine to include the following: age, breed, color, sex, animal's name, and all distinctive markings (i.e., color patterns, brands, tattoos, scars, or blemishes), and any RFID numbers applied to the equine [~~animal~~]. In the absence of any distinctive color markings or any form of visible permanent identification (brands, tattoos or scars), the equine [~~animal~~] must be identified by indicating the location of all hair whorls, vortices or cowlicks with an "X" on the illustration provided on the chart. In [~~It~~] lieu of the manual illustration, digital photographs clearly showing the equine [~~horse~~] from the left side, right side, and full face may be incorporated in the chart. All charts must list owner's name, address, the equine's [~~animal's~~] home premises [~~premise~~] and county, the name and address of the authorized individual collecting the test sample, and laboratory and individual conducting the test. The Piroplasmosis test document shall list one equine [~~horse~~] only.

(b) Reactor. A reactor is any equine which discloses a positive reaction for Piroplasmosis on a Complement [Compliment] Fixation (CF) or competitive Enzyme Linked Immunosorbent Assay (cELISA) applied at a laboratory approved by the Commission. The individual collecting the test sample must notify the equine's [~~animal's~~] owner of the quarantine within 48 hours after receiving the results. Movement of all [AH] Piroplasmosis positive equine and all equine epidemiologically determined to have been exposed to a Piroplasmosis positive equine [~~animals~~] will be restricted. Retests of a reactor may only be performed by a representative of the Commission.

(c) Official Identification of Reactors [Equine Positive for Piroplasmosis].

(1) A reactor must be identified with an implanted radio frequency microchip identification device that provides unique identification for each individual equine and complies with ISO 11784/11785 and one [or both] of the following methods as determined by the Commission:

(A) [(+)] The reactor equine may be identified with a permanent mark as described herein or as approved by the Commission. If branded the letter "P" will be applied [by a representative of the Texas Animal Health Commission] as a hot-iron brand, [or] freeze-marking brand or a hoof brand. For a Freeze or Hot-Iron brand the "P" brand must be not less than two inches high and shall be applied to the left shoulder or left [or right] side of the neck of the reactor. For a hoof brand the "P" brand must be applied to the front left [right] hoof and reapplied [by a Commission representative] as necessary to maintain visibility; [Reactors must be identified within ten (10) days of the date the laboratory completes the test unless the equine is destroyed. Any equine destroyed prior to identification must be described in a written statement by the accredited veterinarian or other authorized personnel certifying to the destruction. This certification must be submitted to the Texas Animal Health Commission promptly; or]

(B) [(2)] Using an official identification or identification device or a unique tattoo, approved by the Commission, that provides unique identification for each individual equine; or [~~animal~~].

(C) Using digital photographs sufficient to identify the individual equine.

(2) Reactors must be identified by an accredited veterinarian or representative of the Commission within ten days of the equine being classified as a reactor by the Commission. Any equine destroyed prior to identification must be described in a written statement by the accredited veterinarian or other authorized personnel certifying to the destruction. The description must be sufficient to identify the individual equine including, but not limited to, name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (e.g., brands, tattoos, scars, cowlicks, blemishes or biometric measurements). This certification must be submitted to the Commission within ten days of the date the equine is destroyed.

(d) Equine entering a racetrack facility must have a negative Piroplasmosis test (*Theileria equi*) within the past 12 months. A race-track facility is grounds used to conduct organized horse racing.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2014.

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Gene Snelson

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0724



CHAPTER 54. DOMESTIC AND EXOTIC FOWL REGISTRATION

4 TAC §54.9

The Texas Animal Health Commission (commission) proposes amendments to §54.9, concerning Live Bird Marketing System, in Chapter 54 which is entitled "Domestic and Exotic Fowl Registration". The purpose of the amendments is to address concerns regarding potential disease exposure associated with unconfined fowl.

The Fowl Registration Program was created to register domestic and exotic fowl sellers, distributors, or transporters who do not participate in disease surveillance programs recognized by the commission. The primary purpose of the program is to ensure that the various types of fowl being sold or transported throughout this state do not pose a disease risk which could devastate the various Texas fowl industries. Over the years Texas has experienced problems with several diseases which can be carried by the various types of fowl, some of which are not clinically affected by the disease.

The rule is being amended to put in place a requirement focused on an area of concern for disease exposure within the live bird marketing system. These fowl may share a communal water supply with wild bird populations which may be a potential disease source. As such, the rule is being amended to improve and clarify existing biosecurity protocols. Section 54.9(c)(4), as proposed, will require fowl to be confined in a cage, pen or other structure in order to provide a physical barrier at all times so as to keep the fowl separate and apart from all other fowl of in-

fect, exposed or unknown health status and to limit exposure to wild bird populations. It is important that all participating facilities understand that biosecurity protocols include this important element for preventing the spread of disease and for protecting animal health in this state.

In addition to the biosecurity change, §54.9(g) is being amended to correctly identify the section that addresses violations of the live bird marketing system rules as §54.8.

FISCAL NOTE

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rule. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and, therefore, there is no need to do an EIS. Implementation of this rule poses no significant fiscal impact on small or micro-businesses. There are no anticipated costs to persons who are required to comply with the rule as proposed.

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to protect the public and fowl industries from potential disease exposure associated with unconfined fowl and wild bird populations.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

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

STATUTORY AUTHORITY

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

those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That is under §161.002.

Section 161.007 provides that if a veterinarian employed by the commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the commission. Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice, signed under that authority has the same force and effect as if signed by the entire commission.

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

§54.9. Live Bird Marketing System.

(a) Registration/Licensing. Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors shall submit:

(1) An application including:

(A) Business name and Owner name, address, and telephone number;

(B) Hours of operation;

(C) Bird capacity, which is based on the maximum number of fowl during the previous 12 [~~twelve~~ (~~+2~~)] months, being owned or managed by the registrant at any one time;

(D) Other businesses under the same ownership in the LBM system, including other dealerships, bird transportation businesses, and commercial poultry operations;

(E) A list of all avian and non-avian species distributed; and

(F) NAIS unique premises identification number.

(2) An annual registration fee as provided in §54.4 of this title (relating to Registration Fee).

(b) Record Keeping. Requirements for Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors:

(1) Are responsible for verifying bird identification, using PIN or Lot identification and maintaining identification and obtaining and maintaining documentation of test-negative status of all birds at the time of their receipt. If records do not accompany the shipment the management is prohibited from allowing those fowl to enter the premises.

(2) Records for avian species shall include the date of entry into a LBM, the premises-of-origin identification number, with lot identifier; the number and species of birds in the lot; the distributor license number; the date of sale and a copy of the negative test results for the source flock.

(3) These records must be maintained for a minimum of two [~~2~~] years. Such records must be made available to State or Federal animal health officials, upon request, during normal business hours.

(c) Biosecurity. Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors shall:

(1) Develop and follow a biosecurity protocol approved by the Commission. This protocol shall include standards for cleaning & disinfecting (C&D) of facilities, conveyances, and equipment. This protocol shall also call for management practices and physical barriers that prevent migratory water fowl from accessing any water supply being used by or shared with the fowl at the facility.

(2) Train all personnel that work for the company in biosecurity by State or Federal personnel or by a trained company representative. Certification of employee training must be maintained in the personnel files for a minimum of two [~~2~~] years. Such records must be made available to State or Federal animal health officials, upon request, during normal business hours.

(3) Once delivered to a market, birds must be slaughtered and processed before leaving the facility, unless otherwise provided for in the biosecurity protocol.

(4) Confine domestic and exotic fowl in a cage, pen or other structure in order to provide a physical barrier at all times so as to keep the fowl separate and apart from all other fowl of infected, exposed or unknown health status and to limit exposure to wild bird populations.

(d) Inspections.

(1) The Commission may make inspections of any facilities, conveyances, and equipment and the domestic or exotic fowl therein and review records to ensure compliance with the requirements of the fowl registration program.

(2) Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors shall allow State and/or Federal animal health officials to have access to records upon request and to permit official inspections and testing of birds, premises, vehicles, and equipment as deemed appropriate by the Commission.

(3) Indication or evidence that paperwork received has been altered or that it misrepresents the sources or test status of birds coming into the LBM, the LBMS, or distributor must be reported to a Federal or State animal health official.

(e) Avian Influenza Test Requirements. All domestic fowl in a Live Bird Marketing System shall participate in testing for avian influenza virus which shall include but is not limited to using AGID on serum or egg yolk samples from gallinaceous birds, RRT-PCR on tracheal swabs from gallinaceous birds, or virus isolation on cloacal swabs from waterfowl and other birds:

(1) Live Bird Markets and Live Bird Marketing System distributors shall be tested:

(A) at least quarterly; and

(B) may include live birds, environment, conveyances, and crates.

(2) All birds provided to a distributor or directly to the LBM must originate from an avian influenza negative flock and must bear or be accompanied by identification to a premises of origin. The categories of production units and the testing requirements for each category are as follows:

(A) AI-monitored flock: This is a flock that is tested monthly for AI for at least 3 months using AGID on serum or egg yolk samples from gallinaceous birds, RRT-PCR on tracheal swabs from gallinaceous birds, or virus isolation on cloacal swabs from waterfowl and other birds. At least 30 birds per flock are tested monthly by an approved laboratory.

(B) Established flock: This is a flock that has been maintained together for at least 21 days prior to sample collection with no additions to the flock. For an established flock to qualify for the first shipment into the LBM system or to requalify after any breaks in the monthly sample-testing regimen, 30 birds must be tested by AGID or other approved procedure within 10 days prior to movement.

(C) Commingled flock: This is a group of poultry from multiple sources that has been assembled for one or more shipments. When untested birds are added to the flock, previous test reports are void and the flock must requalify as an established flock by waiting 21 days before resampling, and then following the protocol as for a nonmonitored flock.

(D) Nonmonitored flock: This is a flock that has not been on a program of monthly testing for at least 3 months. To qualify for sale in the LBM system, 30 birds in a nonmonitored flock must have been tested within 10 days of movement.

(f) Infected flock. Any Live Bird Marketing System flock where fowl are positive on virus isolation or RRT-PCR for a disease reportable to the Commission under Chapter 45 of this title (relating to Reportable Diseases):

(1) Any specimens positive for virus will be submitted to the NVSL for virus isolation and characterization. The premises will be movement restricted by a hold order until results are obtained from the NVSL.

(2) Infected flocks will be placed under quarantine, the fowl depopulated, and the facility cleaned and disinfected unless an alternate approach to disease elimination is approved by the Commission. No new fowl may be added to the quarantined flock unless approved by the Commission. A flock plan shall be developed between the flock owner and the Commission addressing the length of time the facility is to remain vacant of fowl, the testing schedule following repopulation, and other details germane to the management of the flock and elimination of disease.

(3) RRT-PCR or VI positives at LBMs and distribution facilities will result in trace-backs to a supplier of origin by State or Federal personnel in the State of origin.

(g) Violations of these requirements will be handled as provided in §54.8 [§54.4] of this title (relating to Enforcement).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2014.

TRD-201400176

Gene Snelson
General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: March 2, 2014

For further information, please call: (512) 719-0724



TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.14

The Texas State Securities Board proposes an amendment to §113.14, concerning Statements of Policy. The amendment would adopt by reference certain updated North American Securities Administrators Association ("NASAA") statements of policy ("SOPs") that were amended on May 6, 2012. These SOPs include cross-reference sheets and the 2012 amendment revised the cross-reference sheets to correspond to earlier changes in the SOPs.

Patricia Louthierback, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Louthierback also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that review of applications to register securities will be facilitated by having the cross-reference sheets correspond to the uniform SOPs used in this and other states. There will be no effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed amendment in the *Texas Register*. Comments should be sent to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or sent by facsimile to (512) 305-8336.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Article 581-7.

§113.14. *Statements of Policy.*

(a) (No change.)

(b) In order to promote uniform regulation, the following NASAA Statements of Policy shall apply to the registration of securities:

(1) - (13) (No change.)

(14) Oil and Gas Programs, as amended by NASAA on May 6, 2012 [7, 2007];

(15) Asset-backed Securities, as amended by NASAA on May 6, 2012 [7, 2007];

(16) Equipment Programs, as amended by NASAA on May 6, 2012 [7, 2007];

(17) - (19) (No change.)

(20) Registration of Commodity Pool Programs, as amended by NASAA on May 6, 2012 [7, 2007].

(c) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 16, 2014.

TRD-201400159

John Morgan

Securities Commissioner

State Securities Board

Earliest possible date of adoption: March 2, 2014

For further information, please call: (512) 305-8303



TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 123. MEDIA PRODUCTION DEVELOPMENT ZONES

13 TAC §§123.1 - 123.10

The Texas Film Commission ("TFC") proposes new 13 TAC Chapter 123, §§123.1 - 123.10, regarding Media Production Development Zones. The purpose of the rules is to provide the process for property owners to request a sales, excise and use tax exemption under the Media Production Development Zone Act. The proposed rules provide: applicable definitions, a process whereby a written request may be made, the required contents of the request, for submission and review of the request to and by a local government body, and for review by the TFC of an exemption application made by a local government on behalf of a requestor.

Heather Page, Director of the TFC, has determined for the first five-year period there will be no fiscal implications for state or to local governments as a result of enforcing or administering proposed rules. There will be no impact on small businesses or microbusinesses.

Ms. Page has also determined that the public benefit anticipated as a result of the proposed rules is increased development of media production facilities in the state, and increased economic impact of the media production industry. Other than compliance

costs to requestors required to furnish an economic impact analysis, no economic costs are anticipated to persons who are required to comply with the proposed new rules.

Written comments on the proposed new rules may be hand delivered to the Office of the Governor, General Counsel Division, 1100 San Jacinto, Austin, Texas 78701, mailed to P.O. Box 12428, Austin, Texas 78711-2428, or faxed to (512) 463-1932, or emailed to david.zimmerman@gov.texas.gov, and should be addressed to the attention of David Zimmerman, Assistant General Counsel. Comments must be received within 30 days of publication of the proposal in the *Texas Register*.

The new rules are proposed pursuant to the Texas Government Code, §485A.052, which directs the TFC to develop rules necessary to implement the Media Production Development Zone Act.

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

§123.1. Short Title, Background, and Purpose.

(a) Short title. The program contemplated by this chapter may be referred to as the Production Facilities Incentive.

(b) Background. The Texas Media Production Development Zone Act offers exemptions to the Limited Sales, Excise, and Use Taxes to qualified persons who build, construct, renovate, improve, or expand a media production facility within the state.

(c) Purpose. The Texas Media Production Development Zone Act was enacted to maintain and strengthen the media production industry in Texas in the face of strong competition from other states. Soundstages and other production facilities would be key assets in this effort.

§123.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in Texas Government Code, Chapter 485A, and not defined in this chapter shall have the meanings provided by Texas Government Code, Chapter 485A.

(1) Act--The Media Production Development Zone Act, Texas Government Code, Chapter 485A.

(2) Comptroller--The Texas Comptroller of Public Accounts or the designated representative acting on behalf of the Comptroller.

(3) MPDZ Exemption--The exemption of certain property from sales, excise, and use taxes pursuant to the Act and Texas Tax Code, §151.3415.

(4) Metropolitan Statistical Area--An area of the state described on the State Metropolitan Statistical Area Reference Table, as maintained by the Texas State Data Center, University of Texas at San Antonio.

(5) Nominating Body--The governing body of a municipality or county, as defined in the Act.

(6) Requestor--The title holder of real property, or the leaseholder in a written, non-residential, real property lease with at least four years remaining in the current lease term, on or in which a media production location is proposed.

(7) Region--For the purposes of §485A.103(d) of the Act, a grouping of counties described on the Comptroller Economic Region table, as maintained by the Texas State Data Center, University of Texas at San Antonio.

§123.3. Request for MPDZ Exemption.

(a) A Requestor who desires a MPDZ Exemption shall submit a written request to the Nominating Body having jurisdiction over the proposed media production location.

(b) A completed request shall include:

(1) a current Request for Exemption form from the Texas Film Commission ("TFC") website, filled out completely and signed by an authorized representative of Requestor;

(2) a specific and detailed description of the project;

(3) a site plan for the proposed media production location;

(4) a floor plan for the proposed media production facility;

(5) an itemized budget for the project;

(6) a schedule of media production equipment (as opposed to physical plant equipment and fixtures) to be bought, rented, or leased for use specifically and exclusively in the proposed media production facility;

(7) an economic impact analysis, in the form specified in §123.7 of this chapter;

(8) a financial statement and background information on Requestor;

(9) such other written documents on which Requestor relies to qualify for and obtain a MPDZ Exemption; and

(10) such other written documents containing information reasonably requested by the Nominating Body, the TFC, or the Comptroller which shall be provided within 20 days of the date of the request. The TFC may, for good cause, allow additional time to comply with a request.

(c) The request contents shall be provided in the following formats:

(1) one original hard copy of the complete request in a three ring binder with tabs separating each section of the documents submitted; and

(2) one electronically digitized copy formatted in searchable portable document format (PDF) or other format acceptable to the office.

(d) The request shall be submitted in any manner acceptable to the Nominating Body.

§123.4. Request Review by Nominating Body.

(a) Within 7 days of receipt of a request for MPDZ Exemption, the Nominating Body shall deliver to the Texas Film Commission ("TFC") a digitized copy of the request.

(b) If the Nominating Body determines that the Requestor has submitted a complete request and, by official action, decides to consider that request, the Nominating Body shall provide written notice to the Requestor and to the TFC that includes:

(1) a statement that the Nominating Body has received and will be considering a completed request; and

(2) the date on which the request was received.

(c) In reviewing a request, the Nominating Body shall consider:

(1) whether the proposed media production location meets the requirements of the Act;

(2) whether the Requestor has the ability and financial wherewithal to successfully complete the building, constructing, renovating, or expanding of the proposed media production facility within 18 months from certification as a qualified person under §123.6(f)(1) of this chapter; and

(3) whether the proposed financial incentives are in the best interest of the Nominating Body and this state.

(d) Within 90 days of deciding to consider a completed request, the Nominating Body shall either:

(1) adopt a written ordinance or order nominating the proposed media production location which shall include:

(A) written findings as to each criterion listed in §485A.102 of the Act;

(B) written information as listed in §485A.105 of the Act;

(C) a determination that granting the MPDZ Exemption is in the best interest of the Nominating Body and this state; and

(D) designate and direct a representative of the Nominating Body to execute an Application for Exemption pursuant to §485A.106 of the Act and submit same to the TFC;

(2) deny the request; or

(3) take no official action and the request shall be considered denied on the 91st day after the request consideration start date.

(e) A Nominating Body may, for good cause and upon written notice to the Requestor with a copy to the TFC, take more than 90 days to consider a request under subsection (d) of this section.

(f) If not previously recognized, the Nominating Body at the same time shall also adopt a written ordinance or order recognizing the media production development zone in which a location nominated under subsection (d)(1) of this section is located. This ordinance or order shall include:

(1) a precise description of the zone by a legal description or reference to municipal or county boundaries;

(2) written findings as to each criterion listed in §485A.101 of the Act; and

(3) a determination that recognizing the zone is in the best interest of the Nominating Body and the state.

§123.5. Application for MPDZ Exemption.

(a) A Nominating Body that has recognized a zone, nominated a location, and certified a person for the purposes of a MPDZ Exemption shall submit a written application to the Texas Film Commission ("TFC").

(b) A completed application shall include:

(1) the current Application for Exemption form from the TFC website, filled out completely and signed by an authorized representative of Nominating Body, with all specified attachments; and

(2) such other written documents containing information reasonably requested by the TFC or the Comptroller which shall be provided within 20 days of the date of the request. TFC or Comptroller may, for good cause, allow additional time to comply with a request.

(c) The application contents shall be provided in the following formats:

(1) one original hard copy of the complete application in a three ring binder with tabs separating each section of the documents submitted; and

(2) one electronically digitized copy formatted in searchable portable document format (PDF) or other format acceptable to the TFC.

(d) The application shall be submitted in any manner acceptable to the TFC.

§123.6. Application Review.

(a) Upon receipt of an Application for MPDZ Exemption from a Nominating Body, the Texas Film Commission ("TFC") shall review the application to determine:

(1) whether the application is complete in accordance with §485A.106 of the Act and with the provisions of this chapter;

(2) whether the nominated location qualifies for designation as a media production location; and

(3) if not previously reviewed, whether the recognized zone qualifies for approval as a media production development zone.

(b) The TFC shall provide to the Nominating Body written notice that either:

(1) the application is complete and is being considered; or

(2) the application is incomplete and is being returned to the Nominating Body for remediation.

(c) Upon acceptance of an application for consideration, the TFC shall deliver to the Comptroller's office:

(1) a digitized copy of the Requestor's request;

(2) a digitized copy of Nominating Body's application; and

(3) a request for certification as to whether the proposed project will have a positive impact on state revenue.

(d) Within 30 days of receipt of the items in subsection (c) of this section, the Comptroller's office shall provide in writing to the TFC certification as to whether the proposed project will have a positive impact on state revenue. Should the Comptroller's office request additional information from the Requestor or the Nominating Body, the time it takes a party to provide the additional information shall not count toward the 30 days.

(e) Upon receipt of certification of positive state revenue impact from the Comptroller's office, the TFC shall call a meeting of the Media Production Advisory Committee to, as soon as practicable:

(1) review the Requestor's request, the Nominating Body's application and the Comptroller's certification; and

(2) provide a written recommendation to the TFC with respect to the pending application.

(f) If the TFC approves an application, it shall provide to the Requestor, with a copy to the Nominating Body, a letter indicating:

(1) certification of the Requestor as a qualified person;

(2) approval granting the MPDZ Exemption to the qualified person; and

(3) the expiration date for such exemption.

(g) If the TFC approves an application, it shall, as needed, simultaneously approve the project's recognized zone as a media production development zone, and designate the project's nominated location

as a qualified media program location. It shall communicate these actions in writing to the Nominating Body and the Requestor.

(h) If the TFC denies an application, it shall provide written notification to the Nominating Body and the Requestor.

§123.7. Economic Impact Analysis.

(a) The economic impact analysis shall be conducted at the Requestor's sole expense by an economic expert; that is, a person with specialized knowledge, skill, experience, training, or education in the subjects of economics and state and local taxation.

(b) The economic impact analysis shall be presented in the form promulgated by the Comptroller's office and must include:

(1) an estimate of the amount of revenue to be generated to the state by the project or activity;

(2) an estimate of any secondary economic benefits to be generated by the project or activity;

(3) an estimate of the amount of state taxes to be exempted, as provided by Texas Tax Code, §151.3415; and

(4) any other information required by the Comptroller for purposes of making the certification required by §485A.109(b) of the Act.

§123.8. Reports by Texas Film Commission.

(a) In order to fulfill its statutory obligation under the Act, the Texas Film Commission ("TFC") may request information from any qualified person, Nominating Body, appraisal district, or any other relevant source.

(b) The entities receiving a request from the TFC under this section shall provide the information requested in the form and in the manner designated by the TFC.

§123.9. Media Production Advisory Committee.

(a) Purpose. Created pursuant to §485A.107 of the Act, the Media Production Advisory Committee ("MPAC") reviews applications submitted to the Texas Film Commission ("TFC") under the Act. The advice and recommendations expressed by the MPAC provide the TFC and the Comptroller's office with a broader perspective regarding media production matters that will be considered in determining whether to approve an application.

(b) Tasks. The MPAC shall:

(1) review each application for designation of qualified media production locations eligible to be certified under the Act, and make a recommendation to the TFC with respect to those applications; and

(2) perform other duties as determined by the TFC.

(c) Reporting requirements. The MPAC will report to the TFC by way of consultation at called meetings; no formal reports, other than the committee's written recommendation on an application, are required unless requested by the director of the TFC.

(d) Independence. Each MPAC member shall in fact and in appearance be independent of any media production location, facility, or qualified person who has been nominated, recognized, qualified, or certified under the provisions of the Act and this chapter.

(1) A MPAC member lacks independence *prima facie* if such member, or any member of his or her immediate family, with regard to any media production location, facility, qualified person, or Requestor:

(A) has any direct or material indirect financial interest;

or

(B) is employed by or affiliated with as a director, officer, manager, or consultant.

(2) If an MPAC member lacks independence, that member must be recused from any meeting about such location, facility, qualified person, or Requestor and may not hear, discuss, deliberate on, or vote on the determination of the recommendation thereon.

§123.10. Miscellaneous Provisions.

(a) Not every application will qualify for a MPDZ Exemption. The Texas Film Commission ("TFC") is not required to act on or approve any application. All decisions by the TFC are final and not subject to review.

(b) If the Comptroller receives written notice from the Nominating Body or the TFC that a qualified person was not entitled to a MPDZ Exemption or was entitled to a lesser amount than an approved application received, the Comptroller shall investigate that determination and provide a written response to the Nominating Body that concludes either that the approved application may have or may not have received unauthorized tax exemptions. If the Nominating Body and the Comptroller agree that an approved application may not have been entitled to a tax exemption, they shall promptly notify the qualified person, the appropriate taxing authorities, and the TFC.

(c) The TFC division of the Office of the Governor is a state agency and must comply with the Texas Public Information Act ("PIA"). In the event that a public information request related to the Requestor and/or an application is submitted to the agency, the Office of the Governor will promptly notify the Requestor of the request if current contact information is available, take all appropriate actions with the Attorney General of Texas to prevent release of confidential information, including asserting exemptions under the PIA, and provide the Requestor with full information and opportunity to participate in such process if current contact information is available.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 16, 2014.

TRD-201400167

David Zimmerman

Assistant General Counsel

Texas Film Commission

Earliest possible date of adoption: March 2, 2014

For further information, please call: (512) 936-0181



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING INSTRUCTIONAL MATERIALS ALLOTMENT

19 TAC §§66.1301, 66.1307, 66.1309, 66.1311, 66.1313, 66.1325, 66.1327

The Texas Education Agency (TEA) proposes amendments to §§66.1301, 66.1307, 66.1309, 66.1311, and 66.1313 and new §66.1325 and §66.1327, concerning state adoption and distribution of instructional materials. The sections address provisions relating to the instructional materials allotment. The proposed amendments and new sections would implement the requirements of the Texas Education Code (TEC), Chapter 31, as amended by Senate Bill (SB) 6, 82nd Texas Legislature, First Called Session, 2011, and House Bill (HB) 5, 83rd Texas Legislature, Regular Session, 2013.

SB 6, 82nd Texas Legislature, 2011, requires the commissioner to provide funds from the instructional materials fund to every school district, open-enrollment charter school, and alternative school. The funds can be used to acquire instructional materials, technological equipment, and technology services. HB 5, 83rd Texas Legislature, 2013, made modifications relating to the use of the instructional materials allotment, including requirements for new purchase and payment options.

Proposed revisions to 19 TAC Chapter 66, Subchapter DD, would clarify prohibitions related to the use of the instructional materials allotment; outline calculations for enrollment growth; change references from "Braille and large type" to "specialized instructional material formats" for students who are blind or visually impaired and provide more specifications for specialized instructional material formats, including accessibility requirements; and add definitions for specialized instructional material format and computerized files. The proposed revisions would also add a new section regarding reimbursement of funds to local education agencies and a new section explaining the delayed publisher payment option.

The proposed amendments and new sections would have no new procedural and reporting implications. The proposed amendments and new sections would have no new locally maintained paperwork requirements. All reporting requirements will be incorporated into the Educational Materials (EMAT) system.

Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the amendments 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 amendments and new sections.

Ms. Martinez has determined that for each year of the first five years the amendments and new sections are in effect the public benefit anticipated as a result of enforcing the amendments and new sections would be clarification of options for the acquisition of instructional materials, technological equipment, and technology services to support instruction for all students. There is no anticipated economic cost to persons who are required to comply with the proposed amendments 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 January 31, 2014, and ends March 3, 2014. 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 January 31, 2014.

The amendments and new sections are proposed under the Texas Education Code (TEC), §31.0211, which authorizes the commissioner to adopt rules as necessary to implement the instructional materials allotment; §31.0214, which authorizes the commissioner to adopt rules as necessary to implement adjustments for high enrollment growth districts; §31.0215, which authorizes the commissioner to adopt rules to implement instructional material allotment purchases; §31.028, which authorizes the commissioner to purchase instructional materials for the education of blind and visually impaired students in public schools; and §31.029, which authorizes the commissioner to adopt rules regarding the purchase of bilingual instructional materials.

The amendments and new sections implement the TEC, §§31.0211, 31.0214, 31.0215, 31.028, and 31.029.

§66.1301. *Definitions.*

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

(1) Computerized files--Files that conform with National Instructional Materials Accessibility Standards.

(2) ~~[(4)]~~ Disbursement--A request made through the Texas Education Agency online ordering system for funds for non-adopted instructional materials, technological equipment, and/or technology services.

(3) ~~[(2)]~~ Educational Materials (EMAT) system--The Texas Education Agency online ordering system through which school districts, open-enrollment charter schools, and juvenile justice alternative education programs submit requisitions for instructional materials and requests for disbursement.

(4) ~~[(3)]~~ Instructional materials--Content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book; supplementary materials; a combination of a book, workbook, and supplementary materials; computer software; magnetic media; DVD; CD-ROM; computer courseware; online services; or an electronic medium or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open-source instructional materials.

(5) ~~[(4)]~~ Instructional materials allotment (IMA)--A specified enrollment-based amount of funds set aside from the state instructional materials fund, as determined by the commissioner in accordance with the Texas Education Code, §31.0211, allocated each school year to every Texas school district, open-enrollment charter school, and juvenile justice alternative education program.

(6) ~~[(5)]~~ Juvenile justice alternative education program (JJAEP)--A juvenile justice alternative education program established under the Texas Education Code, §37.011.

(7) ~~[(6)]~~ Open-source instructional materials--Electronic instructional materials that are available for downloading from the Internet at no charge to a student and without requiring the purchase of an unlock code, membership, or other access or use charge, except for a charge to order an optional printed copy of all or part of the instructional materials.

(8) ~~[(7)]~~ Publisher--Any developer or distributor of instructional materials or online service.

(9) ~~[(8)]~~ Requisition--A request made through the Texas Education Agency online ordering system for State Board of Education or commissioner of education adopted instructional materials.

(10) Specialized instructional material format--Any form of published material converted into an alternative medium that is exclusively for use by blind or other persons with disabilities, as authorized by the Vocational-Rehabilitation Act and the Americans with Disabilities Act.

~~[(9)]~~ Special instructional materials--Instructional materials in Braille, large type, or any other medium or any apparatus intended for students who are blind or visually impaired that convey information to students or otherwise contribute to the learning process.]

(11) ~~[(10)]~~ Technological equipment--Hardware, device, or equipment necessary for instructional use in the classroom, including to gain access to or enhance the use of electronic instructional materials, or for professional use by a classroom teacher.

§66.1307. *Instructional Materials Allotment.*

(a) The commissioner of education shall determine the amount of the instructional materials allotment for a school district or an open-enrollment charter school based on Public Education Information Management System (PEIMS) student enrollment data on a date during the preceding school year specified by the commissioner.

(b) The amount of the instructional materials allotment determined by the commissioner is final and may not be appealed.

(c) The instructional materials allotment may be used to:

(1) purchase:

(A) instructional materials on the list adopted by the commissioner under the Texas Education Code (TEC), §31.0231;

(B) instructional materials on the list adopted by the State Board of Education under the TEC, §31.024;

(C) non-adopted instructional materials;

(D) consumable instructional materials;

(E) instructional materials for use in bilingual education classes, as provided by the TEC, §31.029;

(F) instructional materials for use in college preparatory courses under the TEC, §28.014, as provided by the TEC, §31.031;

~~(G) [(F)]~~ supplemental instructional materials, as provided by the TEC, §31.035;

~~(H) [(G)]~~ state-developed open-source instructional materials, as provided by the TEC, Chapter 31, Subchapter B-1;

~~(I) [(H)]~~ instructional materials and technological equipment under any continuing contracts of the school district or open-enrollment charter school in effect on September 1, 2011; and

~~(J) [(I)]~~ technological equipment that contributes to student learning, including equipment that supports the use of instructional materials; and

(2) pay for:

(A) ~~[(F)]~~ training educational personnel directly involved in student learning in the appropriate use of instructional materials;

(B) ~~[(F)]~~ providing access to technological equipment for instructional use; and

(C) the salary and other expenses of an employee who provides technical support for the use of technological equipment directly involved in student learning.

(d) The instructional materials allotment may not be used to:

(1) purchase:

(A) services for installation;

(B) the physical conduit that transmits data such as cabling and wiring or electricity; ~~or~~

(C) office and school supplies; or

(D) items that are not directly related to student instruction such as furniture, athletic equipment, extension cords, temporary contractors, or video surveillance equipment; or

(2) pay for: ~~[travel expenses.]~~

(A) travel expenses; or

(B) equipment used at a warehouse for the purpose of moving, storing, or taking inventory of instructional materials.

§66.1309. High-Enrollment Growth Adjustment.

(a) Calculations for enrollment ~~[high-enrollment]~~ growth at the district level will be adjusted automatically for each year of a ~~[the]~~ biennium based on current Public Education Information Management System (PEIMS) enrollment data before the EMAT system opens each ~~[in the]~~ spring.

(b) A school district or an open-enrollment charter school that experiences a minimum enrollment growth of 10% over the previous five-year period for which the instructional materials allotment amount is being determined is eligible to receive an adjustment to accommodate high-enrollment growth.

(c) For each year in a biennium, a ~~[A]~~ school district or an open-enrollment charter school that is experiencing a student population growth that is not reflected in the current state calculation may submit an application to be considered for additional funding if ~~[the district or charter experienced]~~:

(1) the district or charter school experienced a net increase of 3,500 students over the last 5 years; ~~or~~

(2) the district or charter school experienced an unexpected enrollment growth due to unforeseen circumstances; ~~or~~ ~~]~~

(3) the charter school experienced unexpected enrollment growth due to a recent approval of an expansion amendment by the commissioner of education.

(d) A school district or an open-enrollment charter school may request additional funding for its instructional materials allotment for high enrollment once during each school year in accordance with procedures established by the commissioner ~~[of education]~~.

(e) The amount of funding for high-enrollment growth under this section will be allocated based on available instructional materials allotment funds.

§66.1311. Special Instructional Materials.

(a) All laws and rules applying to instructional materials provided to students with no visual impairments that are not in conflict with the Texas Education Code, §31.028, or this section shall apply to the distribution and control of specialized instructional material formats ~~[Braille and large type instructional materials]~~, including, but not limited to, the following.

(1) A requisition for special instructional materials shall be based on actual student enrollment to meet individual student needs.

(2) Each school district or open-enrollment charter school shall conduct an annual physical inventory of all currently adopted accessible instructional materials that have been requisitioned by and delivered to the district or charter. The results of the inventory shall be recorded in the district's or charter's files and made available to the Texas Education Agency (TEA) upon request.

(b) Reimbursement and/or replacement shall be made for all volumes of specialized instructional material formats ~~[Braille and large type instructional materials]~~ determined to be lost.

(c) Publishers shall grant permission to the state to have adopted instructional materials converted ~~[transcribed]~~ into specialized instructional material formats ~~[Braille, large type, and audiotape]~~ without penalty or royalty.

(d) On or before the deadline specified in the schedule of adoption procedures, each publisher of newly adopted print instructional materials shall provide computerized files to the state as specified in the proclamation to be used for producing specialized instructional material formats ~~[Braille or other versions of materials]~~ to be used by students who are blind or visually impaired ~~[with disabilities]~~. All information contained in adopted instructional materials shall be included on the computerized files. Computerized files may be copied and distributed to a school district, upon request, for instructional use with a student who is blind or visually impaired and ~~[with a disability who]~~ requires the use of computerized instructional materials, pursuant to an individualized plan developed for the student under the Rehabilitation Act, §504; the Americans with Disabilities Act; or the Individuals with Disabilities Education Act.

~~[(e) The state shall make suitable student instructional materials available in large type. The commissioner of education shall develop specifications for large type instructional materials and notify publishers of student instructional materials suitable for production in large type. The publisher may elect to supply the large type materials, or the commissioner may enter into contracts for producing large type instructional materials.]~~

~~[(f) Gifts of instructional materials in a specialized format for educating students who are blind or visually impaired tendered by individuals, groups, or school district officials may be accepted by the commissioner of education and shall become state property. Gift materials may be shipped by Free Matter for the Blind and Other Physically Handicapped Persons to the Special Textbook Redistribution Center or other location designated by the TEA.]~~

~~[(g) Adopted~~ ~~[Copies of adopted]~~ instructional materials ~~[in Braille and large type]~~ needed by a person who is blind or visually impaired to carry out the duties of a teacher in the public schools of this state shall be furnished in a specialized format without cost. The materials are to be loaned to the public school districts as long as needed and are to be returned to the state when they are no longer needed. Materials in the medium needed by the teacher may be requisitioned by an instructional materials coordinator after the superintendent of schools has certified the following to the commissioner:

(1) the name of the teacher;

(2) the grade or subject taught; and

(3) the fact of the teacher's visual impairment.

~~[(h) Large print~~ ~~[type]~~ instructional materials intended for student use must comply with the standards in the latest edition of ~~[shall meet or exceed]~~ the Manufacturing Standards and Specifications for Textbooks approved by the ~~[national]~~ Advisory Commission on ~~[of]~~ Textbook Specifications ~~[and any additional specifications that may be prescribed].~~

(h) [(i)] Adopted [Copies of adopted] instructional materials in a specialized format [Braille, large type, or an electronic file] that are requested by a parent who is blind or visually impaired shall be furnished without cost by the state. Materials in the medium needed by the parent may be requisitioned by an instructional materials coordinator. Requests for electronic files will be filled by the TEA after the parent signs and the TEA receives a statement, through the appropriate school district, promising that the parent will safeguard the security of the files and observe all current copyright laws, including those that forbid reproduction of the files and their transfer to other parties. All specialized instructional material formats [Braille and large type instructional materials] and electronic files with educational content that have been provided to parents who are blind or visually impaired must be returned to the local school district at the end of the school year for reuse.

(i) Publishers that offer electronic instructional materials (e.g., CD-ROMs, DVDs, or Web-based instructional materials) for adoption shall offer these materials in an accessible format in accordance with the technical standards of the Federal Rehabilitation Act, Section 508.

(j) Publishers that offer Web-based instructional materials for adoption shall ensure that these materials conform to the Web Content Accessibility Guidelines 2.0, Level AA.

(k) Adopted instructional materials that are not compliant with the technical standards of the Federal Rehabilitation Act, Section 508, or do not conform to the Web Content Accessibility Guidelines 2.0, Level AA, will be removed from the EMAT system and will not be available for order through the TEA.

(l) Producers that enter into a contract with the TEA for the production and distribution of specialized instructional material formats shall provide the instructional materials to students with disabilities at the same time other students in the same school district receive print instructional materials.

§66.1313. Bilingual Instructional Materials.

(a) A school district shall purchase with the district's instructional materials allotment or otherwise acquire instructional materials for use in bilingual education classes.

(b) Bilingual education is defined in Chapter 89, Subchapter BB, of this title (relating to Commissioner's Rules Concerning State Plan for Educating English Language Learners).

(c) The calculation used for adjusting the instructional materials allotment for bilingual education student enrollment is based on actual bilingual enrollment [the Texas Education Code, §42.153]. The calculation will take into account funds used for Texas Education Agency administrative purposes and juvenile justice alternative education programs and include adjustments for bilingual education student enrollment and high-enrollment growth.

§66.1325. Reimbursements of Funds to Local Education Agencies.

(a) A school district or an open-enrollment charter school may be reimbursed for allowable instructional materials allotment (IMA) expenditures.

(b) Reimbursements will be funded through a district's or charter school's IMA as funds become available.

(c) A district or charter school may receive a reimbursement only if the district or charter school:

(1) submits a request through the EMAT system;

(2) has a zero IMA balance or the cost of an allowable product or service according to §66.1307 of this title (relating to Instruc-

tional Materials Allotment) is more than the district's or charter's available IMA balance at the time the request is submitted; and

(3) has received approval from the Texas Education Agency (TEA) through the EMAT system.

(d) The TEA will establish a reimbursement process for school districts and open-enrollment charter schools.

§66.1327. Delayed Publisher Payment Option.

(a) A school district or an open-enrollment charter school may requisition and receive state-adopted instructional materials before instructional materials allotment (IMA) funds for those materials are available.

(b) The total cost of materials included in a district's or charter school's requisition(s) pursuant to this section may not exceed 80% of a school district's or open-enrollment charter school's expected IMA for the subsequent fiscal year.

(c) When a district or charter school submits a requisition for instructional materials under this section, the Texas Education Agency (TEA) will expend a district's or charter school's existing IMA balance before applying the delayed payment option.

(d) The TEA will make payment for any remaining balance for a district's or charter school's order under this section as the IMA funds become available.

(e) The TEA will prioritize payment for requisitions under this section over reimbursement of purchases made directly by a school district or an open-enrollment charter school.

(f) Publishers may decline orders for which payments could be delayed. A publisher's decision to decline an order under this section shall affect all of that publisher's orders for which payments could be delayed. Publishers may not selectively decline orders from individual districts or charter schools.

(g) Texas Government Code, Chapter 2251, does not apply to requisitions placed under this section.

(h) Texas Education Code, §31.151, does apply to orders placed under this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 16, 2014.

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Texas Education Agency

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



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 330. MUNICIPAL SOLID WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§330.7, 330.671, 330.673, and 330.675.

Background and Summary of the Factual Basis for the Proposed Rules

The commission is proposing this rulemaking to amend existing rules pertaining to a permit by rule (PBR) authorization for small counties or municipalities disposing of demolition waste from nuisance or abandoned buildings. The commission also proposes amendments to the existing rules pertaining to the waste disposal fees at municipal solid waste (MSW) disposal facilities, such as landfills and incinerators, and to the waste disposal fee exemption/credit for material diverted from disposal and processed into compost or mulch.

Senate Bill (SB) 819, 83rd Legislature, 2013, effective June 14, 2013, revised the Texas Health and Safety Code (THSC), §361.126. This section allows the commission to issue a PBR for a county or municipality, with a population of 12,000 people or less, to dispose of demolition waste from properties controlled by the county or municipality with nuisance or abandoned buildings. The population limit was increased from 10,000 to 12,000 people.

House Bill (HB) 7, 83rd Legislature, 2013, effective June 14, 2013, revised the THSC, §361.013. This statute requires MSW disposal facilities to submit reports on the amount of solid waste brought into the facility and allows the commission to collect fees on the amount of solid waste disposed of at the facility. The solid waste disposal fee is often referred to as the tipping fee. For disposal of waste by landfilling, the fee is reduced by 25%, from \$1.25 to \$0.94 per ton of solid waste, from \$0.40 to \$0.30 per cubic yard of compacted solid waste, and from \$0.25 to \$0.19 per cubic yard of uncompacted solid waste. For disposal of waste by methods other than landfilling--incineration, land application, composting, etc.--the fee is reduced by 25%, from \$0.62 and one-half cent to \$0.47 per ton of solid waste, from \$0.20 to \$0.15 per cubic yard of compacted solid waste, and from \$0.12 and one-half cent to \$0.09 and one-half cent per cubic yard of uncompacted solid waste.

HB 7 also revises the allocation percentage of the tipping fee revenue received by the commission. Revenue received by the commission shall be deposited in the state treasury to credit the commission. Of that revenue, 66.7% shall be dedicated to the commission's Waste Management Account 0549 and the remaining 33.3% to the commission's Solid Waste Disposal Fee Account 5000. The previous allocation percentage was a 50%/50% split between the two accounts.

HB 7 revises THSC, §361.013 to expand the tipping fee exemption--from exemption of source-separated yard waste to exemption of source-separated material. Additionally, material processed into compost or mulch may receive a fee credit. Previously, only material processed into compost could receive the credit.

Section by Section Discussion

§330.7, *Permit Required*

The commission proposes to amend §330.7(i), which would authorize a county or municipality with 12,000 people or less, located in an arid-exempt area, to dispose of demolition waste from nuisance and abandoned buildings under a PBR.

The nuisance and abandoned building must have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation. Disposal of the demolition waste must occur on property that is owned or controlled by the county or municipality. The disposal property must qualify for an arid exemption with less than or equal to 25 inches of average annual precipitation based on data from the nearest official precipitation recording station for the most recent 30-year period or on another method approved by the executive director. To be authorized to dispose of the solid waste under this PBR, the county or municipality must adhere to the conditions set forth in §330.7(i)(1) and (2).

The population limit was increased from 10,000 people to 12,000 people. This allows additional counties and municipalities a less costly, environmentally secure means of disposing of waste from nuisance and abandoned buildings. The PBR was adopted in 2012 to address a short-term issue facing small West Texas communities. This proposed amendment does not extend the five-year term of the PBR.

§330.671, *Purpose and Applicability*

The commission proposes to amend §330.671(b)(1), relating to the tipping fee exemption or credit on material that is processed into compost or mulch. The amendment replaces "source separated yard waste composted at a composting facility, including a composting facility located at a permitted landfill" with "source-separated material processed at a composting or mulch processing facility, including a composting or mulch processing facility located at a permitted landfill." The amendment removes the language defining "source separated yard waste". The amendment replaces "and converted to compost product for composting through a composting process" to "and processed to compost or mulch product at the facility." The amendment replaces "any compost product for composting that is not used as compost and is deposited in a landfill" with "any compost or mulch product that is produced at a composting or mulch processing facility that is used in the operation of the facility or is disposed of in a landfill."

Facilities that divert source-separated material to composting or mulching facilities are exempt from the tipping fee based on the amount of material diverted. Previously, the language only authorized the exemption for the diversion of source-separated yard waste processed into compost. These revisions allow a wider variety of source-separated material to be exempted from tipping fees. Yard waste and brush continue to qualify for the fee exemption when diverted. Clean wood material can now qualify for this exemption. Clean wood material is considered wood or wood materials, including roots, or vegetation with intact root-balls, sawdust, pallets, and manufacturing rejects. Clean wood material does not include wood that has been treated, coated or painted by materials such as, but not limited to, paints, varnishes, wood preservatives, or other chemical products. Clean wood material also does not include demolition material, where the material is contaminated by materials such as, but not limited to, paint or other chemicals, glass, electrical wiring, metal and Sheetrock. The definition of source-separated yard waste was removed from the rule to reduce the limitations on the type of material diverted.

Facilities that divert non-source-separated material from the landfill and process the material into compost or mulch can be credited half of the tipping fee when the facility demonstrates to the commission that the material has been processed for beneficial use. In order to qualify for the tipping fee credit, the processed material cannot be disposed of in a landfill, used in

the operation of the landfill, or be used as daily cover. If the material is used in such a way, the facility will not receive the credit. Additionally, the material received must be processed into compost or mulch at the landfill facility to qualify for the fee credit.

Including mulch processing with composting for both the fee exemption and fee credit allows disposal facilities greater flexibility in diverting material away from landfills. Although not defined in this chapter, mulch is defined in §332.2(33), as ground, coarse, woody yard trimmings and clean wood material. Mulch is normally used around plants and trees to retain moisture and suppress weed growth, and is intended for use on top of soil or other growing media rather than being incorporated into the soil or growing media. Mulch does not include wood that has been systemically killed using herbicides.

§330.673, Fees

The commission proposes to amend §330.673, relating to the fee, collected by the commission, on solid waste disposed of at an MSW disposal facility. The fee rate for solid waste disposed of by landfilling is reduced from \$1.25 to \$0.94 per ton, from \$0.40 to \$0.30 per compacted cubic yard, and from \$0.25 to \$0.19 per uncompacted cubic yard. If the landfill operator calculates the amount of waste received based upon the population equivalent method, the fee is reduced from \$1.25 to \$0.94 per ton.

For MSW facilities that dispose of solid waste by means other than landfilling, the fee collected by the commission is reduced from \$0.62 and one-half cent to \$0.47 per ton, from \$0.20 to \$0.15 per compacted cubic yard, and from \$0.12 and one-half cent to \$0.09 and one-half cent per uncompacted cubic yard. If the facility operator calculates the amount of waste received based upon the population equivalent method, the fee is reduced from \$0.62 and one-half cent to \$0.47 per ton.

These changes will reduce the overall amount of fees collected. However, due to current allocations and the increase in distribution into Fund 0549 from 50% to 66.7%, appropriations from these funds for the 2014-2015 biennium will be funded.

§330.675, Reports

The commission proposes to amend §330.675, relating to the reports submitted to the commission by MSW disposal facilities on the amount of solid waste diverted and disposed of. The amendment replaces "yard waste converted" with "material processed" and replaces "to compost or product for composting" with "to compost or mulch product." These changes are made to coincide with the amendments made in §330.671. The changes in §330.671 are made to provide a fee exemption or credit for a greater variety of materials that are diverted. The changes to the report forms are needed to ensure the correct amount of diverted material is reported to the commission.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect fiscal implications which may be significant are anticipated for the agency and for units of local government that own or operate solid waste disposal facilities or who have nuisance or abandoned buildings, but not for other units of state or local government as a result of the administration or enforcement of the proposed rules.

The proposed rules would: 1) Provide a PBR authorization for small counties or municipalities disposing of demolition waste

from nuisance or abandoned buildings; 2) Reduce by 25% waste disposal fees assessed to MSW disposal facilities; and 3) Provide waste disposal fee exemptions or credits for material diverted from landfills and processed into compost or mulch.

Tipping Fee Reduction

The proposed rules implement provisions in HB 7, 83rd Legislature, 2013. HB 7 reduced the solid waste disposal fee, commonly known as the tipping fee, by 25%. For waste disposed at an MSW landfill, the fee is reduced from \$1.25 to \$0.94 per ton, from \$0.40 to \$0.30 per compacted cubic yard, and from \$0.25 to \$0.19 per uncompacted cubic yard.

HB 7 also changed the distribution of tipping fee revenue, as it is deposited into two agency accounts, the Waste Management Account 0549 and the Municipal Solid Waste Disposal Account 5000. HB 7 requires that 66.7% of the revenue collected by the commission be dedicated to Account 0549 and the remaining 33.3% be dedicated to Account 5000. Previously, the fee revenue distribution was split evenly between the two accounts at 50%. Account 5000 is projected to experience a decrease in revenue in an amount estimated to be \$8.5 million each year for the five-year period covered by this fiscal note due to the reallocation of revenue. The net effect to the revenue deposited to Account 0549 is not expected to be significant even though revenue to Account 0549 is increased by 16.7%, because the total fee revenue collected is decreased by 25%, and 66% of the 25% reduction (the portion of the reduction allocated to Account 0549) is approximately 16.5%.

Funding in Account 5000 is dedicated to local and regional solid waste projects consistent with regional plans approved by the commission in accordance with THSC, Chapter 361. The current fund balance in Account 5000 in combination with the revenue stream under the proposed rules is projected to be sufficient to fund local and regional solid waste projects at current levels for the five-year period covered by this fiscal note and into the foreseeable future.

There are 120 landfills and 77 processing facilities owned or operated by local governments that would be impacted by the proposed rules. These local governments are anticipated to realize a decrease in tipping fees paid to the state. They may be able to pass these savings on to their customers who use the landfills. It is not known how many local government facilities would choose to decrease fees assessed to their customers. Conversely, local governments that dispose of waste at privately owned facilities may see a reduction in the fees they pay to the privately owned facilities if the owner or operator chooses to reduce fees based upon the 25% reduction in the tipping fee that is paid to TCEQ.

Mulch Processing

The proposed rules also implement HB 7 provisions that apply to source-separated materials. The proposed rules would provide that any source-separated material (not only yard waste material) is exempt from the tipping fee if the material is diverted from the disposal facility and processed into compost or mulch. In addition, disposal facilities that divert non-source-separated material and process the material into compost or mulch may receive a credit on their tipping fee. Previously, the language only allowed a credit on material diverted to compost.

These changes allow a greater variety of material to be diverted away from a landfill and processed for beneficial use. Staff does not expect an impact to agency tipping fee revenue from the mulch processing revisions. Many facilities that divert mate-

rial already process the material into compost or mulch and the agency has already been allowing facilities to divert material into compost or mulch as this allows more material to be diverted away from a landfill. Diverting material results in additional landfill space, which extends the life of the landfill. Therefore, the agency does not expect facilities to start diverting material or increase the amount diverted based solely on this rule change. There are many factors including equipment costs, land availability, transportation costs, and sales market for finished compost or mulch products that an entity must consider before diverting material.

Based on data collected for the annual MSW report entitled, "Municipal Solid Waste in Texas: A Year in Review, 2012 Data Summary and Analysis" (AS-187-13), there are 195 active landfills and 198 active processing facilities. Of those, 87 landfills and 58 processing facilities diverted 789,669 tons of material for beneficial use.

Permit By Rule

The proposed rules also implement provisions in SB 819, 83rd Legislature, 2013, that increase the population limit for counties or municipalities that can be authorized by a PBR to dispose of demolition waste from abandoned or nuisance buildings. The bill increased the population limit from 10,000 people to 12,000 people. Increasing the population limit allows additional small West Texas communities an environmentally secure means of disposing of waste from abandoned buildings and other structures deemed to be a health or safety hazard. The bill allows counties or municipalities to dispose of demolition waste from a building, if the disposal occurs on land that the county or municipality owns or controls, and the landfill would qualify for an arid exemption under TCEQ rules.

No significant fiscal implications are anticipated for the agency, but some counties or municipalities may experience cost savings as a result of the implementation of the proposed rules. The commission does not expect the PBR to affect the amount of revenue it receives in Waste Management Account 0549. Current tipping fees and transportation costs for disposal of nuisance or abandoned buildings can be unaffordable for municipalities and counties in the area of the state affected by the proposed rules, therefore tipping fees collected from these local governments for disposal of this type of demolition waste has been minimal. Since the proposed rules do not require a tipping fee for disposal or an application fee for the new PBR, there is no anticipated impact to agency revenue. Cost savings are anticipated for counties or municipalities who dispose of nuisance or abandoned buildings under the proposed rules. These cost savings would vary considerably and agency staff is currently unable to provide an estimate of these savings.

While there are costs to counties or municipalities for implementing the PBR, such as excavation and access control costs at the disposal location, these are voluntary costs that are expected to be less than the costs of transporting the waste to an authorized disposal facility and paying the associated tipping fees at the facility.

When the original PBR for counties of 10,000 in population was implemented, six municipalities were authorized and one municipality is pending authorization. The increase in the population limit from 10,000 to 12,000 people will likely allow an additional six counties and six municipalities to apply for the PBR, if they so choose. The increase of 12 entities was estimated from the most recent census data.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law, more efficient use of state funds, and a more cost effective means of disposal for certain wastes.

The proposed rules are expected to result in cost savings for owners or operators of landfills and waste processing facilities. There are 75 landfills and 121 processing facilities that are privately owned or operated that would be impacted by the proposed rules. The amount of any cost savings would be highly variable for each owner or operator and agency staff is not currently able to quantify the savings. If owners or operators of landfills choose to pass the cost savings on to their customers, individuals may experience a decrease in fees they pay for waste disposal.

Tipping Fee

The proposed 25% reduction in the tipping fee that is paid to the agency is expected to result in lower costs for operators of disposal facilities. The tipping fee reduction has the potential to also lower costs for customers of the disposal facility (individuals, businesses, others disposing of waste) if the owners choose to pass the cost savings on to the consumers. However, it is unknown how many operators will choose to reduce the fees charged to waste disposal customers.

Mulch Processing

The proposed rules will allow facilities that process diverted material into compost or mulch to receive either an exemption from the tipping fee or a credit. The agency currently allows facilities to divert and process material (source-separated yard waste or non-source-separated material) into compost or mulch. The proposed rules would allow a standard practice already in place in many landfills to be codified into agency rules. Facilities that begin to divert material for compost or mulch will incur a cost, such as purchasing equipment, but these costs are voluntary. Providing incentives for landfills to divert material away from the landfill extends the life of the landfill.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rules will allow facilities that process diverted material into mulch or compost to receive either an exemption or credit on the tipping fee. These proposed rules are voluntary and do not impose new requirements on regulated entities. The proposed rules also reduce by 25% the tipping fee that landfill owners and operators collect and pay to the agency. This fee reduction is expected to result in lower costs for owners and operators of waste disposal facilities.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required, because the proposed rules do not adversely affect small or micro-businesses for the first five-year period the proposed rules are in effect and are required by state law.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not re-

quired, because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking is intended to implement amendments to statutory provisions. The authority to issue a PBR for a county or municipality with a population of 10,000 people or less to dispose of demolition waste from properties controlled by the county or municipality with nuisance or abandoned buildings is increased to allow this authorization for populations of 12,000 or less. The fee due to the state from landfill operators for the amount of solid waste disposed at landfills is reduced by 25%. A provision is added to require the commission to issue biennial reports on how that fee money is spent. The existing exemption from these fees for composting source-separated yard waste is expanded to exempt composting or mulching source-separated material. The proposal does not meet the definition of "major environmental rule" because the rulemaking action is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Furthermore, the proposal does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these applicability requirements: there are no corresponding standards set by federal law and the proposals are either allowed or required by state law; the proposed amendments does not exceed an express requirement of state law; the rules do not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and the commission does not propose the rules solely under the general powers of the agency, but rather under the authority of THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; THSC, §361.024, which provides the commission with rulemaking authority; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and THSC, §361.013 and §361.014, which require the commission to charge fees and report on how the fees are spent. Therefore, the commission does not propose

the adoption of the rules solely under the commission's general powers.

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the proposed amendments are to reduce fees the state charges landfills and to require the commission to report how fees are spent. The amendments do not impose a burden on a recognized real property interest and therefore do not constitute a taking. The promulgation of the proposed rulemaking is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the proposed rulemaking does not affect a landowner's rights in a recognized private real property interest because this rulemaking neither: burdens (constitutionally) or restricts or limits the owner's right to the property that would otherwise exist in the absence of this rulemaking; nor would it reduce its value by 25% or more beyond that value which would exist in the absence of the proposed rules. Therefore, the proposed rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the Texas Coastal Management Program be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the §§330.671, 330.673, and 330.675 amendments are consistent with CMP goals and policies because the rulemaking is a fee rule, which is a procedural mechanism for paying for commission programs; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission determined that the amendment in §330.7 will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

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

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 18, 2014, at 2:00 p.m. in Bldg. E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however,

commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submission of Comments

Written comments may be submitted to Mr. Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-050-330-WS. The comment period closes March 3, 2014. Copies of the proposed rule-making can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adapt.html. For further information, please contact Ms. Charlyne Fritz, Waste Permits Division, (512) 239-2331.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §330.7

Statutory Authority

The amendment is proposed under the authority of: Texas Health and Safety Code (THSC), §361.011, Commission's Jurisdiction: Municipal Solid Waste, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.024, Rules and Standards, which provides the commission with rulemaking authority; THSC, §361.061, Permits: Solid Waste Facility, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and THSC, §361.126, Disposal of Demolition Waste from Abandoned or Nuisance Building.

The proposed amendment implements THSC, §361.061 and §361.126.

§330.7. Permit Required.

(a) Except as provided in §§330.9, 330.11, 330.13, or 330.25 of this title (relating to Registration Required; Notification Required; Waste Management Activities Exempt from Permitting, Registration, or Notification; and Relationship with County Licensing System), no person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any solid waste unless such activity is authorized by a permit or other authorization from the commission. In the event this requirement is violated, the executive director may seek recourse against not only the person that stored, processed, or disposed of the waste but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed. No person may commence physical construction of a new municipal solid waste (MSW) management facility, a vertical expansion, or a lateral expansion without first having submitted a permit application in accordance with §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities; Contents of Part I of the Application; Contents of Part II of the Application; Contents of Part III of the Application; and Contents [econtents] of Part IV of the Application, respectively) and received a permit from the commission, except as provided otherwise in this section.

(b) A separate permit is required for the storage, transportation, or handling of used oil mixtures collected from oil/water separators. Any person that intends to conduct such activity shall comply with the regulatory requirements of Chapter 324 of this title (relating to Used Oil Standards).

(c) Permits by rule may be granted for persons that compact or transport waste in enclosed containers or enclosed transportation units to a Type IV facility.

(1) A permit by rule is granted for a generator operating a stationary compactor that is only used to compact waste to be disposed of at a Type IV landfill, if all of the following conditions are met.

(A) The generator submits the following information and any requested additional information on forms provided by the executive director:

- (i) generator contact person, company name, mailing address, street address, city, state, ZIP code, and telephone number;
- (ii) contract renewal date, if applicable;
- (iii) rated compaction capability in pounds per cubic yard;
- (iv) container size;
- (v) description of waste stream to enter compactor;
- (vi) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person; and

(vii) a certification from the generator that states the following: I, (name) _____, (title) _____ of (company name) _____, located at (street address) _____ in (city) _____, certify that the contents of the compactor located at the location stated herein are free of and shall be maintained free of putrescible, hazardous, infectious, and any other waste not allowed in an MSW Type IV landfill.

(B) The generator submits a \$75 fee along with the claim for the permit by rule.

(C) The generator complies with the operational requirements of §330.215 of this title (relating to Requirements for Stationary Compactors).

(D) A stationary compactor permit by rule expires after one year. The generator must submit an annual renewal fee in the amount of \$75. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the generator claims a new or renewed permit by rule.

(2) A permit by rule is granted for transporters using enclosed containers or enclosed vehicles to collect and transport brush, construction or demolition wastes, and rubbish along special collection routes to MSW Type IV landfill facilities if all of the following conditions are met.

(A) The owner or operator seeking a special collection route permit by rule submits to the executive director the following information and any requested additional information on forms provided by the executive director:

- (i) name of owner and operator, mailing address, street address, city, state, ZIP code, name and title of a contact person, and telephone number;

(ii) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person;

(iii) information on each transportation unit, including, at a minimum, license number, vehicle identification number, year model, make, capacity in cubic yards, and rated compaction capability in pounds per cubic yard;

(iv) route information, which shall include as a minimum the collection frequency, the day of the week the route is to be collected, and the day and time span within which the route is to arrive at the MSW Type IV landfill;

(v) a description of the wastes to be transported;

(vi) an alternative contingency disposal plan to include alternate trucks to be used or alternative disposal facilities; and

(vii) a signed and notarized certification from the owner or operator that states the following: I, (name) _____, (title) _____, of _____ operating in _____ County, certify that the contents of the vehicles described above will be free of putrescible, household, hazardous, infectious, or any other waste not allowed in an MSW Type IV landfill.

(B) The transporter submits a \$100 per vehicle fee along with the claim for a permit by rule.

(C) The transporter documents each load delivered with a trip ticket form provided by the executive director, and provides the trip ticket to the landfill operator prior to discharging the load.

(D) A special collection route permit by rule expires after one year. The owner or operator must submit an annual renewal fee in the amount of \$100 per vehicle. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the owner or operator claims a new or renewed permit by rule.

(E) This paragraph does not apply if the waste load is from a single collection point that is a stationary compactor authorized in accordance with paragraph (1) of this subsection.

(3) Revision requirements for stationary compactor permits or special collection route permits by rule identified in paragraphs (1) and (2) of this subsection are as follows.

(A) An update must be submitted if any information within the original permit by rule submittal changes.

(B) A submittal to update an existing permit by rule must include all of the same documentation required for an original permit by rule submittal.

(d) A major permit amendment, as defined by §305.62 of this title (relating to Amendments), is required to reopen a Type I, Type IAE, Type IV, or Type IVAE MSW facility permitted by the commission or any of its predecessor or successor agencies that has either stopped accepting waste, or only accepted waste in accordance with an emergency authorization, for a period of five years or longer. The MSW facilities covered by this subsection may not be reopened to accept waste again unless the permittee demonstrates compliance with all applicable requirements of the Resource Conservation and Recovery Act, Subtitle D and the implementing Texas state regulations. If an MSW facility was subject to a contract of sale on January 1, 2001, the scope of any public hearing held on the permit amendment required by this subsection is limited to land use compatibility, as provided by §330.57(a) of this title. This subsection does not apply to any MSW facility that has received a permit but never received waste, or that received an approved Subtitle D permit modification before September 1, 2001.

(e) A permit by rule is granted for an animal crematory that meets the following criteria. For facilities that do not meet all the requirements of this subsection, the owner or operator shall submit a permit application under §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title and obtain a permit. To qualify for a permit by rule under this subsection, the following requirements must be met.

(1) General prohibitions. An animal crematory facility shall comply with §330.15(a) of this title (relating to General Prohibitions).

(2) Incineration limits. Incineration of carcasses shall be limited to the conditions specified in §106.494 of this title (relating to Pathological Waste Incinerators (Previously SE 90)). The facility shall not accept animal carcasses that weigh more than the capacity of the largest incinerator at the facility and shall not dismember any carcasses during processing.

(3) Ash control. Ash disposal must be at an authorized facility unless the ash is returned to the animal owner or sent to a pet cemetery. Ash shall be stored in an enclosed container that will prevent release of the ash to the environment. There shall be no more than 2,000 pounds of ash stored at an animal crematory at any given time.

(4) Air pollution control. Air emissions from the facility shall not cause or contribute to a condition of air pollution as defined in Texas Clean Air Act, §382.003. All animal crematories, prior to construction or modification, must have an air permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), or qualify for a permit by rule under §106.494 of this title.

(5) Fire protection. The facility shall prepare, maintain, and follow a fire protection plan. This fire protection plan shall describe fire protection resources (a local fire department, fire hydrants, fire extinguishers, water tanks, water well, etc.), and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

(6) Storage limits. Carcasses must be incinerated within two hours of receipt, unless stored at or below a temperature of 29 degrees Fahrenheit. Storage of carcasses shall be in a manner that minimizes the release of odors. Storage of carcasses shall be limited to the lesser of 3,200 pounds or the amount that can be incinerated at the maximum loading rate for the incinerators at the facility in a two-day period.

(7) Unauthorized waste. Only carcasses or animal parts, with any associated packaging, shall be processed. Carcasses shall not be accepted in packaging that includes any chlorinated plastics. Carcasses or animal parts that are either hazardous waste or medical waste are prohibited.

(8) Cleaning. Storage and processing units must be properly cleaned on a routine basis to prevent odors and the breeding of flies.

(9) Nuisance prevention. The facility shall be designed and operated in a manner so as to prevent nuisance conditions, including, but not limited to, dust from ashes, disease vectors, odors, and liquids from spills, from being released from the property boundary of the authorized facility.

(10) Diseased animals. The facility shall be equipped with appropriate protective equipment and clothing for personnel handling diseased animals that may be received at the facility. Facility owners or operators must inform customers and local veterinarians of the need to identify diseased animals for the protection of personnel handling the animals.

(11) Buffer zone. An animal crematory, including unloading and storage areas, constructed after March 2, 2003, must be at least 50 feet from the property boundary of the facility.

(12) Operating hours. A crematory shall operate within the time frames allowed by §111.129 of this title (relating to Operating Requirements).

(13) Documentation. The operator of an animal crematory shall document the carcasses' weight, date and time when carcasses are received, and when carcasses are loaded into the incinerator. A separate entry in the records for loading into the incinerator is not required if a carcass is loaded within two hours of receipt. This information will be maintained in records on site.

(14) Breakdown. The facility is subject to §330.241 of this title (relating to Overloading and Breakdown).

(15) Records management. The owner or operator must retain records as follows:

(A) maintain a copy of all requirements of this subsection that apply to the facility;

(B) maintain records for the previous consecutive 12-month period containing sufficient information to demonstrate compliance with all requirements of this subsection;

(C) keep all required records at the facility; and

(D) make the records available upon request to personnel from the commission or from local governments with jurisdiction over the facility.

(16) Fees. An animal crematory facility authorized under this section is exempt from the fee requirements of Subchapter P of this chapter (relating to Fees and Reporting).

(17) Other requirements. No other requirements under this chapter are applicable to a facility that meets all of the requirements of this subsection.

(f) A permit by rule is granted for a dual chamber incinerator if the owner or operator complies with §106.491 of this title (relating to Dual-Chamber Incinerators).

(g) A permit by rule is granted for an air curtain incinerator if the owner or operator complies with §106.496 of this title (relating to Air Curtain Incinerators). An air curtain incinerator may not be located within 300 feet of an active or closed MSW landfill unit boundary.

(h) A standard air permit is granted for facilities that comply with Subchapter U of this chapter (relating to Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations).

(i) A permit by rule is granted for a period of up to five years to a county or municipality with a population of 12,000 [~~10,000~~] people or less to dispose of demolition waste from properties with nuisance or abandoned buildings.

(1) Requirements. The following conditions must be met.

(A) Form submittal. The county or municipality submits a form provided by the commission to the executive director for review and approval before construction begins.

(B) Notice to regional office. The county or municipality notifies the applicable commission regional office of the intent to dispose of waste under this authorization at least 48 hours prior to accepting the first load of waste.

(C) Facility location. The location where disposal will occur:

(i) is owned or controlled by the county or municipality, and

(ii) receives less than or equal to 25 inches average annual precipitation as determined from precipitation data for the nearest official precipitation recording station for at least the most recent 30-year reporting period or by another method approved by the executive director.

(D) Sources of waste. The properties on which nuisance and abandoned buildings are located have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation, and the previous owners are not financially capable of paying the costs of the disposal of demolition waste at a permitted solid waste disposal facility, including transportation of the waste to the facility.

(E) Waste acceptance.

(i) Prior to demolition, structures are surveyed and abated, if required, for asbestos-containing materials in accordance with 25 TAC Chapter 295, Subchapter C (relating to Texas Asbestos Health Protection).

(ii) The facility may accept non-regulated asbestos-containing materials (non-RACM) for disposal. The wastes are placed on the active working face and covered at the end of the operating day with at least six inches of soil. Under no circumstances may any of the material containing non-RACM be placed on a surface that is subject to vehicular traffic or disposed of by any other means by which the material could be crumbled into a friable state.

(iii) The facility may accept regulated asbestos-containing materials (RACM) if the following conditions are met.

(I) The county or municipality notifies the executive director on a form provided by the commission in accordance with subparagraph (A) of this paragraph.

(II) All waste trenches are identified as receiving RACM, and deed records required under subparagraph (Q) of this paragraph include an indication that the waste trench(es) received RACM.

(III) RACM is transported and received at the facility in tightly closed and unruptured containers or bags or wrapped with at least six-mil polyethylene.

(IV) Bags or containers holding RACM are carefully unloaded and placed in the final disposal location. RACM is then covered immediately with at least six inches of soil. Care is taken during unloading and placement of RACM and during application of the cover so that the bags or containers are not ruptured.

(iv) Waste is limited to the abandoned or nuisance buildings and materials from the property on which the buildings are located. All waste disposed under this authorization must meet the limitations of §330.5(a)(2) of this title (relating to Classification of Municipal Solid Waste Facilities) and may not include waste prohibited under §330.15(e) of this title.

(F) Access control. Access to the disposal facility is controlled by means of fences, other artificial barriers, natural barriers, or a combination of these methods, and includes a locking gate.

(G) Buffers and easements. The county or municipality maintains a minimum distance of 50 feet as a buffer between the permit boundary and waste storage, processing and disposal areas. No disposal occurs within a utility or pipeline easement or within 25 feet of the center of a utility or pipeline easement.

(H) Below-grade placement. Waste is placed only below grade. The top of final cover is placed at pre-existing grade or up to three feet above pre-existing grade to ensure that natural drainage patterns are not altered and ponding of water over waste is prevented.

(I) Weekly cover. Waste is covered at least weekly with six inches of earthen material not previously mixed with waste, or by tarps. Use of tarps as cover is limited to a seven-day period after which the county or municipality must replace the tarp with either waste or a six-inch layer of earthen material not previously mixed with waste. Tarps may not be used in place of soil cover requirements relating to non-RACM and RACM in subparagraph (E)(ii) and (iii) of this paragraph. Any trench that has received waste but will be inactive for more than 180 days receives intermediate cover in accordance with subparagraph (J) of this paragraph, or final cover in accordance with subparagraph (P) of this paragraph.

(J) Intermediate cover. Waste is covered, including any soil weekly cover, with twelve inches of well compacted earthen material not previously mixed with waste.

(K) Maximum volume. The design waste disposal volume is less than 2.5 million cubic meters in accordance with §106.534(3) of this title (relating to Municipal Solid Waste Landfills and Transfer Stations).

(L) Facility signs. At all entrances through which waste is received, the facility conspicuously displays a sign with letters at least three inches in height providing a statement that the facility is "NOT FOR PUBLIC USE," an emergency 24-hour contact number that reaches an individual with the authority to obligate the facility at all times that the facility is not in operation, and the local emergency fire department number.

(M) Stormwater and contaminated water. The county or municipality constructs berms to divert the 25-year/24-hour storm event from entering excavations containing waste. Water that has contacted waste is managed as contaminated water and disposed at an authorized treatment facility.

(N) Reporting. The county or municipality, while not required to provide quarterly reporting, provides annual reporting in accordance with the annual reporting provisions of §330.675(a) of this title (relating to Reports).

(O) Reauthorization. Before reaching the permit by rule term limit of five years, the county or municipality may request reauthorization under the permit by rule by submitting a form that is current at the time of reauthorization, provided by the commission in accordance with subparagraph (A) of this paragraph, to the executive director at least 14 days before the end of the permit term.

(P) Final cover. The following conditions are met.

(i) Within 60 days after a trench reaches its capacity or waste deposition activities are complete in a trench, the county or municipality installs final cover over waste in the trench. Final cover shall be composed of no less than two feet of soil. The first 18 inches or more of cover shall be of compacted clayey soil, classification sand clay (SC) or low plasticity clay (CL) as defined in the "Unified Soils Classification System" developed by the United States Army Corps of Engineers, and placed and compacted in layers of no more than six inches to minimize the potential for water infiltration. A high plasticity clayey (CH) soil may be used; however, this soil may experience excessive cracking and shall therefore be covered by a minimum of 12 inches of topsoil to retain moisture. Other types of soil may be used with prior written approval from the executive director. The final six inches of cover shall be of suitable topsoil that is capable of sustaining native plant growth and shall be seeded or sodded as soon as practi-

cable following the application of the final cover in order to minimize erosion.

(ii) The trench final cover procedures listed in clause (i) of this subparagraph are completed before facility closure, as described in subparagraph (Q) of this paragraph. If these procedures cannot be performed before the permit by rule term limit is reached, the county or municipality submits a current application form for reauthorization of the permit by rule to the executive director at least 14 days before the end of the permit term.

(Q) Facility closure. The county or municipality notifies the executive director and the applicable regional office at least 60 days before the anticipated closure date of the facility. Within ten days after closure, submit to the executive director by registered mail a certified copy of an "affidavit to the public" in accordance with the requirements of §330.19 of this title (relating to Deed Recordation). In addition, record a certified notation of the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that the land has been used as a landfill facility and use of the land is restricted. Submit a certified deed to the executive director.

(2) Other provisions. The following provisions also apply to this authorization.

(A) Processing. This permit by rule also authorizes the processing of waste destined for the disposal unit. Authorized processing is limited to volume reduction, such as chipping or grinding, but not burning. Processing must occur within the permit boundary and may not occur within a buffer zone or right-of-way. Tires, RACM and non-RACM may not be processed. If required, the county or municipality must obtain authorization for air emissions resulting from this processing.

(B) Fees. Waste that is disposed under this authorization is not subject to the fee requirements of Subchapter P of this chapter.

(C) Other requirements. No other requirements under this chapter are applicable to a facility that meets all the requirements of this subsection.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2014.

TRD-201400169
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 2, 2014
For further information, please call: (512) 239-2141



SUBCHAPTER P. FEES AND REPORTING

30 TAC §§330.671, 330.673, 330.675

Statutory Authority

The amendments are proposed under the authority of: Texas Health and Safety Code (THSC), §361.011, Commission's Jurisdiction: Municipal Solid Waste, which establishes the commission's jurisdiction over all aspects of the management of

municipal solid waste; THSC, §361.024, Rules and Standards, which provides the commission with rulemaking authority; THSC, §361.061, Permits; Solid Waste Facility, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; THSC, §361.013, Solid Waste Disposal and Transportation Fees; and THSC 361.014, Use of Solid Waste Fee Revenue.

The proposed amendments implement THSC, §361.013 and §361.014.

§330.671. *Purpose and Applicability.*

(a) Purpose.

(1) Fees. The commission is mandated by Texas Health and Safety Code, §361.013, to collect a fee for solid waste disposed of within the state, and from transporters of solid waste who are required to register with the state. Persons desiring to transport or deliver waste in enclosed containers or enclosed vehicles to a Type IV municipal solid waste management facility are subject to special route permit application and maintenance fees set forth and described in §330.103 of this title (relating to Collection and Transportation Requirements). The fee amount may be raised or lowered in accordance with spending levels authorized by the legislature.

(2) Industrial solid waste and hazardous waste fees. The assessment of fees for the generation, treatment, storage, or disposal of industrial solid waste or hazardous waste is governed by regulations contained in Chapter 335, Subchapter J of this title (relating to Hazardous Waste Generation, Facility and Disposal Fee [Fees] System).

(3) Reports. The commission requires reports in order to track the amount of waste being stored, treated, processed, or disposed of in the state, to track the amount of processing and disposal capacity and reserve (future) disposal capacity, and to enable equitable assessment and collection of fees.

(b) Applicability.

(1) Fees. Each operator of a municipal solid waste disposal facility or process for disposal is required to pay a fee to the agency based upon the amount of waste received for disposal. For the purpose of this subchapter, "waste received for disposal" means the total amount of the waste (measured in tons or cubic yards, or determined by the population equivalent method specified in §330.675(a)(3) of this title (relating to Reports) received by a disposal facility at the gate, excluding only those wastes that are recycled or exempted from payment of fees under this subchapter or by law. For the purpose of these sections, landfills, waste incinerators, and sites used for land treatment or disposal of wastes, sites used for land application of sludge or similar waste for beneficial use, composting facilities, and other similar facilities or activities are determined to be disposal facilities or processes. Recycling operations or facilities that process waste for recycling are not considered disposal facilities. Source-separated material processed [Source separated yard waste composted] at a composting or mulch processing facility, including a composting or mulch processing facility located at a permitted landfill, is exempt from the fee requirements set forth and described in these sections. [For the purpose of these sections, source separated yard waste is defined as leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscape maintenance and land-clearing operations that has been separated and has not been commingled with any other waste material at the point of generation.] The agency will credit any fee payment due under this subchapter for any material received and processed [converted] to compost or mulch product at the facility [for composting through a composting process]. Any compost or mulch product that is produced at a

[for] composting or mulch processing facility that is [not] used in the operation of the facility or is disposed of [as compost and is deposited] in a landfill or used as landfill daily cover is not exempt from the fee.

(2) Industrial solid waste and hazardous waste fees. A fee for disposal of an industrial solid waste or hazardous waste in a municipal solid waste disposal facility shall be assessed at the rates prescribed under the authority of Chapter 335, Subchapter J of this title. If no fee under Chapter 335, Subchapter J of this title, is applicable to the disposal of an industrial solid waste or hazardous waste, then such waste shall be assessed a fee under this chapter for the disposal of solid waste in a municipal solid waste facility.

(3) Reports. All registered or permitted facility operators are required to submit reports to the executive director covering the types and amounts of waste processed or disposed of at the facility or process location; other pertinent information necessary to track the amount of waste generated and disposed of, recovered, or recycled; and the amount of processing or disposal capacity of facilities. The information requested on forms provided by the executive director shall not be considered confidential or classified information unless specifically authorized by law, and refusal to submit the form complete with accurate information by the applicable deadline shall be considered as a violation of this section and subject to appropriate enforcement action and penalty.

(4) Interest penalty. Owners or operators of a facility failing to make payment of the fees imposed under this subchapter when due shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

§330.673. *Fees.*

(a) Landfilling. Each operator of a facility in Texas that disposes of municipal solid waste (MSW) by means of landfilling, including landfilling of incinerator ash, is required to pay a fee to the agency for all waste received for disposal. The fee rate for waste disposed of by landfilling is dependent upon the reporting units used.

(1) Fee rates. For purposes of this subsection, uncompacted waste means any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted subsequent or prior to collection by any type of mechanical device other than small, in-house, compactor devices owned and/or operated by the generator of the waste. Compacted waste is a liquid, sludge, or similar waste or any waste that has been reduced in volume by a collection vehicle or by any other means including, but not limited to, dewatering, composting, incineration, and similar processes.

(A) Tons. For waste reported in tons, the fee rate is \$0.94 [~~\$1.25~~] per ton received for disposal.

(B) Cubic yards (compacted). For waste reported in compacted cubic yards, the fee rate is \$0.30 [~~\$0.40~~] per cubic yard received for disposal.

(C) Cubic yards (uncompacted). For waste reported in uncompacted cubic yards, the fee rate is \$0.19 [~~\$0.25~~] per cubic yard received for disposal.

(2) Measurement options. The volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight of the waste received for disposal, as defined in §330.671(b)(1) of this title (relating to Purpose and Applicability). The volume or weight of the waste received for disposal shall be determined prior to disposal or processing of the waste.

(A) The recommended method for measuring and reporting waste received at the gate is in short tons. The facility operator

must accurately measure and report the number of cubic yards or tons of waste received at the gate.

(i) The fee for waste reported in short tons will be calculated by the executive director at an amount equal to \$0.94 [~~\$1.25~~] per ton.

(ii) The fee for compacted waste reported in cubic yards will be calculated by the executive director at an amount equal to \$0.30 [~~\$0.40~~] per cubic yard.

(iii) The fee for uncompacted waste reported in cubic yards will be calculated by the executive director at an amount equal to \$0.19 [~~\$0.25~~] per cubic yard.

(B) If a landfill operator chooses to report the amount of waste received utilizing the population equivalent method authorized in §330.675(a)(3) of this title (relating to Reports), the fee for such waste received shall be calculated by the executive director at an amount equal to \$0.94 [~~\$1.25~~] per ton.

(3) Fee calculation. The fee shall be calculated by the executive director using information obtained from the quarterly solid waste summary report. The total cubic yards or tonnage reported to the executive director in the quarterly solid waste summary report shall be derived from gate tickets (weight or volume) or invoices, except in the case of operators who are authorized to report utilizing the population equivalent method in §330.675(a)(3) of this title, and records of recycled materials or any other information deemed relevant by the executive director. A billing statement will be generated quarterly by the executive director and forwarded to the applicable permittee/registrant or a designated representative.

(4) Fee due date. All solid waste fees shall be due within 30 days of the date the payment is requested.

(5) Method of payment. The required fee shall be submitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality and delivered or mailed to the return address designated by the executive director in the billing statement distributed quarterly.

(6) Penalties. Failure of the landfill operator to submit the required fee payment by the due date shall be sufficient cause for the commission to revoke the landfill permit and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051 (relating to Administrative Penalty), or take any other action authorized by law to secure compliance.

(7) Exemptions.

(A) A fee will not be charged on solid waste resulting from a public entity's effort to protect the public health and safety of the community from the effects of a natural or man-made disaster or from structures that have been contributing to drug trafficking or other crimes if the disposal facility at which that solid waste is offered for disposal has donated to a municipality, county, or other political subdivision the cost of disposing of that waste.

(B) A fee only for the amount determined necessary to reimburse MSW regulatory activities will be charged federal facilities. Prior to the fourth MSW billing quarter following the close of each regular session of the Texas State Legislature, the Texas Commission on Environmental Quality's chief financial officer will determine the percentage of the MSW disposal fee that represents reimbursement for regulatory implementation of the state MSW program and the percentage that represents a state tax. The percentage determination shall be reported to the MSW Permits Section for use in determining fees owed by federal facilities. The MSW Permits Section shall grant federal fa-

cilities a credit on their MSW fees equal to the percentage of the fee determined to be a state tax. The credit shall be applied to each billing quarter beginning with the first billing quarter of the state fiscal year.

(b) Incinerators and processes for disposal. Each operator of a facility that disposes of or processes MSW for disposal by means other than landfilling is required to pay a fee to the agency for all waste received for processing or disposal. Facilities and/or processes included in this category include, but are not limited to, incineration; composting; application of sludge, septic tank waste, or shredded waste to the land; and similar facilities or processes. Not included as a process for disposal is land application of waste that has already been properly composted in one of the facilities named.

(1) Fee rates. For purposes of this subsection, uncompacted waste means any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted subsequent or prior to collection by any type of mechanical device other than small, in-house, compactor devices owned and/or operated by the generator of the waste. Compacted waste is a liquid, sludge, or similar waste or any waste that has been reduced in volume by a collection vehicle or by any other means including, but not limited to, dewatering, composting, incineration, and similar processes.

(A) Tons. For waste reported in tons, the fee rate is \$0.47 [~~\$0.62 and one-half cent~~] per ton received.

(B) Cubic yards (compacted). For waste reported in compacted cubic yards, the fee rate is \$0.15 [~~\$0.20~~] per cubic yard received.

(C) Cubic yards (uncompacted). For waste reported in uncompacted cubic yards, the fee rate is \$0.09 [~~\$0.12~~] and one-half cent per cubic yard received.

(2) Measurement options. The volume or weight reported on the quarterly solid waste summary report must be consistent with the volume or weight of the waste received for disposal, as defined in §330.671(b)(1) of this title. The volume or weight of the waste received for disposal shall be determined prior to disposal or processing of the waste.

(A) The recommended method for measuring and reporting waste received at the gate is in short tons. The operator must accurately measure and report the number of cubic yards or tons of waste received.

(i) The fee for waste reported in short tons will be calculated by the executive director at an amount equal to \$0.47 [~~\$0.62 and one-half cent~~] per ton.

(ii) The fee for compacted waste reported in cubic yards will be calculated by the executive director at an amount equal to \$0.15 [~~\$0.20~~] per cubic yard.

(iii) The fee for uncompacted waste reported in cubic yards will be calculated by the executive director at an amount equal to \$0.09 [~~\$0.12~~] and one-half cent per cubic yard.

(B) If a facility operator chooses to report the amount of waste received utilizing the population equivalent method authorized in §330.675(a)(3) of this title, the fee shall be calculated by the executive director at an amount equal to \$0.47 [~~\$0.62 and one-half cent~~] per ton.

(3) Fee calculation. The fee shall be calculated by the executive director using information obtained from the quarterly solid waste summary report. The total cubic yards or tonnage reported to the executive director in the quarterly solid waste summary report shall be derived from gate tickets (weight or volume) or invoices, except in

the case of operators who are authorized to report utilizing the population equivalent method in §330.675(a)(3) of this title, and records of recycled materials or any other information deemed relevant by the executive director. A billing statement will be generated quarterly by the executive director and forwarded to the applicable permittee/registrant or a designated representative.

(4) Fee due date. All solid waste fees shall be due within 30 days of the date the payment is requested.

(5) Method of payment. The required fee shall be submitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality and delivered or mailed to the return address designated by the executive director in the billing statement distributed quarterly.

(6) Penalties. Failure of the facility or process operator to submit the required fee payment by the due date shall be sufficient cause for the commission to revoke the permit or registration and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051, or take any other action authorized by law to secure compliance.

(7) Exemptions. A fee will not be charged on solid waste resulting from a public entity's effort to protect the public health and safety of the community from the effects of a natural or man-made disaster or from structures that have been contributing to drug trafficking or other crimes if the disposal facility at which that solid waste is offered for disposal has donated to a municipality, county, or other political subdivision the cost of disposing of that waste.

(c) Facilities and processes not for disposal. Facilities or processes not included in the scope of subsections (a) and (b) of this section shall be considered as "facilities and processes not for disposal." Facilities and processes not for disposal are those facilities that are permitted or registered independently from landfill, incinerator, or disposal processing operations and include, but are not limited to, such facilities or processes as transfer stations, shredders, balers, methane extractors, etc. Facilities and processes not for disposal are not required to pay a fee to the agency, but are required to submit reports.

§330.675. Reports.

(a) Disposal facilities and processes.

(1) Municipal Solid Waste Fee Report frequency, report form, and report information.

(A) Report frequency. Quarterly, each disposal facility or process operator shall report to the executive director the information requested on the report form for the appropriate reporting period including the amount of ~~source-separated material processed~~ [source separated yard waste converted] to compost or ~~mulch product~~ [product for composting]. Annually, the operator shall submit a summary of the information to show the yearly totals and year-end status of the facility or process, as requested on the report form, for the appropriate reporting period. An operator shall file a separate report for each facility that has a unique permit, permit application number, or registration number.

(B) Report form. The report shall be on a form furnished by the executive director or reproduced from a form furnished by the executive director or by an electronic form or format furnished by the executive director. Forms reproduced by the facility operator are not recommended because each report form for each reporting period will have two unique numbers on each form. One number will specifically identify the facility for which the report is made; the other number will specifically identify the individual form. To use the wrong form, or the form intended for a different reporting period, will automatically make the data incorrect for that facility report. The operator

will receive one form from the executive director for each facility or process prior to the due date. The operator must assure that the data entered on the form are applicable for the particular facility and period for which the data are reported.

(C) Report information. In addition to a statement of the amount of waste received for processing or disposal, the report shall contain other information requested on the form, including the facility operator's name, address, and phone number; the permit number, permit application number, or registration number; the facility type, size, and capacity; and other information the executive director may request.

(2) Reporting units. The amount of waste received for processing or disposal shall be reported in short tons (2,000 pounds) or in cubic yards as received (compacted or uncompacted) at the gate. If accounting of the waste is recorded in cubic yards, then separate accounting must be made for waste that comes to the facility in open vehicles or without compaction, and waste that comes to the facility in compactor vehicles. If scales are not utilized and accounting of the waste received is in cubic yards, gallons, or drums then those volumetric units may be converted to tons for reporting purposes, using the conversion factors set forth in subparagraphs (A) and (B) of this paragraph.

(A) General weight/volume conversion factors for various types of waste shall be as follows:

(i) one ton = 2,000 pounds;

(ii) one gallon = 7.5 pounds (grease trap waste);

(iii) one gallon = 8.5 pounds (wastewater treatment plant sludge or septage);

(iv) one gallon = 9.0 pounds (grit trap waste); and

(v) one drum = 55 gallons.

(B) Conversion factors to be used for waste transport vehicles relative to waste volume and weight in vehicles shall be as follows:

(i) one cubic yard = 400 pounds (no compaction);

(ii) one cubic yard = 666.66 pounds (medium compaction); and

(iii) one cubic yard = 800 pounds (heavy compaction).

(3) Use of population equivalent. In determining the amount of waste deposited in a landfill serving less than 5,000 people or the amount of waste processed for disposal at a processing facility serving less than 5,000 people, the owner/operator may use the number of tons calculated or derived from the population served by the facility in lieu of maintaining records of the waste deposited at the facility. The amount of waste shall be calculated on the basis of one ton per person per year. The report shall document the population served by the facility and reflect any changes since the previous report.

(4) Reporting units for beneficial land use application sites. Wastewater treatment plant sludge and septage received for disposal at registered beneficial use land application sites in vacuum or closed tank trucks may be reported in dry weight equivalent units, provided the site operator either produces satisfactory documentation indicating the percent solids present in the received waste materials or uses the dry weight/volume conversion factors set forth in subparagraphs (A) and (B) of this paragraph:

(A) one gallon = 0.5 pounds (sludge - dry weight equivalent); and

(B) one gallon = 0.3 pounds (septage - dry weight equivalent).

(5) Report due date. The required quarterly solid waste summary report shall be submitted to the executive director not later than 20 days following the end of the fiscal quarter for which the report is applicable. The fiscal year begins on September 1, and concludes on August 31.

(6) Method of submission. The required report shall be delivered or mailed to the agency to the return address designated by the executive director in the billing statement distributed quarterly.

(7) Penalties. Failure of the facility or process operator to submit the required report by the due date shall be sufficient cause for the commission to revoke the permit or registration and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051 (relating to Administrative Penalty) or take any other action authorized by law to secure compliance.

(b) Facilities and processes not for disposal. Facilities and processes not for disposal (as defined in §330.673(c) of this title (relating to Fees)) are subject to reporting requirements, but are not required to pay a fee.

(1) Municipal Solid Waste Annual Summary Report frequency, report form, and report information.

(A) Report frequency. Annually, each facility or process operator shall report to the executive director the information requested on the report form for the appropriate reporting period. An operator shall file a separate report for each facility that has a unique permit, permit application number, or registration number.

(B) Report form. The form of the report shall be in accordance with subsection (a)(1)(B) of this section.

(C) Report information. The information in the report shall be in accordance with subsection (a)(1)(C) of this section.

(2) Reporting units. The units used in reporting shall be in accordance with subsection (a)(2) of this section.

(3) Use of population equivalent. The use of the population equivalent method of reporting waste received or processed shall be in accordance with subsection (a)(3) of this section.

(4) Report due date. The required annual report shall be submitted to the executive director not later than 45 days following the calendar year for which the report is applicable.

(5) Method of submission. The required report shall be delivered or mailed to the agency to the return address designated by the executive director in the billing statement distributed quarterly.

(6) Penalties. Failure of the facility or process operator to submit the required report by the due date shall be sufficient cause for the commission to revoke the permit or registration and authorization to process or dispose of waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051 or take any other action authorized by law to secure compliance.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2141

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CHAPTER 339. GROUNDWATER
PROTECTION RECOMMENDATION
LETTERS AND FEES

30 TAC §§339.1 - 339.3

(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 Commission on Environmental Quality or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to repeal §§339.1 - 339.3.

Background and Summary of the Factual Basis for the Proposed Rules

The TCEQ Sunset Legislation, House Bill (HB) 2694, Article 2, passed by the 82nd Legislature, 2011, and signed by the governor, transferred from the TCEQ to the Railroad Commission of Texas (RRC) duties relating to the protection of groundwater resources from oil and gas associated activities. Specifically, HB 2694, Article 2, amended the Texas Natural Resources Code to revise §91.011, add §§91.0115, 91.020, and 91.1015, and amended the Texas Water Code, §27.033. On September 1, 2011, the law transferred from the TCEQ to the RRC those duties pertaining to the responsibility of preparing groundwater protection advisory/recommendation letters. Since the transfer, the RRC has been responsible for providing surface casing and/or groundwater protection recommendations for oil and gas activities under the jurisdiction of the RRC.

The TCEQ's Surface Casing Program and staff transferred to the RRC on September 1, 2011. The RRC's Surface Casing Program was renamed the Groundwater Advisory Unit, and is now located in the William B. Travis Building, 1701 North Congress, Austin.

The RRC has adopted amendments to their regulations to reflect the changes in law made under HB 2694, Article 2. The rules in Chapter 339 authorized the executive director to provide groundwater protection letters to the RRC for use in various activities and applications before the RRC and to collect a fee for the expedited processing of a request for a groundwater protection recommendation. Because the executive director no longer provides the groundwater protection letters to the RRC, the commission's rules in Chapter 339 are no longer necessary. The RRC adopted amendments to their regulations on May 24, 2013. These regulations are effective January 1, 2014. Therefore, the commission proposes the repeal of §§339.1 - 339.3 in their entirety.

Section by Section Discussion

§339.1, Purpose

The commission proposes the repeal of §339.1. This section authorizes the executive director to provide groundwater protection letters to the RRC. With the transfer of this function from the

commission to the RRC in HB 2694, this section is no longer required.

§339.2, Applicability

The commission proposes the repeal of §339.2. This section explains the applicability for the types of applications for which a recommendation to the RRC is provided on depth or depths to usable-quality groundwater. With the transfer of this function from the commission to the RRC in HB 2694, this section is no longer required.

§339.3, Groundwater Protection Letter Requests, Expedited Processing, and Fee

The commission proposes the repeal of §339.3. This section authorizes the executive director to establish procedures and to collect fees for the processing of applications for groundwater protection recommendations. With the transfer of this function from the commission to the RRC in HB 2694, this section is no longer required.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would implement portions of the TCEQ Sunset Legislation, HB 2694, Article 2, passed by the 82nd Legislature, 2011. Specifically, the proposed rules would complete the transfer, from the TCEQ to the RRC, of duties relating to the preparation of groundwater protection advisory/recommendation letters for oil and gas drilling activities and geologic storage of anthropogenic carbon dioxide. This program was transferred to the RRC on September 1, 2011, by HB 2694. Since that time, the RRC has been responsible for providing surface casing and/or groundwater protection advisory recommendation letters to oil and gas drilling companies which are already under the jurisdiction of the RRC.

The proposed rulemaking is similar to rulemaking in 2011, Rule Project Number 2011-037-007-WS, which repealed Chapter 339 along with making other revisions. The 2011 rule proposal, without the Chapter 339 repeal, was approved by the commission on December 5, 2012. The TCEQ repeal could not become effective until the RRC adopted similar rules. The RRC was working concurrently with TCEQ to adopt similar rules; however, due to the number of comments the RRC received, their rulemaking process was extended. Because it was not known how long the RRC would extend their rulemaking, TCEQ withdrew its Chapter 339 repeal until RRC rulemaking was completed. The RRC adopted the necessary rules on May 24, 2013, which became effective on January 1, 2014. The TCEQ can now proceed with repealing Chapter 339.

On September 1, 2011, in order to implement the transfer of the groundwater protection recommendation program, the TCEQ transferred 9.0 full-time employees and \$931,256 in annual costs and fee revenue out of the Water Resource Management Account No. 153 to the RRC, to allow the RRC to implement the groundwater protection program. The RRC would fund the program with appropriated fee revenue they collect for issuing the groundwater protection recommendations. The proposed rules would not have any fiscal impacts for other state agencies or units of local government. The proposed rulemaking would

repeal Chapter 339 in its entirety since the duties related to this chapter are now the responsibility of the RRC.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law.

The proposed rules are not expected to have fiscal implications for businesses or individuals. The proposed rules repeal provisions that are no longer part of the agency's jurisdiction. The RRC became responsible for enforcing regulations pertaining to groundwater protection for oil and gas activities and geologic storage of anthropogenic carbon dioxide on September 1, 2011.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rules repeal provisions that are no longer part of the agency's jurisdiction. The RRC became responsible for enforcing regulations pertaining to groundwater protection for oil and gas activities and geologic storage of anthropogenic carbon dioxide on September 1, 2011.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are necessary to implement state law and do not adversely affect small or micro-businesses for the first five-year period the proposed rules are in effect.

Local Employment Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposal does not meet the definition of "major environmental rule" because the rulemaking action is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, the rulemaking action is intended to repeal Chapter 339 which is no longer necessary because the functions and authorization provided in the rules were transferred by statute from the commission to the RRC.

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

Takings Impact Assessment

The commission evaluated this rulemaking action and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The proposed action implements legislative requirements in HB 2694, 82nd Legislature, 2011, which transferred duties from the commission to the RRC relating to the preparation of groundwater protection letters for certain activities and applications before the RRC. The repeal of these rules would be neither a statutory nor a constitutional taking of private real property. The proposed repeals do not affect a landowner's rights in private real property because this rulemaking action does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

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

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 18, 2014, at 2:00 p.m. in Bldg. E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Mr. Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-050-330-WS. The comment period closes March 3, 2014. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/nav/rules/propose_adapt.html. For further information, please contact Ms. Charlyne Fritz, Waste Permits Division, (512) 239-2331.

Statutory Authority

The repeals are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC, and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to

carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed repeals implement House Bill 2694, 82nd Legislature, 2011.

§339.1. *Purpose.*

§339.2. *Applicability.*

§339.3. *Groundwater Protection Letter Requests, Expedited Processing, and Fee.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2141



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 218 MOTOR CARRIERS

SUBCHAPTER F. ENFORCEMENT

43 TAC §218.71

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 218, §218.71, Administrative Penalties.

EXPLANATION OF PROPOSED AMENDMENTS

The proposed amendments set out the administrative process the department will use to enforce certain federal interstate household goods laws and regulations via a state administrative proceeding. The federal laws and regulations are consumer protection provisions that apply to individual shippers and are related to the delivery and transportation of household goods in interstate commerce. The proposed amendments help the department implement the Memorandum of Agreement between the Federal Motor Carrier Safety Administration (FMCSA) and the department, executed on August 14, 2012.

Amendments to §218.71(a) clarify that the department has authority to enforce certain federal laws and regulations.

The amendment to §218.71(b) clarifies that the existing penalty provisions in subsection (b) apply to violations of state laws, rules, or orders.

New §218.71(c) is proposed to notify interstate motor carriers and brokers that the department has authority to enforce certain federal laws and regulations, pursuant to the Memorandum of Agreement between FMCSA and the department under 49 U.S.C. 14710.

New §218.71(d) sets out the administrative process the department will use to enforce certain federal interstate household

goods laws and regulations. The proposed process is the same process the department uses for the administrative enforcement of all other motor carrier enforcement actions initiated by the department.

In addition, nonsubstantive revisions are proposed to correct punctuation errors and a grammatical error. Further proposed amendments conform the language to the statutory language.

FISCAL NOTE

Ms. Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no significant fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mr. William P. Harbeson, Director of the Enforcement Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Harbeson has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be the increased regulation of interstate household goods movers and brokers. There are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or individuals.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests 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 so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on March 3, 2014.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules necessary and appropriate to implement the powers and duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE

Transportation Code, §§643.251, 643.2525, 1001.003, and 1001.041; 49 U.S.C. §§13702, 13704, 13707(b), 13901, 14104(b), 14706(f), 14708, 14710, 14901(d)(2) and (3), 14901(e), and 14915.

§218.71. *Administrative Penalties.*

(a) Authority. The department, after notice and opportunity for hearing, may impose an administrative penalty against the following:

(1) a motor carrier that [required to register under this section if the motor carrier] violates a provision of Transportation Code,

Chapter 643 or Chapter 645 or violates a rule or order adopted under Transportation Code, Chapter 643 or Chapter 645; or[-]

(2) a motor carrier or broker that violates a federal law or regulation, the enforcement of which has been delegated to the department.

(b) Amount of administrative penalty for violations of state laws, rules, or orders.

(1) In an action brought by the department, the aggregate amount of administrative penalty shall not exceed \$5,000 unless it is found that the motor carrier knowingly committed a violation.

(2) In an action brought by the department, if it is found that the motor carrier knowingly committed a violation, the aggregate amount of administrative penalty shall not exceed \$15,000. A motor carrier acts knowingly if that motor carrier has acted with knowledge that the acts are in violation of Transportation Code, Chapter 643 or Chapter 645, or a rule or order adopted under Transportation Code, Chapter 643 or Chapter 645.

(3) In an action brought by the department, if it is found that the motor carrier knowingly committed multiple violations, the aggregate amount of administrative penalty for the multiple violations shall not exceed \$30,000.

(4) Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative penalty.

(5) Any recommendation that a penalty should be imposed must be based on the following factors:

(A) the seriousness of the violation; including the nature, circumstances, extent and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety or economic welfare of the public;

(B) the economic harm to property or the environment caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter future violations;

(E) efforts made to correct the violation; and

(F) any other matters that justice may require.

(c) Memorandum of Agreement. Pursuant to a Memorandum of Agreement between the department and the Federal Motor Carrier Safety Administration, United States Department of Transportation, the department is authorized to initiate an enforcement action and assess civil penalties against a motor carrier or broker, as applicable, under the authority of the following:

(1) 49 U.S.C. §§13702, 13704, 13707(b), 13901, 14104(b), 14706(f), 14708, 14710, 14901(d)(2) and (3), 14901(e), and 14915, as amended;

(2) 49 C.F.R. §§366.4, 370.3 - 370.9, 371.3(c), 371.7, 371.105, 371.107, 371.109, 371.111, 371.113, 371.115, 371.117, 371.121, 373.201, Part 375, §§378.3 - 378.9, 387.301(b), 387.307, 387.403, and Part 386 Appendix B(g)(22) - (23), as amended; and

(3) any future delegations pursuant to 49 U.S.C. §14710.

(d) Enforcement process for federal laws and regulations. The department will follow the process set forth in Transportation Code, §643.2525 when enforcing the federal laws and regulations cited in subsection (c) of this section via an administrative proceeding.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 17, 2014.

TRD-201400177

David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: March 2, 2014
For further information, please call: (512) 467-3853



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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER A. TEXAS COMMODITY REFERENDUM LAW

DIVISION 2. TEXAS BEEF CHECKOFF PROGRAM

4 TAC §§17.20, 17.21, 17.23 - 17.25

The Texas Department of Agriculture (the department) adopts amendments to Subchapter A, Division 2, §§17.20, 17.21, and 17.23 - 17.25, concerning the Texas Beef Checkoff Program, without changes to the proposal published in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8727).

The checkoff program was established in Texas Agriculture Code, Chapter 41, Subchapter H, as amended, by the enactment of House Bill 2312 (HB 2312), 82nd Legislature, 2013 (Subchapter H). In accordance with Subchapter H, the department was petitioned by the Texas Beef Council to establish and appoint the Beef Promotion and Research Council of Texas. This council will establish the parameters and timeline for conducting a referendum of Texas beef cattle producers on whether to establish a Texas Beef Promotion and Research Program and associated producer-paid assessment to fund the program (beef checkoff). The amendments update procedures for conducting a beef checkoff referendum authorized by Subchapter H, including voter eligibility requirements, notice requirements, voting procedures, verification requirements, and the process for requesting a recount. In addition, references made to the Texas Beef Council as the designated entity administering the beef checkoff program have been changed to the Beef Promotion and Research Council of Texas, in accordance with HB 2312. The amendments were developed with the assistance of representatives from the beef industry and were approved by the members of the Beef Promotion and Research Council of Texas.

Written comments generally in support of the proposal were submitted by the Texas Cattle Feeders, the Texas and Southwestern Cattle Raisers Association, the Independent Cattlemen's Association of Texas, and the Texas Association of Dairymen. In addition, the Independent Cattlemen's Association of Texas also indicated support for an additional amendment to the rules that would restrict the use of Texas Beef Checkoff funds for the promotion and research of only Texas beef. Because the proposed

rules are procedural in nature and do not address the use of funds collected by the council, such an amendment would not be an appropriate amendment to include in these rules. The department will refer this comment to the council for its consideration.

The amendments are adopted under the Texas Agriculture Code, Chapter 41, Subchapter I, §41.163, which provides that the department with the authority to adopt rules necessary to conduct a statewide referendum of beef producers in accordance with Texas Agriculture Code, Chapter 41, Subchapter H.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 17, 2014.

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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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Proposal publication date: December 6, 2013

For further information, please call: (512) 463-4075



CHAPTER 20. COTTON PEST CONTROL SUBCHAPTER B. QUARANTINE REQUIREMENTS

4 TAC §20.16

The Texas Department of Agriculture (the department) adopts amendments to Subchapter B, §20.16, concerning restrictions on movement of regulated articles, without changes to the proposal published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8047). The adoption implements amendments made to Texas Agriculture Code, §74.122, by Senate Bill 818 (SB 818), passed by the 83rd Regular Session of the Texas Legislature (2013), to protect the state's and cotton producers' investment in boll weevil eradication and to accelerate eradication of the boll weevil in Texas.

The amendments to §20.16 change criteria for allowing movement of regulated articles. More specifically, the amendments prohibit movement of regulated articles from an area infested with the boll weevil if the area is not participating in the boll weevil eradication program. In addition, exemptions in §20.16(b) to the quarantine requirements of Subchapter B of this chapter and exceptions in §20.16(c) to the prohibitions in §20.16(b) to the movement of regulated articles are applicable under the amendments

only if the regulated article is originating from an area participating in the boll weevil eradication program. Further, the amendments to §20.16 are designed to prevent artificial movement of boll weevils from an area that is not participating in the boll weevil eradication program into an area that is participating in the program.

No comments were received on the proposal.

The amendments to §20.16 are adopted in accordance with the Texas Agriculture Code, §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, and §74.122, which provides the department with the authority to adopt rules relating to quarantining areas of Texas that are infested with the boll weevil, including rules addressing the storage and prohibiting the movement of cotton and regulated articles from an area infested with the boll weevil if the area is not participating in the boll weevil eradication program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-4075



PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 38. TRICHOMONIASIS

4 TAC §38.2

The Texas Animal Health Commission (commission) adopts amendments to §38.2, concerning General Requirements, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6759). The rule text will not be republished.

Bovine Trichomoniasis (Trich) is a venereal disease of cattle caused by the protozoa *Tritrichomonas foetus*. Certain herd management practices such as commingled grazing or fence-line contact with other herds are risk factors for infection. Control of *T. foetus* in an infected herd includes testing bulls and culling those infected.

Representatives of the Bovine Trich Working Group met on May 21, 2013, at the commission's central office in Austin to review and evaluate the effectiveness of current rules. The group recommended allowing untested bulls to be purchased and resold without a test if moved under permit with official permanent identification. After much discussion it was decided that this procedure will be allowed. Commission inspectors will permit untested bulls to be moved to either a feeding facility, another sale barn or to another physical location given by the buyer for the bull to be resold. The permit will expire seven days from the date

of issuance and bulls cannot be commingled with female cattle during the seven days.

No comments were received regarding adoption of the amendments.

STATUTORY AUTHORITY

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Gene Snelson

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0724



CHAPTER 41. FEVER TICKS

4 TAC §41.1, §41.8

The Texas Animal Health Commission (commission) adopts amendments to §41.1, concerning Definition of Terms; and §41.8, concerning Dipping and Treatment of Livestock, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6761). The rule text will not be republished.

The Texas Cattle Fever Tick Eradication Program is undergoing some changes in order to make it more effective in the efforts to eradicate the Texas cattle fever tick. During the most recent Texas Legislative Session, House Bill 1807 was enacted into law and it amended the Texas Agriculture Code to broaden the scope of statutory provisions relating to tick eradication by providing for the treatment of animals, rather than just dipping of livestock. The commission is making amendments in response to the new statutory provisions.

No comments were received regarding adoption of the amendments.

STATUTORY AUTHORITY

House Bill 1807 amended the Texas Agriculture Code, Chapter 167, §167.003, which provides for general powers and duties of the commission to eradicate fever ticks and provides authority for adopting the necessary rules to fulfill those duties. Section 167.004 authorizes the commission by rule to define what animals can be classified as exposed to ticks. Section 167.006 authorizes the commission to designate for tick eradication any county or part of a county that the commission believes contains ticks. Section 167.007 authorizes the commission to conduct tick eradication in the free area. Section 167.021 provides that the commission may establish quarantines on land, premises, and livestock as necessary for tick eradication. Section 167.022 provides the commission authority designating a county or part of a county for tick eradication. Section 167.023 provides the commission authority to establish quarantine in the free area. Section 167.024 provides the requirement to obtain appropriate authorization and compliance with the requirements prior to movement. Section 167.032 provides that the commission may restrict movement of commodities that are carrying ticks.

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

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054.

Section 161.007 provides that if a veterinarian employed by the commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a

communicable disease, the exposure or infection is considered to continue until the commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the commission. Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice, signed under that authority has the same force and effect as if signed by the entire commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Gene Snelson

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0724



CHAPTER 47. APPROVED PERSONNEL

4 TAC §§47.1 - 47.6

The Texas Animal Health Commission (commission) adopts the repeal of Chapter 47, §§47.1 - 47.6, concerning Approved Personnel, without changes to the proposal as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6765).

Elsewhere in this issue of the *Texas Register*, the commission contemporaneously adopts new Chapter 47, concerning Authorized Personnel, which replaces the repealed chapter in its entirety.

No comments were received regarding adoption of the repeal.

STATUTORY AUTHORITY

The repeal is authorized by the Texas Agriculture Code §161.046, which provides the commission with authority to adopt rules relating to the protection of livestock, exotic livestock, domestic fowl or exotic fowl, as well as Texas Government Code §2001.039, which requires a state agency to review their rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Gene Snelson

General Counsel

Texas Animal Health Commission

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CHAPTER 47. AUTHORIZED PERSONNEL

The Texas Animal Health Commission (commission) adopts new Chapter 47, §§47.1 - 47.9 and §§47.11 - 47.15, concerning Authorized Personnel. Section 47.1 is adopted with changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6765) and will be republished. Sections 47.2 - 47.9 and §§47.11 - 47.15 are adopted without changes to the proposed text and will not be republished.

Elsewhere in this issue of the *Texas Register*, the commission contemporaneously adopts the repeal of the existing Chapter 47, §§47.1 - 47.6, concerning Approved Personnel. The purpose of the new chapter is to make substantial changes to the requirements of persons authorized to perform certain activities related to disease control, in response to the passage of House Bill (HB) 3569 during the 83rd Texas Legislative Session.

HB 3569 amended the Texas Agriculture Code to require a person, including a veterinarian, to be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals. In addition to the brucellosis program, existing disease control or eradication programs include, but are not limited to, tuberculosis, trichomoniasis, piroplasmiasis, equine infectious anemia, chronic wasting disease, pseudorabies, and scrapie.

The new Chapter 47 includes two subchapters. Subchapter A, which is entitled "General Provisions," includes provisions for all persons authorized by the commission to perform activities as part of a disease control or eradication program. The provisions include minimum standards for authorized personnel and establish application, training, and recordkeeping requirements. Subchapter A also includes grounds for suspending or revoking an authorized person's status and the procedures that must be followed to proceed with such action.

Subchapter B, which is entitled "Brucellosis Program," includes the existing standards and requirements for authorized personnel performing activities that are part of the brucellosis control program. In addition, the commission revises the general requirements concerning adult cattle vaccination for brucellosis. As a result of the severe drought, a number of Texas cattle are moving or have been moved to other states. Some western states require brucellosis vaccination of cattle prior to entry. To assist producers in meeting those states' entry requirements, §47.12 allows authorized veterinarians to adult vaccinate cattle for brucellosis if commission protocols are followed. Previously, commission veterinarians and inspectors, and USDA veterinary medical officers and animal health technicians were the only persons authorized to vaccinate adult cattle.

The commission is also revising the brucellosis calfhood vaccination requirements by removing the reference and tattoo requirements for *Brucella abortus* strain 19 vaccines in §47.14. This is a conforming program change as *Brucella abortus* strain 19 is no longer authorized for routine use in the brucellosis control program.

The commission received one comment from the Texas Veterinary Medical Association regarding adoption of the new chapter. They noted that they were supportive of the legislation and their goal was for us to implement the rule in a fair and practical manner, which preserves due process and supports the commission's disease surveillance and control work. They had one specific issue of concern as it relates to the involvement of non-licensed lay persons for the collection of Chronic Wasting Disease (CWD) samples. Currently, the test involves the removal of test

samples from dead animals. They do believe that would need to be held to accountable standards by our rules, but if the sample collection involved a live animal or involved the practice of veterinary medicine, then this is an area that would be part of the practice of veterinary medicine and changes should be made in accordance with that standard. The commission appreciates the comment and agrees with the assessment regarding a live animal test for CWD.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§47.1 - 47.9

STATUTORY AUTHORITY

HB 3569 amended the Texas Agriculture Code, Chapter 161, by adding §161.0417, which requires a person, including a veterinarian, to be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals. HB 3569 authorizes the commission to adopt necessary rules for the authorization of such persons and, after reasonable notice, to suspend or revoke a person's authorization if the commission determines that the person has substantially failed to comply with Chapter 161 or rules adopted under that chapter. The bill entitles a person to a hearing before the commission or a hearing examiner appointed by the commission before the commission may revoke the person's authorization. The bill requires the commission to make all final decisions to suspend or revoke an authorization. The bill establishes that its provisions relating to authorized personnel for disease control do not affect the requirement for a license or an exemption under the Veterinary Licensing Act to practice veterinary medicine. HB 3569 also amended §161.0601(a) to clarify that the commission is authorized to charge a fee and provide for the issuance of electronic certificates of veterinary inspection by veterinarians.

The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized by §161.041(b) to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. Section 163.064 provides that only a person approved by the commission may perform testing and vaccinating for brucellosis, regardless of whether the person is a veterinarian.

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

Under §161.081, the commission by rule may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. Also, under that section the commission by rule may provide the method for inspecting and testing animals before and after entry into this state. The commission by rule may provide for the issuance and form of health certificates and entry permits.

The rules may include standards for determining which veterinarians of this state, other states, and departments of the federal government are authorized to issue the certificates or permits.

Section 161.101 requires a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of certain diseases among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Under §161.112, the commission may adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

Section 161.113 provides that if the commission requires testing or vaccinations at a market, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The commission may adopt rules requiring permits for moving exotic livestock and exotic fowl from livestock markets as necessary to protect against the spread of communicable diseases.

§47.1. Definitions.

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

(1) Accredited veterinarian--A veterinarian approved by USDA under the provisions of Title 9, Part 161, Code of Federal Regulations, to perform specified functions required by cooperative state-federal disease control eradication programs for Category II animals.

(2) Authorized personnel--

(A) Veterinarians and inspectors employed by the commission;

(B) USDA-APHIS, VS veterinary medical officers and animal health technicians;

(C) Veterinarians who:

(i) are licensed to practice veterinary medicine in Texas; and

(ii) are Category II accredited by USDA-APHIS, VS for the State of Texas; and

(iii) have satisfactorily completed Texas Animal Health Commission disease control or eradication program training or provide documentation to the executive director that they have satisfactorily completed substantially similar disease control or eradication program training;

(D) Veterinarians' technicians and/or employees who have satisfactorily completed the Texas Animal Health Commission disease control or eradication program training or provide documentation to the Executive Director that they have satisfactorily completed substantially similar disease control or eradication program training; and

(E) For the Chronic Wasting Disease (CWD) program, individuals who have satisfactorily completed Texas Animal Health Commission CWD disease control or eradication program training or provide documentation to the executive director that they have satisfactorily completed substantially similar CWD disease control or eradication program training.

(3) APHIS--The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(4) Commission--The Texas Animal Health Commission.

(5) Disease control or eradication program--Any state or federal disease control or eradication program for animals.

(6) Executive Director--The Executive Director of the Texas Animal Health Commission or any individual authorized to act for the Executive Director.

(7) False sample--An adulterated sample or a sample that was collected from an animal other than the animal indicated on the test document.

(8) Issue--The distribution, including electronic transmission, of an official document that has been signed.

(9) Official document--Any certificate, form, record, report, chart, tag, band, or other identification, required by the commission or USDA for use by an authorized person performing authorized functions under this chapter. This includes, but is not limited to a certificate of veterinary inspection, vaccination charts and test documents.

(10) Sign--For an authorized person to put his or her signature in his or her own hand, or by means of an approved digital signature, on an official document. No official document is signed if:

(A) Someone other than the authorized person has signed it on behalf or in the name of the authorized person, regardless of the authority granted them by the authorized person; or

(B) If any mechanical device, other than an approved digital signature, has been used to affix the signature.

(11) Veterinarian-in-Charge--The veterinary official of APHIS who is assigned by the USDA Administrator to supervise and perform the official work of APHIS in a State or group of States.

(12) VS--The Veterinary Services of the United States Department of Agriculture.

(13) Veterinarian's technician or employee--An authorized person who works under the supervision of an authorized veterinarian unless specifically exempted under this chapter, or rules of the Texas Board of Veterinary Medical Examiners as provided in 22 TAC Chapter 573, Subchapter B (relating to Supervision of Personnel), to perform certain procedures under general supervision.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Gene Snelson

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0724



SUBCHAPTER B. BRUCELLOSIS PROGRAM

4 TAC §§47.11 - 47.15

STATUTORY AUTHORITY

HB 3569 amended the Texas Agriculture Code, Chapter 161, by adding §161.0417, which requires a person, including a veterinarian, to be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals. HB 3569 authorizes the commission to adopt necessary rules for the authorization of such persons and, after reasonable notice, to suspend or revoke a person's authorization if the commission determines that the person has substantially failed to comply with Chapter 161 or rules adopted under that chapter. The bill entitles a person to a hearing before the commission or a hearing examiner appointed by the commission before the commission may revoke the person's authorization. The bill requires the commission to make all final decisions to suspend or revoke an authorization. The bill establishes that its provisions relating to authorized personnel for disease control do not affect the requirement for a license or an exemption under the Veterinary Licensing Act to practice veterinary medicine. HB 3569 also amended §161.0601(a) to clarify that the commission is authorized to charge a fee and provide for the issuance of electronic certificates of veterinary inspection by veterinarians.

The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized by §161.041(b) to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. Section 163.064 provides that only a person approved by the commission may perform testing and vaccinating for brucellosis, regardless of whether the person is a veterinarian.

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

Under §161.081, the commission by rule may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. Also, under that section the commission by rule may provide the method for inspecting and testing animals before and after entry into this state. The commission by rule may provide for the issuance and form of health certificates and entry permits. The rules may include standards for determining which veterinarians of this state, other states, and departments of the federal government are authorized to issue the certificates or permits.

Section 161.101 requires a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of certain diseases among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Under §161.112, the commission may adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping

of those livestock as necessary to protect against the spread of communicable diseases.

Section 161.113 provides that if the commission requires testing or vaccinations at a market, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The commission may adopt rules requiring permits for moving exotic livestock and exotic fowl from livestock markets as necessary to protect against the spread of communicable diseases.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Gene Snelson

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0724



CHAPTER 50. ANIMAL DISEASE TRACEABILITY

4 TAC §50.3

The Texas Animal Health Commission (commission) adopts new §50.3, concerning Cattle Identification, with changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6772). The rule text will be republished.

The purpose of the new section is to establish identification requirements for cattle.

The United States Department of Agriculture (USDA) has amended its regulations and established minimum national official identification and documentation requirements for the traceability of livestock moving interstate. Under USDA's rulemaking, unless specifically exempted, livestock belonging to species covered by the regulations must be officially identified and accompanied by an interstate certificate of veterinary inspection or other documentation. These regulations specify approved forms of official identification for each species, but allow the livestock covered under this rulemaking to be moved interstate with another form of identification, as agreed upon by animal health officials in the shipping and receiving States or Tribes. The federal rule provides for an approved tagging site, which is a premise where livestock moving interstate may be officially identified on behalf of their owner or the person in possession. Under the federal rule they must be officially approved by the state where located. The effective date of the USDA rule is March 11, 2013, and it is found in 9 CFR Part 86.

The commission believes that it is in the best interest of the state's cattle industry to develop and implement a minimal identification requirement in order to maintain a surveillance standard that supports the full completion of the Brucellosis eradication program as well as other ongoing disease eradication or surveillance efforts. This is being adopted as part of the Brucellosis

eradication program in order to achieve complete eradication of the disease. Identification helps the commission personnel to quickly locate at risk cattle and also rule out herds that do not have the cattle in question. Quickly locating animals of interest can be critical to an effective disease response. For example, the first 24 hours of response when faced with a highly contagious disease such as Foot and Mouth disease has been proven to be the key in quickly allowing normal trade and marketability to resume. An efficient and accurate animal disease traceability system also helps reduce the number of animals potentially involved in an investigation. The mandatory identification system already in place in 2009 in the Texas dairy industry allowed the commission to only test a portion of the state's dairy cattle, instead of all of them, when faced with a complex disease investigation resulting from a tuberculosis infected dairy in west Texas.

The USDA recently released a 130-page report entitled "*Assessment of Pathways for the Introduction and Spread of Mycobacterium bovis in the United States*". The report indicates that a lack of a national animal identification program leaves the U.S. vulnerable to containing disease outbreaks and puts the U.S. at risk of shutting down commerce if there is a significant disease outbreak. Texas has historically been considered to have one of the best traceability systems to date due to the application of permanent official identification (eartags) of adult cattle at markets prior to August 1, 2011. The vulnerability increases daily with the cessation of the brucellosis identification process in conjunction with the stoppage of brucellosis testing.

Although Texas has been considered brucellosis free since 2008, two infected herds were disclosed in 2011. Texas is still considered at risk for more detection of the disease, as well as a risk for disclosing brucellosis test reactions in cattle due to swine brucellosis in the feral population. The presence of eartags on adult cattle will ensure that if a herd does need to be evaluated it can be done quickly.

HB 2311 amends the current law relating to an animal identification program. Over the last three years, the Texas cattle industry has placed a renewed emphasis on controlling foreign animal diseases of concern. Intrastate and interstate animal identification plans have recently been developed and implemented at the federal and state levels for the purpose of establishing a means to enable the cattle industry and state and federal animal health officials to more rapidly and effectively respond to animal health emergencies.

HB 2311 clarifies that any state animal disease traceability program cannot be more stringent than any federal animal disease traceability program; repeals the penalty provisions that gave the commission the Class C misdemeanor authority for violations relating to animal identification; and repeals the subsection that references the use of specific identification numbers that the commission may consider in implementing an animal identification program. Additionally, the bill requires a two-thirds vote of the Commissioners to adopt any program more stringent than federal law.

The requirement as adopted is based on a change of ownership within Texas. Under the rule all cattle that are parturient or post parturient or 18 months of age and older, except steers and spayed heifers changing ownership within Texas, shall be officially identified with an official eartag or other form of official permanent identification as approved by the commission. That requirement does create an exception for movement to slaughter within seven days of the change of ownership. Cattle that

are sold or consigned to move to a state or federally approved slaughter establishment within seven days of the change of ownership, where they are harvested within three days of arrival at the establishment, are exempt from the requirement.

The commission received a letter from the Farm and Ranch Freedom Alliance as well as 14 other email comments regarding adoption of the new rule, all with the same issues of concern. The first issue raised was regarding an economic assessment on the requirement. "First, the agency should have done an economic impact statement to determine the cost for small and micro-businesses. The statement that the identification tags are "available to producers" does not address the question of whether the government will continue to provide tags at no cost in the future. And the greater cost will come from the labor and equipment needed to do tagging, particularly for very small scale producers who do not have chutes and headgates, which can cost thousands of dollars. The agency assumes that there will be businesses offering tagging services 'for a nominal fee,' but this has yet to happen." The commission appreciates the comments and would note that first and foremost the cost of tagging an animal is minimal, particularly when included with the overall production cost incurred with raising, working, feeding, and selling an animal. The tags even if procured are still of minimal cost. Chutes and headgates to tag cattle for a small producer are not necessary. If someone is going to sell an animal, then the animal will need to be transported and this provides an opportunity to apply identification on the animal. Also, if a small producer is taking the cattle to sell at a livestock market, then there is an opportunity to have the animal tagged with identification.

The second issue raised in the comments was regarding a custom slaughterhouse. The comments all stated that cattle being taken to a custom slaughterhouse should be exempted, just like cattle being taken to slaughter at a state or federally inspected slaughterhouse. From a traceability perspective, there is no significant difference between an inspected and a custom slaughterhouse. Many small-scale producers do not have an inspected slaughterhouse nearby, and it is unfair to impose tagging requirements on them simply because of the inspection status of the facility. Under the law these custom slaughter facilities do have a status as being inspected by state inspectors and would qualify under this exemption.

STATUTORY AUTHORITY

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

HB 2311 was passed during the 83rd Texas Legislative Session and clarifies that any state animal disease traceability program cannot be more stringent than any federal animal disease traceability program; the bill requires a two-thirds vote of the commission's board to adopt any program more stringent than federal law.

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

Under §161.081, the commission by rule may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. Also, under that section the commission by rule may provide the method for inspecting and testing animals before and after entry into this state. The commission by rule may provide for the issuance and form of health certificates and entry permits. The rules may include standards for determining which veterinarians of this state, other states, and departments of the federal government are authorized to issue the certificates or permits.

Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission. Under §161.112, the commission may adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases. Also, the commission may adopt rules requiring permits for moving exotic livestock and exotic fowl from livestock markets as necessary to protect against the spread of communicable diseases.

§50.3. *Cattle Identification.*

(a) Change of ownership within Texas. All cattle that are parturient or post parturient or 18 months of age and older, except steers and spayed heifers changing ownership within Texas, shall be officially identified with an official eartag or other form of official permanent identification as approved by the commission within seven days of the change of ownership.

(b) Cattle that are sold or consigned to move to a state or federally approved slaughter establishment within seven days of the change of ownership, where they are harvested within three days of arrival at the establishment, are exempt from the requirement of subsection (a) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Gene Snelson
General Counsel
Texas Animal Health Commission
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For further information, please call: (512) 719-0724



CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.8

The Texas Animal Health Commission (commission) adopts amendments to §51.8, concerning Cattle, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6774). The rule text will not be republished.

The purpose of the amendments is to change the Bovine Trichomoniasis (Trich) entry requirements.

The Trich control program is an industry driven initiative that was implemented in 2009. The concept included an annual review by commission staff and interested stakeholder organizations of the program's rules and policies and to subsequently suggest non-binding recommendations to the commission. The Trich Working Group met on May 15, 2013, to evaluate the Trich program. The group discussed the program overview to date, the management of infected herds, entry requirements, and ultimately discussed the need for revisions to the program regarding interstate movement of breeding bulls into Texas.

No comments were received regarding adoption of the amendments.

STATUTORY AUTHORITY

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

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Gene Snelson

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Texas Animal Health Commission

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CHAPTER 57. POULTRY

4 TAC §57.13

The Texas Animal Health Commission (commission) adopts new §57.13, concerning Indemnification, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6776). The rule text will not be republished.

The new section is for the purpose of providing indemnification requirements for poultry.

During the 83rd Texas Legislative Session, House Bill (HB) 1521 was passed, which amended the Texas Agriculture Code to extend the commission's authority to require the slaughter or sale for immediate slaughter of domestic and exotic fowl, if the fowl is exposed to or infected with certain diseases, and compensate domestic and exotic fowl owners. The fowl industry would benefit from similar provisions currently in place for livestock owners. These provisions and measures will also avoid risks to human health due to the exposure to diseased fowl. An outbreak of low path avian influenza provides the commission concern for the potential exposure to the Texas poultry industry if the agency is not able to effectively and efficiently remove exposed or infected poultry. Low pathogenic avian influenza is an infectious and contagious disease that has previously been detected in several states including Texas. HB 1521 establishes indemnity provisions for domestic and exotic fowl owners, provided state funding is available.

The commission received one comment from the Texas Poultry Federation in support of the new section.

STATUTORY AUTHORITY

The new section is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. HB 1521 amends §161.0415(a) and (b) and §161.058(a) and (c) of the Texas Agriculture Code. Section 161.0415 now authorizes the commission by order to require the slaughter of livestock, domestic fowl or exotic fowl, under the direction of the commission, or the sale of livestock, domestic fowl or exotic fowl for immediate slaughter at a public slaughtering establishment maintaining federal or state inspection if the livestock, domestic fowl or ex-

otic fowl is exposed to or infected with certain disease. Section 161.058 now authorizes the commission to pay an indemnity to the owner of livestock, domestic fowl or exotic fowl exposed to or infected with a disease if the commission considers it necessary to eradicate the disease and to dispose of the exposed or diseased livestock, domestic fowl or exotic fowl. It also authorizes the commission to spend funds appropriated for the purpose of this section only for direct payment to owners of exposed or infected livestock, domestic fowl or exotic fowl.

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

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.6

The Texas State Securities Board adopts an amendment to §109.6, concerning investment adviser registration exemption for investment advice to financial institutions and certain institutional investors, with changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6778). The text in subsection (e) was changed to a date certain (March 31, 2014) to coordinate the adoption of this amendment and new §139.23 with the SEC filing deadline for annual amendments to Form ADV.

The amendment coordinates with new §139.23, a registration exemption for investment advisers to private funds, which is being concurrently adopted. The exclusion from the exemption in subsection (c) for advisers to "private funds" is removed and language added to reference the new §139.23 exemption for private fund advisers. A grandfathering provision is added as new subsection (e) to allow an investment adviser currently relying

on §109.6 as it now exists for advisory services rendered to a "private fund" (as defined in new §139.23) to continue using the exemption in certain circumstances - if the private fund was in existence on March 31, 2014, and the private fund ceases to accept new beneficial owners.

The preamble for the published proposal clarified that the following would not be considered "new beneficial owners": donees of gifts (where the donor is a natural person, and the donee is either a natural person family member of donor (or an entity composed only of such family members, i.e., trusts, etc.) or is an IRC 501(c)(3) charitable organization); a successor who received the interest due to an involuntary transfer (examples would be legal separation, divorce, death, devise, bankruptcy, or receivership); or a "knowledgeable employee" of the issuer or adviser who replaces a departing knowledgeable employee.

The exemption is preserved for investment advisers who currently come within its provisions.

The Board received a comment letter on the proposal from members of the subcommittee of the Securities Law Committee of the Business Law Section of the State Bar of Texas. The letter expressed support for the amendment to §109.6. The Board agreed and adopted the amendment substantially as published.

The amendment is adopted under Texas Civil Statutes, Articles 581-5.T, 581-12.C, and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Articles 581-5, 581-12, 581-12-1, and 581-18.

§109.6. Investment Adviser Registration Exemption for Investment Advice to Financial Institutions and Certain Institutional Investors.

(a) Availability. The exemption from investment adviser and investment adviser representative registration provided by the Texas Securities Act, §5.H, or this section is not available if the financial institution or other institutional investor named therein is in fact acting only as agent for another purchaser that is not a financial institution or other institutional investor listed in §5.H or this section. These exemptions are available only if the financial institution or other institutional investor named therein is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the investment advisory services for which the investment adviser or investment adviser representative is claiming the exemption. For purposes of this section, an investment adviser or investment adviser representative that is providing investment advisory services to a corporation, general partnership, limited partnership, limited liability company, trust or other legal entity, other than a private fund (as that term is defined in §139.23 of this title (relating to Registration Exemption for Investment Advisers to Private Funds)), is not providing investment advisory services to a shareholder, general partner, member, other security holder, beneficiary or other beneficial owner of the legal entity unless the investment adviser provides investment advisory services to such owner separate and apart from the investment advisory services provided to the legal entity.

(b) Investment advice rendered to certain institutional investors. The State Securities Board, pursuant to the Act, §5.T and §12.C, exempts from the investment adviser and investment adviser representative registration requirements of the Act, persons who render investment advisory services to any of the following:

(1) an "accredited investor" (as that term is defined in Rule 501(a)(1)-(3), (7), and (8) promulgated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933, as amended (1933 Act), as made effective in SEC Release Number 33-6389, as amended in Release Numbers 33-6437, 33-6663, 33-6758, and 33-6825);

(2) any "qualified institutional buyer" (as that term is defined in Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as made effective in SEC Release Number 33-6862, and amended in Release Number 33-6963); and

(3) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than \$5 million, or a wholly-owned subsidiary of such entity.

(c) Exclusions from exemption. There is no exemption under this section for an investment adviser providing investment advisory services to a natural person. A private fund adviser, as that term is defined in §139.23 of this title (relating to Registration Exemption for Investment Advisers to Private Funds), may not rely on this exemption except as provided in subsection (e) of this section.

(d) Financial statements. For purposes of determining an institutional investor's total assets or net worth under this section, an investment adviser or investment adviser representative may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the institutional investor.

(e) Grandfathering. An investment adviser to a private fund, as that term is defined in §139.23 of this title (relating to Registration Exemption for Investment Advisers to Private Funds), may nonetheless qualify for the exemption described in subsection (b) of this section if:

(1) the private fund existed prior to March 31, 2014;

(2) the investment adviser qualified for the exemption in subsection (b) of this section as modified by subsection (c) of this section as both subsections existed prior to March 31, 2014; and

(3) as of March 31, 2014, the private fund ceases to accept new beneficial owners.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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John Morgan

Securities Commissioner

State Securities Board

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Proposal publication date: October 4, 2013

For further information, please call: (512) 305-8303



7 TAC §109.13

The Texas State Securities Board adopts an amendment to §109.13, concerning limited offering exemptions, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6780).

The amendment incorporates recent changes to Securities and Exchange Commission ("SEC") Regulation D, Rule 506 concerning bad actor disqualification and elimination of the prohibition against general solicitation and general advertising in certain Rule 506 offerings when all purchasers of the securities are accredited investors and the issuer takes reasonable steps to verify that such purchasers are accredited investors.

The provisions of the Texas Exemption will coordinate more closely with the standards and requirements of a corresponding federal exemption.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Articles 581-5.T and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Articles 581-5 and 581-7.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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John Morgan

Securities Commissioner

State Securities Board

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Proposal publication date: October 4, 2013

For further information, please call: (512) 305-8303



CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.18

The Texas State Securities Board adopts an amendment to §115.18, concerning special application provisions available to a military spouse, military service member, or military veteran, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6780).

The amendment implements Senate Bill 162 requiring licensing agencies to provide an additional alternative licensing procedure for military spouses and new alternative procedures for military service members and veterans seeking a registration or license in Texas. A related form is being concurrently adopted as is a comparable amendment for investment adviser and investment adviser representative applications. The amendment takes ef-

fect March 1, 2014, and applies to applications filed on or after that date.

A military spouse already licensed in another jurisdiction can request special consideration when applying for registration in Texas and a military service member or veteran can receive credit for comparable military service, training or education when applying for a Texas registration.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1 and Chapter 55 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Chapter 55 of the Texas Occupations Code authorizes the agency to adopt rules for licensure or registration of a person who is a military spouse, military service member, or military veteran who meets certain criteria.

The adopted amendment affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, and 581-18.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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John Morgan

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §116.18

The Texas State Securities Board adopts an amendment to §116.18, concerning special application provisions available to a military spouse, military service member, or military veteran, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6782).

The amendment implements Senate Bill 162 requiring licensing agencies to provide an additional alternative licensing procedure for military spouses and new alternative procedures for military service members and veterans seeking a registration or license in Texas. A related form is being concurrently adopted as is a comparable amendment for dealer and agent applications. The amendment takes effect March 1, 2014, and applies to applications filed on or after that date.

A military spouse already licensed in another jurisdiction can request special consideration when applying for registration in

Texas and a military service member or veteran can receive credit for comparable military service, training or education when applying for a Texas registration.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1 and Chapter 55 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Chapter 55 of the Texas Occupations Code authorizes the agency to adopt rules for licensure or registration of a person who is a military spouse, military service member, or military veteran who meets certain criteria.

The adopted amendment affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, and 581-18.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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John Morgan

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



CHAPTER 133. FORMS

7 TAC §133.4

The Texas State Securities Board adopts the repeal of §133.4, which adopts by reference a form concerning military spouse request for expedited review, without changes to the proposal as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6785).

The repeal allows a new form to be adopted.

An outdated form has been eliminated.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 581-28-1 and Chapter 55 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Chapter 55 of the Texas Occupations Code authorizes the agency to adopt rules for licensure or registration of a person who is a military spouse, military service member, or military veteran who meets certain criteria.

The adopted repeal affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, and 581-18.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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7 TAC §133.4

The Texas State Securities Board adopts new §133.4, which adopts by reference a form concerning request for special consideration of a registration application by a military spouse, military service member, or military veteran, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6785).

The form allows a military spouse already licensed in another jurisdiction and a military service member or veteran to request special consideration or credit for comparable military service, training or education pursuant to §115.18 or §116.18, which are being concurrently amended. Existing §133.4 is being concurrently repealed. The new form takes effect March 1, 2014, and applies to applications filed on or after that date.

A military spouse already licensed in another jurisdiction and a military service member or veteran can complete the form to request special consideration or credit pursuant to §115.18 or §116.18.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 581-28-1 and Chapter 55 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Chapter 55 of the Texas Occupations Code authorizes the agency to adopt rules for licensure or registration of a person who is a military spouse, military service member, or military veteran who meets certain criteria.

The new rule affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, and 581-18.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.23

The Texas State Securities Board adopts new §139.23, concerning registration exemption for investment advisers to private funds, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6786).

This is a new registration exemption for investment advisers to private funds. A related amendment to §109.6, concerning investment adviser registration exemption for investment advice to financial institutions and certain institutional investors, is being concurrently adopted. Both the amendment to §109.6 and new §139.23 will take effect on March 31, 2014, to allow advisers affected by the changes to make an orderly transition and prepare and make any filings necessitated by the changes.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111-203 ("Dodd-Frank"), made substantial changes to the regulation of private funds. Dodd-Frank mandated Securities and Exchange Commission ("SEC") registration for investment advisers to private funds if they have assets under management of at least \$150 million and subjected them to recordkeeping and disclosure requirements.

The SEC provides an exemption from the registration requirements under the Investment Advisers Act of 1940 for an investment adviser that acts solely as an adviser to private funds and has assets under management of less than \$150 million. Although exempt from federal registration, these advisers must file reports with the SEC and are called "exempt reporting advisers." The new exemption extends this filing requirement to private fund investment advisers who utilize the exemption so that the Agency has comparable information on advisers using the exemption. Alternatively, some investment advisers to private funds with assets under management of more than \$100 million can opt to register with the SEC.

The Form ADV filing required under subsection (b)(1) would be made on a comparable schedule as an exempt reporting adviser making the Form ADV filing with the SEC. Form ADV, General Instruction number 13, requires this filing to be made within 60 days of the adviser relying on §203(m) of the Investment Advisers Act because the adviser acts solely as an adviser to private funds. An adviser who is registered must file a Form ADV-W to withdraw from registration before submitting the first report as an exempt reporting adviser. No filing fee is imposed on either the investment advisers or their representatives who qualify for the exemption.

The exemption in §139.23 ceases to be available for an investment adviser once the adviser becomes registered with the SEC. At that point, the adviser makes a notice filing in Texas. As with other investment adviser exemptions, the adviser's representatives whose activities are similarly limited are covered by the adviser's exemption from registration. Although the exemption

does not specifically address the disclosures that must be made by the exempt investment adviser, the general antifraud provisions of the Texas Securities Act would apply.

The exemption contains bad-actor disqualifications applicable to the investment adviser and to its advisory affiliates and imposes additional restrictions on advisers to 3(c)(1) funds.

Transparency will be enhanced for investment advisers who no longer qualify for the exemption contained in §109.6.

The Board received a comment letter on the proposal from members of the subcommittee of the Securities Law Committee of the Business Law Section of the State Bar of Texas. The letter expressed support for new §139.23. The Board agreed and adopted the rule as published.

The new rule is adopted under Texas Civil Statutes, Articles 581-5.T, 581-12.C, and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The new rule affects Texas Civil Statutes, Articles 581-5, 581-7, 581-12, 581-12-1, and 581-18.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2014.

TRD-201400164
John Morgan
Securities Commissioner
State Securities Board
Effective date: March 31, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 305-8303



7 TAC §139.24

The Texas State Securities Board adopts new §139.24, concerning charitable organizations assisting economically disadvantaged clients with Texas qualified tuition program plans, with changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6789).

The definitions of "economically disadvantaged" and "financial coach or counselor" in subsection (a) were modified slightly at adoption to reflect comments received on the published proposal. Economically disadvantaged means those eligible for services based on criteria established by a charitable organization using the federal poverty guidelines, rather than those eligible based on criteria established by a charitable organization and the federal poverty guidelines. A financial coach or counselor is an individual acting on behalf of a charitable organization in

providing services (not just counseling) to economically disadvantaged clients of the organization.

The new rule provides a registration exemption for a charitable organization and its financial coaches or counselors when they assist economically disadvantaged clients with Texas qualified tuition program plans.

Charitable organizations and their financial coaches or counselors can assist economically disadvantaged clients with Texas qualified tuition plans without registering as dealers, agents, investment advisers, or investment adviser representatives.

The Board received two comment letters on the proposal. The first, from the RAISE Texas Network (representing 24 individuals and organizations) supported the proposal. The second, from the RAISE Texas Network and the Center for Public Policy Priorities, supported the proposal and suggested two changes to the text. Staff contacted the authors of the letters to discuss their comments and reached an understanding on the modifications they were seeking to the definitions of "economically disadvantaged" and "financial coach or counselor" in subsection (a). The Board agreed and adopted modifications to those definitions.

The new rule is adopted under Texas Civil Statutes, Articles 581-5.T, 581-12.C, and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The new rule affects Texas Civil Statutes, Articles 581-12 and 581-18.

§139.24. Charitable Organizations Assisting Economically Disadvantaged Clients with Texas Qualified Tuition Program Plans.

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

(1) Charitable organization--A 501(c)(3) nonprofit organization located in Texas that provides services to economically disadvantaged individuals and families.

(2) Client--An individual receiving services from a financial coach or counselor of a charitable organization relating to a Texas qualified tuition program plan.

(3) Economically disadvantaged--Eligible for services based on criteria established by a charitable organization using the poverty guidelines updated periodically in the *Federal Register* by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(4) Financial coach or counselor--An individual acting on behalf of a charitable organization in counseling or providing services to economically disadvantaged clients of the charitable organization.

(5) Texas qualified tuition program plan--A fund or plan established under the Texas Education Code, Chapter 54, Subchapter G, H, or I, as amended.

(b) Exemption from dealer, agent, investment adviser, and investment adviser representative registration. The State Securities

Board, pursuant to the Texas Securities Act, §12.C, exempts a charitable organization and its financial coaches and counselors from the dealer, agent, investment adviser, and investment adviser representative registration requirements of the Texas Securities Act, when their securities-related activities are limited to:

(1) assisting economically disadvantaged clients with completing documentation necessary to enroll or make a contribution to a Texas qualified tuition program plan; and

(2) providing materials relating to a Texas qualified tuition program plan that have been prepared on behalf of or approved by the plan manager or administrator of a Texas qualified tuition program plan, Texas Prepaid Higher Education Tuition Board, Office of the Comptroller of Public Accounts, Texas State Securities Board, Texas Match the Promise Foundation, or a tax-exempt charitable organization established by law to implement the Texas Save and Match Program.

(c) Prohibited activities. A charitable organization and its financial coaches and counselors are prohibited from the following activities in connection with a client's enrollment in or contribution to a Texas qualified tuition program plan:

(1) selecting or recommending a particular investment option; or

(2) receiving a commission or other remuneration.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2014.

TRD-201400165

John Morgan

Securities Commissioner

State Securities Board

Effective date: February 5, 2014

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For further information, please call: (512) 305-8303

TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.3

The Texas Funeral Service Commission ("Commission") adopts amendments to §201.3, concerning Complaints and Investigations, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6860). The section will not be republished.

The amendments to §201.3 are adopted to add language to include the Staff Attorney and Legal Assistant to the rule provisions.

No comments were received regarding the proposed amendments.

The amendments are adopted under Texas Occupations Code, §651.152. The Commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 14, 2014.

TRD-201400121
Janice McCoy
Executive Director
Texas Funeral Service Commission
Effective date: February 3, 2014
Proposal publication date: October 4, 2013
For further information, please call: (512) 936-2469



CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.3

The Texas Funeral Service Commission ("Commission") adopts an amendment to §203.3, concerning Funeral Director in Charge, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6862). The section will not be republished.

The amendment to §203.3 is adopted to change the mileage in subsection (d) from 60 to 100 miles.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, §651.152. The Commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201400120
Janice McCoy
Executive Director
Texas Funeral Service Commission
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Proposal publication date: October 4, 2013
For further information, please call: (512) 936-2469



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 111. CONTROL OF AIR POLLUTION FROM VISIBLE EMISSIONS AND PARTICULATE MATTER

SUBCHAPTER B. OUTDOOR BURNING

30 TAC §111.211

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §111.211 *without change* to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5223) and will not be republished.

The amendment will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rule

The Texas Prescribed Burning Board (TPBB) petitioned the TCEQ to address wildfires in the state's prescribed burn rule. In particular, the TPBB asked for a revision that would add hazard mitigation to the rule. The commission approved the request at its February 27, 2013, Agenda meeting and issued an order on March 5, 2013, directing the executive director to initiate rulemaking (Project No. 2013-018-PET-NR).

The rule revision amends §111.211 by adding prescribed burning for wildfire hazard mitigation as an exception to the state's prohibition on outdoor burning. Currently, a prescribed burn is allowed only for forest, range and wildland/wildlife management purposes, and coastal salt-marsh management burning. The revision allows prescribed burning in other areas, such as where rural areas interface with urban areas, for the purpose of wildfire hazard mitigation in order to reduce the incidence, intensity, and spread of wildfires. While the petitioner did not specifically request that the hazard mitigation provision be specific to wildfires, the exception added to §111.211(1) is specific to wildfire hazard mitigation in order to provide clarity and specificity consistent with the commission's interpretation of the TPBB's intent. The TPBB did not comment on the proposed rule.

Under current TCEQ rule §111.215, a prescribed burn for wildfire hazard mitigation is authorized only by written permission on a case-by-case basis from the TCEQ executive director. Prescribed burning has been underutilized due to lack of awareness of the authorization available under §111.215. Also, prescribed burning for hazard mitigation is currently subject to TCEQ enforcement action unless prior written permission from the executive director is received. Prescribed burning is not appropriate for land-clearing operations, which are addressed separately under §111.209.

A prescribed burn is defined in §111.203(5) as the controlled application of fire to naturally occurring vegetative fuels under specified environmental conditions and confined to a predetermined area, following appropriate planning and precautionary measures. The state's prohibition on outdoor burning is in Chapter 111, Subchapter B.

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

The revision to add wildfire hazard mitigation to Chapter 111 does not negatively impact the state's attainment of the particulate matter National Ambient Air Quality Standard (NAAQS), does not interfere with control measures for NAAQS compliance, and does not prevent reasonable further progress toward attainment of the particulate matter NAAQS.

The outdoor burning rules in Chapter 111, Subchapter B, are included in the SIP as part of the state's strategy for control of particulate matter emissions. The revision does not interfere with applicable requirements for attainment and for reasonable further progress toward attainment, or with other applicable requirements of the Federal Clean Air Act (FCAA). While prescribed burning does result in some air emissions, controlled burning for wildfire hazard mitigation purposes helps reduce the incidence, intensity, and spread of wildfires. By reducing the likelihood of the significantly greater air emissions associated with wildfires, the rule revision is expected to help improve air quality. Additionally, as discussed elsewhere in this preamble, the executive director currently authorizes prescribed burning for wildfire hazard mitigation on a case-by-case basis as provided by §111.215. Section 111.215 is already an EPA-approved rule under the SIP. The commission's purpose in amending the rule is to streamline the existing process for authorization of prescribed burning for wildfire hazard mitigation provided by §111.215, consistent with the executive director's current enforcement of the outdoor burning rules in Chapter 111, Subchapter B.

Section Discussion

The amendment to §111.211 changes existing paragraph (1) to add "wildfire hazard mitigation" to the list of authorized prescribed burn purposes.

Final Regulatory Impact Determination

The commission reviewed the rule revision in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, Regulatory Analysis of Major Environmental Rules, and determined that the amendment does not meet the definition of a major environmental rule as defined in the statute. According to Texas Government Code, §2001.0225, a major environmental rule means "a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." The purpose of this revision is to increase protection of the environment through wildfire hazard mitigation and reduce risk to human health; it is not expected that this revision will adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, or the public health and safety of the state or a sector of the state. Therefore, no regulatory impact analysis is required.

Furthermore, even if the revision to the rule constituted a major environmental rule, a regulatory impact analysis would not be required because the revision does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the fed-

eral government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The revision does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the revision is designed to meet, not exceed the relevant standard set by federal law; 2) no contract or delegation agreement covers the topic that is the subject of this rule; and 3) the rule revision is authorized by specific sections of the Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), cited in the Statutory Authority section of this preamble.

The purpose of the rule revision is to allow prescribed burns for the purpose of wildfire hazard mitigation. Also, the rule revision will be incorporated into the Texas SIP. The revision will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the FCAA. In addition, the revision is expected to improve air quality by reducing the incidence, intensity, and spread of wildfires.

Without the rule revision, a prescribed burn for wildfire hazard mitigation may be authorized only by written permission on a case-by-case basis from the TCEQ executive director under §111.215. Under current rules, prescribed burning is underutilized due to lack of awareness of the provision in §111.215. Without written permission from the executive director, prescribed burning for hazard mitigation is subject to TCEQ enforcement action.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission completed a takings impact assessment for this rulemaking action under Texas Government Code, §2007.043. The primary purpose of the rulemaking is to add in §111.211, prescribed burning for wildfire hazard mitigation as an exception to the state's prohibition on outdoor burning. Currently, a prescribed burn is allowed only for forest, range and wildland/wildlife management purposes, and coastal salt-marsh management burning. A prescribed burn is defined in §111.203(5) as the controlled application of fire to naturally occurring vegetative fuels under specified environmental conditions and confined to a predetermined area, following appropriate planning and precautionary measures.

This revision is expected to improve air quality by reducing the incidence, intensity, and spread of wildfires. In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to this rule amendment because this is an action that is taken in response to a real and substantial threat to public health and safety, that is designed to significantly advance the health and safety purpose, and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13).

Consistency with the Coastal Management Program

The commission reviewed the rulemaking and found the revision is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Coastal Management Program, and, therefore, requires

that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and has no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Because Chapter 111 contains applicable requirements under 30 TAC Chapter 122, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise operating permits to include the revised Chapter 111 requirements for emissions affected by the revisions to Chapter 111 at their site.

Owners or operators must revise operating permits to include the new Chapter 111 requirements upon the effective date of the adopted rulemaking.

Public Comment

The commission held a public hearing on September 10, 2013. The comment period closed on September 16, 2013. The commission received comments from the Houston Regional Group of the Sierra Club (Sierra Club), the Harris County Attorney's Office (HCAO), Harris County Pollution Control Services Department (HCPCSD), and the EPA. The comments from the Sierra Club were generally in support of the revision.

Response to Comments

Comment

The Sierra Club expressed support for this proposal, but believes it is unnecessary since the prescribed burning already allowed under §111.211 is usually flexible enough to allow burning in areas as necessary for wildfire hazard mitigation. Sierra Club also encouraged the commission to understand that this form of prescribed burn is not needed or recommended in streamside management zones or in riparian areas since it can severely damage these areas for the native wildlife and vegetation.

Response

The commission appreciates the support. The amendment adopted in this rulemaking specifically addresses the mitigation of wildfire hazards to human population. The purpose of the amendment is to include prescribed burning for wildfire hazard mitigation as an exception to the type of outdoor burning that requires approval of the executive director on a case-by-case basis. The amendment streamlines the authorization process for prescribed burning for wildfire hazard mitigation by authorizing, without prior approval from the executive director, a form of prescribed burning that has consistently been approved in the past. No change was made as a result of this comment.

Comment

The Sierra Club urged the commission to allow prescribed burning that begins naturally or as a result of human carelessness.

Response

A prescribed burn is one that is intentionally set with the purpose of an end benefit. Fires that begin naturally or by human carelessness are not examples of prescribed burning. Prescribed burning for wildfire hazard mitigation is an intentionally set fire designed to reduce the frequency, intensity, and duration of a wildfire by consuming the fuel load under controlled conditions with the goal to reduce the potential fire hazard between unpopulated and populated areas. No change was made as a result of this comment.

Comment

EPA, HCAO, and HCPCSD commented on the need for the revised rule to define "wildfire hazard" and "wildfire hazard mitigation." They are concerned that, without the requested definitions, burning of large piles of brush from land-clearing operations would take place under this exception. In its comment, EPA questioned the TCEQ's ability to ensure that the burning would not be conducted for another reason, such as land-clearing, if the executive director's case-by-case approval is not required.

Response

The TCEQ does not believe a definition of wildfire hazard or of wildfire hazard mitigation in the amended rule is necessary to prevent unauthorized burning under the amended rule. A prescribed burn is defined in §111.203(5) as: "The controlled application of fire to naturally occurring vegetative fuels under specified environmental conditions and confined to a predetermined area, following appropriate planning and precautionary measures." It is also defined in 4 TAC §225.1(10) as: "The controlled application of fire to naturally occurring or naturalized vegetative fuels under specified environmental conditions in accordance with a written prescribed burn plan." The accumulation of cleared and piled vegetation is considered a waste and therefore is not considered a naturally occurring fuel. Compliance with the streamlined authorization for prescribed burning for wildfire hazard mitigation does not change whether the approval is made on a case-by-case basis or approved under the conditions set forth in this proposed rule. No change was made as a result of these comments.

Comment

HCAO and HCPCSD commented on the lack of requirements that define who may carry out a prescribed burn and how prescribed burning takes place. They recommend that the proposed rule be revised to define who can conduct prescribed burning, and that the rule include training and qualification criteria.

Response

The TPBB is responsible for regulating certified and insured prescribed burn managers. For more information about the TPBB's certification and training programs, go to <http://www.texasagriculture.gov/Home/ProductionAgriculture/PrescribedBurnProgram.aspx>. No change was made as a result of these comments.

Comment

HCAO and HCPCSD commented on the lack of pre-approval or pre-inspection requirements of the site or area that is the subject of the prescribed burn. They recommended prior notification to local authorities be made part of the revised rule. They proposed a specific wording for the notification requirement, and requested that the notification requirement be extended to all types of prescribed burning in §111.211.

Response

The purpose of the amendment is to streamline the process for prescribed burning for wildfire hazard mitigation. Requiring notification to local authorities is not always possible due to time restraints and emergency situations. Notification would not facilitate streamlining the authorization process for this type of prescribed burning. No change was made in response to these comments.

Comment

HCAO and HCPCSD commented that the exception would allow an increased number of fires that could impact the Houston-Galveston-Brazoria (HGB) PM_{2.5} attainment status. Since the HGB attainment status is currently under review, the commenters requested a re-evaluation of the proposed exception if future PM_{2.5} monitoring data indicates an impact from prescribed burning for wildfire hazard mitigation.

Response

Prescribed burning for wildfire hazard mitigation is already conducted on a case-by-case basis, requiring approval from the TCEQ Regional Director. The purpose of this rulemaking is to "pre-authorize" prescribed burning with the intention of streamlining the decision-making process under a specific set of conditions. The result of controlled burns for wildfire hazard mitigation should be the reduced frequency, intensity, and duration of wildfires, and therefore less atmospheric loading of airborne particulates.

If the HGB area's PM_{2.5} attainment status changes in the future, the TCEQ will be required to develop SIP revisions to address all contributing factors. The allowance of this type of prescribed burning is not expected to be a contributing factor for PM_{2.5} non-attainment. No change was made in response to these comments.

Comment

EPA noted in their comment that a SIP revision must meet §110(l) of the FCAA and requested that the TCEQ address several points. Specifically, the EPA asked what analysis has the TCEQ done to support its statement that the proposed revision to add wildfire hazard mitigation to Chapter 111 is expected to improve air quality by reducing the incidence, intensity, and spread of wildfires. Additionally, the EPA asked if the TCEQ had done any analysis to estimate the additional amount of acreage that may be annually burned as a result of this amendment to Chapter 111. Finally, the EPA stated that the TCEQ should provide an analysis to show that the revision will not interfere with attainment or maintenance of the ozone, as well as the particulate matter standards.

Response

The commission did not perform any modeling or other technical analysis regarding the expected benefits associated with wildfire hazard mitigation. Nor has the commission performed an analysis to estimate the additional acreage that may be burned annually from wildfire hazard mitigation purposes. The commission considers it to be self-evident that while prescribed burns for wildfire hazard mitigation will result in some emissions of particulate matter, nitrogen oxides, and other pollutants, these emissions will be significantly less than a wildfire which would burn uncontrolled and consume substantially more fuel. Additionally, such analyses are not necessary for the purposes of FCAA, §110(l) and the adopted revision to Chapter 111. The commission already has the ability to allow prescribed burns for wildfire hazard mitigation purposes on a case-by-case basis under

§111.215, which is an EPA-approved rule under the SIP. Therefore, the adopted rule revision is not authorizing an activity that could not already be allowed under the current rules included in the SIP. As such, the revision cannot be backsliding under the SIP for the purposes of FCAA, §110(l) for either the particulate matter or the ozone NAAQS. The purpose of the rulemaking is to better facilitate the process of allowing prescribed burns for wildfire hazard mitigation by specifically allowing the activity under the rule rather than through case-by-case determinations. No change has been made to the rule in response to this comment.

Comment

EPA commented that, by removing the existing approval process from §111.215, the executive director no longer has "methods to specify control or abate emissions."

Response

Section 111.215 stipulates that the executive director *may* specify procedures or methods to control or abate emissions. Because emissions controls or abatement are not practical in all cases of outdoor burning, not every request is conducive to abating or controlling emissions. Other than the general requirements in the exception, there are no practical methods to control or abate emissions from prescribed burning, thus the executive director is not waiving or eliminating this requirement. No change was made in response to this comment.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, General Powers, §5.103, Rules, and §5.105, General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under the Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.018, which authorizes the commission to control outdoor burning; and THSC, §382.085, unauthorized emissions prohibited.

The adopted amendment implements TWC, §§5.102, 5.103, and 5.105; THSC, §§382.002, 382.011, 382.012, 382.017, 382.018, and 382.085; and Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 17, 2014.

TRD-201400172

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: February 6, 2014
Proposal publication date: August 16, 2013
For further information, please call: (512) 239-2548



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

43 TAC §215.58

The Texas Department of Motor Vehicles (department) adopts new §215.58, Delegation of Final Order Authority, without changes to the proposed text as published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6565). The new section will not be republished.

EXPLANATION OF ADOPTED NEW SECTION

The new section delegates final order authority and motion for rehearing authority from the board of the Texas Department of Motor Vehicles (board) to the director of the department division that regulates the distribution and sale of motor vehicles in certain cases resolved without a decision on the merits and in all cases under Occupations Code, §2301.204 or §§2301.601 - 2301.613 filed before January 1, 2014.

Currently, the designated division is the department's Motor Vehicle Division, but the adopted language allows the board or the Executive Director the flexibility to change the division's name.

New §215.58(a) delegates the authority to issue final orders in certain cases to the director of the department division that regulates the distribution and sale of motor vehicles.

New §215.58(b) delegates the authority to issue decisions and orders in cases under Occupations Code, §2301.204 or §§2301.601 - 2301.613 filed prior to January 1, 2014.

New §215.58(c) delegates the authority to issue decisions and orders regarding motions for rehearing in certain cases.

COMMENTS

No comments on the proposed new section were received.

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties for the Texas Department of Motor Vehicles under the Transportation Code and the Occupations Code; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.154(c),

and Transportation Code, §1003.005(b), which provide the board with the authority to delegate final order authority.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 16, 2014.

TRD-201400166
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: February 5, 2014
Proposal publication date: September 27, 2013
For further information, please call: (512) 467-3853



SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §215.138

The Texas Department of Motor Vehicles (department) adopts amendments to §215.138, Use of Metal Dealer License Plates, without changes to the proposed text as published in the October 4, 2013, issue of the *Texas Register* (38 TexReg 6903). The amended rule will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The amendments implement the changes mandated by House Bill 894, 83rd Legislature, Regular Session, 2013, which amended Transportation Code, §503.068(b) and added subsection (b-1) to expand the use of metal dealer license plates on service or work vehicles used by an independent motor vehicle dealer to transport inventory to and from points of sale, and add a non-substantive amendment.

Amendment to subsection (b) is adopted to identify and clarify the statutory exception under which an independent motor vehicle dealer may use a metal dealer license plate on a service or work vehicle to transport a motor vehicle from the dealer's inventory to and from a point of sale.

Amendment to subsection (e) is adopted to correct a punctuation error by adding a comma.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §503.002 and §1002.001, and Occupations Code, §2301.155, which provide the board of the Texas Department of Motor Vehicles (board) with the authority to establish rules necessary to administer the laws relating to the sale and distribution of motor vehicles in this state; and more specifically, Transportation Code, §503.061(b), which provides the board the authority to adopt rules to regulate the issuance and use of metal dealer license plates.

CROSS REFERENCE TO STATUTE

Transportation Code, §503.038 and §503.068.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 17, 2014.

TRD-201400178

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Effective date: February 6, 2014

Proposal publication date: October 4, 2013

For further information, please call: (512) 467-3853



CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

The Texas Department of Motor Vehicles (department) adopts the repeal of §215.304, Notice of Alleged Violation, and adopts new Subchapter J, Administrative Sanctions, §215.500, Administrative Sanctions and Procedures; §215.501, Final Decisions and Orders; Motions for Rehearing; §215.502, Judicial Review of Final Order; and §215.503, Refund of Fees, without changes to the proposed text as published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6566). The adopted repeal and new sections will not be republished.

EXPLANATION OF ADOPTED REPEAL AND NEW SECTIONS

The repeal and new sections are necessary to implement the changes mandated by House Bill 2741, 83rd Legislature, Regular Session, 2013, which amends Occupations Code, §2301.651(d), by adding a provision that the department may not deny, revoke, or suspend a license or take disciplinary action against a licensee under Occupations Code, Chapter 2301, Subchapter N, which includes violations under Transportation Code, §503.038(a), unless the respondent is given an opportunity for a hearing.

The repeal of §215.304 will ensure an orderly transition from current procedure to the procedure described by the new sections.

New §215.500 describes the types of administrative sanctions that could be imposed by the department on a license applicant or a licensee and explains the procedure by which an administrative sanction will be imposed. New subsection (a) lists the types of administrative sanctions that could be imposed by the department on a license applicant or a licensee for a violation. New subsection (b) requires the department to issue and send a Notice of Department Decision (notice) to a license applicant or a licensee determined to be in violation of Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 to the license applicant's or the licensee's last known address by certified mail delivery. New subsection (c) details the specific requirements of the notice. The notice shall include a statement of the department's decision of administrative sanction and an effective date, a description of the alleged violation(s), a description of the administrative sanction adopted for each alleged violation, a statement as to the legal basis for each administrative sanction, a statement notifying the license applicant or licensee of the right to request and procedure to set an administrative hearing on the

matter on or before a specific date certain, and a statement informing the license applicant or the licensee that the adopted administrative sanction will become final if a request for hearing is not timely. New subsection (d) establishes a 26-day deadline by which a written request for hearing must be received by the department. New subsection (e) establishes the procedure by which the department shall set the time, date and location for an administrative hearing and provides that the hearing will be conducted under the provisions of Occupations Code, Chapter 2301 and heard by an administrative law judge from the State Office of Administrative Hearings. New subsection (f) informs the license applicant or the licensee that the consequence of the untimely request for an administrative hearing is that the department's decision becomes final.

New §215.501 describes the procedure by which the notice becomes a final order. New subsection (a) provides that, in the absence of a proper request for hearing, the department or a final order authority shall issue a final order that will be sent to the license applicant or the licensee. New subsection (b) provides that Government Code, Chapter 2001, Subchapter F, relating to Contested Cases: Final Decisions and Orders; Motions for Rehearing, governs the issuance of final orders and motions for rehearing.

New §215.502 provides that Government Code, Chapter 2001, Subchapter G, relating to Contested Cases: Judicial Review, governs the appeal of a final order issued under new Subchapter J.

New §215.503 provides that the department will not refund fees paid by a license applicant or a licensee if the license has been denied, suspended or revoked under the new subchapter.

COMMENTS

No comments on the proposed repeal and new sections were received.

SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

43 TAC §215.304

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §503.002, Transportation Code, §1002.001, and Occupations Code, §2301.155, which provide the board of the Texas Department of Motor Vehicles with the authority to adopt rules for the conduct of the work of the department; and more specifically, Occupations Code, §2301.153, which authorizes the board to adopt rules to perform a power or duty expressly granted under Chapter 2301.

CROSS REFERENCE TO STATUTE

Transportation Code, §2301.651 and §2301.801.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 17, 2014.

TRD-201400179

David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: February 6, 2014
Proposal publication date: September 27, 2013
For further information, please call: (512) 467-3853

◆ ◆ ◆
**SUBCHAPTER J. ADMINISTRATIVE
SANCTIONS**

43 TAC §§215.500 - 215.503

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §503.002, Transportation Code, §1002.001, and Occupations Code, §2301.155, which provide the board of the Texas Department of Motor Vehicles with the authority to adopt rules for the conduct of the work of the department; and more specifically, Occupations Code, §2301.153, which authorizes the board to adopt rules to perform a power or duty expressly granted under Chapter 2301.

CROSS REFERENCE TO STATUTE

Transportation Code, §2301.651 and §2301.801.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 17, 2014.

TRD-201400180
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: February 6, 2014
Proposal publication date: September 27, 2013
For further information, please call: (512) 467-3853

◆ ◆ ◆
**CHAPTER 217. VEHICLE TITLES AND
REGISTRATION**
**SUBCHAPTER B. MOTOR VEHICLE
REGISTRATION**

43 TAC §§217.21, 217.23, 217.24, 217.26, 217.29

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 217, Subchapter B, §217.21, Definitions; §217.23, Special Registration Permits; §217.24, Disabled Person License Plates and Identification Placards; §217.26, Military Specialty License Plates; and §217.29, Vehicle Registration Renewal via the Internet, all relating to Motor Vehicle Registration, without changes to the proposed text as published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6568). The amended rules will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The amendments are necessary to implement the legislative requirements of House Bills 120, 1678, 2485 and 2741, and Sen-

ate Bills 563, 597, and 1376, 83rd Legislature, Regular Session, 2013; House Bill 2357, 82nd Legislature, Regular Session, 2011; and House Bill 2553, 81st Legislature, Regular Session, 2009.

Amendments to §217.21(8) delete "in tons" from the definition of Carrying Capacity and now define the term as "the maximum safe load that a commercial vehicle may carry, as determined by the manufacturer." The amendments conform the definition to the requirements of House Bill 2357, 82nd Legislature, Regular Session, 2011.

Amendments to §217.23(b)(1)(C) revise the language from "difference between the owner's regular annual registration fee and the annual fee for the desired tonnage" to "difference between the owner's annual registration fee and the annual fee for the desired gross vehicle weight." The amendments to §217.23(b)(1)(E) revise the language "hauling the larger tonnage" to "hauling the additional weight." The amendments to §217.23(b)(2)(C)(i) require that the foreign semitrailer registration be current. The amendments also change the criteria of the exemption for foreign semitrailers from token fee payment and license plate display requirements. The amendments are required by House Bill 2357, 82nd Legislature, Regular Session, 2011, and House Bill 2553, 81st Legislature, Regular Session, 2009. The amendments to §217.23(e)(2) authorize the return of unused temporary registration permits to the county tax assessor-collector as well as the department. The amendments are intended to increase the convenience to department customers.

Amendments to §217.24, Disabled Person License Plates and Identification Placards, delete unnecessary language in §217.24(b)(2)(A) and (B), §217.24(c), and §217.24(d)(2) and (3) because this language is included in Transportation Code, §§504.201 - 504.203 and §§681.001 - 681.013. The amendments to §217.24(f)(1)(B), relating to transfer of Disabled Person license plates between vehicles, remove the prohibition on such transfers and authorize transfer if the county or department can verify the plate ownership and that the vehicle the plates are transferred to is owned by the disabled person or used for the transportation of the disabled person. The amendments also add the requirement that an owner who sells or transfers a vehicle with Disabled Person license plates must remove the plates from the vehicle. The amendments to §217.24(g)(1) require a law enforcement officer who seizes an identification placard under Transportation Code, §681.012, to destroy the placard and provide the department with a notice that the placard was destroyed not later than the fifth day after the date of the seizure. The amendments streamline the settlement procedure available under §217.24(g)(2) concerning placard seizure disputes by allowing the placard holder to obtain a replacement placard from the county tax assessor-collector. The amendments to §217.24(g)(2)(C) also delete some unnecessary provisions which no longer apply to the placard procedures. The amendments are necessary to implement the legislative requirements of House Bill 2741, 83rd Legislature, Regular Session, 2013. The amendments renumber the provisions accordingly. These amendments will reduce the time and effort currently required of both law enforcement officers and department personnel in storing and processing seized placards. The amendments to the section are intended to increase convenience of department customers.

Amendments to §217.26(b) add the Defense Superior Service Medal, Air Medal, Air Medal with Valor, and Enduring Freedom Afghanistan military specialty license plates. The amendments also add Retired military specialty license plates for honorably

discharged members of the U.S. Armed Forces. The amendments to §217.26(c) authorize a person eligible for Surviving Spouse Disabled Veteran specialty plates to register one vehicle for the person's own use without payment of any fee other than \$3 for the first set of license plates. The new military specialty license plates are authorized by Transportation Code, §§504.301 - 504.319, as amended by House Bills 120, 1678, and 2485, and Senate Bills 563, 597, and 1376 83rd Legislature, Regular Session, 2013.

Amendments to §217.29(b) clarify that participation by county tax assessor-collectors in an online registration renewal system designated by the department is now mandatory. The amendments to §217.29(c)(2) and (3) delete unnecessary language and move language from subsection (c) to subsection (f). The amendments are in compliance with Transportation Code, §520.005, as amended by House Bill 2741, 83rd Legislature, Regular Session, 2013.

Nonsubstantive amendments to correct punctuation, grammar, and capitalization were made throughout the amended sections.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the Texas Department of Motor Vehicles under the Transportation Code; and more specifically, Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Chapter 502, Registration of Vehicles; Transportation Code, §504.0011, which authorizes the board to adopt rules to implement and administer Transportation Code, Chapter 504, License Plates; and Transportation Code, §520.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 520, Miscellaneous Provisions.

CROSS REFERENCE TO STATUTE

Transportation Code, §§502.093, 502.255, 504.201 - 504.203, 504.301 - 504.319, 520.005 and 681.001 - 681.013.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 17, 2014.

TRD-201400181

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Effective date: February 6, 2014

Proposal publication date: September 27, 2013

For further information, please call: (512) 467-3853



CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

SUBCHAPTER C. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES

43 TAC §219.31

The Texas Department of Motor Vehicles (department) adopts new §219.31, Timber Permits, with changes to the proposed text as published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7428). The adopted rule will be republished.

EXPLANATION OF ADOPTED NEW SECTION

House Bill 2741, 83rd Legislature, Regular Session, 2013, added new Transportation Code, Chapter 623, Subchapter Q, §§623.321 - 623.325, authorizing the department to issue a permit to a person to operate a vehicle or combination of vehicles to transport unrefined timber, wood chips, or woody biomass in certain counties. This permit is an alternative to a permit issued under Transportation Code, §623.011.

New §219.31 implements this new permit by establishing the procedures for the application and issuance of the permit. In addition, §219.31 establishes the process by which the financially responsible party shall electronically file the notification document with the department, as required by Transportation Code, §623.323. Further, §219.31 establishes certain restrictions and requirements regarding the permit.

New §219.31(g)(5) is adopted with changes from the proposed text by adding the word "by" to correct a nonsubstantive grammatical error.

COMMENTS

No comments on the proposed new section were received.

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to establish rules that are necessary and appropriate to implement the powers and duties of the department; Transportation Code, §623.002, which authorizes the board of the Texas Department of Motor Vehicles to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; and more specifically, Transportation Code, §623.323(c), which authorizes the department to establish by rule the method by which a financially responsible party shall electronically file the notification document described by Transportation Code, §623.323(b).

CROSS REFERENCE TO STATUTE

Transportation Code, §623.012 and §§623.321 - 623.325.

§219.31. *Timber Permits.*

(a) Purpose. This section prescribes the requirements and procedures regarding the annual permit for the operation of a vehicle or combination of vehicles that will be used to transport unrefined timber, wood chips, or woody biomass, under the provisions of Transportation Code, Chapter 623, Subchapter Q.

(b) Application for permit.

(1) To qualify for a timber permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name and address of the applicant;

(B) name of contact person and telephone number or email address;

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number; and

(D) a list of timber producing counties described in Transportation Code, §623.321(a), in which the vehicle or combination of vehicles will be operated.

(3) The application shall be accompanied by:

(A) the total annual permit fee of \$1,500; and

(B) a blanket bond or irrevocable letter of credit as required by Transportation Code, §623.012, unless the applicant has a current blanket bond or irrevocable letter of credit on file with the department that complies with Transportation Code, §623.012.

(4) Fees for permits issued under this section are payable as required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(c) Issuance and placement of permit and windshield sticker; restrictions.

(1) A permit and a windshield sticker will be issued once the application is approved, and each will be mailed to the applicant at the address contained in the application.

(2) The windshield sticker shall be affixed to the inside of the windshield of the vehicle in accordance with the diagram printed on the back of the sticker and in a manner that will not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will render the sticker void and will require a new permit and sticker.

(3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued, provided that the permittee submits a request on a form approved by the department which shall include a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle.

(d) Notification. The financially responsible party as defined in Transportation Code, §623.323(a), shall electronically file the notifi-

cation document described by §623.323(b) with the department via the form on the department's website.

(e) Transfer of permit. An annual permit issued under this section is not transferable between vehicles.

(f) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(g) Termination of permit. An annual permit issued under this section will automatically terminate, and the windshield sticker must be removed from the vehicle:

(1) on the expiration of the permit;

(2) when the lease of the vehicle expires;

(3) on the sale or other transfer of ownership of the vehicle for which the permit was issued;

(4) on the dissolution or termination of the partnership, corporation, or other legal entity to which the permit was issued; or

(5) if the permittee fails to timely replenish the bond or letter of credit as required by Transportation Code, §623.012.

(h) Restrictions. Permits issued under this section are subject to the restrictions in §219.11(l) of this title.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 17, 2014.

TRD-201400182

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

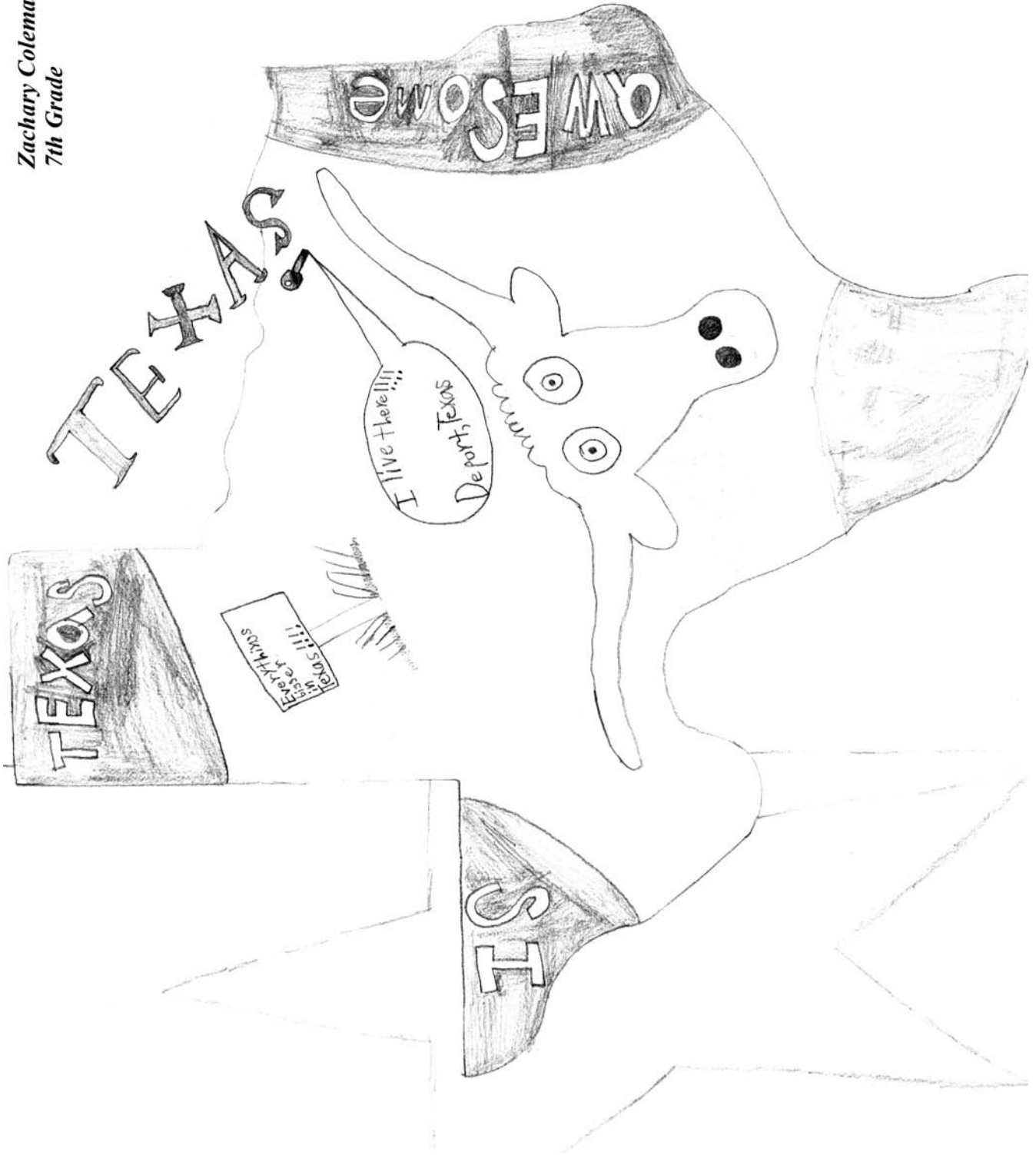
Effective date: February 6, 2014

Proposal publication date: October 25, 2013

For further information, please call: (512) 467-3853



Zachary Coleman
7th Grade



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Texas Animal Health Commission

Title 4, Part 2

TRD-201400153

Filed: January 16, 2014



Proposed Rule Reviews

Texas Animal Health Commission

Title 4, Part 2

The Texas Animal Health Commission (commission) proposes the review of 4 TAC Chapter 32, concerning Hearing and Appeal Procedures, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are §§32.1, 32.2, 32.5, and 32.6.

As required by §2001.039 of the Texas Government Code, the commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Comments on the proposed rule review may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721, or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*.

TRD-201400154

Gene Snelson

General Counsel

Texas Animal Health Commission

Filed: January 16, 2014



Adopted Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

In accordance with the Texas Government Code §2001.039, the Texas Department of Insurance, Division of Workers' Compensation (Division) considered readoption, revision, and repeal of all sections within 28 Texas Administrative Code (TAC) Chapter 65 - Unethical or Fraudulent Claims Practices. The notice of proposed rule review was published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5313).

The Division has determined that the reasoned justification to adopt the sections pursuant to Government Code §2001.033 continues to exist. The Division received no public comment on the sections within this chapter. Accordingly, the Division readopts the following rules in this chapter:

Chapter 65. Unethical or Fraudulent Claims Practices.

§65.5. Practicing before the Board.

§65.10. Actions by Carrier, Claimant's Attorney and/or Agent.

§65.15. Filing of Violation Report.

This concludes the review of 28 TAC Chapter 65. Any proposed changes to the sections within 28 TAC Chapter 65 as a result of future reviews will be done in accordance with the Administrative Procedure Act which governs rule proposals and adoptions.

TRD-201400152

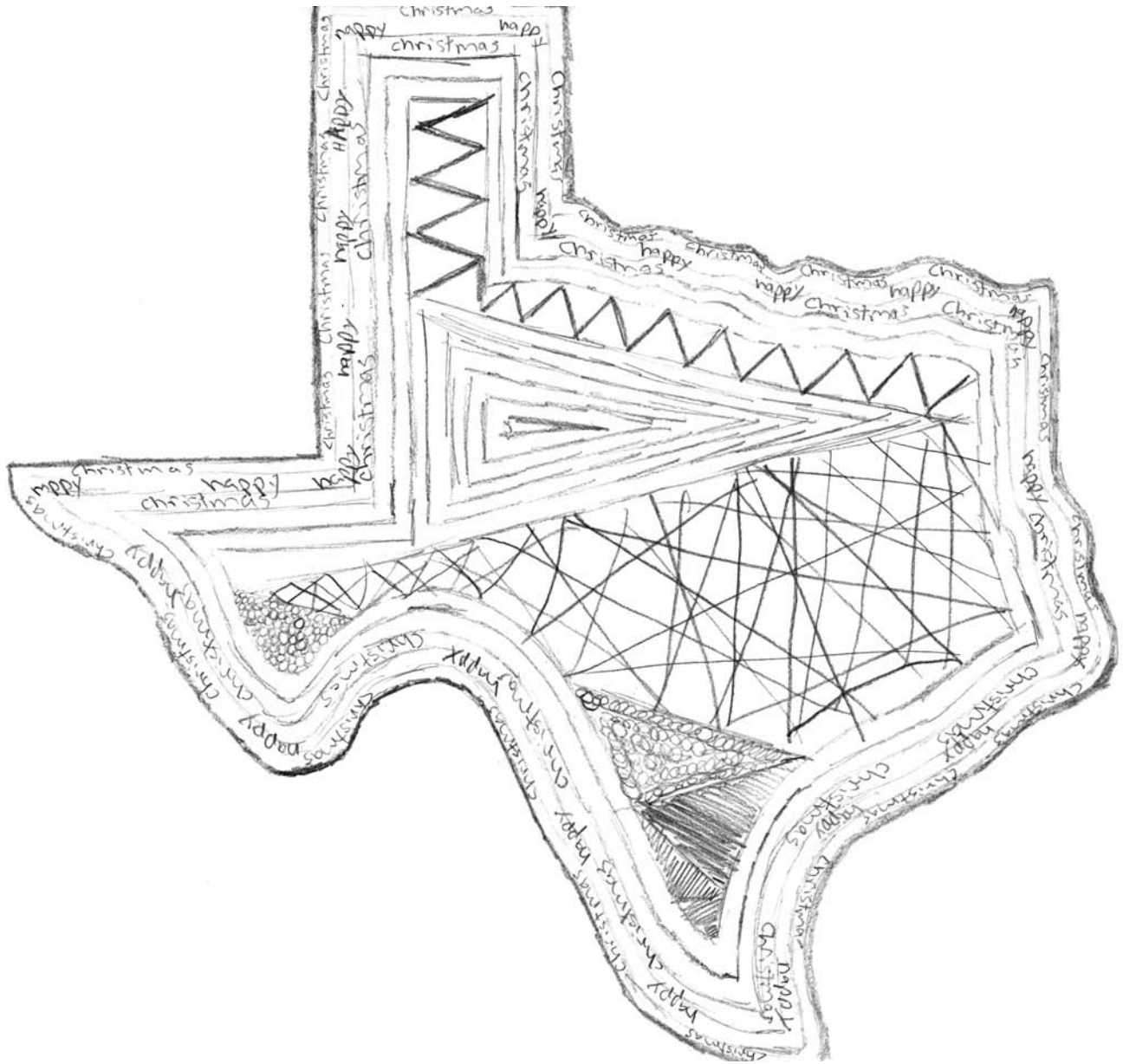
Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: January 16, 2014





The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to §659.131 et seq., Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller"), on behalf of the State Policy Committee of the State Employee Charitable Campaign ("Committee") and the Attorney General of Texas, legal counsel for the Committee, announces the issuance of Request for Letter Proposals No. 207m ("RFP") from qualified, independent non-profit charitable organizations to serve as the State Campaign Manager for the Committee to administer the annual State Employee Charitable Campaign ("SECC") statewide campaign approved by the Committee.

Each individual or firm submitting a proposal in response to this RFP shall be referred to as a "Respondent." The Committee estimates that it will evaluate Respondents and announce a contract award or awards no later than February 24, 2014, or as soon thereafter as practical. Respondents must be able to begin providing services on an as-needed basis as soon as possible or no later than about March 1, 2014, and throughout the expected initial contract term - March 1, 2014 through February 28, 2015.

Potential Respondents should see the Electronic State Business Daily ("ESBD") for a complete copy of the RFP.

TRD-201400220

Jason C. Frizzell

Assistant General Counsel

Comptroller of Public Accounts

Filed: January 22, 2014



Notice of Request for Proposals

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 207i ("RFP") for the Endangered Species Research Project for Desert Massasauga Rattlesnakes. The successful respondent(s), if any, will be expected to begin performance of the contract on or after May 1, 2014.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, January 31, 2014, after 10:00 a.m., CT. Parties interested in a hard copy of the RFP should contact Robin Reilly, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address no later than 2:00 p.m. CT on Friday, February 14, 2014. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or contracts@cpa.state.tx.us to ensure timely receipt. On or about Friday, February 28, 2014, Comptroller expects to post responses to questions on the ESBD as a RFP Addendum.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, March 14, 2014. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller will make the final decision on award(s). The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - January 31, 2014, after 10:00 a.m. CT; Questions Due - February 14, 2014, 2:00 p.m. CT; Official Responses to Questions posted - February 28, 2014, or as soon thereafter as practical; Proposals Due - March 14, 2014, 2:00 p.m. CT; Contract Execution - May 1, 2014, or as soon thereafter as practical; and Commencement of Work - on or after May 1, 2014. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any amendment to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Response.

TRD-201400221

Robin Reilly

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: January 22, 2014



Notice of Request for Proposals

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 207h ("RFP") for the Endangered Species Research Project for Spot-Tailed Earless Lizards. The successful respondent(s), if any, will be expected to begin performance of the contract on or after May 1, 2014.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, January 31, 2014, after 10:00 a.m. CT. Parties interested in a hard copy of the RFP should contact Robin Reilly, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address no later than 2:00 p.m. CT on Friday, February 14, 2014. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or contracts@cpa.state.tx.us to ensure timely receipt. On or about Friday, February 28, 2014, Comptroller expects to post responses to questions on the ESBD as a RFP Addendum.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, March 14, 2014. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller will make the final decision on award(s). The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - January 31, 2014, after 10:00 a.m. CT; Questions Due - February 14, 2014, 2:00 p.m. CT; Official Responses to Questions posted - February 28, 2014, or as soon thereafter as practical; Proposals Due - March 14, 2014, 2:00 p.m. CT; Contract Execution - May 1, 2014, or as soon thereafter as practical; and Commencement of Work - on or after May 1, 2014. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any amendment to this solicitation will be posted on the ESBD as an RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Response.

TRD-201400222

Robin Reilly
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: January 22, 2014



Notice of Request for Proposals

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 207c ("RFP") for the Endangered Species Research Project for Freshwater Mussels. The successful respondent(s), if any, will be expected to begin performance of the contract on or after May 1, 2014.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, January 31, 2014, after 10:00 a.m. CT. Parties interested in a hard copy of the RFP should contact Robin Reilly, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address no later than 2:00 p.m. CT on Friday, February 14, 2014. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or contracts@cpa.state.tx.us to ensure timely receipt. On or about Friday, February 28, 2014, Comptroller expects to post responses to questions on the ESBD as a RFP Addendum.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, March 14, 2014. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller will make the final decision on award(s). The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is not obligated to ex-

ecute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - January 31, 2014, after 10:00 a.m. CT; Questions Due - February 14, 2014, 2:00 p.m. CT; Official Responses to Questions posted - February 28, 2014, or as soon thereafter as practical; Proposals Due - March 14, 2014, 2:00 p.m. CT; Contract Execution - May 1, 2014, or as soon thereafter as practical; and Commencement of Work - on or after May 1, 2014. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any amendment to this solicitation will be posted on the ESBD as an RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Response.

TRD-201400223

Robin Reilly
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: January 22, 2014



Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application for a name change was received from YOUR Community Credit Union, Irving, Texas. The credit union is proposing to change its name to Mobility Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201400209

Harold E. Feeney
Commissioner
Credit Union Department
Filed: January 22, 2014



Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

Pegasus Credit Union, Dallas, Texas (#1) (Amended) - Members of churches belonging to the Texas Conference of Seventh-Day Adventists located in Collin, Dallas, Denton, Ellis, Kaufman, and Rockwall Counties and the affiliated churches.

Pegasus Credit Union, Dallas, Texas (#2) - See *Texas Register* issue, dated October 25, 2013.

Harlingen Area Teachers Credit Union, Harlingen, Texas - See *Texas Register* issue, dated November 29, 2013.

Application for a Merger or Consolidation - Approved

Educators Credit Union (Waco) and Tribune Herald Federal Credit Union (Waco) - See *Texas Register* issue, dated August 30, 2013.

Corner Stone Credit Union (Lancaster) and North Central PHM Federal Credit Union (Dallas) - See *Texas Register* issue, dated October 25, 2013.

Application to Amend Articles of Incorporation - Approved

Navy Army Community Credit Union, Corpus Christi, Texas - See *Texas Register* issue, dated November 29, 2013.

Application for a Foreign Branch Office - Approved

Eastman Credit Union, Kingsport, Tennessee - See *Texas Register* issue, dated March 30, 2012.

Articles of Incorporation - 50 Years to Perpetuity - Approved

Skel-Tex Credit Union, Skellytown, Texas.

TRD-201400210

Harold E. Feeney

Commissioner

Credit Union Department

Filed: January 22, 2014



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 **March 3, 2014**. 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 March 3, 2014**. 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: Barnett Contracting, Incorporated; DOCKET NUMBER: 2014-0022-WQ-E; IDENTIFIER: RN107001042; LOCATION: Hewitt, McLennan County; TYPE OF FACILITY: residential construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing

to obtain a Construction General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: City of Bastrop; DOCKET NUMBER: 2013-1795-MWD-E; IDENTIFIER: RN101510832; LOCATION: Bastrop, Bastrop County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011076001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$14,250; Supplemental Environmental Project offset amount of \$11,400 applied to Bastrop Collection Event; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753-1808, (512) 339-2929.

(3) COMPANY: City of Manor; DOCKET NUMBER: 2013-1881-MWD-E; IDENTIFIER: RN101610228; LOCATION: Manor, Travis 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 WQ0012900001, Interim I Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permit effluent limits; PENALTY: \$1,063; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753-1808, (512) 339-2929.

(4) COMPANY: Development II Partners, Incorporated dba Island Fuel; DOCKET NUMBER: 2013-1783-PST-E; IDENTIFIER: RN101798205; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Donald E. Crane dba Country Village Mobile Home Estates; DOCKET NUMBER: 2013-1915-PWS-E; IDENTIFIER: RN101267466, RN101225506, and RN102675121; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and TCEQ Agreed Order Docket Number 2011-1125-PWS-E, Ordering Provision Numbers 2.a.i. and 2.d., by failing to submit a disinfectant level quarterly operating report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.122(c)(2)(A), by failing to provide public notification for the failure to collect routine coliform monitoring samples for the month of June 2012; PENALTY: \$1,355; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(6) COMPANY: E & A Welding & Oilfield Service, Incorporated; DOCKET NUMBER: 2014-0014-WQ-E; IDENTIFIER: RN106901127; LOCATION: Midland, Midland County; TYPE OF FACILITY: commercial construction and repair; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(7) COMPANY: Eagle Rock Field Services, L.P.; DOCKET NUMBER: 2013-1669-AIR-E; IDENTIFIER: RN100215227; LOCATION: Canadian, Hemphill County; TYPE OF FACILITY: natural gas

processing plant; RULE VIOLATED: 30 TAC §§116.115(b)(2)(F), 116.615(2), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O306/Oil and Gas General Operating Permit Number 514, Site-wide Requirements (b)(8)(E)(ii), and Standard Permit Registration Number 37608, by failing to comply with the annual emissions limit of 21.02 tons per year of volatile organic compounds from Condensate Tank TK-4; PENALTY: \$11,250; Supplemental Environmental Project offset amount of \$4,500 applied to Borger Independent School District; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: ELG METALS, INCORPORATED; DOCKET NUMBER: 2013-1817-IWD-E; IDENTIFIER: RN102185733; LOCATION: Houston, Harris County; TYPE OF FACILITY: scrap metals processing facility; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and TWC, §26.121(a)(1), by failing to maintain authorization for the discharge of wastewater; PENALTY: \$7,500; Supplemental Environmental Project offset amount of \$3,000 applied to City of Pasadena; ENFORCEMENT COORDINATOR: Lanee Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: FLO COMMUNITY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-1892-PWS-E; IDENTIFIER: RN101440949; LOCATION: Leon County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(ii) and Texas Health and Safety Code, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; PENALTY: \$300; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Formosa Plastics Corporation, Texas; DOCKET NUMBER: 2013-1609-AIR-E; IDENTIFIER: RN100218973; LOCATION: Point Comfort, Calhoun County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c), Texas Health and Safety Code (THSC), §382.085(b), and New Source Review Permit Numbers 76305 and PSDTX1058, Special Conditions Number 1, by failing to prevent unauthorized emissions; and 30 TAC §101.20(2), 40 Code of Federal Regulations (CFR) §61.65(a), and THSC, §382.085(b), by failing to submit a 40 CFR Part 61, Subpart F report within 10 days of any relief valve discharge; PENALTY: \$15,775; Supplemental Environmental Project offset amount of \$6,310 applied to Texas Association of Resource Conservation and Development Areas, Incorporated; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: Gibson Real Estate, LLC; DOCKET NUMBER: 2013-1945-PST-E; IDENTIFIER: RN103732483; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current UST delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(1)(B), by

failing to maintain UST records and make them immediately available for inspection upon request by TCEQ personnel; PENALTY: \$11,382; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: IIA Investments, Incorporated dba Food Mart; DOCKET NUMBER: 2013-1846-PST-E; IDENTIFIER: RN101729994; LOCATION: San Antonio, Bexar 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 corrosion protection for the underground storage tank system; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: JHH Signature Series, LLC; DOCKET NUMBER: 2014-0024-WQ-E; IDENTIFIER: RN106945702; LOCATION: Burleson, Johnson County; TYPE OF FACILITY: residential construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Newell Recycling Company of El Paso, L.P.; DOCKET NUMBER: 2013-1659-PST-E; IDENTIFIER: RN100581768; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 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 UST delivery certificate before accepting delivery of a regulated substance into the UST system; PENALTY: \$4,664; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(15) COMPANY: Oxy Vinyls, LP; DOCKET NUMBER: 2013-1732-AIR-E; IDENTIFIER: RN100225879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: polyvinyl chloride plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O3018, Special Terms and Conditions Number 15, and New Source Review Permit Number 4673B, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$19,000; Supplemental Environmental Project offset amount of \$9,500 applied to Houston Regional Monitoring Corporation; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Pineda, Timoteo D; DOCKET NUMBER: 2014-0037-LII-E; IDENTIFIER: RN105224034; LOCATION: Tyler, Smith County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §344.70(a) and (b), by failing on all forms of advertisement of landscape irrigation installation, maintenance, alteration, and repair must include the irrigator's license number in the form of LI number. This includes vehicles, written and electronic advertisements, business cards and estimates; PENALTY: \$175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2616 Teague Drive Tyler, Texas 75701-3734, (903) 535-5100.

(17) COMPANY: Pioneer Natural Resources USA, Incorporated; DOCKET NUMBER: 2013-1866-OSS-E; IDENTIFIER:

RN106888241; LOCATION: Big Lake, Reagan County; TYPE OF FACILITY: oil camp with an on-site septic facility; RULE VIOLATED: Texas Health and Safety Code, §366.004 and §366.051 and 30 TAC §285.3(a), by failing to obtain authorization prior to constructing, installing, and operating an on-site sewage facility; PENALTY: \$225; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(18) COMPANY: PONDEROSA AND WESTERN VILLAGE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-1773-PWS-E; IDENTIFIER: RN101220606; LOCATION: Canutillo, El Paso County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.031(a), by failing to comply with the maximum contaminant level for total coliform during the month of August 2013; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failed to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; and 30 TAC §290.122(c)(2)(A), by failing to provide public notification regarding the failure to conduct routine coliform monitoring for the months of June and July 2012; PENALTY: \$780; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(19) COMPANY: Southwestern Bell Telephone Company dba AT&T Texas; DOCKET NUMBER: 2012-1118-PWS-E; IDENTIFIER: RN105819742; LOCATION: Houston, Fort Bend County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(c), by failing to submit engineering plans and specifications and receive written approval prior to beginning construction of a new public water supply system; PENALTY: \$100; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: TSS Business, Incorporated dba Corner Food Mart; DOCKET NUMBER: 2013-1697-PST-E; IDENTIFIER: RN102371986; LOCATION: Pharr, Hidalgo 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; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,504; ENFORCEMENT COORDINATOR: Michael Pace, (817) 588-5933; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(21) COMPANY: United Dirt Constructors, Incorporated; DOCKET NUMBER: 2014-0023-WQ-E; IDENTIFIER: RN105287593; LOCATION: Novice, Runnels County; TYPE OF FACILITY: individual; 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: 1977 Industrial Boulevard, Abilene, Texas 78602-7833, (325) 698-9674.

(22) COMPANY: Western Refining Company, L.P.; DOCKET NUMBER: 2013-0841-AIR-E; IDENTIFIER: RN100213016; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization for material unloading activities at the North Loading Rack NLR3; and Federal Operating Permit Number O1348, Special Terms and Conditions Number 3.F.(iv), 30 TAC §111.149(b) and §122.143(4), and THSC, §382.085(b), by failing to pave a parking lot with more than 100 parking spaces; PENALTY: \$25,838; Supplemental Environmental Project offset amount of \$10,335 applied to Texas Association of Resource Conservation and Development Areas, Incorporated; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(23) COMPANY: Xpress Choice LLC dba Campbell Travel Center; DOCKET NUMBER: 2013-1497-PST-E; IDENTIFIER: RN103767828; LOCATION: Campbell, Hunt 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 corrosion protection for the underground storage tank system; PENALTY: \$8,250; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Zapata Cart-Away Concrete & Materials LLC; DOCKET NUMBER: 2013-1668-AIR-E; IDENTIFIER: RN106844244; LOCATION: Zapata, Zapata County; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to the construction and operation of a concrete batch plant; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-201400191

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 21, 2014



Enforcement Orders

An agreed order was entered regarding Global Environmental & Marine Services, Inc., Docket No. 2011-0463-MLM-E on January 16, 2014 assessing \$95,835 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf Chemical & Metallurgical Corporation, Docket No. 2011-0987-IHW-E on January 16, 2014 assessing \$300,256 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHRINERS HOSPITALS FOR CHILDREN, Inc., Docket No. 2011-2353-PST-E on January 16, 2014 assessing \$8,775 in administrative penalties with \$1,755 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Woden Independent School District, Docket No. 2012-0866-MWD-E on January 16, 2014 assessing \$33,475 in administrative penalties with \$6,695 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 INVISTA S.a.r.l., Docket No. 2012-0968-AIR-E on January 16, 2014 assessing \$15,000 in administrative penalties with \$3,000 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 Two Sisters Dairy, LLC, Docket No. 2012-1349-AGR-E on January 16, 2014 assessing \$9,663 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 TRINITY TOWERS LIMITED PARTNERSHIP dba Trinity Towers, Docket No. 2012-1433-PST-E on January 16, 2014 assessing \$17,002 in administrative penalties with \$3,399 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Arlington, Docket No. 2013-0373-WQ-E on January 16, 2014 assessing \$13,125 in administrative penalties.

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 JMH Homes-Houston, LLC, Docket No. 2013-0449-MWD-E on January 16, 2014 assessing \$8,721 in administrative penalties with \$1,744 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Michael Ung dba Mikes Food Mart, Docket No. 2013-0575-PST-E on January 16, 2014 assessing \$8,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FT. WORTH PIPE SERVICES, LP, Docket No. 2013-0695-MLM-E on January 16, 2014 assessing \$8,605 in administrative penalties with \$1,721 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Elizabeth Perez dba JD's Kwik Stop, Docket No. 2013-0704-PWS-E on January 16, 2014 assessing \$8,312 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 Red Rock Water Supply Corporation, Docket No. 2013-0718-PWS-E on January 16, 2014 assessing \$1,105 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Total Petrochemicals & Refining USA, Inc., Docket No. 2013-0773-AIR-E on January 16, 2014 assessing \$19,688 in administrative penalties with \$3,937 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 J.J.R.S. FAMILY INVESTMENTS LLC dba Friendly's Shell, Docket No. 2013-0788-PST-E on January 16, 2014 assessing \$8,004 in administrative penalties with \$1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Red Ewald, Inc., Docket No. 2013-0801-AIR-E on January 16, 2014 assessing \$110,055 in administrative penalties with \$22,010 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center, Docket No. 2013-0825-PWS-E on January 16, 2014 assessing \$1,723 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, 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 Red Sand RV, LLC, Docket No. 2013-0855-PWS-E on January 16, 2014 assessing \$2,265 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc., Docket No. 2013-0901-MWD-E on January 16, 2014 assessing \$16,187 in administrative penalties with \$3,237 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 SHERGILL FUEL ENTERPRISES INC dba Friendlys 3 and dba Friendlys 4, Docket No. 2013-0929-PST-E on January 16, 2014 assessing \$15,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, 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 LIVINGSTON WATER SUPPLY AND SEWER SERVICE CORPORATION, Docket No. 2013-0942-PWS-E on January 16, 2014 assessing \$750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ramon C. Gonzales, Jr. dba Warren Road Subdivision Water Supply, Docket No. 2013-0949-PWS-E on January 16, 2014 assessing \$1,444 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunny Flea Market, Inc., Docket No. 2013-0978-PWS-E on January 16, 2014 assessing \$2,041 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pearland, Docket No. 2013-1040-MWD-E on January 16, 2014 assessing \$14,625 in administrative penalties with \$2,925 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 ANDREWS TRANSPORT, L.P., Docket No. 2013-1044-PST-E on January 16, 2014 assessing \$7,985 in administrative penalties with \$1,597 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DAVE'S ROOFING, SIDING AND METAL BUILDINGS, LLC, Docket No. 2013-1049-PWS-E on January 16, 2014 assessing \$812 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Arneson, Enforcement Coordinator at (512) 239-1160,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding River Bend Water Services, Inc., Docket No. 2013-1050-PWS-E on January 16, 2014 assessing \$247 in administrative penalties.

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 Davis Operating Company, Docket No. 2013-1066-AIR-E on January 16, 2014 assessing \$18,000 in administrative penalties with \$3,600 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 Delek Refining, Ltd., Docket No. 2013-1122-IWD-E on January 16, 2014 assessing \$17,550 in administrative penalties with \$3,510 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David M. Richter and Francisca Richter dba Hillside Water Works, Docket No. 2013-1158-PWS-E on January 16, 2014 assessing \$1,199 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JACK AND SAM, INC. dba Jacks Grocery 7, Docket No. 2013-1189-PST-E on January 16, 2014 assessing \$9,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TranStop LLC. dba Ontrak, Docket No. 2013-1263-PST-E on January 16, 2014 assessing \$16,386 in administrative penalties with \$3,277 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Azle, Docket No. 2013-1333-MWD-E on January 16, 2014 assessing \$14,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of La Villa, Docket No. 2013-1387-PWS-E on January 16, 2014 assessing \$1,288 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-

3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201400216

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 22, 2014



Light-Duty Motor Vehicle Purchase or Lease Incentive Program, Manufacturer's Annual Report

The Texas Commission on Environmental Quality (TCEQ) announces the availability of revised guidelines and reporting forms for use by manufacturers of light-duty motor vehicles intended to be sold or leased in Texas to submit required reports on vehicles eligible for an incentive under the Light-Duty Motor Vehicle Purchase or Lease Incentive Program (program) established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter D. This notice is not announcing that rebate applications are being accepted.

The manufacturer reporting requirements are established under THSC, §386.155. Motor vehicle manufacturers are required to provide to the TCEQ a list of the new vehicle models that the manufacturer intends to sell in Texas that meet the incentive criteria. The reports are to be submitted by July 1 of each year. The TCEQ is to publish a list of the eligible vehicles.

The program was revised in 2013 by Senate Bill (SB) 1727 enacted by the 83rd Texas Legislature, Regular Session. Under the revised program criteria, the TCEQ may provide rebate incentives of up to \$2,500 for the purchase or lease in Texas of an eligible new light-duty motor vehicle. Eligible vehicles must be powered by natural gas, liquefied petroleum gas (LPG), or electricity (including plug-in hybrids). In general, vehicles powered by natural gas or LPG must be a light-duty motor vehicle with a rated unloaded vehicle weight of not more than 9,600 pounds and have a range on the natural gas or LPG system of at least 125 miles. Electric motor vehicles must have a rated unloaded vehicle weight of not more than 8,500 pounds and a battery system with a capacity of not less than four kilowatt hours and capable of being recharged from an external source of electricity.

The TCEQ anticipates completion of the rulemaking process for the changes to the program by April 2014. The TCEQ may begin accepting rebate applications soon after the adoption of the rule revisions. In order to compile a list of eligible vehicles in time to begin the rebate application process, the TCEQ is encouraging vehicle manufacturers to submit their required reports by March 21, 2014, rather than waiting until the July 1, 2014, deadline. Manufacturers may provide updates to the vehicle list as needed.

Information on the revised program and copies of the vehicle manufacturer reporting guidelines and reporting forms are available at the program website www.terpgrants.org under the link for the light-duty incentive program. Vehicle manufacturers may direct questions to program staff at (800) 919-8377.

TRD-201400190

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 21, 2014



Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 40271

Application. Jimmie L. Smith dba Tri-State Recycling, P.O. Box 421, Texline, Texas 79087, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40271, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, Tri-State Recycling, will be located on Highway 296 East, 0.4 miles northwest of the intersection of US 87 and FM 296, in Texline, Dallam County, Texas 79087. The Applicant is requesting authorization to process, store and transfer, municipal solid waste which includes residential and commercial municipal solid waste, class 2 and 3 industrial solid waste and pesticide containers contained in normal household waste. The registration application is available for viewing and copying at the Texline City Hall, 517 S 2nd Street, Texline, Texas 79087 and may be viewed online at www.tristaterecyclingtexline.com. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.051659&lng=-96.976511&zoom=12&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, TX 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 Tri-State Recycling at the address stated above or by calling Mr. Jim Smith at (806) 362-4828.

TRD-201400215

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 22, 2014



Notice of District Petition

Notice issued January 15, 2014.

TCEQ Internal Control No. D-09032013-001; Mobberly Road and 285 Partners, LTD. and BVJV Watauga, LP (the "Petitioners") filed a petition for creation of Mobberly Municipal Utility District of Denton County (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners are the owner of a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 521.16 acres located within Denton County, Texas; (3) no part of the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas; and (4) there are no lienholders on the property to be included in the proposed district. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately \$37,800,000. The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087.

For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-201400214

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 22, 2014



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

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 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 **March 3, 2014**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 3, 2014**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: HELD GOLF, Ltd. d/b/a Preston West Golf Course; DOCKET NUMBER: 2013-0733-PWS-E; TCEQ ID NUMBER: RN101379147; LOCATION: 9101 South Coulter Street, Amarillo, Randall County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), by failing to collect routine distribution water samples for coliform analysis, and failed to provide public notice of the failure to sample; 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution samples within 24 hours of being notified of a total coliform-positive result for a routine distribution sample; 30 TAC §290.109(c)(4)(B), by failing to collect one raw groundwater source *Escherichia coli* sample from the facility's well within 24 hours of notification of a distribution total coliform-positive sample; 30 TAC §290.109(c)(2)(F), by failing to collect at least five distribution coliform samples for the month following a total coliform-positive sample result; and 30 TAC

§290.106(e), by failing to provide the results of annual nitrate sampling to the executive director; PENALTY: \$2,263; STAFF ATTORNEY: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: KING FUELS, INC. d/b/a TDS Supermarket; DOCKET NUMBER: 2012-1570-PST-E; TCEQ ID NUMBER: RN102272556; LOCATION: 10911 Highway 150 West, Shepherd, San Jacinto County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$6,563; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Meadowland Utility Corporation; DOCKET NUMBER: 2012-0750-MWD-E; TCEQ ID NUMBER: RN102815198; LOCATION: approximately 7,600 feet west of the intersection of State Highway 35 and the American Canal, approximately 1.9 miles north of the intersection of State Highway 6 and McCormick Street, Brazoria County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §§305.125(17), 319.1 and 319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013632001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; 30 TAC §305.125(17) and TPDES Permit Number WQ0013632001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2011, by September 30, 2011; and 30 TAC §21.4 and TWC, §5.702, by failing to pay outstanding consolidated water quality fees and associated late fees for TCEQ Financial Account Number 23004116; PENALTY: \$5,325; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Mildred Fowler; DOCKET NUMBER: 2013-0321-MLM-E; TCEQ ID NUMBER: RN106307291; LOCATION: 4668 Spillers Road, Lumberton, Hardin County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste (MSW); and Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by failing to prohibit the burning of MSW for the purpose of disposal; PENALTY: \$2,600; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: PRAIRIE GROVE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-1004-PWS-E; TCEQ ID NUMBER: RN101459758; LOCATION: 3436 Farm-to-Market Road 1818, Diboll, Angelina County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failing to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with the compliance monitoring data; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification for

the failure to submit a Disinfectant Level Quarterly Operating Report for the first quarter of 2011, and failed to provide a copy of the required public notice to the executive director within 10 days of its distribution; 30 TAC §290.122(b)(2)(A) and (f), by failing to post public notification for the failure to comply with the maximum contaminant level (MCL) for total trihalomethanes for the first quarter of 2011 through the fourth quarter of 2012, and failing to provide a copy of the required public notice to the executive director within 10 days of its distribution; and 30 TAC §290.122(b)(2)(A) and (f), by failing to provide public notification regarding the failure to comply with the MCL for haloacetic acids during the third quarter of 2011 through the fourth quarter of 2012, and failing to provide a copy of the required public notice to the executive director within 10 days of its distribution; PENALTY: \$1,282; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: SAHIL VENTURES, INC. d/b/a Paradise Food Mart; DOCKET NUMBER: 2012-1131-PWS-E; TCEQ ID NUMBER: RN105996771; LOCATION: 13796 Farm-to-Market Road 1314, southeast of Conroe, Montgomery County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.035(c) and 30 TAC §290.39(c) and (h)(1), by failing to submit plans and specifications to the executive director for review and approval prior to the establishment of a new public water supply; 30 TAC §290.41(c)(3)(O), by failing to enclose the facility's well with an intruder-resistant fence or lockable and ventilated well house; 30 TAC §290.43(d)(3), by failing to equip the air compressor injection lines with filters or other devices to prevent compressor lubricants or other contaminants from entering the facility's pressure tank; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling tap on the discharge pipe of the facility's well pump prior to any treatment; 30 TAC §290.41(c)(3)(J), by failing to provide the facility's well with a concrete sealing block extending at least three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away and not less than 0.25 inches per foot around the well head; THSC, §341.035(c) and 30 TAC §290.45(c)(1)(A)(ii), by failing to provide a minimum pressure tank capacity of 220 gallons; 30 TAC §290.44(h)(1)(A), by failing to install backflow prevention assemblies or an air gap at connections where an actual or potential contamination hazard exists, as identified in 30 TAC §290.47(i); and 30 TAC §290.121(a) and (b), by failing to develop, maintain and make available for executive director review upon request an accurate and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$2,292; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Sharif & Associates, Inc. d/b/a Texan Stop 2; DOCKET NUMBER: 2013-1338-PST-E; TCEQ ID NUMBER: RN102228202; LOCATION: 244 North Main Street, Lone Star, Morris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 3, 2014**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 3, 2014**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: BUCHANAN LAKE VILLAGE, INC.; DOCKET NUMBER: 2012-2609-PWS-E; TCEQ ID NUMBER: RN101224988; LOCATION: 512 Frazier Street, Llano County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failing to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit Disinfectant Level Quarterly Operating Reports to the executive director each quarter by the tenth day of the month following the end of the quarter; and Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A), by failing to collect monthly routine monitoring samples for coliform analysis; PENALTY: \$2,942; STAFF ATTORNEY: Jennifer Cook, Litigation

Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Austin Regional Office, Post Office Box 13087, MC R-11, Austin, Texas 78711, (512) 339-2929.

(2) COMPANY: CANDELARIA WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-1013-MLM-E; TCEQ ID NUMBER: RN101185312; LOCATION: 58 miles north of Presidio on Farm-to-Market Road 170, Presidio County; TYPE OF FACILITY: public water system; RULES VIOLATED: TWC, §11.1272(c) and 30 TAC §288.20(a) and §288.30(5)(B), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(c)(3), by failing to provide the overflow on the ground storage tank with a gravity-hinged and weighted cover that fits tightly with no gap over 1/16 inch; Texas Health and Safety Code, §341.033(a) and 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class "D" or higher license; 30 TAC §290.46(f)(2), (3)(A)(i), (iv), (B)(ii), (D)(i), and (ii), by failing to provide facility records to commission personnel at the time of the investigation; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: \$880; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: DERBY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-1270-PWS-E; TCEQ ID NUMBER: RN101281178; LOCATION: southeast corner of the intersection of County Road 3415 and County Road 3428, Moore, Frio County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A), and TCEQ DO Docket Number 2011-1101-PWS-E, Ordering Provisions Numbers 3.a.ii. and 3.a.iii., by failing to collect routine distribution water samples for coliform analysis and failing to provide public notification for the failure; 30 TAC §290.110(e)(4)(A) and (f)(3), and TCEQ DO Docket Number 2011-1101-PWS-E, Ordering Provisions Numbers 3.a.vi. and 3.c., by failing to submit Disinfectant Level Quarterly Operating Reports to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.271(b) and §290.274(a) and (c), and TCEQ DO Docket Number 2011-1101-PWS-E, Ordering Provision Number 3.a.i., by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) for the year 2011 to each bill paying customer by July 1, 2012, and failing to submit to the TCEQ by July 1, 2012, a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.122(c)(2)(A), and TCEQ DO Docket Number 2011-1101-PWS-E, Ordering Provision Number 3.a.ii., by failing to provide public notification for the failure to collect routine monitoring samples; and 30 TAC §290.106(e) and TCEQ DO Docket Number 2011-1101-PWS-E, Ordering Provisions Numbers 3.a.iv. and 3.a.v., by failing to provide the results of annual nitrate sampling to the executive director; PENALTY: \$3,465; STAFF ATTORNEY: Jim

Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: McKEN, LLC d/b/a Hill Country RV Park; DOCKET NUMBER: 2011-1863-PWS-E; TCEQ ID NUMBER: RN101266435; LOCATION: 2421 Junction Highway, Kerrville, Kerr County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i), by failing to collect routine distribution water samples for coliform analysis for the months of May - August 2008, December 2008, January, April, June, July and October 2009, March, April and September 2010, and January, February, and April 2011; 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample collected during the month of May 2011; 30 TAC §290.109(c)(4)(B), by failing to collect a raw groundwater source *Escherichia coli* sample from each active source within 24 hours of being notified of a distribution total coliform-positive result on a routine sample collected during the month of May 2011; 30 TAC §290.109(c)(2)(F), by failing to collect at least five routine distribution coliform samples the month following a total coliform-positive result for the month of June 2011; 30 TAC §290.106(e), by failing to provide the results of triennial metal sampling to the executive director in a timely manner; and 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite sampling to the executive director in a timely manner; PENALTY: \$9,469; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: NIAZI FAMILY INVESTMENTS, LTD.; DOCKET NUMBER: 2013-1155-IWD-E; TCEQ ID NUMBER: RN101520344; LOCATION: 17141 East Freeway, Channelview, Harris County; TYPE OF FACILITY: convenience store and truck stop with an associated wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.64(a), (b), and (e), by failing to obtain authorization prior to operating a wastewater treatment plant; PENALTY: \$17,187; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Rocky Wadlington d/b/a Farrar Water Supply Corporation; DOCKET NUMBER: 2013-0347-MLM-E; TCEQ ID NUMBER: RN101441095; LOCATION: at the intersection of Limestone County Road 846 and Limestone County Road 848, Limestone County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(m)(1)(A), by failing to inspect the ground storage tank (GST) annually; 30 TAC §290.46(m)(1)(B), by failing to inspect the pressure tank annually; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once every seven days; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.43(c)(4), by failing to equip the GST with a water level indicator; 30 TAC §288.20(a) and §288.30(5)(B), by failing to adopt a Drought Contingency Plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.46(f)(2), (3)(A)(i)(III), and (ii)(III), by failing to provide facility records to commission personnel at the time of the investigation; 30 TAC

§290.46(l), by failing to flush all dead-end mains at monthly intervals or more often as needed if water quality complaints are received from water customers or if disinfectant residuals fall below acceptable levels; 30 TAC §290.121(a) and (b), by failing to develop, maintain and make available for executive director review upon request an accurate and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(w), by failing to have an internal procedure to notify the executive director by a toll-free reporting phone number immediately following certain events that may negatively impact the production or delivery of safe and adequate drinking water; 30 TAC §290.46(c)(3), by failing to provide the overflow on the GST with a gravity-hinged and weighted cover that fits tightly with no gap over 1/16 inch; 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence to protect the facility's well sites; 30 TAC §290.42(e)(5), by failing to completely cover the hypochlorination solution container top to prevent the entrance of dust, insects, and other contaminants; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; PENALTY: \$5,367; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Roy Wayne Smith d/b/a Smiths First and Last Chance Tire Repair; DOCKET NUMBER: 2013-1500-MSW-E; TCEQ ID NUMBER: RN102221058; LOCATION: 510 San Angelo Highway, Brady, McCulloch County; TYPE OF FACILITY: motor vehicle repair and used tire sales facility; RULES VIOLATED: 30 TAC §328.60(a) and TCEQ Agreed Order Docket Number 2011-1559-MSW-E, Ordering Provisions Numbers 2.a. and 2.b., by failing to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers; PENALTY: \$13,500; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-201400194
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 21, 2014

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**Notice of Opportunity to Comment on Shutdown/Default
Orders of Administrative Enforcement Actions**

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required cor-

rective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 3, 2014**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 3, 2014**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: H&A Group Inc. d/b/a Sean Food Mart; DOCKET NUMBER: 2012-2718-PST-E; TCEQ ID NUMBER: RN102265451; LOCATION: 1600 South 17th Street, Waco, McLennan County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and failing to provide release detection for the pressurized piping associated with the UST system; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$8,879; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201400192

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 21, 2014



Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 330 and 339

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 330, Munic-

ipal Solid Waste, §§330.7, 330.671, 330.673 and 330.675, and repeal of Chapter 339, Groundwater Protection Recommendation Letters and Fees, §§339.1 - 339.3, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bill (HB) 7, 83rd Legislature, 2013, Regular Session, relating to the reduction in the municipal solid waste disposal fees paid to the commission and revisions in the waste disposal fee exemption and credit for material diverted from disposal and processed into compost or mulch. The proposed rulemaking would also implement Senate Bill (SB) 819, 83rd Legislature, 2013, Regular Session, relating to the increase in the population limit, from 10,000 to 12,000 people, for counties or municipalities seeking authorization under a permit by rule to dispose of demolition waste from abandoned or nuisance buildings. The proposed rulemaking would implement HB 2694, Article 2, 82nd Legislature, 2011, Regular Session, relating to the transfer from the Texas Commission on Environmental Quality to the Railroad Commission of Texas duties pertaining to the protection of groundwater resources from oil and gas associated activities by repealing commission rules pertaining to the issuance of groundwater protection recommendation letters.

The commission will hold a public hearing on this proposal in Austin, Texas on February 18, 2014, at 2:00 p.m., in Bldg. E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2013-050-330-WS. The comment period closes March 3, 2014. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adopt.html.

For further information, please contact Charlyne Fritz, Business and Program Services (or Waste Permits Division), (512) 239-2331.

TRD-201400168

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 17, 2014



Notice of Water Quality Applications

The following notices were issued on January 10, 2014, through January 17, 2014.

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

GULF COPPER AND MANUFACTURING CORPORATION which operates the Gulf Copper Dry Dock & Rig Repair, a general fabrication and repair facility for inland and offshore barges, supply vessels, oil rigs, and other similar vessels, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000779000, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 16,000 gallons per day via Outfall 001; process wastewater, ballast/void space water, and exterior surface low pressure rinse water on an intermittent and flow-variable basis via Outfalls 004 and 005; and ballast/void space water and exterior surface low pressure rinse water on an intermittent and flow-variable basis via Outfall 006. The facility is located at 2920 Todd Road, on Pelican Island adjacent to Galveston Channel and approximately 1.5 miles east of the Pelican Island Bridge, part of the City of Galveston, Galveston County, Texas 77554. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office, and has determined that the action is consistent with the applicable CMP goals and policies.

HANSON AGGREGATES LLC which operates Bridgeport Plant, a limestone quarrying and processing plant, has applied for a major amendment to TPDES Permit No. WQ0001214000 to add Outfall 002 to discharge process generated wastewater, mine dewatering water, and stormwater on an intermittent and flow-variable basis and to reduce the frequency of monitoring and reporting requirements at Outfall 001. The existing permit authorizes the discharge of mine dewatering water and stormwater on an intermittent and flow-variable basis via Outfall 001. The facility is located at 1443 South State Highway 101 in the City of Chico, Wise County, Texas 76431.

DOUBLE DIAMOND UTILITIES CO which operates The Cliffs WWTP, a facility consisting of a reverse osmosis water treatment plant and a domestic wastewater treatment plant, has applied for a renewal of TPDES Permit No. WQ0002789000, which authorizes the discharge of previously monitored effluents (reverse osmosis reject water and domestic wastewater) on an intermittent and flow variable basis via Outfall 001. The facility is located at 922 State Highway 16 South, adjacent to Possum Kingdom Lake, immediately west of State Highway 16 and south of the Brazos River in the City of Graford, Palo Pinto County, Texas 76449.

NORTH TEXAS MUNICIPAL WATER DISTRICT, which proposes to operate the North Texas Municipal Water District Leonard Water Treatment Facility, has applied for a new permit, TPDES Permit No. WQ0004996000, to authorize the discharge of desalination concentrate at a daily average flow not to exceed 9,300,000 gallons per day. The facility is located 700 feet north of the intersection of County Road 4965 and State Highway 78, west of the City of Leonard, Fannin County, Texas 75452.

EF90 LLC which proposes to operate the EF90 Mini Refinery, a crude oil refining facility, has applied for new TPDES Permit No. WQ0005024000 to authorize the discharge of previously monitored effluent (treated process wastewater, boiler blowdown, cooling tower blowdown, and stormwater) via Outfalls 001, 002, and 003 at a daily average flow not to exceed 167,000 gallons per day and stormwater on an intermittent and flow variable basis via Outfall 004. The facility will be located 2,986 feet northwest of the intersection of Southern Minerals Road and the Interstate Highway 37 Frontage Road, Nueces County, Texas 78409. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office and has determined that the action is consistent with the applicable CMP goals and policies.

CITY OF ALBANY has applied for a renewal of TPDES Permit No. WQ0010035001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 290,000 gallons per day. The facility is located approximately one mile southeast of the intersection of U.S. Highways 180 and 283; approximately 3,200 feet east of U.S. Highway 283 in Shackelford County, Texas 76430.

CITY OF SWEETWATER has applied for a renewal of TPDES Permit No. WQ0010373002 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,200,000 gallons per day. The facility is located at 320 County Road 109, Sweetwater, 0.6 mile north of the intersection of Farm-to-Market Road 1856 and Interstate Highway 20 in Nolan County, Texas 79556.

CITY OF BROWNSBORO has applied for a renewal of TPDES Permit No. WQ0010540001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 156,000 gallons per day. The facility is located at the intersection of Farm-to-Market Road 314 and County Road 3300, north of Brownsboro in Henderson County, Texas 75756.

CITY OF MART has applied for a renewal of TPDES Permit No. WQ0010645001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located at 1 Old Oil Mill Road, Mart, 1,500 feet east of Farm-to-Market Road 1860 and approximately 2,000 feet south of State Highway 164, on the west side of the City of Mart in McLennan County, Texas 76664.

AQUA TEXAS INC has applied for a renewal of TPDES Permit No. WQ0011314001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located at 18604 Candleview Drive, north of Cypress Creek, approximately two miles northwest of the intersection of Interstate Highway 45 and Farm-to-Market Road 1960 in Harris County, Texas 77388.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 50 has applied for a renewal of TPDES Permit No. WQ0011770001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 550,000 gallons per day. The facility is located at 922 Magnolia Avenue, approximately 1.0 mile south of U.S. Highway 90 and 0.5 mile west of the end of Magnolia Street in Barrett Station, Crosby, in Harris County, Texas 77532.

FORT BEND MUNICIPAL UTILITY DISTRICT NO 50 has applied for a major amendment to TPDES Permit No. WQ0013228001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 700,000 gallons per day to a daily average flow not to exceed 950,000 gallons per day. The facility is located at 22122 Bellaire Boulevard, approximately 4,600 feet southeast of the intersection of Farm-to-Market Road 1093 and Grand Parkway in Fort Bend County, Texas 77406.

UNION HILL INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013885001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The facility is located at 2197 Farm-to-Market Road 2088, Gilmer in Upshur County, Texas 75644.

UPPER LEON RIVER MUNICIPAL WATER DISTRICT has applied for a renewal of TPDES Permit No. WQ0014206001 which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 249,000 gallons per day. The facility is located at 2250 Highway 2861, on Farm-to-Market Road 2861, 1.8 miles north of the intersection of Farm-to-Market Road 2861 and U.S. Highway 377, which is located 4.6 miles west of the City of Proctor Comanche, in Comanche County, Texas 76442.

GRANT ROAD PUBLIC UTILITY DISTRICT has applied for a new permit TPDES Permit No. WQ0015098001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 310,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0011887001 which expired February 1, 2013. The facility is located at 11837 Meadow Sweet Drive, Cypress in Harris County, Texas 77429. The treated effluent is discharged via pipes to Harris County Flood Control District (HCFCD) ditch L103-00-00; thence to Little Cypress Creek; thence to Cypress Creek in Segment No. 1009 of the San Jacinto River Basin.

CITY OF GATESVILLE has applied for a renewal of TPDES Permit No. WQ0010176004, 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 1100 College Street, approximately 0.5 mile south of the intersection of U.S. Highway 84 and U.S. Business 36 in the City of Gatesville in Coryell County, Texas 76528.

CITY OF JOHNSON CITY has applied for a renewal of TPDES Permit No. WQ0010198001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 303,000 gallons per day. The facility is located approximately 2,500 feet south-southwest of the U.S. Highway 281 crossing of the Pedernales River and 3,700 feet north of the intersection of Farm-to-Market Road 2766 and U.S. Highway 281 in Blanco County, Texas 78636.

CITY OF SEYMOUR has applied for a renewal of TPDES Permit No. WQ0010281001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 537,000 gallons per day. The facility is located approximately 0.5 mile southwest of the intersection of Farm-to-Market Road 1286 and State Highway 199, Seymour, in Baylor County, Texas 76380.

SPENCER ROAD PUBLIC UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011472001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 980,000 gallons per day. The facility is located at 14315 Scotney Castle Street, Houston, approximately 2,000 feet west of the intersection of Jackrabbit Road and Spencer Road (Farm-to-Market Road 529), approximately 1.1 miles east of the intersection of State Highway 6 and Spencer Road, approximately 500 feet north of Spencer Road, adjacent to the east bank of Horsepen Creek in Harris County, Texas 77095.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 23 has applied for a renewal of TPDES Permit No. WQ0011485001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located at 7214 Woodland West Drive, Houston, in Harris County, Texas 77040.

THE CITY OF MAUD has applied for a renewal of TPDES Permit No. WQ0014025001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 192,000 gallons per day. TCEQ received this application on June 27, 2013. The facility is located approximately 1,500 feet south of US Highway 67 and St. Louis Southwestern Railroad, and approximately 5,000 feet east of the intersection of US Highway 67 and State Highway 8 in Bowie Country, Texas 75567.

CITY OF GORDON has applied for a renewal of TCEQ Permit No. WQ0014837001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 78,000 gallons per day via surface irrigation of 25 acres of non-public access pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located on the west side of Gordon Cemetery Road approximately two miles north of the City of Gordon in Palo Pinto County, Texas 76453.

TOLL BROS INC has applied for a new permit, proposed TPDES Permit No. WQ0015157001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility will be located approximately 2 miles north of the intersection of Farm-to-Market Road 2978 and Farm-to-Market Road 2920 in Montgomery County, Texas 77354.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY has initiated a minor amendment of TPDES Permit No. WQ0012382001 issued to J&S Water Company, L.L.C., to limit the thirty-day average loading of influent Biochemical Oxygen Demand (BOD5) to 193 pounds BOD5 per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located approximately 3,300 feet west from the bridge where Rothwood Road crosses Spring Creek in Harris County, Texas 77389.

CITY OF HAMILTON has applied for a minor amendment to the TPDES Permit No. WQ0010492002 to authorize changing the disinfection system from Ultraviolet (UV) to chlorination method. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 880,000 gallons per day. The facility is located at 700 North Lloyd Street, approximately 1,900 feet east of U.S. Highway 281 in the City of Hamilton and immediately south of Pecan Creek at a point 2,800 feet north of State Highway 36, in Hamilton County, Texas 76531.

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-201400213

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 22, 2014

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Texas Health and Human Services Commission

Public Notice of Intent to Engage in Negotiated Rulemaking

The Texas Health and Human Services Commission (HHSC), as required by House Bill 33, will engage in negotiated rulemaking to develop an implementation plan in the form of a rule (Acts 2013, 83rd Legislature, Regular Session, Chapter 218, 2013 Texas General Laws). This rule will establish an informal dispute resolution (IDR) process that provides for adjudication by an appropriate disinterested person of disputes relating to a statement of violations submitted by the Department of Aging and Disability Services (DADS) under §32.021(d), Human Resources Code, or Chapter 247 Health and Safety Code to an assisted living facility.

The statutory IDR process requires assisted living facilities to request IDR no later than the 10th calendar day after notification by DADS of the violation of a standard or standards. It requires HHSC to complete the process not later than the 90th calendar day after receipt of a request from an assisted living facility for IDR.

The scope of this negotiated rulemaking will include the revision to current rule at 1 Texas Administrative Code (TAC) §393.1, specific to assisted living facilities. It will not include revisions to the existing rule 1 TAC §393.1 for nursing facilities or intermediate care facilities for individuals with intellectual disabilities.

Thus far, HHSC has determined that:

- a diverse, but limited, set of stakeholders exists who will be affected by the subject matter of this rule;
- stakeholders have a high degree of interest in having a fair and balanced IDR process;
- stakeholders have both diverse and common interests suitable for negotiation;
- stakeholders have something to gain by participating in the process;
- reaching consensus on some aspects of this rule is likely possible; however, there are and probably will remain topics that will require tough compromise or where parties will not reach consensus;
- stakeholders have an opportunity to share information, communicate their interests and explain their data and assumptions to others who have their own perspectives and data; and
- the agency stands to gain important information about how its stakeholders view the issues involved in this rule.

A preliminary list of issues to be negotiated include:

1. Ground Rules;
2. Definitions;
3. Scope of the IDR process;
4. Timeframes to submit information to IDR;
5. Evaluation.

There is a diverse but limited set of stakeholders who are significantly affected by this rule and will be represented on the negotiating committee. Identified stakeholders include:

- consumers and representatives of consumers of assisted living facilities;
- assisted living facilities and representatives of assisted living facilities;
- the state agency that is required to regulate and provide oversight for assisted living facilities; and
- representatives from HHSC.

HHSC proposes to appoint the following organizations as representatives of the interests identified above to the negotiating committee:

- consumers and representatives of consumers of assisted living facilities

Association of American Retired Persons (AARP) - Texas

Texas Silver-Haired Legislature

State Long-Term Care Ombudsman

- assisted living facilities and representatives of assisted living facilities

Texas Assisted Living Association

Texas Health Care Association

Leading Age

Texas Organization of Residential Care Homes (TORCH)

- DADS, the state agency that is required to regulate and provide oversight for assisted living facilities

- HHSC

HHSC has attempted to identify all significantly affected interests and include at least one representative of each on the negotiated rulemaking committee. Meetings will be open to the public. If there are persons who are significantly affected by this proposed rule and not represented by those persons named above, you may apply to HHSC for membership on the negotiating committee or nominate another to represent your interests. You must apply in writing and include the following information:

- Name and contact information of the person submitting the application;
- Description of how the person is significantly affected by the rule;
- Name and contact information of the person being nominated for membership;
- Description of the qualifications of the nominee to represent the person's interests.

HHSC requests comments on the notice of negotiated rulemaking and on the proposed membership of the negotiated rulemaking committee. Comments and applications for membership on the negotiating committee must be submitted by March 3, 2014, to: Allison J. Levee, fax: (512) 706-7275, HHSC, 1106 Clayton Lane, Austin, Texas 78723 (Twin Towers) Mail Code H970 or Allison.Levee@hhsc.state.tx.us. HHSC will make final determinations as to issues related to the comments and the composition of said committee.

TRD-201400212

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: January 22, 2014

Texas Higher Education Coordinating Board

Notice of Intent to Engage in Negotiated Rulemaking - Toward Excellence, Access and Success Grant Program (Public Universities and Health-Related Institutions Only)

The Texas Higher Education Coordinating Board ("THECB") intends to engage in negotiated rulemaking to develop rules for the Toward EXcellence, Access and Success (TEXAS) Grant Program allocation methodology for public universities and health-related institutions of higher education and to develop procedures for THECB staff to verify the accuracy of the application of that allocation methodology. This is in accordance with the provisions of Senate Bill 215 passed by the 83rd Texas Legislature, Regular Session.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via email to all presidents of public universities and health-related institutions of higher education soliciting their interest and willingness to participate in the negotiated rulemaking process or to nominate a representative from their campus.

From this effort, 27 individuals responded (out of approximately 47 affected institutions) and expressed an interest to participate or nominated someone from their institution to participate on the TEXAS Grant Program negotiated rulemaking committee. The authority of the volunteers and nominations includes Presidents, Vice Presidents and Directors. This indicates that the probable willingness and authority of the affected interests to negotiate in good faith is also high and that there is a good probability that a negotiated rulemaking process can re-

sult in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee on TEXAS Grant Program:

- 1) Public universities;
- 2) Public health-related institutions; and
- 3) Texas Higher Education Coordinating Board

The THECB proposes to appoint the following 21 individuals (out of the 27 respondents) to the negotiating rulemaking committee on TEXAS Grant Program to represent affected parties and the agency:

Public Universities

Heather Thielemann, Vice President for Enrollment Management, Sam Houston State University

Rachelé Garrett, Interim Director for Financial Aid, Stephen F. Austin State University

David Weissenburger, Associate Vice President for Enrollment Management, Tarleton State University

Minita Ramirez, Vice President for Student Success, Texas A&M International University

Joseph P. Pettibon II, Associate Vice President for Academic Services, Texas A&M University

Jeannie Gage, Director of Financial Aid, Texas A&M University-Corpus Christi

Linda Ballard, Director of Student Financial Assistance, Texas Southern University

Christopher Murr, Director of Financial Aid and Scholarships, Texas State University

Becky Wilson, Managing Director of Financial Aid and Scholarships, Texas Tech University

Gary Ray, Associate Vice President for Enrollment Services, Texas Woman's University

Thomas Melecki, Director of Student Financial Services, The University of Texas at Austin

Nikkie Saldivar Hodgson, Executive Director of Enrollment Services, The University of Texas at Brownsville

Beth Tolan, Director of Financial Aid, The University of Texas at Dallas

Gary Edens, Vice President for Student Affairs, The University of Texas at El Paso

Lisa Blazer, Associate Vice President for Student Financial Aid, The University of Texas at San Antonio

Marquita Hackette, Director of Student Financial Aid, The University of Texas at Tyler

Martha Cantu, Vice President for Student Affairs, The University of Texas-Pan American

Sal Loria, Executive Director of Scholarships and Financial Aid, University of Houston

Billy Satterfield, Executive Director of Financial Aid, University of Houston-Clear Lake

Zelma DeLeon, Executive Director of Student Financial Aid and Scholarships, University of North Texas System

Public Health-Related Institutions

N/A - no representatives from the health-related institutions were nominated.

Texas Higher Education Coordinating Board

Dan Weaver, Assistant Commissioner for Business and Support Services

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

* Name and contact information of the person submitting the application;

* Description of how the person is significantly affected by the rule;

* Name and contact information of the person being nominated for membership; and

* Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee. Comments and applications for membership of the committee must be submitted by February 10, 2014 to:

Linda Battles, Associate Commissioner/Chief of Staff

Texas Higher Education Coordinating Board

P.O. Box 12788

Austin, TX 78711

or

Linda.Battles@thehb.state.tx.us.

TRD-201400211

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: January 22, 2014

Texas Department of Insurance

Company Licensing

Application to change the name of VALLEY BAPTIST INSURANCE COMPANY to ALLEGIAN INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Harlingen, Texas.

Application for ALLEGIAN INSURANCE COMPANY (formerly known as VALLEY BAPTIST INSURANCE COMPANY), a domestic life, accident and/or health company, DBA (doing business as) ALLEGIAN HEALTH PLANS. The home office is in Harlingen, Texas.

Texas Ag Co-op Trust filed a Name Reservation application on May 21, 2013, which was published in the *Texas Register* on June 7, 2013 (38 TexReg 3696) and became eligible for use on June 27, 2013. The

company has requested the name reservation be changed to Texas Ag Coop Trust.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201400224

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: January 22, 2014



Texas Lottery Commission

Instant Game Number 1586 "Lucky Symbols"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1586 is "LUCKY SYMBOLS". The play style is "row/column/diagonal".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1586 shall be \$1.00 per Ticket.

1.2 Definitions in Instant Game No. 1586.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$3,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, DICE SYMBOL, 4 LEAF CLOVER SYMBOL, DIAMOND SYMBOL, HORSESHOE SYMBOL, and CHERRY SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1586 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUN
\$3,000	THR THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
DICE SYMBOL	DICE (Scene 1 only)
4 LEAF CLOVER SYMBOL	CLOVER (Scene 2 only)
DIAMOND SYMBOL	DMND (Scene 3 only)
HORSESHOE SYMBOL	HRSHE (Scene 4 only)
CHERRY SYMBOL	CHERRY (Scene 5 only)

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$8.00, \$10.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00, \$50.00, \$100, or \$500.

H. High-Tier Prize - A prize of \$3,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1586), a seven (7) digit Pack number, and

a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1586-0000001-001.

K. Pack - A Pack of "LUCKY SYMBOLS" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 to 005 will be on the top page; Tickets 006 to 010 on the next page etc.; and Tickets 146 to 150 will be on the last page. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY SYMBOLS" Instant Game No. 1586 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "LUCKY SYMBOLS" Instant Game is determined once the latex on the Ticket is scratched off to expose 10 (ten) Play Symbols. Scene 1: If a player reveals 3 matching numbers in any one row, column or diagonal, the player wins the PRIZE in the PRIZE box. If a player reveals 3 "DICE" Play Symbols in any one row, column or diagonal, the player wins DOUBLE the PRIZE in the PRIZE box. Scene 2: If a player reveals 3 matching numbers in any one row, column or diagonal, the player wins the PRIZE in the PRIZE box. If a player reveals 3 "CLOVER" Play Symbols in any one row, column or diagonal, the player wins DOUBLE the PRIZE in the PRIZE box. Scene 3: If a player reveals 3 matching numbers in any one row, column or diagonal, the player wins the PRIZE in the PRIZE box. If a player reveals 3 "DIAMOND" Play Symbols in any one row, column or diagonal, the player wins DOUBLE the PRIZE in the PRIZE box. Scene 4: If a player reveals 3 matching numbers in any one row, column or diagonal, the player wins the PRIZE in the PRIZE box. If a player reveals 3 "HORSESHOE" Play Symbols in any one row, column or diagonal, the player wins DOUBLE the PRIZE in the PRIZE box. Scene 5: If a player reveals 3 matching numbers in any one row, column or diagonal, the player wins the PRIZE in the PRIZE box. If a player reveals 3 "CHERRY" Play Symbols in any one row, column or diagonal, the player wins DOUBLE the PRIZE in the PRIZE box. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 10 (ten) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 10 (ten) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Texas Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to one (1) time.

D. Each Ticket will contain one Play Symbol which appears four (4) or five (5) times in the play area.

E. There will not be more than two (2) identical Play Symbols other than the one symbol which appears four (4) or five (5) times (see restriction in 2.2.D).

F. Non-Winning and winning Tickets will not contain four (4) identical Play Symbols in all four corners.

G. Winning Tickets will only contain one (1) winning combination.

H. Winning Tickets will have three (3) identical Play Symbols as the winning Play Symbol in the same ROW, COLUMN or DIAGONAL.

I. All Tickets will have at least one (1) DOUBLER Play Symbol appear, with respect to other parameters, play action or prize structure.

J. The particular DOUBLER Play Symbol for that scene can only appear on that scene: The single "DICE" Play Symbol will only ever appear on scene one (1) Tickets with the base graphic "DICE" design. The "4 LEAF CLOVER" Play Symbol will only ever appear on scene two (2) Tickets with the base graphic "4 LEAF CLOVER" design. The "DIAMOND" Play Symbol will only ever appear on scene three (3) Tickets with the base graphic "DIAMOND" design. The "HORSESHOE" Play Symbol will only ever appear on scene four (4) Tickets with base graphic "HORSESHOE" design. The single "CHERRY" Play Symbol will only ever appear on scene five (5) Tickets with the base graphic "CHERRY" design.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY SYMBOLS" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$8.00, \$10.00, \$20.00, \$40.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00, \$50.00, \$100 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY SYMBOLS" Instant Game prize of \$3,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY SYMBOLS" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "LUCKY SYMBOLS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "LUCKY SYMBOLS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose

signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,240,000 Tickets in the Instant Game No. 1586. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1586 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,142,400	10.71
\$2	884,000	13.85
\$4	340,000	36.00
\$5	136,000	90.00
\$8	108,800	112.50
\$10	54,400	225.00
\$20	40,800	300.00
\$40	850	14,400.00
\$50	476	25,714.29
\$100	238	51,428.57
\$500	102	120,000.00
\$3,000	10	1,224,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.52. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1586 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1586, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201400196
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: January 21, 2014

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 17, 2014, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of BM Service Corp. d/b/a Rock Solid Internet & Telephone for a Service Provider Certificate of Operating Authority, Docket Number 42170.

Applicant intends to provide data, facilities-based, and resale telecommunications services.

Applicant seeks to provide service throughout the state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than February 7, 2014. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42170.

TRD-201400200

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Public Utility Commission of Texas

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 21, 2014



Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 10, 2014, for retail electric provider (REP) certification, pursuant to §39.352 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Jade Energy, LLC for Retail Electric Provider Certification, Docket Number 42153.

Applicant's requested service area by geography includes the entire state of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than February 24, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 42153.

TRD-201400186
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 17, 2014



Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 14, 2014, for retail electric provider (REP) certification, pursuant to §39.352 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Volterra Energy, LLC for Retail Electric Provider Certification, Docket Number 42157.

Applicant's requested service area by geography includes the entire area of the Electric Reliability Council of Texas (ERCOT).

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than February 28, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 42157.

TRD-201400187
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 17, 2014



Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 15, 2014, for an amendment to certificated service area for a service area exception within Deaf Smith County, Texas.

Docket Style and Number: Application of Deaf Smith Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Deaf Smith County, Docket Number 42160.

The Application: Deaf Smith Electric Cooperative, Inc. (DSEC) filed an application for a service area boundary exception to allow DSEC to provide service to a specific customer located within the certificated service area of Southwestern Public Service Company (SPS). SPS has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than January 24, 2014, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42160.

TRD-201400199
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 21, 2014



Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 15, 2014, to relinquish designation as an eligible telecommunications carrier (ETC) and eligible telecommunications provider (ETP).

Docket Title and Number: Application of Telenational Communications, Inc. to Relinquish its Designation as an Eligible Telecommunications Provider and Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.417(g)(1) and §26.418(j)(1), Docket Number 42163.

The Application: Telenational Communications, Inc. (Telenational) informed the Public Utility Commission of Texas (commission) that relinquishment of its ETP/ETC designations will have no impact on Telenational's network, services, or customer base as they intend to continue offering service to all existing customers at current rates. Telenational requested that the relinquishment be approved effective May 1, 2014.

Telenational acknowledged that the company is not the sole ETC/ETP in the service area for which it received ETC/ETP designation. Telenational affirmed that United Telephone Company of Texas, Inc. d/b/a CenturyLink is designated as an ETC and ETP in the same service area and can serve Telenational's customers without the purchase or construction of facilities.

Persons who wish to intervene in the proceeding or comment upon the action sought should notify the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 42163.

TRD-201400188

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 17, 2014

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Request for Proposals to Provide Technical Consulting Services

Request for Proposals (RFP) Number 473-14-00153

The Public Utility Commission of Texas (PUCT or Commission) is issuing an RFP for analyst services to study the issues and effects of Entergy Texas, Inc. (ETI) leaving the Entergy System Agreement and joining the MidWest Independent System Operator (MISO).

Scope of Work:

The Contractor shall provide technical consulting services related to the compliance proceeding PUCT Docket 40979 concerning the membership of Entergy Texas, Inc. (ETI) in a regional transmission organization and ETI's participation in and orderly transition out of the Entergy System Agreement (ESA).

The analysis and support provided by the Contractor shall include, but not be limited to, identification of options and recommendations for achieving an orderly transition out of the ESA and integration into MISO, including solving operational issues, economic impacts, contract issues, and additional steps that must be taken by ETI.

RFP documentation may be obtained by contacting:

Purchaser
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7069
purchasing@puc.texas.gov

RFP documentation is also located on the PUCT website at <http://www.puc.texas.gov/agency/about/procurement/Default.aspx>.

Deadline for proposal submission is 3:00 p.m. CT on Tuesday, February 18, 2014.

TRD-201400185
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 17, 2014

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Supreme Court of Texas

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 14-9022

CORRECTED ORDER APPROVING AMENDMENTS TO TEXAS RULE OF DISCIPLINARY PROCEDURE 15.06

ORDERED that:

1. By order dated October 14, 2013, in Misc. Docket No. 13-9150, the Court approved amendments to Texas Rules of Disciplinary Procedure 1.06 and 15.06 and the Commission for Lawyer Discipline's Internal Operating Procedure 13, effective November 1, 2013. That order is

corrected by amending Texas Rule of Disciplinary Procedure 15.06 as follows, effective immediately.

2. The Clerk is directed to:

- a. file a copy of this order with the Secretary of State;
- b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- c. send a copy of this order to each elected member of the Legislature; and
- d. submit a copy of the order for publication in the *Texas Register*.

Dated: January 15, 2014.

Nathan L. Hecht, Chief Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice

John P. Devine, Justice

Jeffrey V. Brown, Justice

Amendments to Rule 15.06, Texas Rules of Disciplinary Procedure

15.06. Limitations; General Rule and Exceptions

A. *General Rule:* No attorney may be disciplined for Professional Misconduct that occurred more than four years before the date on which a Grievance alleging the Professional Misconduct is received by the Chief Disciplinary Counsel.

B. *Exception: Compulsory Discipline:* The general rule does not apply to a Disciplinary Action seeking compulsory discipline under Part VIII.

C. *Exception: Alleged Violation of the Disclosure Rule:* A prosecutor may be disciplined for a violation of Rule 3.09(d), Texas Disciplinary Rules of Professional Conduct, that occurred in a prosecution that resulted in the wrongful imprisonment of a person if a Grievance alleging the violation is received by the Chief Disciplinary Counsel within four years after the date on which the Wrongfully Imprisoned Person was released from a Penal Institution.

D. *Effect of Fraudulent or Concealment:* ~~If the doctrine of fraudulent concealment is successfully invoked~~ Where fraud or concealment is involved, the time periods stated in this rule do not begin to run until the Complainant discovered, or in the exercise of reasonable diligence should have discovered, the Professional Misconduct.

TRD-201400151

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Texas Department of Transportation

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

The City of Caldwell, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services for the current project as described below.

Current Project: City of Caldwell; TxDOT CSJ No.: 1417CALDW.

Scope: Provide engineering/design services to:

1. rehabilitate and mark runway
2. rehabilitate apron and taxiways
3. construct 7-unit nested T-Hangar
4. construct hangar access taxiway and apron for aircraft run-up area

The HUB goal for the design of the current project is 11%. The goal will be re-set for the construction phase. The TxDOT Project Manager is Ed Mayle.

The following is a listing of proposed projects at the Caldwell Municipal Airport during the course of the next five years through multiple grants.

Future scope work items for engineering/design services within the next five years may include the following: install perimeter fencing; construct apron; construct taxiway; and construct aircraft hangar.

The City of Caldwell 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 <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> by selecting "Caldwell Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/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 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" 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:

SIX 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 February 25, 2014, 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 committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at <http://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 Ed Mayle, Project Manager.

TRD-201400217

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: January 22, 2014

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

Brooks County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services for the current project as described below.

Current Project: Brooks County; TxDOT CSJ No.: 1421FALRS.

Scope: Provide engineering/design services to:

1. Rehabilitate and mark Runway, Taxiway and Apron
2. Reconfigure/rehab apron
3. Mill/Overlay portions of Runway 14-32, Taxiway to Runway 14
4. Upgrade signage panels
5. Replace lighted windcone and light supplemental
6. Enhance wildlife fencing
7. Clear and grub wildlife habitat and clear out RSA

The DBE goal for the design of the current project is 8%. The goal will be re-set for the construction phase. TxDOT Project Manager is Eusebio Torres.

The following is a listing of proposed projects at the Brooks County Airport during the course of the next five years through multiple grants.

Future scope work items for engineering/design services within the next five years may include the following: Expand apron and extend parallel taxiway, replace MIRLS and vault.

Brooks 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 Exhibit, and most recent Airport Layout Plan are available online at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> by selecting "Brooks 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 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/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 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" 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:

FIVE 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 February 25, 2014, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at <http://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 Sheri Quinlan, Grant Manager. For technical questions, please contact Eusebio Torres, Project Manager.

TRD-201400218

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: January 22, 2014



Public Notice - Advertising in Texas Department of Transportation's Travel Literature and *Texas Highways* Magazine

Advertising in Texas Department of Transportation Travel Literature and *Texas Highways* magazine, both in print and in digital or online assets. The Texas Department of Transportation is authorized by Texas Transportation Code, Chapter 204 to publish literature for the purpose of advertising the highways of this state and attracting traffic thereto, and to include paid advertising in such literature. Title 43 Texas Administrative Code, §23.10 and §23.29 describe the policies governing advertising in department travel literature and *Texas Highways* magazine, both in print and in digital or online, lists acceptable and unacceptable subjects for advertising in department travel literature and the magazine, and describes the procedures by which the department will solicit advertising.

As required by 43 TAC §23.10(e)(4)(A) and 43 TAC §23.29(d)(1) the department invites any entity or individual interested in advertising in department travel literature and *Texas Highways* magazine to request to be added to the department's contact list. Written requests may be mailed to the Texas Department of Transportation, Travel Information Division, Travel Publications Section, P.O. Box 141009, Austin, Texas 78714-1009. Requests may also be made by telephone to (512) 486-5880 or sent by fax to (512) 486-5879.

The department is now accepting advertising for the 2015 edition of the *Texas State Travel Guide*, scheduled to be printed and available in January 2015. The *Texas State Travel Guide* is designed to encourage readers to explore and travel to and within the State of Texas. The guide lists cities and towns, featuring population figures and recreational travel sites for each, along with maps and 4-color photography. The guide may also include sections listing Texas lakes, state parks, state and national forests, along with hunting and fishing information. The State of Texas distributes this vacation guide to travelers in Texas and to those who request information while planning to travel in Texas.

Media kits for 2015 *Texas State Travel Guide*, 2014/2015 *Texas Highways*, and 2014/2015 *Texas Highways Events Calendar* are now available.

All *Texas State Travel Guide* insertion orders, including premium space will be accepted on a first-come first-served basis. Insertion orders for an inside front cover spread and inside back cover spread will take precedence over an inside front cover and inside back cover insertion order.

The department is now accepting advertising for the 2015 edition of the *Texas Official Travel Map*, scheduled to be printed and available in January 2015. The State of Texas distributes this map to travelers in Texas and to those who request information while planning to travel in Texas.

The department continues to accept advertising for all quarterly issues of the *Texas Highways Events Calendar*, beginning with the Fall 2014 calendar. The *Texas Highways Events Calendar* is published quarterly, corresponding with the seasons, to provide information about events

happening in Texas throughout the year. The *Texas Highways Events Calendar* includes festivals, art exhibits, rodeos, indoor and outdoor music and theatre productions, concerts, nature tours, and more, depending on the season. The State of Texas distributes this quarterly calendar to travelers in Texas and to those who request information on events happening around the state.

The Fall 2014 calendar lists events scheduled for September 2014, October 2014, and November 2014. The Winter 2014-2015 calendar lists December 2014, January 2015, and February 2015 events. The Spring 2015 calendar lists March 2015, April 2015, and May 2015 events; and the Summer 2015 calendar lists events scheduled for June 2015, July 2015, and August 2015.

The advertising due dates for the *Texas Highways Events Calendar* vary depending on the issue involved. The publication deadline for accepting advertising space in the *Texas Highways Events Calendar* is May 14, 2014, for the Fall 2014 issue; August 13, 2014, for the Winter 2014-2015 issue; November 12, 2014, for the Spring 2015 issue; and February 12, 2015, for the Summer 2015 issue. The deadline for accepting materials for the *Texas Highways Events Calendar* is May 28, 2014, for the Fall 2014 issue; August 28, 2014, for the Winter 2014-2015 issue; November 26, 2014, for the Spring 2014-2015 issue; and February 26, 2015, for the Summer 2015 issue.

The department is now accepting advertising for all monthly 2015 issues of *Texas Highways* magazine. *Texas Highways* magazine is a

monthly publication designed to encourage recreational travel within the state and to tell the Texas story to readers around the world. Accordingly, the content of the magazine is focused on Texas vacation, recreational, travel, or tourism related subjects, shopping opportunities in Texas and for Texas related products, various outdoor events, sites, facilities, and services in the state, transportation modes and facilities in the state, and other sites, products, facilities, and services that are travel related or Texas-based, and that are determined by the department to be of cultural, educational, historical, or of recreational interest to *Texas Highways* readers.

The publication deadline for accepting advertising space in *Texas Highways* magazine is the 27th of the third month preceding the issue date. The deadline for accepting materials for *Texas Highways* magazine is seven days after space closing. When material or space closing dates fall on a Saturday, Sunday or holiday, space and/or materials are due the preceding workday.

The rate card information for potential advertisers in the *Texas State Travel Guide*, the *Texas Highways Events Calendar*, *Texas Highways* magazine, the *Texas Official Travel Map*, and related digital assets are included in this notice. Digital assets may include *Texas Highways.com* and *Texas Highways* Extra eNewsletter.

TEXAS STATE TRAVEL GUIDE

Year 2015 Rate Base: 900,000
Space Closing: October 3, 2014
Materials Due: October 10, 2014
First Distribution: January 2015

Advertising Rates

ROP:	Gross
Full Page	\$23,667
Two Thirds (2/3) Page	\$16,907
Half (1/2) Page	\$14,217
One Third (1/3) Page	\$8,526
One Sixth (1/6) Page	\$5,376
Premium Positions:	
Cover 2 (Inside Front)	\$34,125
Cover 3 (Inside Back)	\$31,773
Cover 4 (Back)	\$42,624
Spread (Inside Front Cover or Inside Back Cover)	\$57,792

Note: All rates are 4-color (no black and white). Run-of-book spreads are 2 times the page rate. Rates for inserts, gatefolds, multi-title frequency advertising, and other special advertising will be quoted on request. Multiple fractional ads will be priced at the equivalent page rate.

Early Reservation Discount: Organizations reserving their space by Monday, August 4, 2014 will receive a 5% discount off the net space price.

Umbrella Plan A: 5% discount for 1x Texas State Travel Guide, 3x Texas Highways Magazine, 2x Texas Events Calendar

Umbrella Plan B: 10% discount for 1x Texas State Travel Guide, 6x Texas Highways Magazine, 4x Texas Events Calendar

Umbrella Plan C: 10% discount for 1x Texas State Travel Guide, 12x Texas Highways Magazine, 2x Texas Events Calendar

Payment: Cash with order or net 30 from invoice date. All orders must be paid in full by October 10, 2014.

Texas Highways Events Calendar

Advertising Rates/Due Dates

Year 2014/2015 Rate Base: 65,000 Circulation: Summer, Fall, Winter, Spring
 Black/White 1X 2X 4X

	Gross	Gross	Gross
FULL PAGE	\$1,512	\$1,465	\$1,418
HALF PAGE	\$1,040	\$1,016	\$968
THIRD PAGE	\$756	\$733	\$685

4 Color	1X	2X	4X
	Gross	Gross	Gross
FULL PAGE	\$2,117	\$2,051	\$1,985
HALF PAGE	\$1,455	\$1,422	\$1,356
THIRD PAGE	\$1,058	\$1,025	\$959

COVERS (4-Color)	1X	2X	4X
	Gross	Gross	Gross
COVER 2	\$3,308	\$3,072	\$2,835
COVER 3	\$2,835	\$2,599	\$2,363
COVER 4	\$3,969	\$3,780	\$3,591

Cash with other or net 30 from invoice date. All orders must be paid in full by 30 days after publication date. Rates for inserts, multi-title frequency advertising, and other special advertising will be quoted on request.

Advertising Due Dates:

<u>Issue Date</u>	<u>Space Closing</u>	<u>Materials Due</u>
Fall 2014 (Sep, Oct, Nov-2014)	May 14, 2014	May 28, 2014
Winter 2014-15 (Dec, Jan, Feb-2015)	Aug. 13, 2014	Aug. 28, 2014
Spring 2015 (Mar, Apr, May-2015)	Nov. 12, 2014	Nov. 26, 2014
Summer 2015 (Jun, Jul, Aug-2015)	Feb. 12, 2015	Feb. 26, 2015

TEXAS HIGHWAYS MAGAZINE

Texas Rate Card (All rates gross)

Four-Color	1x	3x	6x	12x	18x	24x
Full Page	\$7,120	\$6,764	\$6,550	\$6,337	\$6,123	\$5,910
2/3 Page	\$5,880	\$5,586	\$5,410	\$5,233	\$5,057	\$4,880
1/2 Page	\$4,626	\$4,395	\$4,256	\$4,117	\$3,978	\$3,840
1/3 Page	\$3,326	\$3,160	\$3,060	\$2,960	\$2,860	\$2,761
1/6 Page	\$1,830	\$1,739	\$1,684	\$1,629	\$1,574	\$1,519
Cover 2	\$9,100	\$8,645	\$8,372	\$8,099	\$7,826	\$7,553
Cover 3	\$8,700	\$8,265	\$8,004	\$7,743	\$7,482	\$7,221

Section Guides (Holiday, Product, and Destination): \$1,300 per insertion

Payment: Cash with order or net 30 from invoice date.

Space Deadline: 27th of the third month preceding issue date.

Materials Deadline: Seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

2015 advertisers who spend a minimum of \$4,600 gross on one order will receive a full year listing in the marketplace section of www.texashighways.com and be allowed to update the image and copy 4xs during calendar year 2015.

TEXAS HIGHWAYS MAGAZINE

National Rate Card (All rates gross)

Four-Color	1x	3x	6x	12x	18x	24x
Full Page	\$11,867	\$11,273	\$10,917	\$10,562	\$10,205	\$9,850
2/3 Page	\$9,800	\$9,310	\$9,016	\$8,722	\$8,428	\$8,133
1/2 Page	\$7,710	\$7,325	\$7,093	\$6,682	\$6,630	\$6,400
1/3 Page	\$5,543	\$5,267	\$5,100	\$4,933	\$4,767	\$4,601
1/6 Page	\$3,050	\$2,898	\$2,807	\$2,715	\$2,623	\$2,532
Cover 2	\$15,167	\$14,408	\$13,953	\$13,498	\$13,043	\$12,588
Cover 3	\$14,500	\$13,775	\$13,340	\$12,905	\$12,470	\$12,035

Section Guides (Holiday, Product, and Destination): \$2,167 per insertion

Payment: Cash with order or net 30 from invoice date.

Space Deadline: 27th of the third month preceding issue date.

Materials Deadline Seven days after space closing. When material or space Closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

2015 advertisers who spend a minimum of \$4,600 gross on one order will receive a full year listing in the marketplace section of www.texashighways.com and be allowed to update the image and copy 4xs during calendar year 2015.

TEXAS OFFICIAL TRAVEL MAP

Advertising Rates

Year 2014 Rate Base: 1,400,000
Space Closing: October 3, 2014
Materials Due: October 10, 2014
First Distribution: January 2015

ROP:	Gross
Full Panel	\$49,900
Half (1/2) Panel	\$28,175

Note: All rates are 4-color (no black and white).

Payment: Cash with order or net 30 from invoice date. All orders must be paid in full by October 10, 2014.

Discount plans: Contact AJR Media Group for more information on multi-title discounts with the other TxDOT travel publications: *Texas Highways*, *Texas State Travel Guide* and *Texas Highways Events Calendar*.

TRD-201400219
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 22, 2014

Texas Water Development Board

Applications for January 2014

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73678, a request from the City of Dell City, P.O. Box 125, Dell City, Texas 79837-0125, received August 29, 2013, for financial assistance in the amount of \$191,223 consisting of a \$75,000 loan and \$116,223 in loan forgiveness from the Clean Water State Revolving Fund to finance the planning, design and install a land application disposal system near the City's wastewater treatment plant.

Project ID #62621, a request from the City of Clyde, P.O. Box 1155, Clyde, Texas 79510, received August 30, 2013, for financial assistance in the amount of \$1,350,000 from the Drinking Water State Revolving Fund to finance planning, acquisition, and design costs relating to an intake structure and raw water line from Lake Fort Phantom Hill.

Project ID #73677, a request from Angelina & Neches River Authority, received August 29, 2013, P.O. Box 387, Lufkin, Texas 75902-0387, for financial assistance in the amount of \$674,013 consisting of a \$205,000 loan and \$469,013 in loan forgiveness from the Clean Water State Revolving Fund to finance planning and design costs related

to wastewater collection system improvements that will provide first time sewer service to approximately 105 connections within the service area including Redland Estates.

Project ID #73676, a request from the City of Houston, 611 Walker, Houston, Texas 77002, received August 27, 2013, for a loan in the amount of \$55,005,000 from the Clean Water State Revolving Fund to finance the rehabilitation of sanitary sewer pipe throughout the City.

Project ID #62610, a request from the City of Houston, 611 Walker, Houston, Texas 77002, received August 27, 2013, for a loan in the amount of \$70,754,904 consisting of a \$70,580,000 loan and \$174,904 in loan forgiveness from the Drinking Water State Revolving Fund to finance the construction phase of water system improvements including water main replacement, meter replacement and upgrades and the installation of an automatic meter reading program.

Project #21737, a request from Pleasant Springs Water Supply Corporation, 1041 ACR 2140, Palestine, Texas 75801-4310, received August 23, 2013, for a loan in the amount of \$1,135,000 from the Rural Water Assistance Fund to finance planning, design, and construction of an additional water well and storage capacity for the existing system.

Project ID #73659, a request from the City of McAllen, P.O. Box 220, McAllen, Texas 78505, received August 30, 2013, for financial assistance in the amount of \$30,202,322, consisting of a loan in the amount of \$30,000,000 and \$202,322 in loan forgiveness from the Clean Water State Revolving Fund to finance construction costs related to upgrading a wastewater treatment plant.

TRD-201400155

Les Trobman
General Counsel
Texas Water Development Board
Filed: January 16, 2014



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.

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 39 (2014) is cited as follows: 39 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 “39 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 39 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)

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***Note:** Back issues of the *Texas Register*, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

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