TEXAS REGISTER

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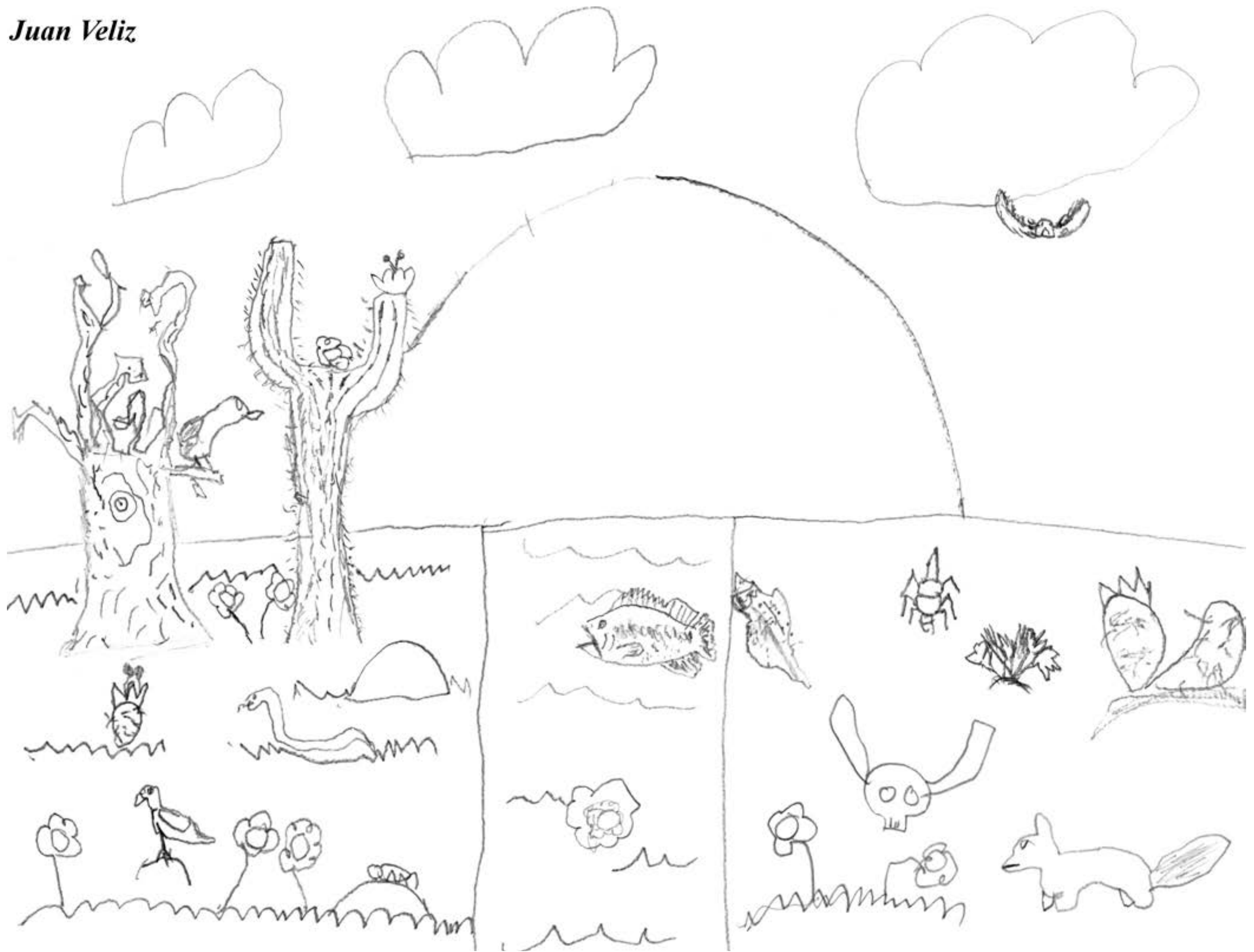

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Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

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

Secretary of State –
Nandita Berry

Staff
Leti Benavides
Dana Blanton
Jeana Bores
Elaine Crease
Deana Lackey
Jill S. Ledbetter
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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-1223-GA

Requestor:

Mr. Michael Williams

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Construction of §45.0532 of the Education Code regarding the limitation on the guarantee of charter district bonds (RQ-1223-GA)

Briefs requested by October 15, 2014

RQ-1224-GA

Requestor:

The Honorable Abelino Reyna

McLennan County Criminal District Attorney

219 North 6th Street, Suite 200

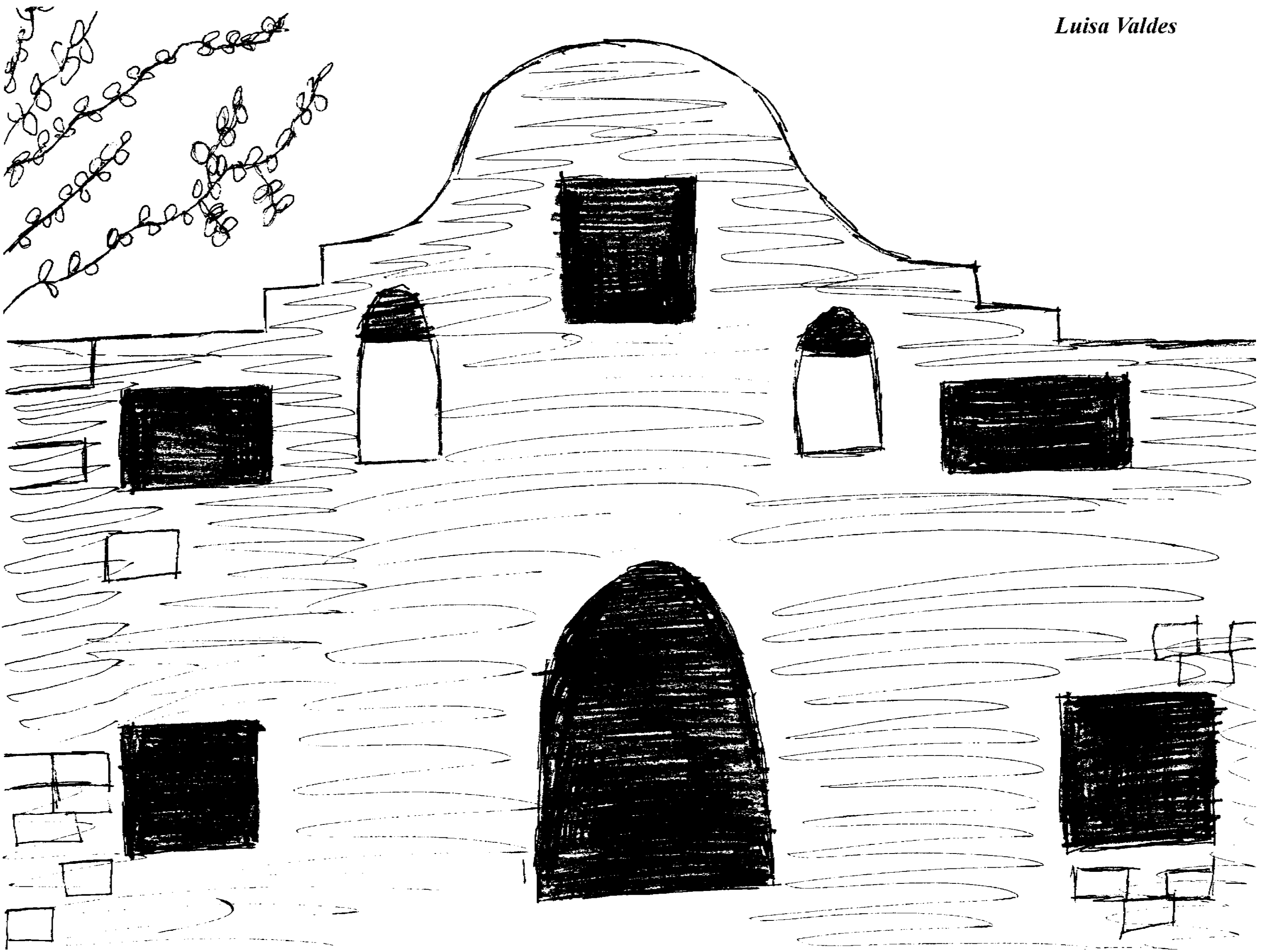
Waco, Texas 76701

Re: To which programs jurors may donate their juror reimbursement under §61.003(a)(4) of the Government Code (RQ-1224-GA)

Briefs requested by October 20, 2014

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201404596
Katherine Cary
General Counsel
Office of the Attorney General
Filed: October 1, 2014



Luisa Valdes

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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID)

1 TAC §355.456

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.456, concerning Reimbursement Methodology.

Background and Justification

This rule establishes the reimbursement methodology for the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) program administered by the Department of Aging and Disability Services (DADS). HHSC, under its authority and responsibility to administer and implement rates, is proposing amendments to this rule to add a reimbursement methodology for services to individuals who have lived in a State-Supported Living Center (SSLC) for at least six months prior to referral to a non-state operated facility; have a level of need (LON) which includes a medical LON increase but not a LON of pervasive plus; and have a Resource Utilization Group (RUG-III) classification in the major RUG-III classification groups of Extensive Services, Rehabilitation, Special Care, or Clinically Complex.

The proposed reimbursement methodology will calculate an add-on payment for eligible individuals based on the RUG-III classification system. There will be three add-on groups. For each group, HHSC will compute the median direct care staff per diem base rate component for all facilities, as specified in §355.308, relating to the Direct Care Staff Rate Component in Subchapter C, relating to the Reimbursement Methodology for Nursing Facilities. HHSC will then subtract the average nursing portion of the current recommended modeled rates as specified in this ICF/IID Reimbursement Methodology rule.

This amendment is being proposed to assist DADS to serve individuals with complex medical needs currently living in an SSLC in a less restrictive environment. Based upon the Sunset Advisory Commission's recommendations for DADS to address the needs of individuals with complex medical needs transitioning from an SSLC, DADS needs the rates to go forward as soon as possible. A process to allow existing ICF/IID providers to serve individuals with complex medical needs is being developed. The expedited rule process allows DADS to proceed with the process to serve individuals with complex medical needs in an ICF/IID facility by January 1, 2015.

Additionally, HHSC is making minor revisions to incorporate person-first respectful language, insert a needed abbreviation, and delete obsolete language.

Section-by-Section Summary

The proposed amendments to §355.546 are as follows:

- Revise subsections (d)(2) and (d)(3) to include person-first respectful language and the abbreviation for level of need (LON).

- Add a new subsection (d)(6) to define the methodology for determining the add-on.

- Revise subsections (f) and (g) to remove obsolete language.

Fiscal Note

James Jenkins, Chief Financial Officer for DADS, has determined that, during the first five-year period the amended rule is in effect, there will be a fiscal impact to state government estimated at a cost of $249,435 for state fiscal year (SFY) 2015, $1,771,136 for SFY 2016, $4,139,426 for SFY 2017, and $4,139,426 for SFY 2018.

The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the amended rule.

Mr. Jenkins does not anticipate that there will be any economic cost to persons who are required to comply with the proposed amendments during the first five years the rule will be in effect. The amendments will not affect a local economy or local employment for the first five years the proposed amendment will be in effect.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendments. The implementation of the proposed rule amendments does not require any changes in practice or any additional cost to the contracted provider.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that for each of the first five years the amendment is in effect, the expected public benefit is that individuals currently residing in an SSLC will have more options for transitioning to a smaller, less-restrictive setting.

Takings Impact Assessment

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

Regulatory Analysis

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

Public Comment

Questions about the content of this proposal may be directed to Judy Myers in the HHSC Rate Analysis Department by telephone at (512) 707-6072. Written comments on the proposed amendments may be submitted to Ms. Myers by facsimile at (512) 730-7475, by e-mail to judy.myers@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under the Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b)(2), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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

§355.456. Reimbursement Methodology.

(a) Types of facilities. There are two types of facilities for purposes of rate setting: state-operated and non-state operated. Facilities are further divided into classes that are determined by the size of the facility.

(b) Classes of non-state operated facilities. There is a separate set of reimbursement rates for each class of non-state operated facilities, which are as follows:

(1) Large facility--A facility with a Medicaid certified capacity of 14 or more as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(2) Medium facility--A facility with a Medicaid certified capacity of nine through 13 as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(3) Small facility--A facility with a Medicaid certified capacity of eight or fewer as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(c) Classes of state-operated facilities. There is a separate interim rate for each class of state-operated facilities, which are as follows:

(1) Large facility--A facility with a Medicaid certified capacity of 17 or more as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(2) Small facility--A facility with a Medicaid certified capacity of 16 or less as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(d) Reimbursement rate determination for non-state operated facilities. HHSC will adopt the reimbursement rates for non-state operated facilities in accordance with §355.101 of this title (relating to Introduction) and this subchapter.

(1) Reimbursement rates combine residential and day program services, i.e., payment for the full 24 hours of daily service.

(2) Reimbursement rates are differentiated based on the level of need (LON) of the individual receiving the service [~~client level-of-need~~]. The levels of need are intermittent, limited, extensive, pervasive, and pervasive plus.

(3) The recommended modeled rates are based on cost components deemed appropriate for economically and efficiently operated services. The determination of these components is based on cost reports submitted by ICF/IID [~~MR~~] providers.

(4) Direct service workers cost area. This cost area includes direct service workers' salaries and wages, benefits, and mileage reimbursement expenses. The reimbursement rate for this cost area is calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(5) Direct care trainers and job coaches cost area. This cost area includes direct care trainers' and job coaches' salaries and wages, benefits, and mileage reimbursement expenses. The reimbursement rate for this cost area is calculated as specified in §355.112 of this title.

(6) Add-on reimbursement rate. There is an available add-on reimbursement rate, in addition to the daily reimbursement rate, for certain individuals.

(A) The add-on is based on the Resource Utilization Group (RUG-III) 34 group classification system as described in §355.307 of this title (relating to Reimbursement Setting Methodology).

(B) There are three add-on groupings based on certain RUG-III 34 classification groups and the assessed Activities of Daily Living (ADL) score.

(i) Group 1 includes Extensive Services 3 (SE3), Extensive Services 2 (SE2), and Rehabilitation with ADL score of 17-18 (RAD).

(ii) Group 2 includes Rehabilitation with ADL score of 14-16 (RAC), Rehabilitation with ADL score of 10-13 (RAB), Extensive Services 1 (SE1), Special Care with ADL score of 17-18 (SSC), Special Care with ADL score of 15-16 (SSB), and Special Care with ADL score of 4-14 (SSA).

(iii) Group 3 includes Rehabilitation with ADL score of 4-9 (RAA), Clinically Complex with Depression and ADL score of 17-18 (CC2), Clinically Complex with ADL score of 17-18

(CC1), Clinically Complex with Depression and ADL score of 12-16 (CB2), Clinically Complex and ADL score of 12-16 (CB1), Clinically Complex with Depression and ADL score of 4-11 (CA2), and Clinically Complex and ADL score of 4-11 (CA1).

(C) An individual must meet the following criteria to be eligible to receive the add-on rate:

(i) be assigned a RUG-III 34 classification in Group 1, Group 2, or Group 3;

(ii) be a resident of a large state-operated facility for at least six months prior to referral; and

(iii) have a LON which includes a medical LON increase as described in 40 TAC §9.241 (relating to Level of Need Criteria), but not be assessed a LON of pervasive plus.

(D) The add-on for each Group is determined based on data and costs from the most recent nursing facility cost reports accepted by HHSC.

(i) For each Group, compute the median direct care staff per diem base rate component for all facilities as specified in §355.308 of this title (relating to Direct Care Staff Rate Component); and

(ii) Subtract the average nursing portion of the current recommended modeled rates as specified in subsection (d)(3) of this section.

(e) Reimbursement determination for state-operated facilities. Except as provided in paragraph (2) of this subsection and subsection (f) of this section, state-operated facilities are reimbursed an interim rate with a settlement conducted in accordance with paragraph (1)(B) of this subsection. HHSC will adopt the interim reimbursement rates for state-operated facilities in accordance with §355.101 of this title and this subchapter.

(1) State-operated facilities certified prior to January 1, 2001, will be reimbursed using an interim reimbursement rate and settlement process.

(A) Interim reimbursement rates for state-operated facilities are based on the most recent cost report accepted by HHSC.

(B) Settlement is conducted each state fiscal year by class of facility. If there is a difference between allowable costs and the reimbursement paid under the interim rate, including applied income, for a state fiscal year, federal funds to the state will be adjusted based on that difference.

(2) A state-operated facility certified on or after January 1, 2001, will be reimbursed using a pro forma rate determined in accordance with §355.101(c)(2)(B) and §355.105(h) of this title (relating to Introduction and General Reporting and Documentation Requirements). A facility will be reimbursed under the pro forma rate methodology until HHSC receives an acceptable cost report which includes at least 12 months of the facility's cost data and is available to be included in the annual interim rate determination process.

(f) HHSC may define experimental classes of service to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers. Reimbursement for an experimental class is not implemented, however, unless HHSC and the Centers for Medicare and Medicaid Services (CMS) [~~Health Care Financing Administration (HCFA)~~] approve the experimental methodology.

(g) Cost Reporting. [~~For cost reports pertaining to providers' fiscal years ending in calendar year 2004 and subsequent years the following applies:~~]

(1) Providers must follow the cost-reporting guidelines as specified in §355.105 of this title.

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

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

(h) Adjusting costs. Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(i) Field Audit and Desk Review. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

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 September 26, 2014.

TRD-201404559
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: November 9, 2014
For further information, please call: (512) 424-6900

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 18. ORGANIC STANDARDS AND CERTIFICATION

SUBCHAPTER F. ADMINISTRATIVE

DIVISION 5. MISCELLANEOUS PROVISIONS

The Texas Department of Agriculture (the department) proposes the repeal of Chapter 18, Subchapter F, Division 5, §18.702

and §18.705, new §18.702, and amendments to §18.704 and §18.706, all concerning organic standards and certification. The department has conducted an evaluation of the department's Organic Certification Program and is now proposing a fee restructure in §18.702 or to discontinue the program if the program participants are not in support of the fee restructure proposal. The repeals, amendments and new §18.702 are proposed in order to facilitate the fee restructure. The proposed amendments are necessary to comply with changes made to the department's organic certification program by the 82nd Texas Legislature. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly.

In order to meet the Legislative cost recovery mandate, the department first reviewed the program for cost savings and efficiencies, then restructured the program, as needed, to provide the best service possible at a reasonable cost to producers and handlers who were currently certified or may voluntarily seek certification by the department. A thirty-eight percent increase in certification fees was adopted for the program in 2011 (36 TexReg 5355), so that the program could continue in operation, under the cost recovery requirement imposed by the 82nd Legislature. As a result of the fee increase and other factors, program participation has declined by an average of twelve percent annually, which has resulted in lower revenue collections than projected for offsetting expenses, thereby impacting full cost recovery. The department has reduced staffing and modified program procedures to achieve greater efficiencies and meet cost-recovery requirements in law, however, service delivery turn-around time for certification processing has increased over time to an unacceptable level.

The department has conducted a survey of existing organic certification clients to obtain feedback concerning the program. Generally, the responses did not support a fee increase amount adequate to ensure full cost recovery. The department also obtained input from the Organic Agricultural Industry Advisory Board, advising the department to evaluate an outsourcing solution for certification activities. The department posted a Request for Proposal in June 2014, seeking proposals from external businesses, to provide an augmented certification review and processing service for the program. No proposals were submitted to the department for consideration.

The department is now faced with either discontinuing the program or restructuring fees to ensure adequate cost recovery. The proposed revisions to §18.702 restructure fees for organic certification or annual update of organic certification so that the program may continue under the cost recovery requirement imposed by the 82nd Legislature. The repeal of §18.705 eliminates registration requirements for certified organic businesses and organic certifying agents. The proposed amendment to §18.704 updates the citation of the fee for transaction certificates in §18.702. The proposed amendments to §18.706 remove reference to a section that has been repealed, and remove the 12-month "waiting period" before applying for transitional certification.

Mary Ellen Holliman, Coordinator for the organic certification program, has determined that for the first five-year period the provisions related to fees are in effect, there will be fiscal implications for state government due to the increase in revenue collected. After computing an estimated twelve percent reduction in program participation, based on historical trend data, there will be an estimated increase in state revenue of $101,686 annually. The charging of a fee is necessary to enable the continued operation of the program due to the Legislative requirement that this program generate revenue to completely offset its costs. The ability of the department to enforce statutory requirements will be impacted if the department does not assess a fee that recovers the full cost of the program. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rules, as proposed.

Ms. Holliman has also determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of administering the proposal will be achieving effective recovery of the costs of administering the organic certification program. The anticipated costs to micro-businesses, small businesses or individuals required to comply with the proposal would affect all 230 currently certified operations and operations applying for certification. All 130 production operations would experience a fee change. Due to the restructuring of fees to effectively recover costs, some land production operations will experience a fee increase of $595 or more depending upon the number of inputs used. Similarly, some land production operations will experience a fee reduction of $55 or more depending upon the number of inputs used. Three livestock production operations would experience a fee increase ranging from $145 to $595 or more depending upon the number of inputs used. The total certification fee for crop production operations with less than 5,000 acres shall not exceed $4,200. All 111 operations that handle and process organic product would experience a fee increase ranging from $145 to $1,245. Approximately 37 organic handling operations that process multi-ingredient organic products would experience an additional fee increase of $100 to $250 per each multi-ingredient processed product. At this time, the department participates in the National Organic Certification Cost Share Program (NOCCP) that is funded through the U.S. Agriculture Act of 2014 and is administered by the United States Department of Agriculture's Agricultural Marketing Service. Certified organic operations that choose to participate in the NOCCP will see a net reduction of $750 in certification fees under the proposal. The proposed repeals, new section and amendments will become effective on January 1, 2015. The department has posted fee restructure calculators on the department's website, www.TexasAgriculture.gov, for affected producers and handlers to use in calculating their respective fee under the proposal.

Comments on the proposal may be submitted to Mary Ellen Holliman, Coordinator for Organic Certification Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments may be submitted by email at: Organic@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

4 TAC §18.702, §18.705

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

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

The repeal of §18.702 and §18.705 is proposed under Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules for the certification of organic products; and §12.016, which provides the department

with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.702. Fees.

§18.705. Registration.

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 September 29, 2014.

TRD-201404576
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Proposed date of adoption: January 1, 2015
For further information, please call: (512) 463-4075

4 TAC §§18.702, 18.704, 18.706

New §18.702 and the amendments to §18.704 and §18.706 are proposed under Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules for the certification of organic products; §18.006 which requires the department to set fees for the organic certification program in amounts that enable it to recover the costs of administering the program; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.702. Fee Schedule.

(a) The categories of fees that may be incurred by an operation applying for initial certification or annual update of certification are as follows: new application fee, certification fees, administrative fees, and additional service fees:

(1) New Application Fee: $400. An application fee is incurred at the time of submission for each new application for organic certification, and is in addition to any certification fees.

(2) Certification Fees: These fees are incurred at the time of initial application and annual update of certification and shall be paid in conjunction with submission of a new application or an annual update of an existing certification. Certification fees are cumulative.

(A) Producer Scopes. Fees for an operation or a portion of an operation that produces organic crops and livestock as defined in 7 Code of Federal Regulations (CFR), Part 205.

(i) Fees for crop producer scope:

(I) Crop production operations that have 50 acres or less under organic management have an established baseline of up to 25 production inputs and a fee of $1,000. Any additional inputs above this baseline will incur an additional fee as established in this subsection.

(II) Crop production operations that have more than 50 acres under organic management have an established baseline of up to 5 production inputs and a fee of $1,500. Any additional inputs above this baseline will incur an additional fee as established in this subsection.

(ii) Fee for the review of each additional production input above the baseline that is established in this subsection: $100 per production input.

(iii) The total certification fee for a crop production operation that is less than 5,000 acres shall not exceed $4,200.

(iv) An operation with more than 5,000 acres of land under organic management incurs an additional fee of $600.

(v) Fee to add the livestock producer scope to organic producer certification: $1,000. Operations that incur this fee shall increase their baseline by 25 production inputs. Any additional inputs above this baseline will incur an additional fee as established in this subsection.

(B) Handler Scope. Fee for each location of an operation or portion of an operation that handles organic product and is required to obtain certification per 7 CFR Part 205 or desires to obtain organic certification for the purpose of brokering and/or trading of certified organic product.

(i) Fee for handler scope: $1,500. Fee includes certification for handling of bulk raw agricultural commodities; single ingredient finished products (e.g. cotton, coffee, rice); livestock feed that is consumed onsite of the operation; and review of organic labeling claims made in compliance with 7 CFR Part 205, §§205.307 - 205.309.

(ii) Fee for certification of multi-ingredient processed products for operations that have 25 or less multi-ingredient processed products: $250 per product.

(iii) Fee for certification of multi-ingredient processed product for operations that have 26 or more multi-ingredient processed products: $6,250 for the certification of the first 25 products and $100 for the certification of each additional product.

(iv) Fee for reviewing each new organic product label or label template or change to a previously approved product label or label template for compliance with 7 CFR Part 205, §§205.303 - 205.306. (To be classified as a label template, organic claims made on main label and any information content, use of the department's organic logo, use of the United States Department of Agriculture organic seal, and certified by statement must remain the same (i.e. size, color(s), and location on the label)): $200.

(C) A change fee is incurred when an operation submits documentation to make one or more changes to an organic system plan after the initial review of the organic system plan documentation has been conducted: $300.

(i) If an operation submits documentation to make one or more changes to an organic system plan after the initial review has been conducted and includes changes to add one or more producer inputs or changes to previously submitted multi-ingredient processed products or product labels, such changes are cumulative and charged at the applicable fee rate provided in paragraph (1) of this subsection.

(ii) A change fee is not incurred when the only change to the organic system plan is the addition of one or more producer inputs, addition of new or changes to previously submitted multi-ingredient processed products or product labels. Such changes are charged at the applicable fee rate provided in paragraph (1) of this subsection.

(3) Administrative fees. The following fees are incurred by an operation that is not compliant with 7 CFR Part 205 and are cumulative.

(A) Corrective action fee: incurred for each area of noncompliance identified in a notice of noncompliance that is issued to an operation due to adverse findings from an inspection, review, or investigation of an operation that is seeking certification from or is currently certified by the department: $200 per area of noncompliance.

(B) Re-inspection fee: incurred when a re-inspection must be conducted to verify that an operation has come into compliance with one or more previously identified areas of noncompliance: $400 per re-inspection.

(C) Late Fees: incurred when an operation fails to submit an annual update fee payment on or before the due date of the certification annual update shall pay, in addition to the annual update fee, a late fee of:

(i) 50 percent of the certification fee if received by the department from at least one but less than 91 days after the due date;

(ii) 100 percent of the certification fee if received by the department 91 days after the due date.

(4) Additional Service fees. The following fees are incurred at the time the service is requested and are cumulative. The purpose of the following service fees is to facilitate trade and satisfy document requirements by another state or a foreign country.

(A) Organic pesticide residue tissue sample collection requested by client during scheduled inspection: $250 per sample.

(B) Organic pesticide residue tissue sample collection requested by client when inspection is not scheduled: $200 fee for the facility visit, plus $250 per sample.

(C) Review of an operation's organic system plan for compliance with the equivalency agreement between the United States Department of Agriculture National Organic Program and the Canadian Organic Regime (COR): $75.

(D) Review of an operation's organic system plan for compliance with the equivalency agreement between the United States Department of Agriculture National Organic Program and the European Community (EU): $75.

(E) Issuance of an attestation notice for compliance with the equivalency agreement between the United States Department of Agriculture National Organic Program and the Canadian Organic Regime (COR): $50.

(F) Completion of Certificate of Inspection (COI) for compliance with the equivalency agreement between the United States Department of Agriculture National Organic Program and the European Community (EU): $50.

(G) Transaction certificate: $100 per certificate.

(b) The department may require additional fees or refund fees submitted by producers and handlers for underpayment or overpayment of prescribed annual fees or for a portion of a certification period.

(c) Prorated fees may be charged for extension of an annual certification period that is prescribed by the department.

(d) Scheduled date of annual update.

(1) The due date for annual certification update shall be the anniversary of initial certification or the anniversary date of the previous date for annual certification update.

(2) A certified operation may submit a written request to revise its due date for annual certification; provided that:

(A) The operation has not already submitted a written request to revise its existing due date for annual certification during the current certification year;

(B) The requested due date must not be more than five calendar months past the existing due date of certification;

(C) The requested due date is on the last date of the month; and

(D) Normal organic operations are available for inspection for a period of six calendar months following the requested due date.

(3) The written request must be received by the department prior to 30 days before the requested due date if the requested due date for annual certification will occur prior to the existing due date. The operation's annual update documents and fee payment will be due on the revised due date for annual certification update.

(4) The written request must be received by the department prior to 30 days before the existing due date if the requested due date for annual certification will occur after the existing due date and be accompanied by payment of all applicable fees.

(A) An operation that submits a written request to revise its due date for annual certification to occur after the existing due date will incur a prorated fee for each calendar month the current certification is extended. The prorated fee is cumulative. Payment of the prorated fee does not alter the fee amount incurred on the revised annual certification due date. If a request is made to revise the due date prior to the existing due date of certification, no additional fees are due and any fees previously paid are nonrefundable and may not be applied for future updates.

(B) An operation that submits a written request to revise its due date for annual certification to a date occurring after the existing date will also incur a re-inspection fee.

(e) Refunds. A portion of the certification fee may be refunded if the application is withdrawn or certification is surrendered prior to a certification decision. Refunds will be prorated based on the steps of the certification process that have been completed. Requests for refund of fees must be submitted in writing and submitted in conjunction with the request to withdraw an application or surrender an operation's certification.

(1) If withdrawn or surrendered prior to initial review, all of the certification fee may be refunded.

(2) If withdrawn or surrendered after initial review but prior to inspection, 40 percent of the certification fee may be refunded.

(3) Once an inspection has been conducted, the certification fee shall not be refunded.

(4) Administrative fees are nonrefundable.

(5) New application fees are nonrefundable.

(6) Change fees are only refundable prior to the review of the documentation being performed by the department.

(7) Additional service fees are only refundable prior to the service being performed by the department.

§18.704. Transaction Certificates.

(a) - (d) (No change.)

(e) Fees for transaction certificates established in §18.702(a) [~~§18.702(i)~~] of this title (relating to Fee Schedule [~~Fees~~]) must be submitted with the application, prior to issuance of the transaction certificate.

§18.706. Transitional Certification Requirements and Logo.

(a) Land that meets the requirements of 7 Code of Federal Regulations, Part 205 §205.202(a) and (c) [~~§18.202(1) and (3) of this title (relating to Land Requirements)~~] may be certified as Transitional.

(b) Crops planted and harvested from Transitional land after the last application of a prohibited substance or excluded method (as established in 7 CFR Part 205, §205.105) [~~at least 12 months after the last use of any prohibited material (as established in §18.105 of this title (relating to Allowed and Prohibited Substances, Methods, and Ingredients in Organic Production and Handling))~~] may be labeled as Certified Transitional.

(c) (No change.)

(d) All other requirements for Transitional certification are as established for organic certification under 7 CFR Part 205 [~~this chapter~~].

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 September 29, 2014.

TRD-201404577
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Proposed date of adoption: January 1, 2015
For further information, please call: (512) 463-4075

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.6

The Texas Animal Health Commission (commission) proposes amendments to §40.6, concerning CWD Movement Restriction Zone, in Chapter 40, which is entitled "Chronic Wasting Disease". The purpose of the amendments is to redefine the boundary of the containment zone.

It was disclosed in 2011 through Chronic Wasting Disease (CWD) sampling efforts of New Mexico Game and Fish personnel that CWD had been detected in mule deer in the southern Sacramento Mountains and northern Hueco Mountains, in southern New Mexico. In 2012, samples from two mule deer taken in far West Texas tested positive for CWD. These were the first cases of CWD detected in Texas deer.

A task force comprised of members of affected deer and exotic livestock associations, private veterinary practitioners, and wildlife biologists assisted the Texas Parks and Wildlife Department (TPWD) and commission staff in developing a CWD response plan. They provided both agencies with recommendations on a strategy to address the risk of exposure of CWD to susceptible species in Texas. TPWD and the commission created CWD Movement Restriction Zones for this area with restrictions put in place to protect against the exposure and spread of CWD. These recommendations were implemented in a coordinated effort by TPWD and the commission.

A High Risk Zone (HRZ) was delineated as all land west of the Pecos River and IH 20, and north of IH 10 to Ft. Hancock, and all land west and north of Ft. Hancock. The Containment Zone (CZ) was delineated as all land west of Hwy. 62-180 and Hwy. 54, and north of IH 10 to Ft. Hancock, and all land west and north of Ft. Hancock.

TPWD has established different requirements for deer breeders located in the different zones. The commission's two zones do not make a distinction between the need to achieve five years of CWD monitored status. As such, the commission is now proposing to redefine the existing containment zone in order to minimize confusion regarding the commission's requirements.

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 would be the commission's ability to quickly respond and control CWD disease issues related to elk and other susceptible species regulated by the commission.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed amendments 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

When the rule was proposed in 2012, the commission determined that the proposed governmental action could affect private real property, but did not constitute a takings because it was an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7. The amendments were for the purpose of protecting the overall Texas native cervid and exotic livestock industries from exposure to CWD. The creation of this zone, with associated requirements, was to protect these susceptible species of the state. The amendments required a private property landowner to adhere to the stated requirements if they were using a location within the zone to raise one of the species susceptible to CWD and then transporting the animals in order to protect other susceptible species in the state. This proposal is not establishing any new area for inclusion in the established zone and does not constitute a taking of real property.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Amanda Bernhard by mail at Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758; by fax at (512) 719-0719; or by email at "comments@tahc.texas.gov".

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, entitled "Disease Control", with the requirement to protect all livestock, domestic animals, and domestic fowl from disease.

Pursuant to §161.041(b), the commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl or exotic fowl. The commission may adopt any rules necessary to carry out the purpose of this subsection.

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 §161.0541, entitled "Elk Disease Surveillance Program", the commission by rule may establish a disease surveillance program for elk.

Pursuant to §161.061(b), 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, or that livestock are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

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

§40.6. CWD Movement Restriction Zone.

(a) Definitions:

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

(2) High Risk Zone (HRZ)--An area that may serve [Area which serves] as a buffer (surveillance) zone separating the Containment Zone from the rest of Texas.

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

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

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

(c) Zone Boundary. The CZ is defined as follows: That portion of the state within the boundaries of a line beginning in Reeves County where the Pecos River enters from New Mexico; thence southeast along the Pecos River to Interstate Highway (IH) 20; thence west along IH 20 to IH 10; thence west along IH 10 to State Highway (SH) 20 in Hudspeth County; thence northwest along SH 20 to Farm to Market Road (FM) 1088; thence south along FM 1088 to the Rio Grande River; thence northwest along the Rio Grande River to the Texas-New Mexico border.

[(c) Zone Boundaries:]

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

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

(d) Restrictions:

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

(A) No susceptible species may be trapped and transported from within [the HRZ or] the CZ to another location. No susceptible species may be released within [the HRZ or] the CZ without participating in a monitored herd program in accordance with the requirements of §40.3 of this chapter (relating to Herd Status Plans for Cervidae) and having a herd with Certified [Level "C"] status [of five years or higher] as established through §40.3(c)(6) [§40.3(4)(C)] of this chapter or for species under the authority of Texas Parks and Wildlife in accordance with their applicable requirements.

(B) No part of a carcass of a susceptible species, either killed or found dead, within the [HRZ or] CZ may be removed from the [HRZ or] CZ unless a testable CWD sample from the carcass is

collected by or provided to the commission [~~Commission~~] or TPWD with appropriate contact information provided by the submitter.

(2) CWD monitored status within the CZ:

(A) Previously Established CWD Monitored Facilities within the CZ. Movement of susceptible species will only be allowed for animals from previously established facilities within the CZ that have obtained Certified [~~a five-year~~] status while in the CZ in accordance with the requirements of §40.3 of this chapter and having a herd with Certified [~~Level "C"~~] status [~~of five years or higher~~] as established through §40.3(c)(6) [~~§40.3(4)(C)~~] of this chapter or for species under the authority of Texas Parks and Wildlife in accordance with their applicable requirements.

(B) Newly Established CWD Monitored Facilities within the CZ. Susceptible species moving into newly established facilities within the CZ will have their status reset to [~~at~~] zero, and movement will be restricted [~~must be held within the facility~~] until the facility has gained Certified [~~it has received five-year~~] status in accordance with the requirements of §40.3 of this chapter and having a herd with Certified [~~Level "C"~~] status [~~of five years or higher~~] as established through §40.3(c)(6) [~~§40.3(4)(C)~~] of this chapter or for species under the authority of Texas Parks and Wildlife in accordance with their applicable requirements.

[~~(3) CWD monitored status within the HRZ:~~]

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

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

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

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

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 September 26, 2014.

TRD-201404561

Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: November 9, 2014
For further information, please call: (512) 719-0724

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CHAPTER 43. TUBERCULOSIS
SUBCHAPTER D. MOVEMENT RESTRICTION ZONE (MRZ)

4 TAC §43.30, §43.31

The Texas Animal Health Commission (commission) proposes amendments to §43.30, concerning Special Requirements for Movement Restriction Zone (MRZ), and §43.31, concerning Testing Requirements in Movement Restriction Zone (MRZ), in Chapter 43, which is entitled "Tuberculosis".

The purpose of the amendments to §43.30 is to redefine the MRZ, establish geographic boundaries and testing requirements based on the "Bovine Tuberculosis Risk Assessment-El Paso and Hudspeth Counties" report. The proposed amendments will remove the Affected and Surveillance Areas from the MRZ definition and specify that the El Paso and Hudspeth County MRZ is limited to bovine.

The purpose of the amendments to §43.31 is to remove the annual Tuberculosis testing requirement for cattle, bison, captive cervid, exotic bovid, and camelid herds within the MRZ. Annual testing will be replaced with a requirement to test susceptible species as epidemiologically determined by the commission.

House Bill 1081 from the 83rd Texas Legislative Session directed the commission to conduct a study, with a report to be submitted by September 1, 2014, regarding the current risk of bovine tuberculosis (TB) in areas determined to be at high risk for TB. This area is defined by commission rule as the Movement Restriction Zone. The "Bovine Tuberculosis Risk Assessment-El Paso and Hudspeth Counties" report recommended the MRZ be reduced in size but maintained as a buffer against the reoccurrence of TB in the area. The report also recommended removal of the requirement for annual TB testing of certain species in the highest risk area within the MRZ, currently defined as the Affected Area, and replacing it with a test interval to be determined epidemiologically by the commission.

The MRZ, which effectively prohibits dairies from operating in the zone, was established in 2001 in parts of El Paso and Hudspeth counties. The MRZ was necessary due to the persistence of bovine Tuberculosis in the area despite aggressive and costly surveillance and eradication efforts conducted continuously since 1985. Since the establishment of the MRZ, as well as the associated depopulation of dairies in the area and surveillance in other susceptible species, no new cases of bovine TB have been confirmed within the area. Testing of TB-susceptible species in the MRZ in 2014 indicates that earlier eradication and control measures (including prohibition of dairies) were effective, and the area remains free of bovine TB.

Bovine TB in Mexico was and continues to be a concern with regard to possible re-introduction of this disease into Texas. Molecular genotyping techniques confirmed the same three distinct strains of M. bovis were present in cattle in El Paso, Texas, Las Cruces, New Mexico and Juarez, Mexico in the past. How these disease agents were being moved across the border

was never determined and remains a factor to be considered in any action taken now regarding safeguards against the potential for future infection. There are indications that Mexico has made some progress in controlling bovine TB in the area nearest to the MRZ. In June 2014, a review of the state of Chihuahua, Mexico was conducted by a team of experts organized and led by the United States Department of Agriculture, Veterinary Services (VS). This review resulted in an upgrade of 56 municipalities from Accredited Preparatory status to provisional Modified Accredited (MA) status, including those municipalities bordering the MRZ in Texas.

The study concluded that if dairies are allowed to operate in the El Paso area, the risk of bovine TB re-establishing and then spreading to other herds is low but still significant. It was also concluded that the lower risk portion of the MRZ, currently defined as the Surveillance Area, could be safely removed. No TB-affected herds were found in this area even when there were multiple herds under quarantine in the Affected Area. This recommendation could be reversed pending the results of two herd tests pending in the area, and scheduled for the fall of 2014.

Testing of TB-susceptible species in the MRZ in 2014 indicates that earlier eradication and control measures were effective, and the annual TB test requirement can be removed without significantly increasing the risk for reoccurrence of bovine TB in the area.

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. 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 have a zone and test requirement that more adequately reflects the Tuberculosis risk for cattle in that area.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed amendments 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) 719-0719 or by email at "comments@tahc.texas.gov".

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, entitled "Disease Control", with the requirement to protect all livestock, domestic animals, and domestic fowl from disease.

Pursuant to §161.041(b), the commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl or exotic fowl. The commission may adopt any rules necessary to carry out the purpose of this subsection.

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 §161.057, entitled "Classification of Areas", the commission by rule may prescribe criteria for classifying areas in the state for disease control. The criteria must be based on sound epidemiological principles. The commission may prescribe different control measures and procedures for area with different classifications. The commission by rule may designate as a particular classification an area consisting of one or more counties.

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

Pursuant to §162.003, entitled "Testing", the commission by rule shall prescribe the manner, method, and system of testing cattle for tuberculosis under a cooperative program.

Pursuant to §162.009, entitled "Tuberculosis Modified Accredited Advanced and Tuberculosis Free Areas", as part of a cooperative program, the commission or its representative may examine, test, and retest any cattle in this state as necessary to maintain an area of this state as a tuberculosis modified accredited advanced area or to establish or maintain each area of this state as a tuberculosis free area under the uniform methods and rules of the United States Department of Agriculture and the rules of the commission. Under §162.009(b), the commission or its representative may test or retest all or part of a herd of cattle at intervals considered necessary or advisable by the commission to control and eliminate tuberculosis in animals.

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

§43.30. Special Requirements for Movement Restriction Zone (MRZ).

(a) [~~Definition of Zone Boundaries:~~] The Movement Restriction Zone (MRZ) [~~("MRZ")~~] is defined as a geographic area infected with or at high risk for [~~which includes an Affected Area, where~~] bovine tuberculosis. [~~occurs or has historically occurred, and a Surveillance Area where the disease has not been detected, but which serves as a buffer area between the Affected Area and the Free Zone of Texas. The boundaries of the referenced zones and areas are as follows:~~]

[~~(1) MRZ: The area of El Paso County and Hudspeth County which lies within the boundaries established by the Rio Grande River on the West; Loop 375 to FM 659 to US 62/180 on the North; the El Paso County line to I-10 to Spur 148 at Ft Hancock on the East; and Spur 148 to the Rio Grande River on the South.~~]

[~~(A) Affected Area within the MRZ: The area of the MRZ in El Paso County which lies west of I 10, as defined above.~~]

[~~(B) Surveillance Area within the MRZ: The area of the MRZ in El Paso County which lies east of I 10, and all of the MRZ in Hudspeth County, as defined above.~~]

[~~(2) Free Zone: The area of Texas not included in the MRZ.~~]

(b) El Paso and Hudspeth County MRZ. That portion of the state within the boundaries of a line beginning in El Paso County where Loop 375 and Interstate Highway (IH) 10 intersect; thence southeast along IH 10 to Spur 148 at Ft. Hancock in Hudspeth County; thence south along Spur 148 to State Highway (SH) 20; thence south along SH 20 to Farm to Market Road (FM) 1088; thence south along FM 1088 to the Rio Grande River; thence northwest along the Rio Grande River to South Zaragoza Road in El Paso County; thence north along South Zaragoza Road to Loop 375; thence northeast along Loop 375 to the intersection of Loop 375 and IH 10. The El Paso and Hudspeth County MRZ only applies to bovine.

§43.31. Testing Requirements in Movement Restriction Zone (MRZ).

[~~(a)~~] All species susceptible to bovine tuberculosis [~~cattle, bison, captive cervid, exotic bovid, and camelid herds~~] within the Movement Restriction Zone [~~Affected Area~~] must be tested as epidemiologically determined by the commission [~~annually~~].

[~~(b) All cattle, bison, captive cervid, exotic bovid, and camelid herds within the Surveillance Area must be tested on an interval not to exceed two years.~~]

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
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CHAPTER 49. EQUINE

4 TAC §49.5

The Texas Animal Health Commission (commission) proposes an amendment to §49.5, concerning Piroplasmosis, in Chapter 49, which is entitled "Equine". The purpose of the amendment is to broaden the definition of a racetrack facility to include facilities that are not licensed by the Texas Racing Commission.

Equine piroplasmosis is a tick-borne protozoal infection of horses. At least one species of tick, *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 blood. While piroplasmosis can be a fatal disease, many horses may display vague signs of illness, such as fever, inappetance or jaundice.

Testing conducted to date has shown that there is a distinct population of positive horses that are utilized in some way as race horses. In 2011, the commission adopted a requirement that equine entering a sanctioned racetrack facility must have a negative piroplasmosis test within the past 12 months. This was intended to protect participating equine by ensuring disclosure of any unknown positive animal entering such an event. However, there is a much larger class of equine that are used for racing which are not being addressed by the current racing facility entry requirements.

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 Texas equine and industry from exposure to piroplasmosis by ensuring high risk animal populations are tested.

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 amendment is an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and is, therefore, compliant with the Private Real Property Preservation Act in 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) 719-0719 or by email at "comments@tahc.texas.gov".

STATUTORY AUTHORITY

The amendment is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute §161.041, entitled "Disease Control", with the requirement to protect all livestock, domestic animals, and domestic fowl from disease.

Pursuant to §161.041(b), the commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl or exotic fowl. The commission may adopt any rules necessary to carry out the purpose of this subsection.

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

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

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

(a) Official Equine Piroplasmosis 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 authorized 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. In the absence of any distinctive color markings or any form of visible permanent identification (brands, tattoos or scars), the equine 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 lieu of the manual illustration, digital photographs clearly showing the equine 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 home premises 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 only.

(b) Reactor. A reactor is any equine which discloses a positive reaction for Piroplasmosis on a Complement 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 owner of the quarantine within 48 hours after receiving the results. Movement of all Piroplasmosis positive equine and all equine epidemiologically determined to have been exposed to a Piroplasmosis positive equine will be restricted. Retests of a reactor may only be performed by a representative of the Commission.

(c) Official Identification of Reactors.

(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 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 as a hot-iron brand, 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 side of the neck of the reactor. For a hoof brand the "P" brand must be applied to the front left hoof and reapplied as necessary to maintain visibility;

(B) Using an identification device or a unique tattoo, approved by the Commission, that provides unique identification for each individual equine; or

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

(2) Reactors must be identified by an authorized 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 authorized 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 racetrack facility is grounds used to conduct live [~~organized~~] horse racing events and is not limited to facilities licensed by the Texas Racing Commission.

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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CHAPTER 57. POULTRY

4 TAC §57.11

The Texas Animal Health Commission (commission) proposes an amendment to §57.11, concerning General Requirements, in Chapter 57, which is entitled "Poultry". The purpose of the amendment is to ensure that poultry shipped into Texas have not originated from an area that has had active infection with chicken embryo origin Laryngotracheitis vaccine virus within the last 30 days.

There are several types of vaccines available to prevent Laryngotracheitis. Certain recombinant/vectored or modified live/tissue culture vaccines are approved for use in Texas without restriction; however, domestic poultry broilers from states affected with Laryngotracheitis and vaccinated with chick embryo vaccine (CEO) may enter Texas only for immediate slaughter and processing only under specific conditions. CEO-vaccinated birds can shed the Laryngotracheitis virus even though they do not appear sick, which can then cause illness in unvaccinated chickens. For poultry entering Texas, the proposed amendment will add a requirement that the health certificate state the poultry have not originated from an area that has had active chicken embryo origin Laryngotracheitis vaccine virus within the last 30 days.

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 Texas poultry and the industry from birds infected with or exposed to an active chicken embryo origin Laryngotracheitis vaccine virus.

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 amendment is an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and is, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Amanda Bernhard by mail at Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758; by fax at (512) 719-0719; or by email at "comments@tahc.texas.gov".

STATUTORY AUTHORITY

The amendment is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute §161.041, entitled "Disease Control", with the requirement to protect all livestock, domestic animals, and domestic fowl from disease.

Pursuant to §161.041(b), the commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl or exotic fowl. The commission may adopt any rules necessary to carry out the purposes of this subsection.

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

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.

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

§57.11. General Requirements.

(a) Quarantine provisions.

(1) Poultry and/or premises shall be placed under quarantine when evidence of infection or possible exposure to any contagious and/or communicable disease not considered to be endemic exists in the State of Texas. A quarantine shall remain in effect until epidemiological evidence of the existing disease or exposure thereto is satisfied. After due consideration of epidemiological evidence, the executive director of the commission may cause the quarantine to be released.

(2) When Laryngotracheitis [~~laryngotracheitis~~] infection is confirmed in any house on a farm, the entire farm will be placed under quarantine, and all poultry on that farm will be considered infected and no molting will be allowed until after the quarantine has been released. Official quarantine signs will be posted in a prominent place at the entrance to the premise and on the doors of each house. The doors should be locked when the house is unattended.

(3) Premises may be released from a Laryngotracheitis [~~laryngotracheitis~~] quarantine when:

(A) the farm has been depopulated and established cleaning and disinfection procedures have been applied;

(B) all infected poultry have been removed and all replacement poultry have been vaccinated twice with cell culture vaccine, no chick embryo origin vaccine has been used, and a surveillance system as established by the commission is carried out with no evidence of active infection; or

(C) all dead poultry and caked litter are removed; the houses are sprayed with disinfectant and closed for 15 to 30 days; and two consecutive sets of nonvaccinated poultry are raised in the houses with no evidence of infection based on commission surveillance.

(4) When fowl typhoid (S. gallinarum) infection is confirmed in a flock, the farm on which the flock is located shall be placed under quarantine and the flock depopulated. Following depopulation and burial or incineration of all poultry, nest material, and litter, the premise and facilities shall be cleaned and disinfected. The premise shall remain quarantined for at least 180 days following depopulation during which time poultry shall not be reintroduced to the premises. Following removal of the quarantine, repopulation of the premises may be allowed with poultry that have been tested negative to fowl typhoid.

(b) Public exhibitions. Poultry entered in public exhibition shall originate from flocks or hatcheries free of pullorum disease and fowl typhoid or have a negative pullorum-typhoid test within 30 days before exhibition. Chickens or turkeys entered in public exhibition shall be accompanied by a certificate of source.

(c) Public sales. Poultry offered for public sale or trade at markets such as trade days, flea markets, auctions, or any other public sale shall originate from pullorum-typhoid clean flocks or hatcheries. The seller shall furnish proof of the source of poultry or hatching eggs offered for public sale. The owner or management of any market or public sale shall prevent the sale, trade, or offer for sale of any poultry that is not properly qualified under the Texas Pullorum-Typhoid Program as prescribed by the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) and/or the National Poultry Improvement Plan. Failure to enforce this requirement may result in the seeking of a court order prohibiting any further sale of poultry on the grounds. Poultry from states other than Texas shall be accompanied by a health certificate from the state of origin, including a negative pullorum-typhoid test within 30 days of the sale as described in subsection (e)(1) of this section. Poultry not properly identified and qualified as pullorum-typhoid clean are prohibited from sale and shall be returned to the owner's or dealer's premises.

(d) Surveillance. The commission may pick up dead poultry at farms to determine if Laryngotracheitis [~~laryngotracheitis~~] or any other disease is present in any area.

(e) Interstate Movement.

(1) Poultry shipped into the State of Texas shall be accompanied by an official health certificate issued by an accredited veterinarian within 30 days prior to shipment. The health certificate shall state that the poultry have been inspected and are free of evidence of infectious or contagious disease; that the poultry have been vaccinated only with approved vaccines as defined in this regulation; and that the poultry have not originated from an area that has had active Laryngotracheitis or chicken embryo origin Laryngotracheitis vaccine virus within the last 30 days. The certificate shall also state the poultry have passed a negative test for pullorum-typhoid [~~pullorum typhoid~~] within 30 days prior to shipment or that they originate from flocks which have met the pullorum-typhoid requirements of the Texas Pullorum-Typhoid Program and/or the National Poultry Improvement Plan. Baby poultry will be exempt from this section if from an NPIP, or equivalent, hatchery, and accompanied by NPIP Form 9-3, or APHIS Form 17-6; or, are covered by an approved "Commuter Poultry Flock Agreement" on file with the state of origin and the commission [~~Texas Animal Health Commission~~].

(2) An official health certificate is not required on poultry consigned to slaughter establishments, which maintain federal postmortem inspection, provided the shipment is accompanied by a waybill indicating the plant of destination.

(3) Live poultry, unprocessed poultry, hatching eggs, unprocessed eggs, egg flats, poultry coops, cages, crates, other birds, and used poultry equipment affected with, or recently exposed to, infectious, contagious, or communicable disease, or originating in state or federal quarantined areas shall not enter Texas without express written consent from the commission.

(f) Depopulation and disposition of poultry and eggs. The commission shall depopulate or dispose of poultry and/or hatching eggs that pose a threat to the poultry industry of the State of Texas after a hearing before the commission pursuant to the Administrative Procedure Act.

(g) Dead poultry disposal. Dead poultry are to be disposed of by incinerating, burying in disposal pits, or hauling to a rendering plant in closed containers.

(h) Cleaning and disinfecting.

(1) Premises found to have housed, incubated, brooded, or ranged an infected flock shall be cleaned and disinfected under the supervision of the commission within 15 days following depopulation, unless an extension of time is granted. Infected premises shall not be restocked with poultry or eggs for hatching purposes until the cleaning and disinfecting requirement of this subsection is certified complete by the commission. The following cleaning and disinfection procedures are approved for Laryngotracheitis [~~laryngotracheitis~~]:

(A) completely clean house, spray with disinfectant, and close for 15-30 days; or

(B) remove all dead poultry and caked litter, spray with disinfectant, and close for 15-30 days.

(2) Trucks, loading equipment, cages, or coops used in hauling poultry vaccinated with restricted vaccines or infected with a reportable disease within a designated area or from a designated area shall be cleaned and disinfected prior to entering premises on which the disease has not been diagnosed and the vaccine has not been used or as directed by the commission.

(i) Designated area for Laryngotracheitis [~~laryngotracheitis~~]. The following procedures shall apply to all poultry operations:

(1) Replacement poultry. All poultry housed in the designated area will be vaccinated twice (no earlier than four weeks of age and again at least four weeks later) with cell culture (eye drop) modified vaccine before being housed for egg production. A certificate of vaccination must be on file with the owner, farm manager, and the commission. Prior entry permit and health certificate with vaccination history are required for poultry originating out-of-state. These poultry may receive the second vaccination upon arrival at farm, but the first vaccination must be no earlier than four weeks of age.

(2) Molted hens.

(A) Any hen molted and retained for egg production must be vaccinated with cell culture vaccine after molting.

(B) The hens on known infected premises may be allowed to complete the laying cycle but shall not be molted. Empty houses shall be repopulated only with pullets that have been vaccinated twice with cell culture vaccine at the proper age.

(3) Broilers may be vaccinated with chick embryo vaccine under the following conditions.

(A) No vaccination except by agreement with the commission.

(B) Agreements signed under the following conditions:

(i) broilers less than five weeks of age located within a designated area;

(ii) the next two flocks following an infected flock if epidemiologically sound;

(iii) chick embryo vaccine can be used in layers or breeders only to stop an outbreak and only by agreement with the commission.

(4) Movement.

(A) Permits are required for movement of all non infected flocks between farms in the designated area. Poultry may move from a designated area only to slaughter and only under permit.

(B) Infected flocks and chick embryo origin vaccinated flocks can be moved only to slaughter under permit.

(5) Trucks.

(A) Cleaning and disinfection is required for all trucks hauling infected flocks and chick embryo origin vaccinated flocks.

(B) Farms with poultry infected with Laryngotracheitis [~~laryngotracheitis~~] or vaccinated with chick embryo origin vaccine are to be serviced the last trip of the day. The driver should not enter the poultry house. The driver must wear rubber boots and disinfect them before leaving the farm. All vehicles should be disinfected after entering an infected premise.

(6) Personnel.

(A) Employees from infected or chick embryo origin vaccinated farms are not to enter houses on non infected or non chick embryo origin vaccinated farms.

(B) When entering infected houses, managers must wear protective clothing and change before entering non infected houses.

(C) Catching crews must follow cleaning and disinfection procedures before entering and leaving all infected or chick embryo origin vaccinated premises.

(7) Equipment.

(A) Egg flats from infected or chick embryo origin vaccinated premises are to be returned to infected houses or disposed of or disinfected.

(B) Equipment from infected or chick embryo origin vaccinated farms cannot be moved to other farms without cleaning and disinfection.

(8) Dead poultry disposal must be according to regulations.

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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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §§22.22 - 22.26, 22.29, 22.32

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§22.22 - 22.26, 22.29, and 22.32, concerning the Provisions for the Tuition Equalization Grant (TEG) Program.

Specifically, changes to §22.22(1) and throughout the document eliminate references to "initial" and "continuation" or "renewal" awards and replace such references with "first" and "subsequent" awards. Old definitions for "Continuation award" and "Initial TEG or initial award" are replaced with definitions for "First TEG or first award" and "Subsequent award" and subsequent definitions are renumbered accordingly. These amendments are made to clarify that although a person receiving a first award might also receive subsequent awards, the program does not obligate institutions to commit funds to students for an extended period of time. Each year's award decisions are made independently.

Amendments to §22.23(a) identify the circumstances under which students of a branch campus of an institution previously eligible to participate in the TEG program may also receive TEG awards.

Amendments to §22.23(c)(1) apply to communications with students in the event an accrediting agency places an institution on probation. New wording indicates proof of the communications with institutions must be maintained, but does not have to be housed in each student's individual file.

Amendments to §22.23(c)(3)(i) remove redundant language regarding required reports.

Amendments to §22.24(a)(4) and §22.25(a)(4) align rule language more closely with the language in the General Appropriations Act (currently Senate Bill 1, 83rd Texas Legislature, Regular Session. Rider 11, page III-49), regarding the circumstances under which a nonresident National Merit Finalist may qualify for a TEG.

Amendments to §22.24(a)(5) and §22.25(a)(5) clarify that persons enrolled in a degree leading to licensure to preach or a career in church work (as well as in a degree leading to ordination) are ineligible for an award. This is in recognition of the sectarian purpose clause of the Texas Constitution (Article I, Section 7), mentioned in §61.229(b) of TEG statute.

Amendments to §22.24(a)(6) and §22.25(a)(6) are made to accommodate tuition policies at some independent institutions that set fixed-rate tuition charges for students who enter college at the same time. This can result in subsequent students paying higher tuition rates, but students enrolled in similar situations continue to pay the same tuition and continue to be eligible to receive awards.

Amendments to §22.24(a)(8) and §22.25(a)(8) are made to move the rule language from the passive to the active voice.

Amendments to §22.26(f) are made to indicate an institution must adjust a student's TEG award if additional aid resulting in an over award is received before TEG funds are disbursed to a student. The $300 tolerance of over awards applies only if

the unexpected additional aid is received after TEG funds have been disbursed.

Amendments to §22.32(c) are made to move the rule language from the passive to the active voice.

Ms. Lesa Moller, Interim Assistant Commissioner for Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Moller has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering these sections will be the institution's ability to better meet the needs of their student populations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lesa Moller, P.O. Box 12788, Austin, Texas 78711, (512) 427-6166, lesa.moller@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under Texas Education Code §61.229 which provides the Coordinating Board with the authority to adopt rules to implement the Tuition Equalization Grant (TEG) Program.

The amendments affect Texas Education Code §§56.401 - 56.4075.

§22.22. Definitions.

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

(1) 2006 Revised TEG Program--The TEG program as authorized in statute as amended by the 79th Texas State Legislature in 2005 and which applies to students who are awarded their first [~~initial~~] TEG on or after September 1, 2005.

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

[~~(8) Continuation award--A TEG grant received in any academic year other than the year in which an individual received his or her initial TEG award.~~]

(8) [~~(9)~~] Cost of attendance--A Board-approved estimate of the expenses incurred by a typical financial aid student in attending a particular college or university. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

(9) [~~(10)~~] Degree or certificate program of four years or less--A baccalaureate degree or certificate program other than in architecture, engineering or any other program determined by the Board to require more than four years to complete.

(10) [~~(11)~~] Degree or certificate program more than four years--A baccalaureate degree or certificate program in architecture, engineering or any other program determined by the Board to require more than four years to complete.

(11) [~~(12)~~] Exceptional Financial need--The need an undergraduate student has if his or her expected family contribution is less than or equal to $1000.

(12) [~~(13)~~] Enrollment on at least a half-time basis--For undergraduate students, enrolled for the equivalent of six or more semester credit hours per regular semester. For graduate students, enrolled for the equivalent of 4.5 or more semester credit hours per regular semester or enrolled for 50 percent of the normal full-time load of the student's program of study.

(13) [~~(14)~~] Enrollment on at least a three-fourths or three-quarters basis--For undergraduate students, enrolled for the equivalent of nine or more semester credit hours per regular semester. For graduate students, enrolled for the equivalent of six or more semester credit hours per regular semester or enrolled for 75 percent of the normal full-time load of the student's program of study.

(14) [~~(15)~~] Exceptional TEG need--an additional amount of TEG funds for which an undergraduate student may qualify on the basis of having an expected family contribution generated through the use of the federal methodology, less than or equal to the amount specified by the Board in accordance with Texas Education Code §61.227(e).

(15) [~~(16)~~] Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(16) [~~(17)~~] Full-time enrollment--For undergraduate students, enrollment for the equivalent of twelve or more semester credit hours per regular semester or term. For graduate students, enrollment for the equivalent of nine or more semester credit hours per regular semester or term or the normal full-time load of the student's program of study.

(17) [~~(18)~~] Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines.

(18) First TEG or first award--The first Tuition Equalization Grant ever awarded to and received by a specific student.

(19) - (20) (No change.)

[~~(21) Initial TEG or initial award--The first Tuition Equalization Grant ever awarded to a specific student.~~]

(21) [~~(22)~~] Original TEG Program--The TEG program as authorized by statute prior to amendments adopted by the 79th Texas State Legislature in 2005 and which applies to students who were awarded their first [~~initial~~] TEG prior to September 1, 2005, including students awarded their first [~~initial~~] TEG prior to September 1, 2005 for the 2005-2006 academic year.

(22) [~~(23)~~] Period of enrollment--The semesters or terms within an academic year for which the student was enrolled in an approved institution and met all the eligibility requirements for an award through this program.

(23) [~~(24)~~] Private or independent institution--Any college or university defined as a private or independent institution of higher education by Texas Education Code, §61.003.

(24) [~~(25)~~] Program or TEG--The Tuition Equalization Grant Program.

(25) [~~(26)~~] Program maximum--The TEG Program award maximum determined by the Board in accordance with Texas Education Code, §61.227 (relating to Payment of Grant; Amount).

(26) [~~(27)~~] Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including the selection of recipients, maintenance of all records and preparation and submission

of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(27) [~~(28)~~] Regular semester--A fall or spring semester, typically of 16 weeks duration.

(28) [~~(29)~~] Residency Core Questions--A set of questions developed by the Coordinating Board to be used to determine a student's eligibility for classification as a resident of Texas, available for downloading through the Coordinating Board's website and incorporated into the ApplyTexas application for admission.

(29) [~~(30)~~] Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(30) Subsequent award--A TEG grant received in any academic year other than the year in which an individual received his or her first TEG award.

(31) - (34) (No change.)

§22.23. Institutions.

(a) Eligibility.

(1) Any college or university defined as a private or independent institution of higher education by Texas Education Code, §61.003, or a branch campus of a private or independent institution of higher education [~~that is~~] located in Texas and accredited on its own or with its main campus institution by the Commission on Colleges of the Southern Association of Colleges and Schools, other than [~~except~~] theological or religious seminaries, is eligible to participate in the TEG Program.

(2) - (5) (No change.)

(b) (No change.)

(c) Responsibilities.

(1) Probation Notice. If the institution is placed on public probation by its accrediting agency, it must immediately notify Board staff and advise grant recipients of this condition and maintain evidence [~~in each student's file~~] to demonstrate that the student was so informed.

(2) (No change.)

(3) Reporting.

(A) Requirements/Deadlines. All institutions must meet Board reporting requirements in a timely fashion.

(i) Such reporting requirements shall include but are not limited to reports specific to allocation and reallocation of grant funds (including the TEG Need Survey, the TEG year-end student-by-student report, the Coordinating Board's Education Data Center CBM001 and CBM009 reports, and the Financial Aid Database Report) as well as progress [~~and year-end~~] reports of program activities.

(ii) (No change.)

(B) - (C) (No change.)

(4) (No change.)

§22.24. Provisions that Apply Only to 2006 Revised TEG Program Students.

(a) Eligible Students. To receive an award through the TEG Program, a 2006 Revised TEG Program student must:

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

(4) be a resident of Texas as determined based on data collected using the Residency Core Questions and in keeping with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status), unless such student is a National Merit scholarship finalist and has received a scholarship in the amount required to be eligible to pay Texas resident tuition under the Texas Education Code §54.213(a) [~~who meets the competitive scholarship provisions of Texas Education Code, §54.064~~];

(5) be enrolled in an approved institution in an individual degree plan leading to a first associate's degree, first baccalaureate degree, first master's degree, first professional degree, or first doctoral degree, but not in a degree plan that leads to ordination, licensure to preach or a career in church work;

(6) be required to pay more tuition than is required at a comparable public college or university and be charged no less than the [~~regular~~] tuition required of all similarly situated students [~~enrolled~~] at the institution;

(7) (No change.)

(8) not be a recipient of any form of athletic scholarship during the semester or semesters he or she receives [~~is receiving~~] a TEG.

(9) (No change.)

(b) Continued Eligibility.

(1) Eligibility at End of first [~~Initial~~] Year Award. 2006 Revised TEG Program students who complete their first year receiving a Tuition Equalization Grant in compliance with their institutions' financial aid academic progress requirements are eligible to receive subsequent [~~renewal~~] awards in the following year if they meet the other requirements listed in subsection (a) of this section.

(2) Satisfactory Academic Progress. 2006 Revised TEG Program students shall, unless granted a hardship postponement in accordance with subsection (e) of this section, as of the end of an academic year in which the student receives a subsequent [~~continuation~~] award:

(A) have completed at least:

(i) for undergraduates, 24 semester credit hours in the most recent academic year, or if at the end of the academic year in which the student receives a first [~~an initial~~] award and the student entered college at the beginning of the spring term in the year in which he or she received his or her first [~~initial~~] award, have completed at least 12 semester credit hours in the most recent academic year; or

(ii) for graduate students, 18 semester credit hours in the most recent academic year;

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

(c) Grade Point Average Calculations. Grade-point average calculations shall be made in accordance with institutional policies except that if a grant recipient's grade-point average falls below program requirements and the student transfers to another institution, or has transferred from another institution, the receiving institution cannot make a subsequent [~~continuation~~] award to the transfer student until the student provides official transcripts of previous coursework to the new institution's financial aid office and the institution re-calculates an overall grade-point average, including hours and grade points for courses taken at the old and new institutions, that proves the student's overall grade-point average now meets or exceeds program requirements.

(d) End of Eligibility.

(1) Unless granted a hardship extension in keeping with subsection (e) of this section, an undergraduate 2006 Revised TEG Program student shall no longer be eligible for a TEG as of:

(A) the fifth anniversary of the first [~~initial~~] award of a TEG to the student, if the student is enrolled in a degree or certificate program of four years or less; or

(B) the sixth anniversary of the first [~~initial~~] award of a TEG to student, if the student is enrolled in a degree or certificate program of more than four years.

(2) A graduate student may continue to receive grants as long as he or she meets the relevant eligibility requirements of subsections (a) and (b) of this section.

(e) (No change.)

§22.25. Provisions that Apply Only to Original TEG Program Students.

(a) Eligible Students. To receive an award through the TEG Program, an Original TEG Program student must:

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

(4) be a resident of Texas as determined based on data collected using the Residency Core Questions and in keeping with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status), unless such student is a National Merit scholarship finalist and has received a scholarship in the amount required to be eligible to pay Texas resident tuition under the Texas Education Code §54.213(a) [~~who meets the competitive scholarship provisions of Texas Education Code, §54.064~~];

(5) be enrolled in an approved institution in an individual degree plan leading to a first associate's degree, first baccalaureate degree, first master's degree, first professional degree, or first doctoral degree, but not in a degree plan that leads to ordination, licensure to preach or a career in church work;

(6) be required to pay more tuition than is required at a comparable public college or university and be charged no less than the regular tuition required of all similarly situated students enrolled at the institution;

(7) (No change.)

(8) not be a recipient of any form of athletic scholarship during the semester or semesters he or she receives [~~is receiving~~] a TEG; and

(9) have been awarded his or her first [~~initial~~] TEG grant prior to September 1, 2005.

(b) End of Eligibility. An undergraduate or graduate student who was awarded first [~~an initial~~] TEG prior to the 2005-2006 academic year or before September 1, 2005, for the 2005-2006 academic year may continue to receive grants as long as he or she meets the relevant eligibility requirements of subsection (a) of this section.

(c) (No change.)

§22.26. Award Amounts and Uses.

(a) (No change.)

(b) Award Amount.

(1) (No change.)

(2) A grant to a part-time student whose first [~~initial~~] TEG was awarded prior to September 1, 2005 or to any student enrolled for a limited number of hours due to imminent graduation or to a student with limited need shall be made on a pro rata basis of a full-time award in keeping with subsection (g) of this section.

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

(f) Over Awards. If, at a time after the award has been disbursed [~~offered~~] by the institution to [~~and accepted by~~] the student, the student receives assistance that was not taken into account in the institution's estimate of the student's financial need, so that the resulting sum of assistance exceeds the student's financial need, the institution is not required to adjust the award under this program unless the sum of the excess resources is greater than $300.

(g) (No change.)

§22.29. Allocation and Reallocation of Funds.

(a) Allocations. Allocations for the TEG Program are to be determined on an annual basis as follows:

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

(3) The source of data used for the allocation calculations are the three most recently completed TEG Need Survey Reports submitted to the Board by the institutions. The reports include data for each student identified by the school as eligible to receive a first or subsequent [~~an initial or continuation~~] TEG award as described in §22.24 or §22.25 of this title in the fall term in which the report is submitted. The data from the Need Survey used to calculate the amount of TEG an individual could receive includes:

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

(4) - (8) (No change.)

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

§22.32. Reporting.

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

(c) Each year, participating institutions shall submit a year-end student-by-student report that reflects how the institution disbursed TEG program monies allocated to it [~~the institution were disbursed to award recipients~~].

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 September 29, 2014.

TRD-201404574
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 22, 2015
For further information, please call: (512) 427-6114

SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §§22.254, 22.256, 22.257, 22.260, 22.262

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§22.254, 22.256, 22.257, 22.260, and 22.262, concerning the Texas Educational Opportunity Grant Program (TEOG).

Specifically, §22.254 is amended to include a definition for "attempted hours", the proposed metric by which grant recipients' periods of eligibility will be measured in the future. At their June 3, 2014 meeting, the members of the Coordinating Board's Financial Aid Advisory Committee voted unanimously to measure a student's period of eligibility for TEOG on the basis of hours attempted. In the past, only hours paid for at least in part with TEOG funds were counted against a student's maximum number of hours. In general, the committee felt all hours enrolled in as of the census date, including hours later dropped and hours from which the student withdrew, should count towards a student's semester credit hours of eligibility for a grant. If a student transfers to a new institution, any hours determined by the receiving institution to apply to the student's current degree plan will count towards the limit. This approach is expected to encourage students to be efficient in the hours they take and in their completion of their programs of study. Since institutions have already awarded grants for the 2014-2015 academic year, the change in measurement is proposed for adoption effective with awards for the 2015-2016 academic year. The definition for "cost of attendance" is amended to reflect the fact that institution cost estimates are no longer subject to approval by the Coordinating Board. They are prepared in accordance with federal guidelines. Subsequent definitions are renumbered accordingly. A new definition is provided for "statewide total cost of attendance," an amount that will be calculated and used in the allocation of funds in accordance with the methodology described in §22.262.

The amendments to §22.256(c) adjust language to reflect the use of attempted hours as the measure of a student's eligibility period for a TEOG beginning with the 2015-2016 academic year.

Amendments to §22.257 authorize program officers to exercise professional judgment in granting an extension for students to whom the changes to attempted hours will cause an undue hardship, but clarifies that no student is to receive TEOG to pay for more than 75 semester credit hours or its equivalent.

Amendments to §22.260(e) clarify that the proration of awards is to be based on a student's remaining number of hours of grant eligibility; not simply on the number of hours taken by the student.

New §22.260(f) incorporates the use, beginning with the 2015-2016 academic year, of attempted hours into the proration schedule when students are near the end of their eligibility periods.

An amendment to the title of §22.262(a) is made to indicate the wording of that subsection only applies to allocations for FY 2015.

Changes to §22.262(b) and (c) describe the TEOG allocation process that will take effect with allocations for FY2016 and FY2017, including the basis for the new allocation calculations. Senate Bill 215, passed by the 83rd Texas Legislature, Regular Session, called for the Board, by rule, to establish and publish financial aid program allocation methodologies and develop procedures to verify the accuracy of the application of those methodologies by Board staff. In addition, SB 215 called for the Board to engage institutions of higher education in a negotiated rulemaking process as described in Subchapter 2008, Government Code in the development of such rules.

Although the TEOG Negotiated Rulemaking Committee (NRMC) met four times in the period between February 10 and July 30 (three face-to-face meetings and one phone-in meeting), it was unable to reach consensus. The full committee did agree on several things:

which students to include in the allocation base (those enrolled at least half-time, who were Texas residents, and had applied for financial aid);

the source of the data to be used in the calculations (the most recent Financial Aid Database Report);

that no funds would be allocated specifically for awards to renewal students (although renewal students continue, by rule, to have first priority in the use of funds); and

that an Expected Family Contribution equal to the 9-month EFC cap for Federal Pell Grants would be set for students applying for their first awards.

In addition, they agreed to amend rules to include a 10-day period for institutions to confirm that draft allocation calculations accurately reflect the data they had submitted to the Board, and they agreed on procedures for reallocating funds that were not encumbered as of February 20. They were unable, however, to agree on the aspect of the eligible students that would be the basis for the calculations--on the basis of headcount, a weighted headcount (in which eligible full-time students, for instance, would be given twice the weight as half-time students), or on the basis of the amount of TEOG each school's students could use if the program were fully funded. The headcount approaches shifted funds towards the community colleges; the calculation based on need moved funds towards the state and technical institutions. FY2015 is the first year in which two-year institutions have not received initial award funds through the Towards EXcellence, Access and Success (TEXAS) Grant Program. Instead, $37.3 million--the amount the institutions would have received in FY2015 through the TEXAS Grant Program--was transferred to the TEOG program. The TEXAS Grant program formulas for allocation are sensitive to the costs/needs of institutions in each sector. The TEOG formula was based on headcount. Moving $37.3 million from TEXAS Grants to TEOG raised the question of which formula (or a new one) should be used for distributing the funds. The Coordinating Board's original calculation was based on the TEOG methodology (since the funds will be issued as TEOG awards). Rider 63, General Appropriations Act, called for the Coordinating Board's calculations to be approved by the Legislative Budget Board (LBB). The LBB chose to override the Coordinating Board's calculations and allocate the $37.3 million in a way that would assure that no institution would receive less than 90 percent of the funds it would have received under the TEXAS Grant methodology.

The Negotiated Rulemaking Committee was disbanded on July 30, when it was conceded that no consensus could be reached. Therefore, Board staff have proposed the allocation approach described in §22.262(b). Many details worked out by the committee are incorporated into these sections, but in addition, the recommended approach would be based on each institution's share of statewide costs of attendance for eligible students. This approach was suggested in the July 30 meeting of the Committee and was generally supported by the community college members, but was not adopted by the committee as a whole. To address the dissatisfaction of the state and technical colleges, language proposed in §22.262(b) includes a hold harmless clause so that if program funding continues at the FY2015 level or higher, no institution would receive less than 95 percent of the funds it received through the LBB calculations. In addition,

the new approach is proposed only for allocations for FY2016 and FY2017.

New §22.262(b) describes the TEOG allocation process, including the basis for allocation calculations. Also, in accordance with SB 215, §22.262(b) lists the data elements for each student that are to be reported by institutions to enable Board staff to confirm the validity of the calculations, and new §22.262(c) indicates the Board will provide the results of the allocation calculations to institutions for review before the allocation amounts are officially announced.

New subsection (d) indicates that for allocations for FY2018 and later, will be based on rules developed by a new Negotiated Rulemaking Committee for that purpose.

Changes to §22.262(e), previously §22.262(b), provide a specific date (February 20) as a deadline for institutions to encumber program funds, eliminating language that referred to the use of a "date specified by Board staff via a policy memo" and adds language to address the process for reallocating available funds.

Changes to §22.262(f), previously §22.262(c), reflect the fact that institutions may, at any given time, request either initial or renewal funds. They do not have to request both at the same time.

Old §22.262(d) is deleted since it did not involve allocations or reallocations of funds.

Changes to §22.262(g), previously §22.262(e), are made to reflect the phasing out of two-year institutions from the TEXAS Grant Program.

Ms. Lesa Moller, Interim Assistant Commissioner for Student Financial Aid, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Moller has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering these sections will be the agency's ability to better meet the needs of the student recipient. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lesa Moller, Interim Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6166, lesa.moller@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under Texas Education Code, §56.403, which provides the Coordinating Board with the authority to adopt rules consistent with Texas Education Code, Chapter 56, Subchapter P.

The amendments affect Texas Education Code, §§56.401 - 56.4075.

§22.254. Definitions.

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

(1) Attempted Hours--Every course in every semester for which a student has been registered as of the official Census Date, including but not limited to, repeated courses and courses the student drops and from which the student withdraws. Transfer hours and hours for optional internship and cooperative education courses are also included if they are accepted by the receiving institution towards the student's current program of study.

(2) [~~(1)~~] Awarded--Offered to a student.

(3) [~~(2)~~] Board--The Texas Higher Education Coordinating Board.

(4) [~~(3)~~] Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(5) [~~(4)~~] Cost of attendance--An [~~A Board-approved~~] estimate of the expenses incurred by a typical financial aid student in attending a particular college. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

(6) [~~(5)~~] Encumbered funds--Program funds that have been offered to a specific student, which offer the student has accepted, and which may or may not have been disbursed to the student.

(7) [~~(6)~~] Enrolled on at least a half-time basis--Enrolled for the equivalent of six semester credit hours in a regular semester.

(8) [~~(7)~~] Entering student--A student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination.

(9) [~~(8)~~] Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(10) [~~(9)~~] Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines. Federal and state veterans' educational and special combat pay benefits are not to be considered in determining a student's financial need.

(11) [~~(10)~~] Initial year award--The grant award made in the student's first year in the Texas Educational Opportunity Grant Program, typically made up of a fall and spring disbursement.

(12) [~~(11)~~] Institution--A public junior college as defined in Texas Education Code, §61.003(2); a public technical institution as defined in Texas Education Code, §61.003(7); and a public state college as defined in Texas Education Code, §61.003(16).

(13) [~~(12)~~] Period of enrollment--The term or terms within the current state fiscal year (September 1 - August 31) for which the student was enrolled in an approved institution and met all the eligibility requirements for an award through this program.

(14) [~~(13)~~] Program--the Texas Educational Opportunity Grant Program.

(15) [~~(14)~~] Program Officer--the individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(16) [~~(15)~~] Resident of Texas--a resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status). Nonresident

students who are eligible to pay resident tuition rates are not residents of Texas.

(17) Statewide total cost of attendance--for allocation purposes, the aggregate sum of costs of attendance reported by participating eligible institutions in the most recent Financial Aid Database Report for each first-time-in-college student who meets the eligibility requirements listed in §22.262(b)(1) of this title.

§22.256. Eligible Students.

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

(c) Discontinuation of Eligibility or Non-Eligibility.

(1) A student may not receive a Texas Educational Opportunity Grant for more than 75 semester credit hours or its equivalent. Beginning with awards for the 2015-2016 academic year, a student's eligibility for a Texas Educational Opportunity Grant ends once he or she has attempted 75 semester credit hours or the equivalent unless the student is granted a hardship extension in accordance with §22.231(b) of this chapter.

(2) - (4) (No change.)

§22.257. Hardship Provisions for Students Awarded Grants On or After September 1, 2005.

(a) (No change.)

(b) The Program Officer may grant an extension of the attempted hour limit found in §22.256(c)(1) of this title (relating to Eligible Students) in the event of hardship. Documentation justifying the extension must be kept in the student's files, and the institution must identify students granted extensions and the length of their extensions to the Coordinating Board, so that it may appropriately monitor each student's period of eligibility. The total number of hours paid for, at least in part, with Texas Educational Opportunity Grants may not exceed 75 or its equivalent.

(c) [(b)] Each institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.

§22.260. Award Amounts and Adjustments.

(a) - (d) (No change.)

(e) Prorated Awards in Case of Low Balance of Eligible Hours. If the student's balance of eligible hours is less than the number of hours he or she is taking in a given term or semester, the student's award amount for that term or semester should be prorated. Beginning no later than Fiscal Year 2012, prorated amounts shall be calculated using the following schedule:

(1) If balance of hours equals [enrolled for] 12 or more hours--100% of the maximum award;

(2) If balance of hours equals [enrolled for] 9-11 hours--75% of the maximum award;

(3) If balance of hours equals [enrolled for] 6-8 hours--50% of the maximum award; and

(4) If balance of hours equals [enrolled for] fewer than 6 hours--25% of the maximum award.

(f) Prorated Awards in Case of Low Balance of Eligible Attempted Hours, beginning with the 2015-2016 Academic Year. If the student's balance of eligible attempted hours is less than the number of hours he or she is taking in a given term or semester, the student's award amount for that term or semester should be prorated using the following schedule:

(1) If balance of attempted hours equals 12 or more hours--100% of the maximum award;

(2) If balance of attempted hours equals 9-11 hours--75% of the maximum award;

(3) If balance of attempted hours equals 6-8 hours--50% of the maximum award; and

(4) If balance of attempted hours equals fewer than 6 hours--25% of the maximum award.

§22.262. Allocation and Reallocation of Funds.

(a) Allocations for Fiscal Year 2015.

(1) Initial Year Funds. Available program funds for initial year awards will be allocated to each participating institution in proportion to each institution's share of the state's undergraduate financial aid population with significant amounts of financial need.

(2) Renewal Year Funds. Available program funds for continuation or renewal awards will be allocated in proportion to the number of prior year recipients reported for each institution, adjusted for the institution's student retention rate.

(b) Allocations for Fiscal Year 2016 and Fiscal Year 2017. Allocations are to be determined on an annual basis as follows:

(1) The allocation base for each eligible institution will be the aggregate 9-month cost of attendance for students it reported in the most recent Financial Aid Database Report who met the following criteria:

(A) were classified as Texas residents;

(B) were first-time entering undergraduates enrolled at least half-time;

(C) completed either the FAFSA or the TASFA; and

(D) have a 9-month Expected Family Contribution less than or equal to the Federal Pell Grant eligibility cap for the year reported in the Financial Aid Database Report.

(2) Each institution's percent of the available funds will equal its percent of the state-wide total cost of attendance of students who meet the criteria in (b)(1) of this section, except that:

(A) if statewide funding equals or exceeds the amount allocated for FY 2015, no institution will receive less than 95 percent of its allocation for FY2015; and

(B) if statewide funding is less than the amount available for FY 2015, each institution will receive an amount equal to its FY 2015 allocation, multiplied by a factor equal to the new year's statewide total appropriation divided by the FY2015 statewide appropriation.

(c) Verification of Data for Fiscal Year 2016 and Later. Allocation calculations will be shared with all participating institutions for comment and verification prior to final posting and the institutions will be given 10 working days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the allocation report accurately reflects the data they submitted or to advise Board staff of any inaccuracies.

(d) Allocations for Fiscal Years 2018 and later will be made based on rules developed through the use of Negotiated rulemaking in accordance with Texas Government Code Chapter 2008 and §1.14 of this title (relating to Rulemaking), as well as Senate Bill 215, 83rd Texas Legislature, Regular Session (2013).

(e) [(b)] Reallocations. Institutions will have until the close of business on February 20 or the first working day thereafter if it falls on

a weekend or a holiday [~~date specified by the Board via a policy memo addressed to the Program Officer at the institution~~] to encumber the program funds that have been allocated to them. On that date, institutions lose claim to any unencumbered funds, and the unencumbered funds are available to the Board for reallocation to other institutions. For the institutions that request additional funds, reallocations for amounts up to the amount requested per institution will be calculated on the same basis as was used for the allocation for the relevant fiscal year. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.

(f) [~~(c)~~] Disbursement of Funds to Institutions. As requested by institutions throughout the fall and spring terms, the Board shall forward to each participating institution a portion of its allocation [~~initial and renewal year allocations~~] of funds for immediate release to students or immediate application to student accounts at the institution.

[~~(d) Release of Funds to Students. The institution may release all or part of the proceeds of a Texas Educational Opportunity Grant award to an eligible person only if the tuition and required fees incurred by the person at the institution have been paid.~~]

(g) [~~(e)~~] Authority to Transfer Funds. Institutions participating in a combination of the Texas Educational Opportunity Grant[~~, Toward EXcellence, Access and Success Grant,~~] and Texas College Work-Study Programs, in accordance with instructions from the Board, may transfer in a given fiscal year up to the lesser of 10 percent or $20,000 between these programs.

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 September 29, 2014.

TRD-201404575
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 22, 2015
For further information, please call: (512) 427-6114

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER F. HEMOPHILIA ASSISTANCE PROGRAM

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§37.111 - 37.119 and new §§37.111 - 37.119, concerning the Hemophilia Assistance Program (program).

BACKGROUND AND PURPOSE

The program assists persons who have been diagnosed with hemophilia and who require continuing treatment with blood, blood derivatives, or manufactured pharmaceutical products, but who are unable to pay the entire cost of the treatment. As authorized by Health and Safety Code, Chapter 41, the program contracts with pharmacies, hospitals, and blood banks throughout the state to provide blood derivatives, blood concentrates, and manufactured pharmaceutical products that have been approved for payment by the program and are indicated for the treatment of hemophilia.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.111 - 37.119 have been reviewed in their entirety and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

The proposed repeals and new rules will (1) lower the minimum age for program eligibility from 21 years or older to 18 years or older; (2) expand the language regarding eligibility requirements; (3) require attestation regarding other health insurance coverage; (4) clarify the recertification process; (5) remove specific references to documentation required to prove eligibility for the program; and (6) allow program providers access to an appeal process when their program eligibility or claims reimbursement is terminated, denied, or modified. The proposed repeals and new rules also add new definitions; strengthen and clarify understanding of the program; and improve the flow and readability of the rules.

SECTION-BY-SECTION SUMMARY

Proposed new §37.111 provides a comprehensive summary of the contents of the subchapter. The proposed new rule also removes language that is no longer applicable and improves clarity.

Proposed new §37.112 updates the subchapter's definitions section and includes new terminology used in other sections.

Proposed new §37.113 adds language necessary for clarification of the program's eligibility requirements, including changing the age requirement from 21 years of age or older to 18 years of age or older, expands the language regarding eligibility requirements, requires attestation regarding other health insurance coverage, and clarifies the recertification process. Additionally, specific references to documentation required to prove eligibility for the program have been removed to streamline the rules and provide program flexibility. This information will now be covered in program policy and made available to the general public on the program website at: www.dshs.state.tx.us/hemophilia/default.shtm.

Proposed new §37.114 removes language that is no longer applicable regarding budgetary limitations, increases understanding of the program, and improves the flow and readability of the rule.

Proposed new §37.115 clarifies provider requirements, increases understanding of the program, and improves the flow and readability of the rule.

Proposed new §37.116 removes language that is no longer applicable regarding conditional authorization, increases understanding of the program, and improves the flow and readability of the rule.

Proposed new §37.117 strengthens and clarifies language regarding client and provider rights, increases understanding of the program, and improves the flow and readability of the rule.

Proposed new §37.118 strengthens rule language, increases understanding of the program, and improves the flow and readability of the rule.

Proposed new §37.119 adds language to allow program providers access to an appeal process, removes language that is no longer applicable, strengthens rule language, clarifies understanding of the program, and improves the flow and readability of the rule.

FISCAL NOTE

Sam B. Cooper, Director, Specialized Health Services Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal impact to state or local governments as a result of enforcing and administering the sections as proposed. The new rules are intended to clarify, update, and strengthen the subchapter and are not anticipated to be controversial.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Cooper has also determined that there will be no adverse effect on small businesses or micro-businesses required to comply with the new rules as proposed, because neither small businesses nor micro-businesses that are providers of the program will be required to alter their business practices in order to comply with the rules.

ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

PUBLIC BENEFIT

Mr. Cooper has also determined that for each year of the first five years the rules are in effect, the public will benefit from adoption of the rules. The public benefit anticipated as a result of enforcing or administering the rules is improved accuracy and consistency and more accurate interpretation of their intent. In addition, the new rules will allow the program to function more efficiently and effectively.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted by mail to Kathleen Ford, Policy Formulation and Health Benefit Team, Purchased Health Services Unit, Mail Code 1938, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; by telephone at (512) 776-6836; or by email to kathleen.ford@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

25 TAC §§37.111 - 37.119

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

STATUTORY AUTHORITY

The repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The repeals affect Government Code, Chapter 531; and Health and Safety Code, Chapters 41 and 1001.

§37.111. General Information.

§37.112. Definitions.

§37.113. Eligibility.

§37.114. Benefits and Limitations.

§37.115. Providers.

§37.116. Payment.

§37.117. Rights and Responsibilities.

§37.118. Modifications, Suspensions, Denials and Terminations.

§37.119. Right of Appeal.

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 September 24, 2014.

TRD-201404553
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: November 9, 2014
For further information, please call: (512) 776-6972

25 TAC §§37.111 - 37.119

The new sections are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary

for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The new sections affect Government Code, Chapter 531; and Health and Safety Code, Chapters 41 and 1001.

§37.111. Purpose.

These rules implement Texas Health and Safety Code, Chapter 41. Specifically, the rules establish eligibility requirements; outline program benefits and the methodology used by the program to remain within budgetary limitations; outline provider requirements and provider reimbursement; outline the rights and responsibilities of clients and providers; and stipulate the circumstances that allow for an administrative review.

§37.112. Definitions.

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

(1) Administrative review--A process that allows applicants, clients, and providers the opportunity to request an informal review of any intended program action that would suspend, modify, deny, or terminate their eligibility for enrollment, benefits participation in the program, or reimbursement for allowable products.

(2) Allowable products--Blood derivatives, blood concentrates, and manufactured pharmaceutical products indicated for the treatment of hemophilia and approved for payment by the program.

(3) Applicant--A person making an initial application or re-application for the program.

(4) Attestation--a statement by a person or the person's legally authorized representative attesting that:

(A) the person does not have access to private health care insurance that provides coverage for the benefit, service, or assistance; or

(B) the person has access to private health care insurance that provides coverage for the benefit, service, or assistance.

(5) CHIP--The Children's Health Insurance Program administered by the Commission under Title XXI of the Social Security Act.

(6) Claim--A request for payment or reimbursement of services.

(7) Client--A person who has applied for program services and who meets all program eligibility requirements and is determined to be eligible for program services, and may include:

(A) a person who has applied to the program for the first time and is determined to be eligible for program services;

(B) a person who has re-applied to the program (after a lapse in eligibility) and is determined to be eligible for program service; or

(C) a person who has applied to the program and is determined to be eligible for program services and is currently on the program's waiting list.

(8) Commission--The Health and Human Services Commission.

(9) CSHCN Services Program--Children with Special Health Care Needs Services Program.

(10) Date of service--The date the allowable products are dispensed.

(11) Denial--An action by the program that disallows program eligibility, benefits, or administrative review requests.

(12) Department--Department of State Health Services.

(13) Eligibility date for program benefits--The effective date of client eligibility for program benefits is the date of receipt of a complete, approved application.

(14) Exclusion--The federal and state offices of Inspector General maintain lists that exclude certain people or businesses from participating as service providers for federal and state health care programs.

(15) Factor--A substance that is injected into the vein of a person with hemophilia to replace the missing blood clotting factor and allow the blood to clot properly.

(16) Fair hearing--The informal hearing process the department follows in accordance with §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

(17) Family--In order to determine family size for the calculation of the applicant's percentage of the Federal Poverty Limit for program eligibility, the family includes the following persons who live in the same residence:

(A) the applicant;

(B) any persons who have a legal responsibility to support the applicant;

(C) children under age 18 or wards of the applicant; and

(D) children under age 18 or wards of any persons who have a legal responsibility to support the applicant.

(18) Federal Poverty Level guidelines (FPL)--The minimum income needed by a family for food, clothing, transportation, shelter, and other necessities in the United States, according to the United States Department of Health and Human Services, or its successor agency or agencies. FPL varies according to family size, and after adjustment for inflation, is published annually in the *Federal Register.*

(19) Filing deadline--The last date that a claim may be received by the program and still be considered eligible for payment of benefits.

(20) Hemophilia Assistance Program--A state funded program that provides limited financial assistance to persons age 18 and older who have been diagnosed with hemophilia and meet other program eligibility requirements for blood derivatives, blood concentrates, and manufactured pharmaceutical products that are administered or dispensed by program-approved providers.

(21) Hemophilia--A human physical condition characterized by bleeding, resulting from a genetically determined deficiency of a blood coagulation factor or an abnormal or deficient plasma procoagulant that prevents the blood from clotting properly. The diagnoses covered by the program include:

(A) congenital factor VIII disorder (Hemophilia A);

(B) congenital factor IX disorder (Hemophilia B); and

(C) congenital factor XI disorder (Hemophilia C).

(22) Income--The gross income, either earned or unearned, before deductions over a given period of time for each family member.

(23) Incomplete claim--A request for payment or reimbursement of services that is missing required information.

(24) Medicaid--A program of medical care authorized by Title XIX of the Social Security Act and the Human Resources Code.

(25) Medicare--A federal program that provides medical care for people age 65 or older and the disabled as authorized by Title XVIII of the Social Security Act.

(26) Other Coverage--Coverage, in addition to benefit coverage as referenced in §37.114 of this title (related to Benefits and Limitations), to which a person is entitled for payment of the costs of services included in the scope of coverage of the program, but not limited to, benefits available from:

(A) an insurance policy, group health plan, health maintenance organization, or prepaid medical plan;

(B) Title XVIII, Title XIX, or Title XXI of the Social Security Act (42 U.S.C. §§1395 et seq., 1396 et seq., and 1397aa et seq.), as amended;

(C) the United States Department of Veterans Affairs;

(D) the United States Department of Defense;

(E) workers' compensation or any other compulsory employers' insurance program;

(F) a public program created by federal or state law or under the authority of a municipality or other political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, a county indigent health care program, or the facilities of a publicly supported medical school; or

(G) a cause of action for the cost of care, including medical care, dental care, facility care, and medical supplies, required for a person applying for or receiving services from the department or a settlement or judgment based on the cause of action if the expenses are related to the need for services provided under this chapter.

(27) Provider--Any individual or entity, as defined in §37.115 of this title (relating to Providers) approved by the program to provide allowable products to program clients.

(28) Physician--An individual licensed by the Texas Medical Board to practice medicine in the state.

(29) Prior Authorization--The process of getting approval from the program, before a product is dispensed, to determine if it can be considered for reimbursement.

(30) Program--The Hemophilia Assistance Program.

(31) Recertification of Program Eligibility--Upon request of the program, clients must submit the information required in order to determine their continuing eligibility for program services.

(32) Reimbursement--Payment of a claim for allowable products administered or dispensed to a program client submitted by a provider.

(33) Reimbursement rate--The program payment rate for allowable products, determined annually for the following fiscal year.

(34) Social Security Administration (SSA)--A United States government agency that administers the social insurance programs in the United States. The agency covers a wide range of social security services, such as disability, retirement and survivors' benefits.

(35) Social Security Disability Insurance (SSDI)--A payroll tax-funded, federal insurance program managed by the SSA, that provides income to people who are unable to work because of a disability.

(36) State--The State of Texas.

(37) Texas resident--A person who:

(A) is physically present within the geographic boundaries of the state;

(B) intends to remain within the state;

(C) maintains an abode within the state (i.e., house or apartment, not merely a post office box);

(D) has not come to the state from another country for the purpose of obtaining medical care with the intent to return to the person's native country;

(E) does not claim residency in any other state or country; and

(i) is a person residing in the state who is the legally dependent spouse of a Texas resident; or

(ii) is an adult residing in the state, including an adult whose parent(s), managing conservator, guardian of the adult's person, or caretaker (with whom the adult resides and plans to continue to reside).

§37.113. Program Eligibility.

(a) Client Requirements. In order to be determined eligible for program benefits, applicants must meet the medical, age, residency, financial, and other criteria in this section, and submit a complete application for program benefits.

(1) Medical criteria. A physician must certify that the applicant has a diagnosis of hemophilia.

(2) Age. The applicant must be 18 years of age or older.

(3) Residency. The applicant must be a Texas resident.

(4) Financial criteria. Financial criteria are determined at least annually or as directed by the program. Financial criteria are based upon the determinations of income and family size. Income must be at or below 200% of the FPL.

(5) Other criteria. The applicant must not be eligible for Medicaid, Medicare, the Children's Health Insurance Program (CHIP). The program may require an applicant currently not enrolled in Medicaid, Medicare, CHIP, SSDI, or the CSHCN Services Program to apply for any of these applicable programs when the applicant's age, income, or medical disability determination meets the eligibility criteria for any of these programs and, if eligible, to participate in those programs.

(6) Health Insurance. All health insurance coverage insuring the applicant must be attested to on the application. Noncompliance with this requirement may result in the termination of program benefits.

(A) The program may require an applicant currently not enrolled in a health insurance plan to apply for an available insurance plan that is accessible and provides comprehensive coverage. The program may provide program benefits for ongoing clients during insurance application, enrollment, or limited or excluded coverage periods.

(B) Before canceling, terminating, or discontinuing existing health insurance or electing not to enroll in available health insurance, the client, or person who has a legal responsibility for the client, must notify the program 30 days prior to cancellation, termination, discontinuance, or end of the enrollment period, whenever possible.

(7) Application.

(A) To be considered by the program, a complete application must be made on forms required by the department. The application must have the signature or mark of applicant, or the applicant's legally authorized representative, and the physician's signature.

(B) The program will make the determination of an applicant's eligibility using the information provided with the application. The program will verify information on the application, including required documentation of diagnosis, income, attestation of other coverage, date of birth, and residency.

(C) The program may request additional documentation to verify information provided by the applicant to establish eligibility. The program will notify the applicant, or the applicant's legally authorized representative, in writing when specific documentation is required. It is the responsibility of the applicant, or the applicant's legally authorized representative, to provide the required documentation.

(D) The program will determine eligibility when a completed application is received.

(8) Eligibility Date. The effective date of eligibility for program benefits is the date of receipt of a complete, approved application.

(9) Program Termination. If program coverage is terminated, the eligibility date for any subsequent eligibility period will be the date on which the program receives a subsequent completed application for program benefits.

(b) Determination of continuing eligibility for program benefits. Income criteria, residency, and attestation of other coverage must be documented annually or as directed by the program for the recertification of program eligibility and benefits.

(1) Clients are notified of program deadlines for recertification of eligibility.

(2) If an ongoing client does not meet program deadlines for submitting information required for the determination of continuing eligibility, the client's eligibility for the program will end.

(3) If a former client re-applies to the program, a new medical certification is not required, and their new eligibility date is determined to be the date the completed application is received.

§37.114. Benefits and Limitations.

(a) The program provides limited reimbursement to providers for blood derivatives, blood concentrates, and manufactured pharmaceutical products indicated for the treatment of hemophilia and prescribed to eligible clients for use in medical or dental facilities, or in the home.

(b) All program benefits are limited to those allowable products prescribed by a physician and dispensed by a program provider.

(c) The program will pay for allowable products based upon:

(1) available funds;

(2) established limits for allowable products by type or category of product; and

(3) the reimbursement rates established by the department.

(d) Eligible clients with a private or group health insurance must exhaust all benefits prior to receiving benefits from the program.

(e) The program is payer of last resort. Applicants and currently eligible program clients are no longer eligible when they become eligible for the CHIP, SSDI, the Medicaid or Medicare.

(f) To meet budgetary limitations, the department may:

(1) adjust the reimbursement rates established by the department;

(2) restrict the allowable products paid for under the program;

(3) adjust the annual benefit limits; or

(4) establish a waiting list of persons eligible for the program. Appropriate information will be collected from each applicant who is placed on a waiting list. The information will be used to facilitate contacting the applicant and to allow efficient enrollment of the applicant when benefits become available. Eligibility must be maintained while on the waiting list.

§37.115. Providers.

(a) Applicable provider types for the program include, but are not limited to:

(1) pharmacies;

(2) hospitals; or

(3) blood banks.

(b) In order for a provider to qualify for participation and to enroll in the program, the provider will:

(1) be licensed by in the state and practicing within the scope of their respective licenses, certifications, or registrations;

(2) be a current Texas Medicaid Program provider;

(3) enter into an agreement to participate in the program;

(4) submit a completed program provider enrollment form to the program;

(5) submit a completed department Child Support Certification form to the program;

(6) agree to reimburse the program for any overpayments made to the provider by the program upon request;

(7) not currently be on suspension as a program provider or as a Texas Medicaid Program provider; and

(8) not have a current exclusion documented with the following agencies;

(A) U.S. Department of Health and Human Services (HHS); or

(B) the Commission.

(9) providers who have a suspension or exclusion documented will not be allowed to enroll with the program until the suspension or exclusion is resolved and removed.

(c) Changes in provider ownership require termination of the current agreement and a new agreement must be executed under the new ownership.

(d) The program may establish provider enrollment limitations in order to conserve funds, assure quality, and effectively administer the program.

(e) The program may modify, suspend, deny, or terminate a provider's approval to participate for the following reasons:

(1) submission of false or fraudulent claims;

(2) failure to provide and maintain quality services;

(3) failure to adhere to medically acceptable standards;

(4) breach of the provider agreement;

(5) disenrollment as a Texas Medicaid Program provider;

(6) placement on the current exclusion listing; or

(7) failure to submit a claim for reimbursement for an extended period of time, as specified by program policy.

§37.116. Claims Payment.

(a) Prior authorization is required for all allowable products.

(b) The program reimburses providers for allowable product(s) for eligible clients. Payment may be made only after the allowable product(s) has been dispensed and submission of a valid claim. Claims must be:

(1) submitted on the claim form accepted by the program;

(2) submitted by a program provider; and

(3) filed directly with the program.

(c) Filing Deadlines.

(1) Complete claims must be received by the program within 95 calendar days from the end of the month of the date of service.

(2) Incomplete and ineligible claims will be denied.

(3) Denied claims may be considered for payment if the claim is corrected and resubmitted within 30 days following the date of the program notice of denial or within the initial 95 day filing deadline, whichever is later.

§37.117. Rights and Responsibilities.

(a) Client Rights. The applicant, client, or legally authorized representative have the right to:

(1) apply for eligibility determination;

(2) choose providers subject to program limitations;

(3) be notified of program decisions relating to modifications, suspensions, denials, or terminations;

(4) have all client files and other information maintained in a confidential manner to the extent authorized by law;

(5) appeal program decisions and receive a response within the deadline as described in §37.119 of this title (relating to Right of Appeal); and

(6) reapply for the program when eligibility for the program is denied or terminated.

(b) Provider Rights. The provider has the right to:

(1) apply and enroll as a provider;

(2) be notified of program decision relating to modifications, suspensions, denials, or terminations;

(3) have confidentiality of information in the manner and to the extent authorized by law;

(4) appeal program decisions and receive a response within the deadline as described in §37.119 of this title; and

(5) reapply for the program when eligibility for the program is denied or terminated.

(c) Client Responsibilities. The applicant, client, or legally authorized representative have the responsibility to:

(1) provide accurate medical information to providers and notify providers of program eligibility prior to delivery of services;

(2) provide the program with accurate information regarding any change of circumstance which might affect eligibility and benefits within 30 days following such change; and

(3) notify the program of any lawsuit(s) contemplated or filed concerning the cause of the medical condition for which the program has made payment.

(d) Provider Responsibilities. The provider has the responsibility to:

(1) enroll as a program provider and submit a completed application to the program, including all documents requested;

(2) abide by the program rules and regulations;

(3) not discriminate against applicants or clients based on source of payment; and

(4) notify the program of any lawsuit(s) contemplated or filed concerning the cause of the medical condition for which the program has made payment.

§37.118. Modifications, Suspensions, Denials and Terminations.

(a) Any applicant or client shall be notified in writing of the action, the reason(s) for the action, and the right of appeal in accordance with §37.119 of this title (relating to Right of Appeal), if the program proposes to modify, suspend, deny, or terminate program eligibility or benefits for reasons, which include but are not limited to the following:

(1) the application or other requested information is erroneous or falsified;

(2) financial eligibility requirements are not met;

(3) failure to establish or maintain Texas residency;

(4) financial or residency documentation is not provided as required or requested;

(5) failure to provide information when requested;

(6) the client is or becomes incarcerated in a city, county, state, or federal jail, or prison;

(7) the client is or becomes a ward of the state;

(8) failure to receive allowable products through a provider; or

(9) failure to continue premium payments on individual or group insurance or prepaid medical plans, where such plans provide benefits for the care and treatment of persons who have hemophilia and eligibility for benefits under the plan(s) was effective prior to eligibility for the program, and failure to provide a statement on the application form outlining the reason(s) why such insurance cannot be maintained.

(b) Any provider shall be notified in writing of the action, if the program modifies, suspends, denies, or terminates a client's benefits or provider's enrollment. The written notification shall include the reason(s) for the action. The reasons for modifying, suspending, denying, or terminating a provider's enrollment include, but are not limited to:

(1) failure to maintain required current licensures or certifications in the state;

(2) failure to maintain status as a Texas Medicaid Program provider;

(3) failure to have a current program provider agreement on file;

(4) failure to submit a completed department Child Support Certification form on file;

(5) failure to notify the program of change of ownership;

(6) failure to comply with all the provisions of the program provider agreement and the Provider Manual; or

(7) the reduction or curtailment in funds available for the program.

§37.119. Right of Appeal.

(a) Administrative Review.

(1) When the program modifies, suspends, denies, or terminates eligibility or benefits, the program shall give written notice of and the reason for the action. Applicants, clients, providers, or legally authorized representatives, have the right to request an administrative review of the action within 30 days of the notice date.

(2) If the program denies a prior authorization request for program services, the program will give the client, provider, or a legally authorized representative, written notice of the denial and the right of the client, provider, or legally authorized representative, to request an administrative review of the denial within 30 days of the notice date.

(3) If the program receives a written request for administrative review within 30 days of the notice date, the program will conduct an administrative review of the circumstances surrounding the proposed action. Within 30 days following receipt of a request for administrative review, the program will send the applicant, client, provider, or legally authorized representative, written notice of:

(A) the program decision, including the supporting reasons for the decision; or

(B) the need for extended time to research the circumstances, including an expected date for response to the request.

(4) If the program does not receive a written request for administrative review within 30 days of the date of the notification, the applicant, client, provider, or legally authorized representative, is presumed to have waived the administrative review as well as access to a fair hearing, and the program's action is final.

(5) A client, provider, or legally authorized representative, may not request administrative review of the program's denial of a prior authorization request for program services or reduced provider reimbursement amounts that are authorized by §37.114(f) of this title (relating to Benefits and Limitations).

(6) A client, provider, or legally authorized representative, may not request an administrative review of prior authorization decisions and reimbursement amounts for claims that are paid in accordance with the reimbursement rate as defined in §37.112(33) of this title (relating to Definitions).

(b) Fair Hearing.

(1) If the applicant, client, provider, or a legally authorized representative is dissatisfied with the program's decision and supporting reasons following the administrative review, the applicant, client, provider, or a legally authorized representative may request a fair hearing in writing addressed to the Hemophilia Assistance Program, Purchased Health Services Unit Mail Code 1938, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347,within 20 days of receipt of the administrative review decision notice.

(2) A fair hearing requested by an applicant, client, provider, or a legally authorized representative will be conducted in accordance with §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

(3) If the applicant, client, provider, or a legally authorized representative fails to request a fair hearing within the 20-day period, the applicant, client, provider, or a legally authorized representative is presumed to have waived the request for a fair hearing, and the program may take final action.

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 September 24, 2014.

TRD-201404554
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: November 9, 2014
For further information, please call: (512) 776-6972

CHAPTER 61. CHRONIC DISEASES
SUBCHAPTER E. CHILDREN'S OUTREACH HEART PROGRAM

25 TAC §§61.71 - 61.83

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

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§61.71 - 61.83, concerning the Children's Outreach Heart Program.

BACKGROUND AND PURPOSE

The program was established in 1989 under Health and Safety Code, Chapter 39, which gave the department authority to establish a children's outreach heart program. The purpose of the program was to provide (1) pre-diagnostic cardiac screening and follow-up evaluation services to persons under 21 years of age who are from low-income families and who may have a heart disease or defect; and (2) training to local physicians and public health nurses in screening and diagnostic procedures for heart disease or defect.

The department provided funding to Children's Heart and Health Institute of Texas (CHHI) to serve children in a 35-county area in South Texas. CHHI initially provided the services, but then subcontracted with Driscoll Children's Physicians Group. CHHI terminated the contract, effective July 31, 2006. The contract was transferred to Driscoll Children's Physicians Group to allow for continuity of care.

Rider 54, 80th Legislative Session, 2007, established Driscoll Children's Physicians Group in Corpus Christi as the sole recipient of the appropriated funds. The rider language remained in effect through the 81st Legislative Session, 2009 (Rider 50); however, on August 19, 2009, Driscoll Children's Physicians Group notified the department that they were declining the funding but agreed to continue providing outreach for children's heart services and physician education in the Corpus Christi area and the Valley without state funds. During the 82nd Legislative Session, 2011, the rider was eliminated. Additionally, since the enactment of the legislation in 1989, changes have occurred in health care

delivery systems, increasing access to care; therefore, these services are no longer required to fill a coverage gap.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 61.71 - 61.83 have been reviewed, and the department has determined that reasons for adopting the sections no longer exist because rules on this subject are not needed.

SECTION-BY-SECTION SUMMARY

The department is repealing §§61.71 - 61.83 because the rider that appropriated funding for the program was eliminated.

FISCAL NOTE

Sam Cooper, LMSW-IPR, Director, Specialized Health Services Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to the state or local governments as a result of repealing the sections as proposed.

MICRO-BUSINESS AND SMALL BUSINESS IMPACT ANALYSIS

Mr. Cooper has also determined that there will be no adverse effect on small businesses or micro-businesses required to comply with the sections as proposed because small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

PUBLIC BENEFIT

In addition, Mr. Cooper has also determined that for each year of the first five years that the repeals will be in effect, the public will benefit by eliminating unnecessary rules.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted by mail to Laura Ethridge, Purchased Health Services Unit, Mail Code 1938, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; by telephone at (512) 776-3664; or by email to laura.ethridge@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055(e), and the Health and Safety Code, §39.003, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary to define the scope of the children's outreach heart program; and the Health and Safety Code, §1001.075, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The proposed repeals affect Government Code, Chapter 531; and Health and Safety Code, Chapters 39 and 1001.

§61.71. General Information.

§61.72. Definitions.

§61.73. Eligibility for Client Services.

§61.74. Funding of the COHP Contractor.

§61.75. Program Income and Client Co-payment.

§61.76. Contractor Staff.

§61.77. Clinic Facilities and Equipment.

§61.78. Services.

§61.79. Coordination of Community Services.

§61.80. Client Rights.

§61.81. Tracking and Follow-up.

§61.82. Records Management.

§61.83. Evaluation.

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 September 24, 2014.

TRD-201404555
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: November 9, 2014
For further information, please call: (512) 776-6972

TITLE 28. INSURANCE

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

CHAPTER 131. LIFETIME INCOME BENEFITS

28 TAC §131.1

The Texas Department of Insurance, Division of Workers' Compensation (Division) proposes new §131.1, concerning Initiation of Lifetime Income Benefits; Notice of Denial. New §131.1 is necessary to achieve the goals of Labor Code §402.021(b)(3) and (b)(8), entitled Goals; Legislative Intent; General Workers' Compensation Mission of Department. Labor Code §402.021(b)(3) requires that injured employees are provided income and medical benefits in a timely and cost-effective manner. Labor Code §402.021(b)(8) outlines the Texas workers' compensation system's goal to effectively educate and clearly inform each person who participates in the system of the person's rights and responsibilities under the system and how to appropriately interact within the system.

New §131.1 ensures these goals are met by requiring insurance carriers initiate the payment of lifetime income benefits without a final decision, order, or other action of the commissioner if an injured employee meets the eligibility criteria for lifetime income benefits by establishing a 60-day deadline for the initial payment of or denial of lifetime income benefits; by establishing a 15-day deadline for the initial payment of lifetime income benefits after the carrier reasonably believes the injured employee is eligible; and by requiring that the insurance carrier send a plain language notice of denial of eligibility to the injured employee and the Division explaining the reasons for the denial and the right of all parties to initiate dispute resolution.

The statutory criteria for lifetime income benefits is outlined in Labor Code §408.161, concerning Lifetime Income Benefits. Labor Code §408.161 states that lifetime income benefits are paid until the death of the employee for:

(1) total and permanent loss of sight in both eyes;

(2) loss of both feet at or above the ankle;

(3) loss of both hands at or above the wrist;

(4) loss of one foot at or above the ankle and the loss of one hand at or above the wrist;

(5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg;

(6) a physically traumatic injury to the brain resulting in incurable insanity or imbecility; or

(7) third degree burns that cover at least 40 percent of the body and require grafting, or third degree burns covering the majority of either both hands or one hand and the face.

New §131.1 will require that all reviews regarding an injured employees' eligibility to lifetime income benefit claims are evaluated with all of the statutory criteria in mind, instead of reviews where each criterion under Labor Code §408.161 is examined separately. This ensures the goals of Labor Code §402.021(b)(3), as well as to satisfy the requirements of Labor Code §408.081, concerning Income Benefits, which provide that an employee is entitled to timely and accurate income benefits. The Division further notes that an insurance carrier is required to process claims promptly in a reasonable and prudent manner under Labor Code §415.002(a)(11), concerning Administrative Violation by Insurance Carrier.

Workers' compensation stakeholder feedback was considered and incorporated throughout the informal draft and proposal process. As part of the development process for these proposed rules, the Division posted informal working drafts of these sections on its website on June 20, 2014 and August 19, 2014 and received written comments from system participants. These proposed rules incorporate several recommendations from system participants.

Section 131.1 addresses Initiation of Lifetime Income Benefits; Notice of Denial.

New §131.1(a) requires insurance carriers to initiate the payment of lifetime income benefits without a final decision, order, or other action of the commissioner if an injured employee meets the eligibility criteria for lifetime income benefits listed under Labor Code §408.161 as a result of the compensable injury. New §131.1(a) reaffirms an insurance carrier's existing duties to adjust claims and initiate benefit payments promptly as and when they are due. Prompt initiation of claims payments is an existing requirement of Labor Code §409.021, concerning Initiation of Benefits; Insurance Carrier's Refusal; Administrative Violation. Additionally, under Labor Code §415.002(a), concerning Administrative Violation by Insurance Carrier, an insurance carrier or its representative commits an administrative violation if it fails to process claims promptly in a reasonable and prudent manner or if it fails to initiate or reinstate benefits when due if a legitimate dispute does not exist as to the liability of the insurance carrier. New §131.1(a) also reaffirms the current requirements under Labor Code §408.081(a), concerning Income Benefits, and §402.021(b)(3), that insurance carriers pay and the injured employees receive all income benefits they are entitled to timely and accurately.

New §131.1(b) provides that an insurance carrier must either initiate or deny lifetime income benefits within 60 days from the receipt of the injured employee's written request and after considering all the factors of Labor Code §408.161. An insurance carrier's piecemeal review of an injured worker's request for lifetime income benefits under Labor Code §408.161, and fragmented response on a paragraph by paragraph basis, can delay the review process and hinder the injured employee from receiving timely lifetime income benefits.

New §131.1(b) provides that an insurance carrier's failure to respond to an injured workers' request for lifetime income benefits within the 60-day timeframe does not constitute a waiver of the insurance carrier's right to dispute eligibility to lifetime income benefits. The Division determined that 60 days is an adequate amount of time for an insurance carrier to review an injured employee's eligibility under Labor Code §408.161. The Division weighed the factors of the injured employee's need for prompt payment of lifetime income benefits against the insurance carrier's need to have more time to investigate an injured employee's request for lifetime income benefits that may not contain all of the necessary information needed to process the request. The Division determined that the 60-day deadline was an adequate amount of time based on stakeholder feedback throughout the rule drafting process. The 60-day timeline also reflects existing Division timelines for investigating a potential beneficiary's eligibility for death benefit payments and will ensure consistent requirements for ease of compliance.

The Division notes that the waiver language in new §131.1(b) speaks to an injured worker's eligibility for lifetime income benefits, not to the compensability of the claim. An insurance carrier still waives its right to contest compensability under Labor Code §409.021 if the insurance carrier does not contest compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury.

New §131.1(b) is proposed under the Division's general rulemaking authority under Labor Code §402.00111, regarding Relationship Between Commissioner of Insurance and Commissioner of Workers' Compensation; Separation of Authority; Rulemaking, which provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code. New §131.1(b) is also proposed under the Division's general rulemaking authority under Labor Code §402.061, regarding Adoption of Rules, which provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

New §131.1(b) is also necessary to ensure that insurance carriers pay and the injured employees receive all benefits as required by Labor Code §§408.081(a), 415.002(a)(11), 415.002(a)(12), 402.021(b)(3), and 409.021.

New §131.1(c) requires the insurance carrier to make the first payment of lifetime income benefits on or before the 15th day after the date the insurance carrier reasonably believes the injured employee is eligible for lifetime income benefits. The Division notes that the initiation of lifetime income benefits without a final decision, order, or other action of the commissioner does not waive the insurance carrier's right, in accordance with Labor Code §409.021, to contest the compensability of the injury. This requirement reflects the existing requirement for initiation of all benefits under Labor Code §409.021(a), which requires an insurance carrier to begin the payment of benefits not later than the 15th day after the date on which an insurance carrier receives written notice of an injury. However, Labor Code §409.021(a) concerns the initiation of the first type of workers' compensation benefits paid under the claim, while the requirement in §131.1(c) triggers the initiation of lifetime income benefits regardless of whether the insurance carrier has been making another type of income benefit payment. New §131.1(c) provides that the 15-day initial payment of lifetime income benefits is the same for both when lifetime income benefits are the first benefit type on the claim and when lifetime income benefits are not the first benefit type on the claim to ensure consistent requirements for ease of compliance. The requirements that lifetime income benefits must be initiated within 15 days regardless of whether the insurance carrier has been making another type of benefit payment is proposed under the Division's general rulemaking authority under Labor Code §402.00111 and §402.061.

New §131.1(c) is necessary to fulfill the goals of Labor Code §402.021(b)(3), which states that the Texas workers' compensation system must provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective. New §131.1(c) is also necessary to implement Labor Code §408.081, which provides that an employee is entitled to timely and accurate income benefits.

Although an insurance carrier must initiate or deny an injured employee's request for lifetime income benefits within 60 days under new §131.1(b), insurance carriers are still required to make the first payment on or before the 15th day after the insurance carrier reasonably believes the injured employee is eligible for lifetime income benefits. New §131.1(b) does not authorize an insurance carrier to delay initiation of lifetime income payments to an injured employee beyond 15 days after the insurance carrier reasonably believes the injured employee is eligible for lifetime income benefits. The Division also notes that nothing in this rule is intended to change the requirement that weekly income benefits begin to accrue on the eighth day after the date of injury under Labor Code §408.082, concerning the Accrual of Right to Income Benefits.

New §131.1(d) outlines the form and manner in which an insurance carrier must issue a denial of lifetime income benefits to an injured employee. If the insurance carrier receives a request for lifetime income benefits from an injured employee, and the insurance carrier believes the insured employee is not eligible, the insurance carrier shall deny eligibility by sending a plain language notice of denial of eligibility to the injured employee and to the Division. The denial of eligibility must be in the form and manner prescribed by the Division and must be sent within 60 days of receipt of the injured employee's written request for lifetime income benefits. The notice of denial of eligibility must include the following: (1) a full and complete statement describing the insurance carrier's reasons for denial. The statement must contain sufficient claim-specific substantive information to enable the injured employee to understand the insurance carrier's position or action taken under the claim. A generic statement that simply states the insurance carrier's position with phrases such as "not part of compensable injury," "not meeting criteria," "liability is in question," "under investigation," "eligibility questioned," or other similar phrases with no further description of the factual basis for the denial do not satisfy these requirements; (2) contact information including the adjuster's name, toll-free telephone and fax numbers, and email address; and (3) a statement informing the injured employee of his or her right to request a benefit review conference to resolve the dispute.

This section will help streamline the denial process because insurance carriers are already familiar with its requirements as they closely track existing requirements in §124.2(h) of Title 28 of the Texas Administrative Code relating to Carrier Reporting and Notification Requirements. Additionally, §124.2(e)(1) and §124.2(e)(4) of the Texas Administrative Code impose existing requirements on insurance carriers to notify the Division and the injured employee within 10 days of making the initial income benefit payment on a claim and the initial payment after making a change from one income benefit type to another. This section ensures that communication between insurance carriers and injured employees is consistent and thorough and that injured employees understand the reason for the denial and their right to dispute the insurance carrier's decision by requesting a benefit review conference. Since the reason for denial of payment of lifetime income benefits to the injured employee must be written in plain language, it should not include the unnecessary use of technical terms, acronyms, and abbreviations. Additionally, the insurance carrier's notice of denial under new §131.1(d) does not constitute a request for a benefit review conference.

New §131.1(e) provides that an injured employee may contest an insurance carrier's denial of eligibility for lifetime income benefits by requesting a benefit review conference as provided by Chapter 141 of Title 28 of the Texas Administrative Code (relating to Dispute Resolution--Benefit Review Conference). New §131.1(e) is necessary to fulfill the goals of the workers' compensation system outlined in Labor Code §402.021(b)(5) and §402.021(b)(8) to minimize the likelihood of disputes and resolve them promptly and fairly when identified and effectively educate and clearly inform each person who participates in the system of the person's rights and responsibilities under the system and how to appropriately interact within the system.

New §131.1(f) clarifies new §131.1 does not limit an insurance carrier's duty to initiate payment of lifetime income benefits before the time limit established in subsection (c). For example,

if an insurance carrier receives a written request for lifetime income benefits and then five days later has a reasonable belief the injured employee is entitled to lifetime income benefits, the insurance carrier must initiate payment within 15 days, and the deadline is not extended to day 60 after receipt of request. This is necessary to fulfill the goals of Labor Code §402.021(b)(5), which requires that the Texas workers' compensation system minimize the likelihood of disputes and resolve them promptly and fairly when identified. New §131.1(f) is necessary to fulfill the goals of Labor Code §402.021(b)(3), which states that the Texas workers' compensation system must provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective. New §131.1(f) is also necessary to implement Labor Code §408.081, which provides that an employee is entitled to timely and accurate income benefits.

New §131.1(g) provides the effective date for the rule. This is necessary in order to provide additional time for insurance carriers to fulfill the requirements of this section including possible procedural and tracking changes in the systems that insurance carriers employ for adjusting claims.

Brent Hatch, Director of Return-to-Work and Special Initiatives, has determined that for each year of the first five years the new section is in effect, there will be no fiscal impact to state or local governments that provide workers' compensation coverage as a result of enforcing or administering the section, except to the extent set forth below. There will be no measurable effect on local employment or the local economy as a result of the proposal. Labor Code §2001.024(4), concerning content of notice, requires an explanation of any additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule. Any economic costs to those state and local governments that provide workers' compensation coverage are discussed more fully below.

Mr. Hatch has also determined that, for each year of the first five years that new §131.1 is in effect, there are several public benefits anticipated because of the enforcement and administration of the proposal, as well as potential costs for persons to comply with the proposal.

ANTICIPATED PUBLIC BENEFITS

The public benefits anticipated as a result of the proposal include (i) ensuring insurance carriers consider all eligibility criteria for lifetime income benefits listed under Labor Code §408.161; (ii) promoting consistency in lifetime income benefit procedures by creating deadlines for determination of eligibility and initiation of payment; and (iii) protecting injured employees' rights by requiring that the denial of lifetime income benefits be consistent, documented, and that all parties will be informed of their right to initiate dispute resolution.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL

Mr. Hatch anticipates that there are probable costs to persons required to comply with several of the proposed new provisions during each year of the first five years that the rule will be in effect. The Division notes that lifetime income benefit claims make up a small percentage of the overall claims in the Texas workers' compensation system. According to the Division's System Data Report, there were 58 lifetime income benefit claims in 2012 compared to 48,031 temporary income benefit claims and 18,493 impairment income benefit claims. The small number of claims that receive lifetime income benefits will likely minimize any potential costs of complying with the proposal.

The Division anticipates costs for compliance with new §131.1(b), which establishes a 60-day deadline for insurance carriers to either initiate lifetime income benefits or deny the injured employee's eligibility for lifetime income benefits upon receipt of the injured employee's written request. This new deadline may require procedural and tracking changes in the systems that insurance carriers employ for adjusting claims. To analyze the current systems and develop the necessary features to comply with new §131.1, the insurance carrier may need to engage the services of systems software engineers for computer applications and software development, as well as computer programmers.

The United States Department of Labor, Bureau of Labor Statistics' May 2012, Occupational Employment Statistics indicates that the average hourly wage for these professions in Texas are: $47.80 for software engineers; (http://www.bls.gov/oes/current/oes151133.htm#st); and $37.78 for computer programmers, (http://www.bls.gov/oes/current/oes151133.htm#st). The Division anticipates that insurance carriers have the information necessary to determine their individual costs to comply based on their current procedures addressing lifetime income benefits.

The Division has determined that the deadline in §131.1(c) requiring the insurance carrier to make the first payment of lifetime income benefits on or before the 15th day after the date the insurance carrier makes a determination of eligibility will add no additional costs to the insurance carrier because of the existing requirements in Labor Code §409.021(a). Labor Code §409.021(a) requires an insurance carrier to begin the payment of benefits as required by law not later than the 15th day after the date on which an insurance carrier receives written notice of an injury.

The Division anticipates costs for compliance with new §131.1(d). Insurance carriers may incur costs issuing the plain language notice of denial of eligibility to injured employees through regular mail, although the Division notes that some insurance carriers may already be incurring similar costs for sending their own written notices of denial of eligibility to injured employees who request lifetime income benefits prior to the adoption of these proposed rules. According to the U.S. Postal Service business price calculator, available at: http://dbcalc.usps.gov/, the cost to mail machinable letters in a standard business mail envelope with a weight limit of 3.3 ounces to a standard five-digit ZIP code in the United States is 27 cents. The Division determined that the cost of a standard business envelope is two cents. Accordingly, the Division estimates each mailing would be no more than 29 cents.

The insurance carrier may incur costs for an administrative assistant to mail and process the written agreements if the insurance carrier is not already sending written notices of denial of eligibility to injured employees who request lifetime income benefits. An administrative assistant working in an insurance-related industry in Texas earns a median hourly wage of $22.98, according to the Texas Workforce Commission OES Report available at: http://www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=5242&occcode=43-6011&compare=2. The number of hours that will be required to comply with a particular proposed requirement will vary, and as a result, any total cost would best be determined by the insurance carrier. The Division anticipates that the insurance carriers have the information necessary to determine their individual costs, including the number of mailings, the number of pages to be mailed, and the

number of hours that an administrative assistant will incur to mail and process the written agreements.

Government Code §2006.002(c) provides that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(1) defines a "micro business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees.

In accordance with Government Code §2006.002(c), the Division has determined that the proposal may have an adverse economic effect on small and micro-businesses because they will be required to comply with the 60-day timeframe to initiate or deny lifetime income benefits, send a plain language notice describing the reasons for any denial to the Division and the injured employee on a form prescribed by the Division, and must initiate lifetime income benefits within 15 days after the date the insurance carrier should reasonably believe that the injured employee is eligible for lifetime income benefits as a result of the compensable injury.

According to the Texas Department of Insurance records, there are currently 269 insurance carriers authorized to write workers' compensation coverage in Texas. The Division does not know the total number of persons affected by the proposal or the number that will be small or micro-businesses under Government Code §2006.002(c), because the Division does not have data on the number of employees insured by each insurance carrier. This number does not include the number of certified self-insured employers or governmental entities. The Division does not have data on the number of employees insured by each certified self-insured employer or governmental entity. The Division estimates that the majority of insurance carriers required to comply with new §131.1 do not qualify as small or micro-businesses for the purposes of Government Code §2006.001. The cost of compliance with the proposal will not vary between large businesses and small or micro-businesses, and the Division's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses. Since the Division has determined that the proposed amendments may have an adverse economic effect on small or micro-businesses, this proposal contains the required economic impact statement and a regulatory flexibility analysis, as detailed under Government Code §2006.002.

The specific costs to small and micro-businesses are in the Public Benefit/Cost Note part of this proposal. The Division, in accord with Government Code §2006.002(c)(1), has considered three alternative methods of achieving the purpose of the proposed rule that would not adversely affect small or micro-businesses. The three alternative methods are (i) exempting small and micro-businesses from submitting the required plain language notice to the Division and the injured employee; (ii) exempting small and micro-businesses from the 15-day requirement to initiate lifetime income benefits under §131.1(c); and exempting small and micro-businesses from the 60-day timeframe to initiate or deny lifetime income benefits. The Division has determined that adopting any of these alternatives for small or micro-businesses is neither legal nor reasonable.

The Division rejected these options because implementing different requirements or standards would not be in the best interest of injured employees. These exempted employees may no longer benefit from the requirements that the denial of lifetime income benefits be consistent, documented, and that all parties will be informed of their right to initiate dispute resolution. Additionally, the 15-day initiation requirement in §131.1(c) reflects existing statutory requirements and promotes consistency in the Texas workers' compensation system. Insurance carriers must initiate lifetime income benefits within 15 days of receiving a notice of injury under existing requirements in Labor Code §409.021(a) if the injured employee meets the eligibility requirements for lifetime income benefits under Labor Code §408.161. Insurance carriers must provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective under existing requirements in Labor Code §402.021(b)(3). Additionally, Labor Code §415.002(a)(12) provides, in part, that an insurance carrier or its representative commits an administrative violation if they fail to initiate or reinstate benefits when due if a legitimate dispute does not exist as to the liability of the insurance carrier. The 60-day timeframe to initiate or deny lifetime income benefits is necessary to ensure that insurance carriers pay and the injured employees receive all benefits as required by Labor Code §§408.081(a), 415.002(a)(11), 415.002(a)(12), 402.021(b)(3), and 409.021. The clarifications in new §131.1 regarding initiation of lifetime income benefit payments will also prevent disparate handling of similar claims in the workers' compensation system. Exempting small or micro-businesses from the requirement to timely pay lifetime income benefits would be contrary to the intent of the statute that that insurance carriers pay and the injured employees receive all benefits as required by Labor Code §§408.081(a), 415.002(a)(11), 415.002(a)(12), 402.021(b)(3), and 409.021.

Creating an exemption for small or micro-businesses from sending a plain language notice to the injured employee is also not reasonable because the exemption would be contrary to the goals of Labor Code §402.021(b)(8) to effectively educate and clearly inform each person who participates in the system of the person's rights and responsibilities under the system and how to appropriately interact within the system. Because insurance carriers are currently required to notify injured employees and the Division pursuant to 28 TAC §124.2(e)(1) and §124.2(e)(4), the new notification requirements under §131.1 will not be a significant additional burden to small and micro-businesses. Insurance carriers must send plain language notices to injured employees under existing requirements in 28 TAC §124.2(e)(1) and §124.2(e)(4) within 10 days of making the initial payment on a claim and within 10 days of making the initial payment after making a change from one income benefit type to another.

Section 2006.002(c-1) of the Government Code requires that the regulatory analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro-businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The purpose of the clarifications in new §131.1 is to consistently and uniformly protect the economic welfare of all injured employees who incurred catastrophic injuries and who are eligible for lifetime income benefits, or are in a position to dispute a denial of lifetime income benefits, regardless of the size of the insur-

ance carrier's business. The purpose is not just to protect the economic interests of those injured employees covered by insurance carriers that do not meet the definitions of small or micro-businesses in the Government Code §2006.001(1) and (2). To waive or modify the requirements of the proposed clarification for small and micro-businesses would result in a disparate effect on injured employees affected by the proposed rule and would not be equally protective of the economic welfare of injured employees covered by insurance carriers that qualify as small or micro-businesses. Therefore, the Division has further determined that there are no regulatory alternatives, including the waiving or modifying of the requirements of proposed new §131.1, that will sufficiently protect the economic interests of consumers and the economic welfare of the state.

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

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on November 10, 2014. Comments may be submitted via the internet through the Texas Department of Insurance website at www.tdi.texas.gov/wc/rules/proposedrules/index.html, by email at rulecomments@tdi.texas.gov or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. Comments received after the close of comment will not be considered.

A request for a public hearing must be submitted separately to the Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. CST by the close of the comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under the Labor Code §§408.161, 415.002(a)(11), 415.002(a)(12), 415.002(a)(13), 402.021(b)(5), 402.021(b)(3), 402.021(b)(8), 402.022, 408.081, 409.021, 402.00111, and 402.061. Labor Code §408.161 states the requirements for lifetime income benefits eligibility, the amount the injured employee is owed, and how the insurance carrier may pay the injured employee.

Labor Code §415.002(a)(11) states that an insurance carrier or its representative commits an administrative violation if they fail to process claims promptly in a reasonable and prudent manner.

Labor Code §415.002(a)(12) states that an insurance carrier or its representative commits an administrative violation if they fail to initiate or reinstate benefits when due if a legitimate dispute does not exist as to the liability of the insurance carrier.

Labor Code §415.002(a)(11) provides that an insurance carrier or its representative commits an administrative violation if that person misrepresents the reason for not paying benefits or terminating or reducing the payment of benefits.

Labor Code §402.021(b)(5) requires that the Texas workers' compensation system minimize the likelihood of disputes and resolve them promptly and fairly when identified.

Labor Code §402.021(b)(3) states that the Texas Workers' Compensation System must provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective.

Labor Code §402.021(b)(8) outlines the workers' compensation system's goal to effectively educate and clearly inform each person who participates in the system of the person's rights and responsibilities under the system and how to appropriately interact within the system.

Labor Code §402.022 provides, in part, the commissioner by rule shall ensure that each division form, standard letter, and brochure under this subtitle is written in plain language; is in a readable and understandable format; and complies with all applicable requirements relating to minimum readability requirements.

Labor Code §408.081 provides that an employee is entitled to timely and accurate income benefits.

Labor Code §409.021 requires that an insurance carrier initiate compensation promptly and begins the payment of benefits not later than the 15th day after the date on which an insurance carrier receives written notice of an injury.

Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

The following statutes are affected by this proposal: Labor Code §§408.16, 408.162, and 415.002.

§131.1. Initiation of Lifetime Income Benefits; Notice of Denial.

(a) The insurance carrier shall initiate the payment of lifetime income benefits without a final decision, order, or other action of the commissioner if an injured employee meets the eligibility criteria for lifetime income benefits listed under Labor Code §408.161 as a result of the compensable injury.

(b) An injured employee may submit a written request for lifetime income benefits to the insurance carrier. The insurance carrier shall either initiate lifetime income benefits or deny the injured employee's eligibility for lifetime income benefits considering all of the eligibility criteria listed under Labor Code §408.161 within 60 days from the receipt of the injured employee's written request. An insurance carrier's failure to respond to the request for lifetime income benefits within the timeframes described in this subsection does not constitute a waiver of the insurance carrier's right to dispute the injured worker's eligibility for lifetime income benefits.

(c) The insurance carrier shall make the first payment of lifetime income benefits on or before the 15th day after the date the insurance carrier reasonably believes that the injured employee is eligible for lifetime income benefits as a result of the compensable injury. The initiation of lifetime income benefits without a final decision, order, or other action of the commissioner does not waive the insurance carrier's right to contest the compensability of the injury in accordance with Labor Code §409.021(c).

(d) If the injured employee submits a written request for lifetime income benefits and the insurance carrier denies that the injured employee is eligible for lifetime income benefits, the insurance carrier shall deny eligibility by sending a plain language notice of denial of eligibility to the division, the injured employee, and the injured employee's representative, if any, in the form and manner prescribed by

the division up to the 60th day after receipt of the written request. The notice of denial of eligibility shall include:

(1) a full and complete statement describing the insurance carrier's reasons for denial. The statement must contain sufficient claim-specific substantive information to enable the injured employee to understand the insurance carrier's position or action taken under the claim. A generic statement that simply states the insurance carrier's position with phrases such as "not part of compensable injury," "not meeting criteria," "liability is in question," "under investigation," "eligibility questioned," or other similar phrases with no further description of the factual basis for the denial does not satisfy the requirements of paragraph (1) of this subsection;

(2) contact information including the adjuster's name, toll-free telephone and fax numbers, and email address; and

(3) a statement informing the injured employee of his or her right to request a benefit review conference to resolve the dispute.

(e) An injured employee may contest the insurance carrier's denial of eligibility for lifetime income benefits or failure to respond to the written request for lifetime income benefits by requesting a benefit review conference as provided by Chapter 141 of this title (relating to Dispute Resolution--Benefit Review Conference).

(f) Nothing in this section is intended to limit any insurance carrier's duty to initiate payment of lifetime income benefits before the time limit established in subsection (c) of this section.

(g) Effective date. This section is effective on June 1, 2015.

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 September 29, 2014.

TRD-201404573
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: November 9, 2014
For further information, please call: (512) 804-4703

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 3. RESPONSIBILITIES OF STATE FACILITIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §3.101, concerning definitions; and new §3.801, concerning legally adequate consent or authorization for non-emergency administration of psychotropic medication; §3.802, concerning administration of psychotropic medication during a medication-related emergency; §3.803, concerning refusal of psychotropic medication; §3.804, concerning order authorizing administration of psychotropic medication; and §3.805, concerning effect of order, in Chapter 3, Administrative Responsibilities of State Facilities.

BACKGROUND AND PURPOSE

The purpose of the proposed rules is to implement Texas Health and Safety Code (THSC), Chapter 592, Subchapter F, regarding the administration of psychotropic medication, which was enacted by Senate Bill 34, 83rd Legislature, Regular Session, 2013. The proposed rules require a state supported living center (SSLC), or the intermediate care facility for individuals with an intellectual disability component of the Rio Grande State Center, to obtain consent or authorization to administer psychotropic medication to an individual before administering the medication, unless the individual is having a medication-related emergency or is the subject of an order issued under THSC §592.156. The proposed rules also set forth the requirements for a facility to administer psychotropic medication without consent, authorization, or court order when an individual is having a medication-related emergency.

The proposed rules state that an individual or an individual's legally authorized representative may refuse to consent to the administration of psychotropic medication. The proposed rules describe the process and requirements for applying for a court order to authorize the administration of a psychotropic medication to an individual who refuses the medication. In addition, the proposed rules describe the effect of a court order authorizing the administration of psychotropic medication to an individual.

The proposed rules reflect amendments to §3.101 that were proposed in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2823) that are expected to be effective November 1, 2014.

Current rules regarding consent for treatment with psychotropic medication in Chapter 8, Subchapter I, are proposed for repeal elsewhere in this issue of the *Texas Register.*

SECTION-BY-SECTION SUMMARY

The proposed amendment to §3.101 adds definitions needed for the proposed new Subchapter I, relating to the administration of psychotropic medication, and makes minor corrections to existing definitions. The corrections include more accurately defining "individual" as a person with an intellectual disability or a condition related to an intellectual disability who is receiving services from a facility.

Proposed new §3.801 describes the requirements for a facility to obtain legally adequate consent or authorization for the non-emergency administration of psychotropic medication to an individual.

Proposed new §3.802 describes the requirements for a facility to administer psychotropic medication to an individual who is having a medication-related emergency.

Proposed new §3.803 describes the process a facility must follow if an individual or an individual's legally authorized representative refuses to consent to the administration of psychotropic medication.

Proposed new §3.804 describes circumstances under which a treating physician may file an application for an order to authorize the administration of psychotropic medication to an individual who refuses psychotropic medication.

Proposed new §3.805 describes the effect of a court order that authorizes the administration of a psychotropic medication to an individual.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment and new sections are in effect, enforcing or administering the amendment and new sections does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment and new sections will not have an adverse economic effect on small businesses or micro-businesses, because the proposed rules apply to SSLCs and Rio Grande State Center, which are not small or micro-businesses.

PUBLIC BENEFIT AND COSTS

Scott Schalchlin, Assistant Commissioner for State Supported Living Centers, has determined that, for each year of the first five years the amendment and new sections are in effect, the public benefit expected as a result of enforcing the amendment and new sections is that the rules will clarify the requirements to administer psychotropic medication in SSLCs and the intermediate care facility for individuals with an intellectual disability component of the Rio Grande State Center.

Mr. Schalchlin anticipates that there will not be an economic cost to persons who are required to comply with the amendment and new sections. The amendment and new sections will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Eric Moorad at (512) 438-3169 in DADS SSLC/Quality Assurance. Written comments on the proposal may be submitted by mail to Texas Register Liaison, Legal Services-14R08, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 14R08" in the subject line.

SUBCHAPTER A. DEFINITIONS

40 TAC §3.101

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 592, Subchapter F, which governs the administration of psychotropic medication in state facilities.

The amendment implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§592.151 - 592.160.

§3.101. Definitions.

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

(1) Administrative death review--An administrative, quality-assurance activity related to the death of an individual to identify non-clinical problems requiring correction and opportunities to improve the quality of care at a facility.

(2) Allegation--A report by a person suspecting or having knowledge that an individual has been or is in a state of abuse, neglect, or exploitation as defined in this chapter.

(3) Alleged offender--An individual who was committed or transferred to a facility:

(A) under Texas Code of Criminal Procedure, Chapters 46B or 46C, as a result of being charged with or convicted of a criminal offense; or

(B) under Texas Family Code, Chapter 55, as a result of being alleged by petition or having been found to have engaged in delinquent conduct constituting a criminal offense.

(4) Applicant--A person who has applied to be an employee, volunteer, or unpaid professional intern.

(5) Attending physician--The physician who has primary responsibility for the treatment and care of an individual.

(6) Bedroom--The room at a facility in which an individual usually sleeps.

(7) Behavioral crisis--An imminent safety situation that places an individual or others at serious risk of violence or injury if no intervention occurs.

(8) CANRS--The client abuse and neglect reporting system maintained by DADS Consumer Rights and Services.

(9) Capacity--An individual's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B) make a decision whether to undergo the proposed treatment.

(10) [~~(9)~~] Chemical restraint--Any drug prescribed or administered to sedate an individual or to temporarily restrict an individual's freedom of movement for the purpose of managing the individual's behavior.

(11) [~~(10)~~] Child--An individual less than 18 years of age who is not and has not been married and who has not had the disabilities of minority removed pursuant to Texas Family Code, Chapter 31.

(12) [~~(11)~~] Clinical death review--A clinical, quality-assurance, peer review activity related to the death of an individual and conducted in accordance with statutes that authorize peer review in Texas to identify clinical problems requiring correction and opportunities to improve the quality of care at a facility.

(13) [~~(12)~~] Clinical practice--The demonstration of professional competence in nursing, dental, pharmacy, or medical practice as described in the relevant chapter of the Texas Occupations Code.

(14) [~~(13)~~] Confirmed--Term used to describe an allegation that DFPS determines is supported by a preponderance of the evidence.

(15) [~~(14)~~] Contractor--A person who contracts with a facility to provide services to an individual, including an independent school district that provides educational services at the facility.

(16) [~~(15)~~] Conviction--The adjudication of guilt for a criminal offense.

(17) [~~(16)~~] Covert electronic monitoring--Electronic monitoring that is not open and obvious, and that is conducted when the director of the facility in which the monitoring is being conducted has not been informed about the device by the individual, by a person who placed the device in the bedroom, or by a person who uses the device.

(18) [~~(17)~~] Crisis intervention--The use of interventions, including physical, mechanical, or chemical restraint, in a behavioral crisis, after less restrictive measures have been determined to be ineffective or not feasible.

(19) [~~(18)~~] Crisis intervention plan--A component of the individual support plan (ISP) action plan that provides instructions for staff on how to effectively and safely use restraint procedures, as long as they are needed to prevent imminent physical injury in a behavioral crisis when less restrictive prevention or de-escalation procedures have failed and the individual's behavior continues to present an imminent risk of physical injury. The plan is developed with input from the PCP and direct support professionals familiar with the individual and the individual and LAR and includes a description of how the individual behaves during a behavioral crisis, along with information about the types of restraints that have been most effective with the individual, staff actions to be avoided because they have been ineffective in the past in preventing or reducing the need for restraints, the restraint's maximum duration, a description of the behavioral criteria for determining when the imminent risk of physical injury abates, and reporting requirements. A crisis intervention plan is not considered a therapeutic intervention. It is implemented only to ensure that restraint procedures are carried out effectively and safely and may be adjusted depending upon the individual's progress in the ISP action plan.

(20) [~~(19)~~] DADS--Department of Aging and Disability Services.

(21) [~~(20)~~] Deferred adjudication--Has the meaning given to "community supervision" in Texas Code of Criminal Procedure, Article [§]42.12, [~~Section~~] §2.

(22) [~~(21)~~] Designated representative--A person designated by an individual or an individual's LAR to be a spokesperson or advocate for the individual.

(23) [~~(22)~~] DFPS--Department of Family and Protective Services.

(24) [~~(23)~~] Director--The director of a facility or the director's designee.

(25) [~~(24)~~] Direct support professional--An unlicensed employee who directly provides services to an individual.

(26) [~~(25)~~] Electronic monitoring--The placement of an electronic monitoring device in an individual's bedroom and making a tape or a recording with the device.

(27) [~~(26)~~] Electronic monitoring device (EMD)--A device that:

(A) includes:

(i) a video surveillance camera; and

(ii) an audio device designed to acquire communications or other sounds; and

(B) does not include an electronic, mechanical, or other device that is specifically used for the nonconsensual interception of wire or electronic communications.

(28) [~~(27)~~] Employee--A person employed by DADS whose assigned duty station is at a facility.

(29) [~~(28)~~] Facility--A state supported living center or the intermediate care facility for individuals with an intellectual disability component of the Rio Grande State Center.

(30) [~~(29)~~] Family member--An individual's parent, spouse, children, or siblings.

(31) [~~(30)~~] Forensic facility--A facility designated under Texas Health and Safety Code (THSC), §555.002(a) for the care of high-risk alleged offenders.

(32) [~~(31)~~] Guardian--An individual appointed and qualified as a guardian of the person under Texas Estates Code, Title 3.

(33) [~~(32)~~] High-risk alleged offender--An alleged offender who has been determined to be at risk of inflicting substantial physical harm to another person in accordance with THSC §555.003.

(34) [~~(33)~~] Inconclusive--Term used to describe an allegation leading to no conclusion or definite result by DFPS due to lack of witnesses or other relevant evidence.

(35) [~~(34)~~] Independent mortality review organization--An independent organization designated in accordance with Texas Government Code, Chapter 531, Subchapter U, to review the death of an individual.

(36) [~~(35)~~] Individual--A person with an intellectual [~~a developmental~~] disability or a condition related to an intellectual disability who is receiving services from a facility.

(37) [~~(36)~~] Individual support plan (ISP)--An integrated, coherent, person-directed plan that reflects an individual's preferences, strengths, needs, and personal vision, as well as the protections, supports, and services the individual will receive to accomplish identified goals and objectives.

(38) [~~(37)~~] Interdisciplinary team (IDT)--A team consisting of an individual, the individual's legally authorized representative (LAR) and qualified developmental disability professional, other professionals dictated by the individual's strengths, preferences, and needs, and staff who regularly and directly provide services and supports to the individual. The team is responsible for assessing the individual's treatment, training, and habilitation needs and making recommendations for services based on the personal goals and preferences of the individual using a person-directed planning process, including recommendations on whether the individual is best served in a facility or community setting.

(39) [~~(38)~~] Legally adequate consent--Consent received from a person who [~~has legal status that~~] meets the criteria described

[statutory requirements for comprehension of information and voluntariness as specified] in THSC §591.006.

(40) [(39)] Legally authorized representative (LAR)--A person authorized by law to act on behalf of an individual, including a parent, guardian, or managing conservator of a minor individual, or a guardian of an adult individual.

(41) [(40)] Life-sustaining medical treatment--Treatment that, based on reasonable medical judgment, sustains the life of an individual and without which the individual will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered necessary to provide comfort care or any other medical care provided to alleviate an individual's pain.

(42) [(41)] Mechanical restraint--Any device attached or adjacent to an individual's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. The term does not include a protective device.

(43) [(42)] Medical emergency--Any illness or injury that requires immediate assessment and treatment by medical staff for conditions considered to be life threatening, including, but not limited to, respiratory or cardiac arrest, choking, extreme difficulty in breathing, status epilepticus, allergic reaction to an insect sting, snake bite, extreme pain in the chest or abdomen, poisoning, hemorrhage, loss of consciousness, sudden loss of function of a body part, injuries resulting in broken bones, possible neck or back injuries, or severe burns.

(44) [(43)] Medical intervention--Treatment by a licensed medical doctor, osteopath, podiatrist, dentist, physician assistant, or advanced practice nurse in accordance with general acceptable clinical practice.

(45) [(44)] Medical restraint--A health-related protection prescribed by a primary care provider (PCP) or dentist that is necessary for the conduct of a specific medical or dental procedure, or is only necessary for protection during the time that a medical or dental condition exists, for the purpose of preventing an individual from inhibiting or undoing medical or dental treatment. Medical restraint includes pre-treatment sedation.

(46) [(45)] Medical restraint plan--A component of the ISP action plan that provides instructions for staff on how to effectively and safely carry out medical restraint procedures. The plan is developed with input from the PCP or dentist and meaningful input from the individual and LAR and includes a description of the individual's behaviors that do not allow for a safe and effective implementation of needed medical or dental procedures, information about the types of restraints that have been most effective with the individual, a description of the criteria for releasing the restraint, and reporting requirements. A medical restraint plan is not considered a therapeutic intervention and may be adjusted depending upon the individual's progress in the ISP action plan.

(47) Medication-related emergency--A situation in which it is immediately necessary to administer medication to an individual to prevent:

(A) imminent probable death or substantial bodily harm to the individual because the individual:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the individual is unable to satisfy the individual's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the individual overtly or continually makes or commits.

(48) [(46)] Mental health services provider--Has the meaning assigned in Texas Civil Practice and Remedies Code, Chapter 81.

(49) [(47)] Peer review--A review of clinical or professional practice of a doctor, pharmacist, licensed vocational nurse, or registered nurse conducted by his or her professional peers.

(50) [(48)] Perpetrator--A person who has committed an act of abuse, neglect, or exploitation.

(51) [(49)] Person--Includes a corporation, organization, governmental subdivision or agency, or any other legal entity.

(52) [(50)] Physical restraint--Any manual method that restricts freedom of movement or normal access to one's body, including hand or arm holding to escort an individual over his or her resistance to being escorted. Physical restraint does not include brief and limited use of physical guidance, positioning, or prompting techniques used to redirect an individual or assist, support, or protect the individual during a functional therapeutic or physical exercise activity; response blocking and brief redirection used to interrupt an individual's limbs or body without the use of force so that the occurrence of challenging behavior is prevented; holding an individual, without the use of force, to calm or comfort, or hand holding to escort an individual from one area to another without resistance from the individual; and response interruption used to interrupt an individual's behavior, using facility-approved techniques.

(53) [(51)] Physician on duty--The physician designated by the facility's medical director to provide medical care or respond to emergencies outside regular working hours.

(54) [(52)] Positive behavior support plan (PBSP)--A comprehensive, individualized plan that contains intervention strategies designed to modify the environment, teach or increase adaptive skills, and reduce or prevent the occurrence of target behaviors through interventions that build on an individual's strengths and preferences, without using aversive or punishment contingencies.

(55) [(53)] Preponderance of the evidence--The greater weight of evidence, or evidence that is more credible and convincing to the mind.

(56) [(54)] Primary care provider (PCP)--A physician, advanced practice nurse, or physician assistant who provides primary care to a defined population of patients. The PCP is involved in health promotion, disease prevention, health maintenance, and diagnosis and treatment of acute and chronic illnesses.

(57) [(55)] Primary contact--The person designated as the primary contact of an alleged victim of abuse, neglect, or exploitation, if the alleged victim is an adult with an intellectual disability who is unable to authorize the disclosure of protected health information and does not have a guardian.

(58) [(56)] Prone restraint--Any physical or mechanical restraint that places the individual in a face-down position. Prone restraint does not include when an individual is placed in a face-down position as a necessary part of a medical intervention, or when an individual moves into a prone position during an incident of physical restraint, if staff immediately begin an adjustment to restore the indi-

vidual to a standing, sitting, or side-lying position or, if that is not possible, immediately release the person. Prone restraint is prohibited.

(59) [~~(57)~~] Protection and advocacy organization--The protection and advocacy agent for Texas designated in accordance with the Code of Federal Regulations, Title 45, §1386.20.

(60) [~~(58)~~] Protective mechanical restraint for self-injurious behavior--A type of mechanical restraint applied before an individual engages in self-injurious behavior, for the purpose of preventing or mitigating the danger of the self-injurious behavior because there is evidence that the targeted behavior can result in serious self-injury when it occurs and intensive, one-to-one supervision and treatment have not yet reduced the danger of self-injury. Examples include, but are not limited to, protective head gear for head banging, arm splints for eye gouging, or mittens for hand-biting. The term does not include medical restraints or protective devices.

(61) [~~(59)~~] Protective mechanical restraint plan for self-injurious behavior--A component of the ISP action plan that provides instructions for staff on how to effectively and safely apply the protective mechanical restraint that is used to prevent or mitigate the effects of serious self-injurious behavior. The plan is developed with input from direct support professionals familiar with the individual and meaningful input from the individual and LAR, and includes a description of the individual's self-injurious behaviors, the type of restraint to be used, the restraint's maximum duration, and the circumstances to apply and remove the restraint. The plan must identify any low-risk situations when the restraint may be safely removed, what staff should do during those situations to continue to protect the individual from harm, and adjustments in staff instructions as progress is made for gradually eliminating the use of the restraints, including details on any specialized staff training and reporting. The plan is not considered a therapeutic intervention and is adjusted depending upon the individual's progress in the ISP action plan and an evaluation by the PCP that the individual's behavior is no longer at the dangerous level that is producing serious self-injury.

(62) Psychotropic medication--A medication that is prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorder and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. Psychotropic medication includes the following categories of medication:

(A) antipsychotics or neuroleptics;

(B) antidepressants;

(C) agents for control of mania or depression;

(D) antianxiety agents;

(E) sedatives, hypnotics, or other sleep-promoting drugs; and

(F) psychomotor stimulants.

(63) [~~(60)~~] Registered nurse--A nurse licensed by the Texas Board of Nursing to practice professional nursing in Texas.

(64) [~~(61)~~] Registries--

(A) The Nurse Aide Registry maintained by DADS in accordance with §94.12 of this title (relating to Findings and Inquiries); and

(B) The Employee Misconduct Registry maintained by DADS in accordance with Chapter 93 of this title (relating to Employee Misconduct Registry (EMR)).

(65) [~~(62)~~] Reporter--A person who reports an allegation of abuse, neglect, or exploitation.

(66) [~~(63)~~] Restraint monitor--A designated facility employee who has received competency-based training and demonstrated proficiency in the application and assessment of restraints, who has experience working directly with individuals with developmental disabilities, and who is trained to conduct a face-to-face assessment of the individual who was restrained and the staff involved in the restraint to review the application and results of the restraint.

(67) [~~(64)~~] Retaliation--An action intended to inflict emotional or physical harm or inconvenience on a person including harassment, disciplinary action, discrimination, reprimand, threat, and criticism.

(68) [~~(65)~~] SSLC--A state supported living center.

(69) [~~(66)~~] State office mortality review--A quality assurance activity to review data related to the death of an individual to identify trends, best practices, training needs, policy changes, or facility or systemic issues that need to be addressed to improve services at facilities.

(70) [~~(67)~~] Supine restraint--Any physical or mechanical restraint that places the individual on his or her back. Supine restraint does not include when an individual is placed in a supine position as a necessary part of a medical restraint, or when an individual moves into a supine position during an incident of physical restraint, if staff immediately begin an adjustment to restore the individual to a standing, sitting, or side-lying position or, if that is not possible, immediately release the person. Supine restraint does not include persons who have freedom of movement in a hospital bed or dental chair that is at a reclined position. Supine restraint is prohibited.

(71) THSC--Texas Health and Safety Code.

(72) Treating physician--A physician who has provided medical or psychiatric treatment or evaluation and has an ongoing treatment relationship with an individual.

(73) [~~(68)~~] Unconfirmed--Term used to describe an allegation that DFPS determines is not supported by the preponderance of evidence.

(74) [~~(69)~~] Unfounded--Term used to describe an allegation that DFPS determines is spurious or patently without factual basis.

(75) [~~(70)~~] Unusual incident--An event or situation that seriously threatens the health, safety, or life of an individual.

(76) [~~(71)~~] Volunteer--A person who is not part of a visiting group, who has active, direct contact with an individual, and who does not receive compensation from DADS other than reimbursement for actual expenses.

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 September 29, 2014.

TRD-201404578
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: November 9, 2014
For further information, please call: (512) 438-4162

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SUBCHAPTER H. CONSENT OR AUTHORIZATION FOR ADMINISTRATION OF PSYCHOTROPIC MEDICATION

40 TAC §§3.801 - 3.805

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 592, Subchapter F, which governs the administration of psychotropic medication in state facilities.

The new sections implement Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§592.151 - 592.160.

§3.801. Legally Adequate Consent or Authorization for Non-Emergency Administration of Psychotropic Medication.

(a) A facility must obtain legally adequate consent or authorization for non-emergency administration of psychotropic medication in accordance with subsection (b) or (c) of this section, unless the administration of the medication is authorized by an order issued under THSC §592.156:

(1) before the initial administration of each class of psychotropic medication and annually thereafter; and

(2) before the administration of a dosage of psychotropic medication that is not within the dosage range for which consent has been given.

(b) Legally adequate consent for the administration of psychotropic medication to an individual may be provided in accordance with subsection (a) of this section by the following:

(1) the individual, if the individual has capacity to provide consent; or

(2) the individual's LAR, if the individual has an LAR.

(c) The director of the facility in which the individual resides or the director's designee may authorize the administration of psychotropic medication to an individual if the individual:

(1) has been:

(A) committed to a facility involuntarily under:

(i) THSC, Chapter 593, Subchapter C;

(ii) Texas Code of Criminal Procedure, Chapter 46B or 46C; or

(iii) Texas Family Code, Chapter 55; or

(B) transferred to a facility under the Texas Mental Health Code, THSC, Title 7, Subtitle C;

(2) does not have capacity to provide legally adequate consent for the administration of psychotropic medication;

(3) does not have an LAR; and

(4) has not refused to take the medication, as described in §3.803(b) of this subchapter (relating to Refusal of Psychotropic Medication).

(d) Before obtaining legally adequate consent to administer psychotropic medication to an individual in accordance with subsections (a) and (b) of this section, the individual's treating physician, or the treating physician's designee, must provide the following information in simple, non-technical terms in the individual's or LAR's primary language or mode of communication:

(1) the name of the psychotropic medication;

(2) the class of psychotropic medication, the dosage range, the route of administration, and proposed course of the medication;

(3) the indication for the medication's use, including the rationale for using the psychotropic medication if the medication is being used for a purpose or in a manner that has not been approved by the FDA;

(4) the diagnosis that is the specific condition to be treated by the psychotropic medication;

(5) the symptoms of the condition being treated and the target symptoms that the facility will monitor;

(6) the beneficial effects expected from the psychotropic medication;

(7) the probable, clinically significant side effects and risks associated with the psychotropic medication;

(8) the generally accepted alternative treatments to the psychotropic medication, if any, and an explanation of why the treating physician recommends that the alternatives be rejected;

(9) an explanation of the probable health care consequences of not consenting to the psychotropic medication;

(10) an explanation that the individual or LAR has the right to refuse or revoke consent to the administration of the psychotropic medication at any time;

(11) an explanation that refusal or revocation of consent will not prevent the individual from receiving care and services in the future; and

(12) an offer to answer any questions from the individual or LAR concerning treatment with the psychotropic medication.

(e) An individual's or LAR's consent is evidenced in the individual's clinical record by a completed and signed consent form, in a format approved by DADS.

(f) If the treating physician designates another person to provide the information specified in subsection (d) of this section, then no later than two days, excluding Saturday, Sunday, and a national or state holiday listed in Texas Government Code §662.003(a) or (b), after the designee provides the information, the treating physician must meet with the individual and, if appropriate, with the individual's LAR who provided the consent, to review the information and answer any questions.

(g) A facility must review a consent to psychotropic medication given in accordance with subsection (b) of this section with an individual or an individual's LAR at least annually. The review must include a discussion of the information specified in subsection (d) of this section, as well as a discussion of the individual's or LAR's decision regarding continuation of the psychotropic medication.

§3.802. Administration of Psychotropic Medication during a Medication-Related Emergency.

(a) A facility may administer psychotropic medication to an individual who is having a medication-related emergency without consent, authorization, or a court order.

(b) If psychotropic medication is administered in accordance with subsection (a) of this section, a physician must:

(1) issue an order to administer the psychotropic medication in a manner that is consistent with clinically appropriate medical care and that is the least restrictive of the individual's personal liberty; and

(2) document in the individual's clinical record, in specific medical or behavioral terms, the necessity of the order and that the physician has evaluated but rejected other generally accepted, less intrusive forms of treatment, if any.

§3.803. Refusal of Psychotropic Medication.

(a) An individual may refuse to take psychotropic medication.

(b) An individual's refusal to take psychotropic medication may be demonstrated through written or oral communication or behavior that indicates an objection to the medication, including refusing or pretending to swallow medication, or refusing to submit to hypodermic injection of medication.

(c) An individual's LAR may refuse to consent to the administration of psychotropic medication on the individual's behalf.

(d) A facility must document in the clinical record of an individual who refuses to take psychotropic medication or whose LAR refuses to consent to the administration of psychotropic medication on the individual's behalf:

(1) the individual's refusal to take psychotropic medication;

(2) the manner in which the individual demonstrated his refusal to take the psychotropic medication; and

(3) the LAR's refusal to consent to the administration of psychotropic medication on the individual's behalf.

(e) A facility must not administer psychotropic medication to an individual whose LAR refuses to consent to the administration of psychotropic medication on the individual's behalf unless the individual is having a medication-related emergency.

(f) A facility must not administer psychotropic medication to an individual who refuses to take the medication unless:

(1) the individual is having a medication-related emergency;

(2) the refusing individual's LAR has consented to the administration;

(3) the administration of the psychotropic medication is authorized by:

(A) an order issued under THSC §592.156 (relating to Hearing and Order Authorizing Psychotropic Medication); or

(B) an order issued under Texas Code of Criminal Procedure, Article 46B.086 (relating to Court-Ordered Medications).

§3.804. Order Authorizing Administration of Psychotropic Medication.

In accordance with THSC §592.154, a treating physician may file an application in a probate court or a court with probate jurisdiction on behalf of the State of Texas for an order authorizing the administration of a psychotropic medication to an individual if:

(1) the individual refuses to take the psychotropic medication;

(2) the treating physician believes that the individual lacks the capacity to make a decision regarding the administration of the psychotropic medication;

(3) the treating physician determines that the psychotropic medication is the proper course of treatment for the individual; and

(4) the individual:

(A) has been committed to a facility involuntarily under:

(i) THSC, Chapter 593, Subchapter C;

(ii) Texas Code of Criminal Procedure, Chapter 46B or 46C; or

(iii) Texas Family Code, Chapter 55;

(B) has been transferred to a facility under the Texas Mental Health Code, THSC, Title 7, Subtitle C; or

(C) has had an application for the individual's commitment to a facility filed in accordance with THSC Chapter 593, Subchapter C.

§3.805. Effect of Order.

(a) An individual's consent to take a psychotropic medication is not valid and may not be relied on if the individual is subject to an order issued under THSC §592.156.

(b) The issuance of an order under THSC §592.156 is not a determination or an adjudication of mental incompetency and does not limit in any other respect the individual's rights as a citizen or the individual's property rights or legal capacity.

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 September 29, 2014.

TRD-201404579
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: November 9, 2014
For further information, please call: (512) 438-4162

CHAPTER 8. CLIENT CARE--INTELLECTUAL DISABILITY SERVICES
SUBCHAPTER I. CONSENT TO TREATMENT WITH PSYCHOTROPIC MEDICATION--STATE FACILITIES

40 TAC §§8.201 - 8.209

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

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability

Services (DADS), the repeal of Subchapter I, consisting of §8.201, concerning purpose; §8.202 concerning application; §8.203, concerning definitions; §8.204, concerning general information; §8.205, concerning informed consent: persons admitted under the voluntary or order of protective custody (OPC) provisions of the PMRA; §8.206, concerning informed consent: persons involuntarily committed under the provisions of the PMRA or other provisions (e.g., Code of Criminal Procedures, Family Code); §8.207, concerning documentation of informed consent; §8.208, concerning exhibits; and §8.209, concerning distribution, in Chapter 8, Client Care--Intellectual Disability Services.

BACKGROUND AND PURPOSE

The purpose of the repeal is to allow for the adoption of new rules regarding the administration of psychotropic medication in 40 TAC Chapter 3, which are proposed elsewhere in this issue of the *Texas Register.*

SECTION-BY-SECTION SUMMARY

The repeal of §8.201 removes rules regarding the purpose of Subchapter I.

The repeal of §8.202 removes rules regarding the application of the subchapter.

The repeal of §8.203 removes rules regarding the definition of terms used in Subchapter I.

The repeal of §8.204 removes rules regarding general information relating to consent to treatment with psychotropic medication.

The repeal of §8.205 removes rules regarding informed consent relating to persons admitted under the voluntary or order of protective custody provisions in Texas Health and Safety Code (THSC), Title 7, Subtitle D.

The repeal of §8.206 removes rules regarding informed consent relating to persons involuntarily committed under the provisions of THSC, Title 7, Subtitle D.

The repeal of §8.207 removes rules regarding documentation of informed consent to treatment with psychotropic medication.

The repeal of §8.208 removes rules regarding the availability of departmental forms for consent to treatment with psychotropic medication.

The repeal of §8.209 removes rules regarding distribution of the provisions of the subchapter.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for each year of the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, because there is no cost to comply with the repeal.

PUBLIC BENEFIT AND COSTS

Scott Schalchlin, Assistant Commissioner for State Supported Living Centers, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the sections is the removal of rules that will be replaced with proposed new rules regarding the administration of psychotropic medication in state facilities that are consistent with Senate Bill 34, 83rd Legislature, Regular Session, 2013.

Mr. Schalchlin anticipates that there will not be an economic cost to persons who are required to comply with the repeal. The repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Eric Moorad at (512) 438-3169 in DADS SSLC/Quality Assurance. Written comments on the proposal may be submitted by mail to Texas Register Liaison, Legal Services-14R08, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 14R08" in the subject line.

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 592, Subchapter F, which governs the administration of psychotropic medication in state facilities.

The repeal implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§592.151 - 592.160.

§8.201. Purpose.

§8.202. Application.

§8.203. Definitions.

§8.204. General Information.

§8.205. Informed Consent: Persons Admitted under the Voluntary or Order of Protective Custody (OPC) Provisions of the PMRA.

§8.206. Informed Consent: Persons Involuntarily Committed under the Provisions of the PMRA or Other Provisions (e.g., Code of Criminal Procedures, Family Code).

§8.207. Documentation of Informed Consent.

§8.208. Exhibits.

§8.209. Distribution.

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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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 849. EMPLOYMENT AND TRAINING SERVICES FOR DISLOCATED WORKERS ELIGIBLE FOR TRADE BENEFITS

The Texas Workforce Commission (Commission) proposes amendments to the following sections of Chapter 849, relating to Employment and Training Services for Dislocated Workers Eligible for Trade Benefits:

Subchapter A. General Provisions, §§849.1 - 849.3

Subchapter B. Trade Services Responsibilities, §849.11 and §849.12

Subchapter C. Trade Services, §§849.21 - 849.23

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 849 rule change is to align changes to the Trade Adjustment Assistance (TAA) program statutes, Agency operations, and program requirements.

TAA is a federal program that provides a path for employment growth and opportunity through aid to workers who have lost their jobs as a result of foreign trade. The TAA program seeks to provide these trade-affected workers with opportunities to obtain the skills, resources, and support they need to become reemployed.

TAA offers a variety of benefits and services to support workers in their search for reemployment. This includes job training, job search and relocation allowances, and income support. The Commission's workforce partners administer these services using federal funds.

The Trade Act of 1974 has been amended numerous times since its enactment in January 1975 and has continued to evolve. The benefits and services available to adversely affected workers depend on which of the following versions of the Trade Act a worker is certified under:

--Trade Adjustment Assistance Reform Act of 2002: reauthorized the TAA program through Fiscal Year 2007;

--Trade and Globalization Adjustment Assistance Act (TGAAA) of 2009: overhauled the TAA program and expanded TAA coverage to more workers and firms in the service sector, and expanded workers' opportunities for training, health insurance coverage, and reemployment;

--Omnibus Trade Act of 2011: extended the TGAAA of 2009 amendments for six weeks;

--Trade Adjustment Assistance Extension Act (TAAEA) of 2011: changed the group eligibility requirements and individual benefits and services available under TAA for some workers; and

--Reversion 2014: the sunset provisions of the TAAEA, effective January 1, 2014, which largely revert the TAA program to the provisions of the 2002 amendments with some provisions carried forward from the 2011 TAAEA.

Rule revisions are needed to implement the changes regarding program requirements, individual benefits, and services available.

To ensure appropriate delivery of services, amendments are necessary to address statutory changes and clarify operational and procedural guidance. These changes include moving functions from the state level to the Board level that update roles and responsibilities as well as better defining the responsibilities of participants.

The intent of these amendments is to provide maximum flexibility for the Boards, ensure compliance with laws and regulations, and integrate and align the Trade program requirements with other workforce programs.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§849.1. Purpose

Section 849.1(a)(2), regarding the laws under which coordination and integration of services to dislocated workers are conducted, adds reference to the Trade Act, including the federal statutes relating to the Trade Act of 1974.

Section 849.1(a)(4), referencing the Trade Act and the federal statutes relating to the Trade Act of 1974, is removed.

§849.2. Definitions

Section 849.2(1), the definition of "Alternative Trade Adjustment Assistance for Older Workers" (ATAA):

--adds Reemployment Trade Adjustment Assistance (RTAA), which is similar to the ATAA benefit. The availability of RTAA depends on the Trade law under which the US Department of Labor (DOL) issues a Trade certification. Both ATAA and RTAA provide a subsidy for older workers who secure subsequent employment; and

--removes reference to the requirement that new employment must be within 26 weeks of separation because eligibility standards for ATAA and RTAA are different.

New §849.2(2) defines "benchmarking," as a process established by the Trade Adjustment Extension Act of 2011 (TAAEA) to ensure worker success by monitoring workers' academic status and progress in training. Benchmarking is conducted no less often than once every sixty (60) days and designed to monitor and ensure the worker progresses toward completing the approved training based on:

--maintaining satisfactory academic standing; and

--staying on schedule to complete training within the time frame identified in the approved training plan.

New §849.2(5), the definition of "HCTC--Health Coverage Tax Credit," is removed. HCTC expired January 1, 2014; TAA participants will no longer receive HCTC to assist them in paying their health coverage premiums.

New §849.2(6), the definition of "Individual Employment Plan," is removed.

New §849.2(6) defines "job search allowance" as a cash benefit provided to Trade-certified workers to support out-of-area job search when suitable employment is not available within the Commission-established local commuting area. Trade-certified workers receive a job search allowance as a benefit to support out-of-area job search.

New §849.2(8) defines "relocation allowance," as a cash benefit provided to a Trade-certified worker to support relocation of the worker's household and family when suitable employment is not available to the worker within the Commission-established local commuting area and relocation is necessary to secure suitable employment.

New §849.2(9) defines "Reemployment and Training Plan" (REP), as an employability development plan and service strategy that identifies the results of a comprehensive and objective assessment of the participant's knowledge, skills, abilities, and interests; employment goals; a description of training services; the appropriate combination of services for the participant to achieve employment goals and objectives; and the benchmarks for successful completion of the plan.

New §849.2(10) clarifies the definition of "suitable employment" by removing "prior to a referral to Trade-approved training." Suitable employment is any employment that meets the requirements of 19 United States Code (USC) §2296 and results in work of a substantially equal or higher skill level as compared to the worker's past adversely affected employment with wages of not less than 80 percent of the worker's average weekly wage.

New §849.2(11) amends the definition of "Trade Act" to clarify that the Trade Act of 1974, as amended, includes the Trade Adjustment Assistance Reform Act of 2002; the Trade and Globalization Adjustment Assistance Act of 2009; the Omnibus Trade Act of 2010; the Trade Adjustment Assistance Extension Act of 2011; and the sunset provisions of the Trade Adjustment Assistance Extension Act of 2011, referred to as Reversion 2014.

New §849.2(17) amends the definition of "waiver of the training requirement" to specify that a waiver must be approved by state merit staff. Only state merit staff can approve services and benefits for Trade-certified workers.

Certain paragraphs have been renumbered to reflect additions.

§849.3. Trade Service Strategy

Section 849.3(b)(3) clarifies that training supported under the Trade Act may include demand and targeted occupations as well as occupations in which there is a reasonable expectation of employment.

Section 849.3(c) clarifies that coenrollment with Workforce Investment Act (WIA) services must not interfere with the timely provision of TAA services.

Section 849.3(d)(1) - (5) is removed.

New §849.3(d)(1) - (12) retains the services previously located in §849.3(d)(1) - (5) and adds additional services, set forth in the order they are provided. Boards must ensure that the following services are provided to dislocated workers:

(1) Explanation of benefits and services available under the Trade Act, to include applicable deadlines;

(2) Assessment of education, skills, and service needs;

(3) Information on training available locally and regionally, including information on how to apply for financial aid supported under the Higher Education Act of 1965;

(4) Individual career counseling, including job search and placement counseling;

(5) Short-term prevocational services;

(6) Issuance of a waiver of the training requirement where suitable work is unavailable, training is determined not to be feasible or appropriate, and the worker meets applicable eligibility criteria;

(7) Development of an REP;

(8) Referral to training services where suitable employment is unavailable;

(9) Assistance in filing requests for job search and/or relocation allowances;

(10) Support services available under the WIA Title I dislocated worker program;

(11) Case management; and

(12) Follow-up services upon completion of training.

SUBCHAPTER B. TRADE SERVICES RESPONSIBILITIES

The Commission proposes the following amendments to Subchapter B:

§849.11. General Board Responsibilities

Section 849.11(c)(4), relating to Boards' monitoring requirements, adds benchmarking as the required means of ensuring progress toward goals and objectives.

Section 849.11(c)(5), the requirement that the Commission be notified if a participant drops out of training, is removed because this is no longer a monitoring responsibility or requirement of the Boards.

Certain paragraphs have been renumbered to reflect additions.

§849.12. Participant Responsibilities

Section 849.12(1) adds that, in addition to Unemployment Insurance, dislocated workers eligible for Trade benefits must apply for Trade Readjustment Allowances (TRA).

Section 849.12(5) adds that dislocated workers eligible for Trade benefits are required to accept a job offer "and/or retain employment," if the position meets the criteria for suitable employment.

Section 849.12(7) specifies that dislocated workers eligible for Trade benefits are required to "fully participate in Trade-approved training."

Section 849.12(8) specifies that dislocated workers eligible for Trade benefits are required to notify the case manager prior to modifying coursework rather than within one week of having dropped out.

New §849.12(9) requires dislocated workers eligible for Trade benefits to maintain a satisfactory academic status and progress in training as stipulated in the REP.

Certain paragraphs have been renumbered to reflect additions.

SUBCHAPTER C. TRADE SERVICES

The Commission proposes the following amendments to Subchapter C:

§849.21. Activities Prior to Certification of a Trade Petition

Section 849.21(a) replaces the reference to "Texas Workforce Centers" with "Workforce Solutions Offices" to clarify that Workforce Solutions Offices provide services.

Section 849.21(b) removes the reference to "in local workforce development areas."

Section 849.21(b)(3) specifies that when filing Trade petitions, Boards must ensure layoff assistance is provided to companies, workers, and labor unions.

Section 849.21(b)(6)(A)(iii) removes the requirement to provide HCTC information during orientation to Trade benefits. HCTC expired on January 1, 2014; therefore, TAA participants will no longer receive HCTC to assist them in paying their health coverage premiums.

Section 849.21(b)(6)(A)(v)(I) - (III), the requirement to provide a signed waiver of training ensuring eligibility for HCTC and other Trade benefits that have regulatory time limits, is removed.

Section 849.21(b)(7) specifies that Boards must coordinate with the appropriate UI field specialist when providing layoff assistance.

Certain clauses and subclauses have been renumbered to reflect additions.

§849.22. Post Certification of a Trade Petition

Section 849.22(a) sets forth in new paragraphs (1) and (2) that Boards must ensure that:

(1) Trade-certified workers referred to WIA intensive or training services are coenrolled in WIA dislocated worker services, consistent with WIA eligibility criteria, the needs of the worker, and a Board's policies and procedures; and

(2) the coenrollment of Trade-certified workers in WIA Title I dislocated worker services shall not interfere with the timely provision of TAA services.

Section 849.22(b) clarifies that Boards must ensure trade-affected workers are provided WIA intensive or training services and adds three additional criteria--described in new §849.22(b)(7) - (9)--to be met and documented in the REP.

Section 849.22(b)(4) removes the requirement that training must be in the commuting area as defined in the Texas Unemployment Compensation Act.

Section 849.22(b)(6) retains the provision that training is available at a reasonable cost for the selected occupation and removes the language stating that the availability is "based on a review of Board-approved training as set forth in §849.23(a)(1) - (4) of this subchapter in the workforce area for like training."

New §849.22(b)(7) - (9) adds the following as criteria that Boards must ensure, prior to referring a trade-affected worker to WIA intensive or training services, are met and documented in the REP:

(7) Training can be fully completed and the degree or credential secured within the maximum time frames established under the trade-affected worker's Trade Act certification;

(8) No portion of required training costs are borne by the worker; and

(9) Part-time training is approved only where permitted by the trade-affected worker's Trade Act certification, and the worker is aware that TRA support during periods of part-time training will be unavailable.

Section 849.22(c)(1) - (3) is removed.

New §849.22(c) provides that Boards must ensure the approval of Trade benefits and services is accomplished by state merit staff, including approval of training, waiver issuance, and waiver continuation, and the associated review and approval of waiver continuation.

New §849.22(d) provides that Boards must ensure that any denial of Trade benefits or services is accomplished by forwarding a recommendation to the Agency's TAA unit for issuance of a formal appealable decision.

§849.23. Training Referrals

Section 849.23(a)(1) - (5) specifies that Boards must ensure that referrals to Trade-funded training are Board approved, and that training:

(1) meets the nine criteria established in §849.22(b)(1) - (9);

(2) uses training providers that are licensed under applicable state law or exempt from such requirements, or possessing accreditation recognized by the US Department of Education;

(3) is occupationally specific;

(4) meets the needs of employers for demand or targeted occupations, or ensures the participant has a reasonable expectation of employment; and

(5) can be completed and a degree or credential secured within the maximum time frame established under the worker's Trade certification.

Section 849.23(a)(1)(B) removes the requirement for the Commission to approve prevocational or vocational skills training referrals.

Section 849.23(a)(2) removes the requirement for training to meet the time limitations for Trade benefits.

New §849.23(a)(4) clarifies that training must offer a reasonable expectation of employment.

New §849.23(a)(5) clarifies the requirement that training can be completed with a degree or credential secured within the statutory time frames established under the worker's Trade certification.

Section 849.23(b)(1) adds that employer-based training includes on-the-job training, customized training, and apprenticeship programs.

Section 849.23(b)(3) specifies that workers' remedial training, including literacy, particularly English as a Second Language, Adult Education and Literacy, or GED training, must be considered.

Section 849.23(b)(3)(A) removes the requirement for the training provider to submit amendments to the IEP.

Section 849.23(b)(3)(B) removes the requirement that the case manager approves amendments before the Commission makes the final determinations regarding extended training.

Certain paragraphs have been renumbered to reflect additions.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

Richard C. Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Workforce Development Division, has 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 proposed rules will be to align changes to TAA statutes, Agency operations, and program requirements.

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

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on July 22, 2014. The Commission also conducted a conference call with Board executive directors and Board staff on July 25, 2014, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§849.1 - 849.3

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§849.1. Purpose.

(a) The purpose [~~purposes~~] of this chapter is [~~rule are~~] to ensure:

(1) statewide availability of services under the federal and state statutes and regulations relating to services to dislocated workers eligible for Trade benefits through the Workforce Solutions Offices [~~Texas Workforce Centers,~~] consistent with Chapter 801 of this title relating to Local Workforce Development Boards [~~the One-Stop Service Delivery Network~~];

(2) coordination and integration of services to dislocated workers eligible for Trade benefits through the Workforce Solutions Offices [~~Texas Workforce Centers~~] consistent with state law, the Trade Act, and the Workforce Investment Act (WIA). For the purposes of this subchapter, references to the "Trade Act" include references to the federal statutes relating to the Trade Act of 1974, as amended; and

(3) provision of Rapid Response services, as set forth in §849.21(b) of this chapter, upon receipt of a filed petition for Trade certification with the US [~~U.S.~~] Department of Labor (DOL). [~~; and~~]

[~~(4) co-enrollment of Trade-certified workers in WIA, as appropriate, consistent with the Trade Act and WIA. For purposes of this subchapter, references to the "Trade Act" shall include references to the federal statutes relating to the Trade Act of 1974 and the Trade Act of 2002.~~]

(b) The purposes of services to dislocated workers eligible for Trade benefits under the Trade Act [~~and WIA~~] are to:

(1) ensure that dislocated workers eligible for Trade benefits are assisted in rapid reattachment to employment;

(2) fund such services to develop or enhance the vocational skills necessary to meet employers' needs when rapid reattachment to the workforce cannot be obtained; and

(3) provide other such services, as may be funded under state or federal programs, for post-employment activities, as needed.

§849.2. Definitions.

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

(1) [ATAA--]Alternative Trade Adjustment Assistance for Older Workers/Reemployment Trade Adjustment Assistance (ATAA/RTAA)--[.]Benefits [are] available to workers in an eligible worker group who are at least 50 years of age and who obtain different, full-time employment following separation [within 26 weeks of separation] from adversely affected employment, at wages less than those earned in the adversely affected employment. These workers may receive up to half of the difference between the worker's old wage and the new wage, as set forth in the Trade Act.

(2) Benchmarking--a process conducted no less often than once every sixty (60) days and designed to monitor and ensure the worker progresses toward completing the approved training based on two criteria:

(A) Maintaining satisfactory academic standing; and

(B) Staying on schedule to complete training within the time frame identified in the approved training plan.

(3) [(2)] Bona Fide Application for Training--any document developed by a Board or provided by the Commission that meets the requirements of 20 CFR §617.3(h)(1)(i), and is signed and dated by the participant, which includes the participant's name, Trade petition number, and specific occupational training.

(4) [(3)] Contextual Learning--learning, which includes English and basic skills, presented in the context of the selected vocational skills training.

(5) [(4)] Employer-Based Training--training services specifically designed to meet an employer's staffing and skill needs, including on-the-job and customized training, and apprenticeship programs [as defined by WIA and the Trade Act].

(6) Job Search Allowance--cash benefit provided to Trade-certified workers to support out-of-area job search when suitable employment is not available within the Commission-established local commuting area.

[(5) HCTC--Health Coverage Tax Credit. This benefit provides a tax credit of 65% of the cost of coverage of the eligible individual and qualified family members under qualified health insurance, as set forth in the Trade Act.]

[(6) IEP--Individual Employment Plan. An individual employment plan and service strategy that must identify the results of a comprehensive and objective assessment of the knowledge, skills, abilities, and interests; employment goals; a description of the training services; and the appropriate combination of services for the participant to achieve employment goals and objectives.]

(7) Rapid Response Services--as defined by WIA §134; 20 CFR 652 Subpart. C; 20 CFR §665.300, §665.310, §665.320; and the Trade Act.

(8) Relocation allowance--A cash benefit provided to a Trade-certified worker to support relocation of the worker's household and family when suitable employment is not available to the worker within the Commission-established local commuting area and relocation is necessary to secure suitable employment.

(9) Reemployment and Training Plan (REP)--An employability development plan and service strategy that identifies the results of a comprehensive and objective assessment of the participant's knowledge, skills, abilities, and interests; employment goals; a description of training services; the appropriate combination of services for the participant to achieve employment goals and objectives; and benchmarks for successful completion of the plan.

(10) [(8)] Suitable Employment--any employment [prior to a referral to Trade-approved training] that meets the requirements of 19 USC [U.S.C.] §2296 (as referenced in 20 CFR 617 Subpart. C, Reemployment Services, and in particular §617.22(a)(1)(i)), which is employment that results in work of a substantially equal or higher skill level as compared to [than] the worker's past adversely affected employment, with wages of not less than 80 percent [%] of the worker's average weekly wage.

(11) [(9)] Trade Act--the federal statutes relating to Trade Adjustment Assistance[,] and Trade Readjustment Allowances [TRAs]. For purposes of this rule, references to the "Trade Act" shall include references to the federal statutes relating to the Trade Act of 1974, as amended, which include [and] the Trade Adjustment Assistance Reform Act of 2002; the Trade and Globalization Adjustment Assistance Act of 2009; the Omnibus Trade Act of 2010; the Trade Adjustment Assistance Extension Act of 2011; and the sunset provisions of the Trade Adjustment Assistance Extension Act of 2011, referred to as Reversion 2014.

(12) [(10)] Trade-Affected Worker--any dislocated worker, as defined in WIA §134, or secondarily impacted worker as referenced in 19 USC [U.S.C.] §2272, who states that his or her job was adversely affected by trade, and [or] has filed, or whose company has filed, or who has been assisted in filing a petition for Trade certification with the US [U.S.] Department of Labor (DOL).

(13) [(11)] Trade Benefits--benefits available to dislocated workers certified by DOL as eligible for Trade benefits, which are funded through the federal Trade program administered by DOL.

(14) [(12)] Trade-Certified Worker--any worker meeting the definition of trade-affected worker who is covered by a certification of eligibility as a result of a petition and determination of certification under 19 USC [U.S.C.] §2273 by the Secretary of DOL [the U.S. Department of Labor].

(15) [(13)] [TRAs--]Trade Readjustment Allowances (TRA)--[.]Income-support benefits available to certain trade-affected workers.

(16) [(14)] [UI--]Unemployment Insurance (UI)--UI program[,] as set forth in Texas Labor Code §201.001 *et seq.*

(17) [(15)] Waiver of the Training Requirement--a [any] document developed [by a Board or provided] by the Agency, which may be adapted by a Board, that [Commission that meets the requirements of the Trade Act, and is approved by state merit staff, which recommends] waiving the requirement to be enrolled in Trade-funded training in order to receive TRA [TRAs and the HCTC].

(18) [(16)] WARN--The Worker Adjustment and Retraining Notification Act, as set forth in WIA and the Trade Act.

§849.3. Trade Service Strategy.

(a) Boards shall ensure that their strategic planning process includes an analysis of the local labor market to:

(1) determine employer needs;

(2) determine emerging, targeted, and demand occupations;

(3) identify employment opportunities, which include those with a potential for career advancement; and

(4) identify employer-based training opportunities.

(b) Boards shall set local policies for a Trade service strategy that coordinate various service delivery approaches to:

(1) assist dislocated workers eligible for Trade benefits in obtaining suitable employment as an alternative to referral to training;

(2) promote the use of WIA core and intensive services to support the rapid reattachment to the workforce;

(3) refer to prevocational and vocational training in demand and targeted occupations, or occupations in which there is a reasonable expectation of employment; and

(4) assist in job retention and career advancement.

(c) Boards shall ensure that dislocated workers eligible for Trade benefits, who are unable to find suitable employment through WIA core services, are coenrolled [co-enrolled] in WIA Title I dislocated worker services consistent with WIA eligibility criteria, the needs of the worker, and the policies and procedures of the Board. The coenrollment of workers into WIA Title I dislocated worker services shall not interfere with the timely provision of TAA services [for referral to Trade-funded intensive and training services].

(d) Boards shall ensure that dislocated workers eligible for Trade benefits receive the following services:

(1) Explanation of benefits and services available under the Trade Act, to include applicable deadlines;

(2) Assessment of education, skills, and service needs;

(3) Information on training available locally and regionally, including information on how to apply for financial aid supported under the Higher Education Act of 1965;

(4) Individual career counseling, including job search and placement counseling;

(5) Short-term prevocational services;

(6) Issuance of a waiver of the training requirement where suitable work is unavailable, training is determined not to be feasible or appropriate, and the worker meets applicable eligibility criteria;

(7) Development of an REP;

(8) Referral to training services where suitable employment is unavailable;

(9) Assistance in filing requests for job search and/or relocation allowances;

(10) Support services available under the WIA Title I dislocated worker program;

(11) Case management; and

(12) Follow-up services upon completion of training.

[(d) Boards shall ensure that dislocated workers eligible for Trade benefits receive the following services:]

[(1) career counseling;]

[(2) job development and placement;]

[(3) case management;]

[(4) follow-up services upon completion of training; and]

[(5) support services, such as child care and transportation, funded through other sources based on applicable Board policy and procedure.]

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 September 23, 2014.

TRD-201404527
Laurie Biscoe
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: November 9, 2014
For further information, please call: (512) 475-0829

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SUBCHAPTER B. TRADE SERVICES RESPONSIBILITIES

40 TAC §849.11, §849.12

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§849.11. General Board Responsibilities.

(a) Board Planning. A Board shall amend and modify its integrated workforce training and services plan to incorporate and coordinate the design, policy development, and management of the delivery of Trade activities and support services with the delivery of other workforce employment, training, and educational services identified in Texas Government Code §2308.251 *et seq.,* as well as other training and services included in the One-Stop Service Delivery Network as set forth in Chapter 801 of this title.

(b) Reporting. Boards shall ensure that documentation is maintained as required by the Commission, including documentation required in the Commission's automated reporting system.

(c) Monitoring. A Board shall ensure that the monitoring of program requirements and participant activities is part of the monitoring required under Chapter 802 [800], Subchapter D [I] of this title, relating to monitoring and, in particular, that the monitoring is ongoing and frequent, as determined appropriate by the Board, and consists of the following:

(1) timely and accurate reporting of data required for the provision of services to the trade-affected worker;

(2) tracking and reporting of participation;

(3) tracking and reporting of support services;

(4) ensuring progress toward achieving the goals and objectives through benchmarking, as established in the worker's REP and [Individual Employment Plan (IEP), as] defined [by WIA and] in §849.2(9) [§849.2(6)] of this chapter; and

[(5) notifying the Commission if a participant drops out of training; and]

(5) [(6)] monitoring other requirements, as prescribed by the Commission.

§849.12. Participant Responsibilities.

As required by the Trade Act, dislocated workers eligible for Trade benefits shall:

(1) apply for UI and TRA benefits in the manner, and pursuant to the time limits, prescribed by federal and state statutes and regulations; [and]

(2) contact the local Workforce Solutions Office [Center] and register for full-time work by enrolling in the Commission's automated job matching system;

(3) attend Rapid Response and Trade orientation activities;

(4) report to the employer to whom they are referred for suitable employment;

(5) accept a job offer and/or retain employment, if it meets the criteria for suitable employment;

(6) attend scheduled appointments with the case manager, if no suitable employment is available;

(7) fully participate in Trade-approved training [that is full time] as defined by the training provider or the Commission;

(8) notify the case manager prior to modifying approved Trade-funded training by adding or dropping coursework [within one week of having dropped out of approved Trade-funded training]; [and]

(9) maintain satisfactory academic status while enrolled in Trade-funded training and progressing in training as stipulated in the approved REP; and

(10) [(9)] report to employers, as referred by case managers, upon completing training.

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Laurie Biscoe
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: November 9, 2014
For further information, please call: (512) 475-0829

SUBCHAPTER C. TRADE SERVICES

40 TAC §§849.21 - 849.23

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§849.21. Activities Prior to Certification of a Trade Petition.

(a) Boards shall develop intervention strategies for providing Workforce Solutions Office [Texas Workforce Center] services, which ensure rapid, suitable, and long-term employment for trade-affected workers and dislocated workers eligible for Trade benefits.

(b) Boards shall ensure that layoff assistance is provided [in the local workforce development areas (workforce areas)] consistent with WIA Title I Rapid Response services, including the following:

(1) contacting the employer immediately on receipt of a filed Trade petition, WARN letter, or other notification of pending layoff;

(2) scheduling an on-site meeting with the employer and workers to ensure notification of Rapid Response services, including availability of UI mass claims;

(3) assisting companies, workers, and labor unions with filing [a] Trade petitions [petition] with DOL[, including a request for certification under ATAA];

(4) providing initial assessment of the workers' [workers] English, math, and reading levels as well as transferable skills and interests;

(5) registering for work for purposes of entering information in the Commission's automated job matching system;

(6) scheduling on- or off-site services for workers, including:

(A) orientation to federal Trade Act benefits, which includes the following:

(i) TRAs;

(ii) Trade Act-funded employment and training activities; and

[(iii) Health Coverage Tax Credit (HCTC);]

(iii) [(iv)] A bona fide application for training ensuring that the worker has been notified of all available benefits to which he or she may be eligible; and

[(v) A signed waiver of training ensuring eligibility for HCTC and other Trade benefits that have regulatory time limits. A waiver is appropriate if the worker has significant barriers to reemployment, such as]

[(I) obsolete skills in the worker's most recent occupation;]

[(II) similar skills to other workers representing an excess supply of similarly skilled workers in the labor market area; and]

[(III) limited English language proficiency coupled with limited or no skills in demand in the local labor market area.]

(B) orientation to labor market information, including wage data and the availability of demand and targeted occupations as defined by the Board; and[.]

(7) coordinating with the appropriate UI field specialist.

§849.22. Postcertification [Post-Certification] of a Trade Petition.

(a) Boards shall ensure that:

(1) Trade-certified workers referred to WIA intensive or training services are coenrolled [co-enrolled] in WIA dislocated worker services, consistent with WIA eligibility criteria, the needs of the worker, and a Board's policies and procedures; and.

(2) the coenrollment of Trade-certified workers in WIA Title I dislocated worker services shall not interfere with the timely provision of TAA services.

(b) Boards shall ensure that prior to referring a trade-affected worker to WIA intensive or training services, each of the following nine [six] criteria are met and documented in the REP [IEP]:

(1) no suitable employment is available;

(2) ability of the worker to benefit from training, based on a comprehensive assessment of the worker's knowledge, skills, and abilities;

(3) reasonable expectation of employment following completion of the training;

(4) training is reasonably available to the worker[, within the commuting area as defined in the Texas Unemployment Compensation Act];

(5) worker is qualified to undertake and complete the training based on a comprehensive assessment of the worker's knowledge, skills, abilities, and interests; [and]

(6) training is available at a reasonable cost [based on a review of Board-approved training as set forth in §849.23(a)(1) - (4) of this subchapter in the workforce area for like training] for the selected occupation;[.]

(7) training can be fully completed and the degree or credential secured within the maximum time frames established under the trade-affected worker's Trade Act certification;

(8) no portion of required training costs are borne by the worker; and

(9) part-time training is approved only where permitted by the trade-affected worker's Trade Act certification, and the worker is aware that TRA support during periods of part-time training will be unavailable.

(c) Boards shall ensure that the approval of Trade benefits and services is accomplished by state merit staff, including approval of training, waiver issuance, and the associated review and approval of waiver continuation.

(d) Boards shall ensure that any denial of Trade benefits or services is accomplished by forwarding a recommendation to the Agency's TAA unit for issuance of a formal appealable decision.

[(c) Boards shall ensure that referrals to training and amendments are submitted timely to the training provider and the Commission's Trade Unit for final determination, as appropriate, and include the following:]

[(1) a comprehensive assessment of the worker's knowledge, skills, abilities, and interests;]

[(2) an IEP based on the assessment and a Board's demand and targeted occupation list; and]

[(3) information regarding the occupation selected in the counseling process.]

§849.23. Training Referrals.

(a) Boards shall ensure that referrals to Trade-funded training are Board approved as set forth in [§849.23(a)(1)(A) - (C) of] this subsection, and that training[, prior to final Commission determination]:

(1) meets [Meet] the nine [six] criteria established in §849.22(b)(1) - (9) [§849.22(b)(1 - 6)] of this subchapter; [and]

(2) [(A)] uses training providers that are licensed under applicable state law or exempt from such requirements, or possessing accreditation recognized by the US Department of Education [are in the Eligible Training Provider Certification System as defined Chapter 841 of this title];

(3) [(B)] is occupationally specific; [prevocational or vocational skills training as approved by the Commission; or]

[(C) training that offers contextual learning opportunities for Limited English Proficient (LEP) clients as approved by the Board.]

[(2) Meet the time limitations for Trade benefits;]

(4) [(3)] meets [Meet] the needs of employers for demand or targeted occupations, or ensures [that] the participant has a reasonable expectation of employment [bona fide job offer]; and

(5) [(4)] can be [Be] completed and a degree or credential secured within [during] the maximum time frame established under the worker's Trade certification [104 weeks of Trade-funded benefits, unless otherwise determined by the Commission].

(b) Boards shall ensure that the following types of intensive and training services are considered:

(1) employer-based training, including on-the-job training, customized training, and apprenticeship programs;

(2) contextual vocational skills training, particularly for Limited English Proficiency customers [(LEP) clients]; and

(3) remedial training, including literacy, particularly English as a Second Language [(ESL)], Adult Education and Literacy [Basic Education (ABE)], or [certificate of general equivalence (]GED[)] training. [as stand-alone or linear training only when consistent with the needs of the participant to qualify for certain vocational skills training; or the requirements of employer-based training, as identified in the IEP; and]

[(A) the training provider has submitted amendments to the IEP; and]

[(B) the case manager has approved the amendments in order for the Commission to make the final determination for extended training.]

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 September 23, 2014.

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Laurie Biscoe
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
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For further information, please call: (512) 475-0829

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 36. GUN REGULATION

16 TAC §36.1

The Texas Alcoholic Beverage Commission withdraws the proposed amendment to §36.1, which appeared in the August 8, 2014, issue of the *Texas Register* (39 TexReg 6004).

Filed with the Office of the Secretary of State on September 23, 2014.

TRD-201404533
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: September 23, 2014
For further information, please call: (512) 206-3489

Thomas Huizar

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 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

SUBCHAPTER B. POWERS AND RESPONSIBILITIES

16 TAC §60.24

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to the existing rule at 16 TAC §60.24 without changes to the rules as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5855). The rule will not be republished.

The adopted amendment is necessary to comply with Texas Government Code §2110.008, which authorizes a state agency that has established an advisory committees/boards/councils to designate the date on which the committee will automatically be abolished.

The amendments to §60.24 remove the Licensed Court Interpreter Advisory Board from the list, extend the abolishment date of all boards from September 1, 2014, to September 1, 2024, and extend the abolishment date for the Licensed Breeder Advisory Committee from September 1, 2015, to September 1, 2024.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5855). The deadline for public comments was September 2, 2014. The Department received comments from six interested parties regarding the proposed rule during the 30-day public comment period.

Public Comment: One commenter would like hot comb pressing to be added to the cosmetology curriculum.

Department Response: This comment does not relate to the subject of this rulemaking and the Department does not recommend any changes to the proposed rule.

Public Comment: One commenter agrees with the rule proposal.

Department Response: The Department notes that the comment is in agreement with the proposed changes and appreciates the comment.

Public Comment: One commenter would like more enforcement on non-licensed electricians because they take jobs away from those that are licensed.

Department Response: This comment does not relate to the subject of this rulemaking and the Department does not recommend any changes to the proposed rule.

Public Comment: One commenter is in favor of keeping the advisory board for Air Conditioning and Refrigeration Contractors.

Department Response: The Department agrees that it is necessary to extend the date of the advisory board.

Public Comment: One commenter would also like more enforcement for electricians because certain rules are not being followed by those in the field.

Department Response: This comment does not relate to the subject of this rulemaking and the Department does not recommend any changes to the proposed rule.

Public Comment: One commenter asks several questions about how to receive a license once the cosmetology school she was attending has closed.

Department Response: This comment asks questions related to eyelash extension licensing and does not appear to raise any issues regarding the subject of this rulemaking. However, this comment was forwarded to our compliance division for response.

The amendments are adopted under Texas Occupations Code, Chapter 51, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department, and Texas Government Code, Chapter 2110, which authorizes state agencies to continue the existence of an advisory committee/board/council beyond the four-year period following the date of creation of the committee.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51, the Commission's and Department's enabling statute. In addition, the following statutes establishing advisory committees/boards/councils are affected: Texas Agriculture Code, Chapters 301 and 302 (Weather Modification and Control); Texas Health and Safety Code, Chapters 754 (Elevators, Escalators, and Related Equipment) and 755 (Boilers); Government Code, Chapter 469 (Elimination of Architectural Barriers); and Texas Occupations Code, Chapters 802 (Dog or Cat Breeders), 1151 (Property Tax Professionals), 1152 (Property Tax Consultants), 1302 (Air Conditioning and Refrigeration Contractors), 1305 (Electricians), 1601 (Barbers), 1602 (Cosmetologists), 1603 (Regulation of Barbering and Cosmetology), 1703 (Polygraph Examiners), 1802 (Auctioneers), 1901 (Water Well Drillers), 1902 (Water Well Pump Installers), 2052 (Combative Sports), 2303 (Vehicle Storage Facilities), 2306 (Vehicle Protection Product Warrantors), 2308 (Vehicle Towing and Booting), and 2309 (Used

Automotive Parts Recyclers). 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 September 26, 2014.

TRD-201404568
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: October 17, 2014
Proposal publication date: August 1, 2014
For further information, please call: (512) 463-8179

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER A. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE

DIVISION 6. PAROLE AND DISCHARGE

37 TAC §380.8583

The Texas Juvenile Justice Department (TJJD) adopts new §380.8583, concerning Subsidized Living Support Program, without changes to the proposed text as published in the May 16, 2014, issue of the *Texas Register* (39 TexReg 3810).

The new section establishes a program within TJJD to provide certain eligible youth on parole with financial subsidies to help with living expenses for a limited time. The new section republishes provisions of §380.8723, which is repealed in this issue of the *Texas Register.*

Changes from the current text of §380.8723 include specifying that the rule applies only to youth on parole, adding criteria for youth to be eligible for housing rental assistance, clarifying the limitations that affect the availability of subsidies, changing the list of allowable expenses, and deleting certain detailed information relating to a parole officer's ability to enter a youth's subsidized residence.

The justification for the new section is the promotion of positive community reentry for TJJD youth struggling to live independently or as wage earners for their families.

TJJD did not receive any public comments regarding the proposal.

The new section is adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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 September 23, 2014.

TRD-201404518
Chelsea Buchholtz
Chief of Staff
Texas Juvenile Justice Department
Effective date: October 15, 2014
Proposal publication date: May 16, 2014
For further information, please call: (512) 490-7014

SUBCHAPTER B. TREATMENT

DIVISION 1. PROGRAM PLANNING

37 TAC §380.8721, §380.8723

The Texas Juvenile Justice Department (TJJD) adopts the repeal of §380.8721, concerning Independent Living Preparation, and §380.8723, concerning Subsidized Independent Living, without changes to the proposed text as published in the May 16, 2014, issue of the *Texas Register* (39 TexReg 3811).

Section 380.8721 has been repealed because the specific provisions of the rule are now obsolete. TJJD continues to provide programming related to preparing for independent living, but the agency no longer bases enrollment into this programming on meeting certain classification-related criteria.

Section 380.8723 has been repealed to allow for the rule to be amended, renumbered, and republished as new §380.8583. This rule addresses youth who are on parole. Moving the rule to the new section number allows the rule to be located near other rules that address parole.

The justification for the repeals is the availability of accurate, streamlined rules that provide up-to-date information about TJJD programs.

TJJD did not receive any public comments regarding the proposal.

The repeals are adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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 September 23, 2014.

TRD-201404519
Chelsea Buchholtz
Chief of Staff
Texas Juvenile Justice Department
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Proposal publication date: May 16, 2014
For further information, please call: (512) 490-7014

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SUBCHAPTER C. PROGRAM SERVICES

DIVISION 1. BASIC SERVICES

37 TAC §380.9109

The Texas Juvenile Justice Department (TJJD) adopts the repeal of §380.9109, concerning Youth Personal Property: Independent Living, without changes to the proposed text as published in the May 16, 2014, issue of the *Texas Register* (39 TexReg 3811).

The section has been repealed because relevant provisions have been moved to new §380.8583, which is adopted in this issue of the *Texas Register.* Additionally, many of the detailed provisions of this rule relating to disposition of lost, stolen, or abandoned items are no longer needed as they are addressed by the subsidy agreement signed by TJJD staff and the youth in the independent living program.

The justification for the repeal is the availability of accurate, streamlined rules that provide up-to-date information about TJJD programs.

TJJD did not receive any public comments regarding the proposal.

The repeal is adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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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Chelsea Buchholtz
Chief of Staff
Texas Juvenile Justice Department
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Proposal publication date: May 16, 2014
For further information, please call: (512) 490-7014

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DIVISION 3. YOUTH EMPLOYMENT AND WORK

37 TAC §380.9161

The Texas Juvenile Justice Department (TJJD) adopts an amendment to §380.9161, relating to Youth Employment and Work, with changes to the proposed text as published in the May 16, 2014, issue of the *Texas Register* (39 TexReg 3812). The changes consist of adding a requirement that youth who participate in the Prison Industry Enhancement Certification Program (PIECP) must be paid no less than the federal minimum wage. An additional change adds a reference to the statutes that allow TJJD to operate a PIECP.

The adopted amendment includes minor clarifications and updates that more accurately reflect current practice.

The justification for the amended section is the availability of rules that more accurately reflect current statutes and regulations and TJJD's current practices. Another reason for amending the section is the promotion of public safety through increased campus work opportunities for youth in residential facilities to restore and increase self-respect and self-reliance and to qualify those youth for good citizenship and honorable employment.

TJJD did not receive any public comments regarding the proposal.

The amended section is adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

§380.9161. Youth Employment and Work.

(a) Purpose. The purpose of this rule is to provide opportunities for compensated and uncompensated work to allow youth in residential facilities to experience the responsibilities and rewards of constructive work.

(b) Applicability. This rule applies to high restriction and medium restriction facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) General Provisions.

(1) Youth are not permitted to perform any work prohibited by state or federal regulations or statutes pertaining to child labor.

(2) Repetitive, purposeless, and degrading make-work is prohibited.

(3) Training and work programs use the advice and assistance of labor, business, and industrial organizations where applicable.

(4) Due to the short length of stay and the intent of the program, orientation and assessment units do not provide for any youth work programs other than routine housekeeping chores.

(5) TJJD does not discriminate against youth on the basis of race, color, national origin, sex, religion, disability, or genetic information in providing opportunities for uncompensated and compensated work.

(d) Uncompensated Work.

(1) Youth in TJJD facilities may be required to do the following kinds of work without compensation:

(A) assignments which are part of an agency educational curriculum (vocational training);

(B) tasks performed as community service; and/or

(C) routine housekeeping chores which are shared by all youth in the facility, including basic facility maintenance.

(2) Youth in TJJD facilities may volunteer to perform work without compensation as restitution for damage done by youth.

(e) Compensated Work.

(1) Youth may be paid for performing tasks incidental to facility operations if such employment is part of the youth's reentry plan. Youth work assignments at all TJJD-operated facilities are governed by standardized job descriptions and guidelines. Each facility implements procedures for operating campus work programs that provide youth with training and employment experience.

(2) TJJD may operate a Prison Industry Enhancement Certification Program (PIECP) in accordance with Texas Human Resources Code Chapter 246 and Texas Government Code Chapter

497. Youth who participate in a PIECP are paid no less than the federal minimum wage.

(3) Youth working in the community are paid no less than the federal minimum wage.

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 September 23, 2014.

TRD-201404521
Chelsea Buchholtz
Chief of Staff
Texas Juvenile Justice Department
Effective date: October 15, 2014
Proposal publication date: May 16, 2014
For further information, please call: (512) 490-7014

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Department of Assistive and Rehabilitative Services

Title 40, Part 2

The Texas Department of Assistive and Rehabilitative Services (DARS) proposes the rule review of Chapter 108, Division for Early Childhood Intervention Services. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

In conducting its review, DARS ECI will assess whether the reasons for originally adopting this chapter continue to exist. Each section of this chapter will be reviewed to determine whether it is obsolete, whether it reflects current legal and policy considerations and current procedures and practices of the program, and whether it is in compliance with Chapter 2001 of the Government Code (the Administrative Procedure Act).

Written comments may be submitted to DARS Rules, Department of Assistive and Rehabilitative Services, 4800 N. Lamar Blvd., Austin, Texas 78756 or by e-mail to DARSrules@dars.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this notice.

TRD-201404569
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: September 26, 2014

Adopted Rule Reviews

Texas Film Commission

Title 13, Part 8

The Texas Film Commission (TFC) has completed its review of 13 TAC Chapters 121 (Texas Moving Image Industry Incentive Program) and 122 (Temporary Use of State Buildings and Grounds by Television or Film Production Companies).

The notice of proposed rule review was published in the August 22, 2014, issue of the *Texas Register* (39 TexReg 6693). TFC received no comments regarding the proposed rule review.

After completing the review of 13 TAC Chapters 121 and 122, TFC determined that the reasons for adopting these rules continue to exist and readopts these rules, without changes, pursuant to the requirements of §2001.039, Texas Government Code.

This notice concludes TFC's review of 13 TAC Chapters 121 and 122.

TRD-201404571
David Zimmerman
General Counsel, Office of the Governor
Texas Film Commission
Filed: September 29, 2014

Office of the Governor

Title 1, Part 1

The Office of the Governor, Criminal Justice Division (CJD) has completed its review of 1 TAC Chapter 3 (Criminal Justice Division).

The notice of proposed rule review was published in the August 15, 2014, issue of the *Texas Register* (39 TexReg 6245). CJD received no comments regarding the proposed rule review.

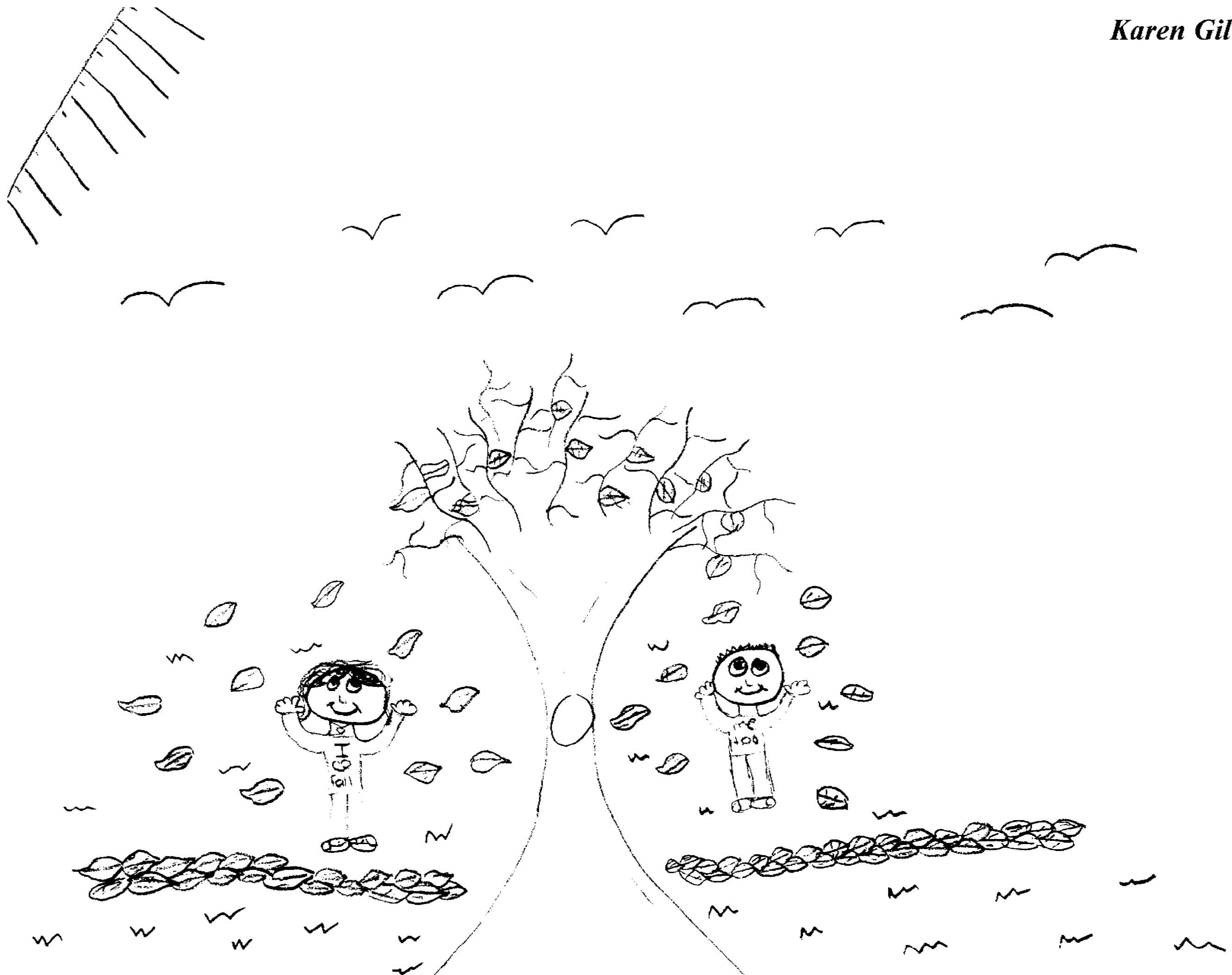
After completing the review of 1 TAC Chapter 3, CJD determined that the reasons for adopting these rules continue to exist and readopts these rules, without changes, pursuant to the requirements of §2001.039, Texas Government Code.

As a result of this review process, CJD may propose amendments in the future that may further clarify or supplement the existing rules and result in more efficient processes and procedures. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by CJD in accordance with the requirements of the Administrative Procedure Act, Chapter 2001, Texas Government Code.

This notice concludes CJD's review of 1 TAC Chapter 3.

TRD-201404560
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: September 26, 2014

Karen Gil



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Draft Bond Program Policies and Request for Proposals Available for Public Comment

The Texas State Affordable Housing Corporation ("Corporation") has posted the draft of its 2015 Tax-Exempt Bonds Program Policies and Request for Proposal. The draft will be posted for public comment, which will run until November 5, 2014. Comments may be submitted in email at ddanenfelzer@tsahc.org. Comments will also be accepted by phone, USPS or any other means at the offices of the Corporation. For more information please contact David Danenfelzer, Manager of Development Finance, by phone at: (512) 477-3562 or by email at ddanenfelzer@tsahc.org.

Comments submitted by mail should be sent to:

Texas State Affordable Housing Corporation

Attn: Development Finance Program Manager

2200 East Martin Luther King Jr. Blvd.

Austin, Texas 78702

A copy of the draft policies and request for proposals is available on the Corporation's website at: http://www.tsahc.org/developers/tax-exempt-bonds.

TRD-201404567
David Long
President
Texas State Affordable Housing Corporation
Filed: September 26, 2014

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Financial Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/06/14 - 10/12/14 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/06/14 - 10/12/14 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201404593
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 30, 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 **November 10, 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 November 10, 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: Aqua Utilities, Incorporated; DOCKET NUMBER: 2014-0699-PWS-E; IDENTIFIER: RN101187854; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; and 30 TAC §290.117(i)(5) and (k), by failing to timely deliver the public education materials in the event of an exceedance of the lead action level and to continue the timely delivery of the public education materials for as long as the lead action level was not met; PENALTY: $1,063; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: BRINSON, INCORPORATED; DOCKET NUMBER: 2014-0969-PWS-E; IDENTIFIER: RN101232916; LOCATION: Dumas, Moore County; TYPE OF FACILITY: public drinking water; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; and 30 TAC §290.122(c)(2)(A),

by failing to provide public notification for the failure to collect triggered source monitoring samples for the month of December 2013; PENALTY: $838; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: Cathodic Technologies International, LLC and Paul Smith; DOCKET NUMBER: 2014-0728-IHW-E; IDENTIFIER: RN106888050; LOCATION: Zavalla, Angelina County; TYPE OF FACILITY: recycling facility; RULES VIOLATED: 30 TAC §335.4 and §335.24(h), by failing to prevent the unauthorized discharge of industrial solid waste; and 30 TAC §335.6(a) and §335.7, by failing to provide notification to the TCEQ for a facility that recycles, stores, processes or disposes of industrial solid waste; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: City of Poteet; DOCKET NUMBER: 2014-0779-MWD-E; IDENTIFIER: RN102078417; LOCATION: Poteet, Atascosa County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013630001, Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, by failing to comply with permitted effluent limitations; PENALTY: $7,250; Supplemental Environmental Project (SEP) offset amount of $1,900 applied to Angelina Beautiful Clean; SEP offset amount of $1,900 applied to Armand Bayou Nature Center, Incorporated; SEP offset amount of $2,000 applied to Nueces River Authority; ENFORCEMENT COORDINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: FC SW HOUSING, LP; DOCKET NUMBER: 2014-1083-EAQ-E; IDENTIFIER: RN107212961; LOCATION: Austin, Travis County; TYPE OF FACILITY: multifamily residential project; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan prior to initiating a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $8,438; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(6) COMPANY: GATX Corporation; DOCKET NUMBER: 2014-0979-AIR-E; IDENTIFIER: RN102039575; LOCATION: Hearne, Robertson County; TYPE OF FACILITY: railcar maintenance; RULES VIOLATED: 30 TAC §122.145(2)(C) and Texas Health and Safety Code, §382.085(b), by failing to timely submit a semi-annual deviation report; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (210) 490-3096.

(7) COMPANY: HAWK's PANTRY, INCORPORATED dba Hawk's Pantry 9; DOCKET NUMBER: 2014-0975-PST-E; IDENTIFIER: RN100710987; LOCATION: Mansfield, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of fuel; RULE VIOLATED: 30 TAC §115.246(a)(1), (4) and (6) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $2,717; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: J&S Water Company, L.L.C.; DOCKET NUMBER: 2014-0955-PWS-E; IDENTIFIER: RN101270080; LOCATION: Chambers, Chambers County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to timely 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 and failed to timely provide public notification and submit a copy of the public notification to the executive director regarding the failure to submit a DLQOR; and 30 TAC §290.117(i)(6) and (j), by failing to timely mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failing to timely submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements; PENALTY: $550; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: James A. Hernandez dba Zebra Show Bar; DOCKET NUMBER: 2014-0321-PWS-E; IDENTIFIER: RN105449151; LOCATION: Anthony, El Paso County; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.122(c)(2)(A), by failing to post public notifications of the failure to collect routine distribution water samples for the months of December 2012 and June 2013; and 30 TAC §290.106(c) and (e), by failing to collect the annual nitrate sample and provide the results to the executive director for the 2012 and 2013 monitoring periods; PENALTY: $706; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(10) COMPANY: LANDMARK INDUSTRIES ENERGY, LLC dba Timewise Exxon 843; DOCKET NUMBER: 2014-0841-PST-E; IDENTIFIER: RN102224748; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $4,875; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Lucite International, Incorporated; DOCKET NUMBER: 2014-1050-AIR-E; IDENTIFIER: RN102736089; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: industrial organic chemical plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1959, Special Terms and Conditions (STC) Number 2.F., by failing to submit an initial notification for Incident Number 194250 within 24 hours of discovery of the emissions event; and 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), THSC, §382.085(b), FOP Number O1959, STC Number 1, and New Source Review Permit Numbers 19005 and PSDTX753, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $7,001; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: MARKET PLACE INNOVATION, INCORPORATED and James Cheng; DOCKET NUMBER: 2014-0784-PWS-E; IDENTIFIER: RN102359908; LOCATION: Houston, Harris County; TYPE OF FACILITY: flea market; RULES VIOLATED: 30 TAC §290.106(e) and §290.122(c)(2)(A) and (f), by failing to provide the results of annual nitrate sampling to the executive director for the 2009

- 2013 monitoring periods and failed to provide public notification and submit a copy of the public notification to the executive director regarding the failure to provide nitrate sampling results for the 2012 monitoring period; 30 TAC §290.106(e) and §290.122(c)(2)(A) and (f), by failing to provide the results of triennial mineral and metal sampling to the executive director and failed to provide public notification and submit a copy of the public notification to the executive director regarding the failure to provide mineral and metal sampling results; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to conduct routine coliform monitoring for the month of July 2013; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 91012642 for fiscal years 2012 - 2014; PENALTY: $795; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: NASH Cinco NW, LLC; DOCKET NUMBER: 2014-0901-WQ-E; IDENTIFIER: RN106508948; LOCATION: Katy, Fort Bend County; TYPE OF FACILITY: construction site; RULES VIOLATED: TWC, §26.121(a)(2), 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System General Permit Number TXR15VA66, Part III., Section F.4.(d) and (e), by failing to utilize appropriate controls to minimize the offsite transport of suspended sediments and other pollutants when channeling standing water from the site and failing to place velocity dissipation devices at discharge locations and along the length of any outfall channel to provide a non-erosive flow velocity from the structure to a water course, so that the natural physical and biological characteristics and functions are maintained and protected; PENALTY: $813; ENFORCEMENT COORDINATOR: Alan Barraza, (512) 239-4642; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: OCI Beaumont LLC; DOCKET NUMBER: 2014-0867-AIR-E; IDENTIFIER: RN102559291; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: methanol and ammonia manufacturing plant; RULES 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 O1645, Special Terms and Conditions Number 16, and New Source Review Permit Number 901, Special Conditions Number 1, by failing to comply with the allowable volatile organic compounds (VOC) emissions rate for the Methanol Receiver Tank, Emission Point Number (EPN) MET-TFL50 and allowable VOC, nitrogen oxides, and carbon monoxide emissions rates for the Methanol Plant Flare (Maintenance), EPN 45; PENALTY: $37,500; Supplemental Environmental Project offset amount of $15,000 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: R&B Mobile Park, LLC; DOCKET NUMBER: 2014-0895-MWD-E; IDENTIFIER: RN101512176; LOCATION: College Station, Brazos County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0012296001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $6,500; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Rita Laura Redow Karbalai; DOCKET NUMBER: 2014-0833-MWD-E; IDENTIFIER: RN102186822; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5) and Texas Pollutant Discharge Elimination System Permit Number WQ0012761001, Operational Requirements Number 1, by failing to properly operate and maintain all facilities and systems of treatment and control; 30 TAC §217.33(c)(2)(C), by failing to use a combination of primary and secondary flow measuring devices at the facility; and 30 TAC §217.16(c) and (d), by failing to keep a copy of a current operation and maintenance manual at the facility; PENALTY: $4,550; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: TEXAS SAND & GRAVEL COMPANY, INCORPORATED; DOCKET NUMBER: 2014-0722-WQ-E; IDENTIFIER: RN106540628; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: aggregate production operation; RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the aggregate production operation registration for the site annually as regulated activities continue; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(18) COMPANY: The Premcor Refining Group Incorporated; DOCKET NUMBER: 2014-0630-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1498, Special Terms and Conditions Number 18, and New Source Review Permit Numbers 6825A, PSDTX49, and N65, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $41,250; Supplemental Environmental Project offset amount of $16,500 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Virginia Franklin Fuller dba Franklin Water Systems 3; DOCKET NUMBER: 2014-1019-PWS-E; IDENTIFIER: RN101264372; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; PENALTY: $431; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(20) COMPANY: West Texas Rock Resources, LLC; DOCKET NUMBER: 2014-1049-WQ-E; IDENTIFIER: RN107278327; LOCATION: Norton, Runnels County; TYPE OF FACILITY: sand and gravel operation; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR050000; and 30 TAC §342.25, by failing to register the site as an aggregate production operation no later than the tenth business day before the beginning date of regulated activities; PENALTY: $5,938; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-201404586

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 30, 2014

Enforcement Orders

An agreed order was entered regarding Vopak Logistics Services USA Inc., Docket No. 2011-0897-AIR-E on September 24, 2014, assessing $1,330 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey J. Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Curtis J. Shupak dba Birch Creek Village Water, Docket No. 2011-1968-PWS-E on September 24, 2014, assessing $2,346 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, 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 TOUCHDOWN TRADING, INC., Docket No. 2013-0769-PST-E on September 24, 2014, assessing $4,629 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Elegant Consolidated Group LLC dba BIG B's SHELL, Docket No. 2013-0792-PST-E on September 24, 2014, assessing $3,251 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 CARDINAL TOWING COMPANY, INC. dba Cardinal Towing & Auto Repair, Docket No. 2013-0882-PST-E on September 24, 2014, assessing $3,891 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Margarito Mendez, Docket No. 2013-1064-MSW-E on September 24, 2014, assessing $1,250 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 IN AND OUT SPEEDWAY, LLC, Docket No. 2013-1188-PST-E on September 24, 2014, assessing $3,825 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cresson Crossroads, LLC, Docket No. 2013-1291-WR-E on September 24, 2014, assessing $550 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 Bhima Corporation dba Aaron Food Mart 2, Docket No. 2013-1347-PST-E on September 24, 2014, assessing $3,563 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 Tsigereda Mengesha dba FINA FOOD MART 1, Docket No. 2013-1475-PST-E on September 24, 2014, assessing $3,532 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, 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 ANCAR WATER SYSTEM, INC. and Lester A. Saucier Jr. dba Ancar Water System, Docket No. 2013-1514-PWS-E on September 24, 2014, assessing $1,955 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mertzon, Docket No. 2013-1529-MWD-E on September 24, 2014, assessing $2,438 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BENTON RAINEY, INC. dba North Main Shamrock, Docket No. 2013-1556-PST-E on September 24, 2014, assessing $3,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, 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 KING FUELS, INC. dba Pin Oak Shell, Docket No. 2013-1577-PST-E on September 24, 2014, assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Akber Gilani dba Tex Mex Food Mart and Alishba, Inc. dba Tex Mex Food Mart, Docket No. 2013-1604-PST-E on September 24, 2014, assessing $5,005 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, 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 ABRAHAM SONS INC, Docket No. 2013-1784-PST-E on September 24, 2014, assessing $5,943 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HDU Services, L.L.C. dba Birch Creek Village Water, Docket No. 2013-1798-PWS-E on September 24, 2014, assessing $4,757 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 CANYON STATE OIL COMPANY, INC. (aka Pilot Logistics Services), Docket No. 2013-1955-PST-E on September 24, 2014, assessing $2,355 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Meaghan M. Bailey, 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 MAS EXPRESS L.L.C. dba T L Mini Express, Docket No. 2013-1979-PST-E on September 24, 2014, assessing $4,538 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Meaghan M. Bailey, 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 John C. Moore and John L. Moore dba Moore's Water System (fka Moore's Water System of Beaver Lake, Inc.), Docket No. 2014-0140-PWS-E on September 24, 2014, assessing $356 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Meaghan M. Bailey, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201404598
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 1, 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 **November 10, 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 November 10, 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: Big Daddy Mart, LLC d/b/a Harvest Food Store 1; DOCKET NUMBER: 2013-1339-PST-E; TCEQ ID NUMBER: RN100925064; LOCATION: 4626 Yale Street, Houston, Harris County; TYPE OF FACILITY: underground storage tank system and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months; THSC, §382.085(b), and 30 TAC §115.242(d)(9), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; PENALTY: $3,649; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Brush Country Development Corporation; DOCKET NUMBER: 2013-1883-PWS-E; TCEQ ID NUMBER: RN106103765; LOCATION: 5087 Texas Highway 44, Freer, Duval County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.035(a) and 30 TAC §290.39(e)(1), (3), and (h)(1); TCEQ AO Docket Number 2011-0796-PWS-E, Ordering Provisions Numbers 2.c.i. and e., by failing to submit engineering plans and specifications and receive written approval prior to beginning construction of the facility; 30 TAC §290.43(c)(3) and TCEQ AO Docket Number 2011-0796-PWS-E, Ordering Provision Number 2.a., by failing to provide the facility's ground storage tank with an overflow that is designed in strict accordance with current American Water Works Association standards and with an overflow pipe that terminates downward with a gravity-hinged and weighted cover tightly fitted with no gap over 1/16 inch; and 30 TAC §290.41(c)(3)(A) and TCEQ AO Docket Number 2011-0796-PWS-E, Ordering Provisions Numbers 2.c.ii. and e., by failing to submit well completion data for review and approval prior to placing a public drinking water well into service; PENALTY: $3,969; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: David Hilsberg; DOCKET NUMBER: 2014-0348-WR-E; TCEQ ID NUMBER: RN103923710; LOCATION: 1340 County Road 106, Purmela, Coryell County; TYPE OF FACILITY: ranch; RULE VIOLATED: 30 TAC §297.82, by failing to inform the executive director of any transfer of water rights or change of

the owner's address for Certificate of Adjudication Number 12-2896; PENALTY: $250; STAFF ATTORNEY: Michael Vitris, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: David Ross Quinn; DOCKET NUMBER: 2013-2054-WR-E; TCEQ ID NUMBER: RN103998779; LOCATION: south of United States Highway 190 on County Road 102; TYPE OF FACILITY: property; RULES VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to diverting, storing, impounding, taking or using state water; PENALTY: $3,000; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(5) COMPANY: ETS Oilfield Services, L.P.; DOCKET NUMBER: 2013-1667-MLM-E; TCEQ ID NUMBER: RN106842990; LOCATION: 7090 North Highway 16, Poteet, Atascosa County; TYPE OF FACILITY: oilfield service; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §330.15(c), by failing to prevent the unauthorized discharge of sewage, municipal solid waste (MSW), recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state, and by failing to prevent the unauthorized disposal of MSW; 30 TAC §330.7(a) and §330.9(b)(3), by failing to obtain a permit authorizing storage, processing, removal, or disposal of MSW, and by failing to register as an MSW transfer station; 30 TAC §290.39(m), by failing to provide written notification to the commission of the startup of a new public water system (PWS) system or reactivation of an existing PWS system; 30 TAC §290.42(e)(2), by failing to disinfect all groundwater prior to distribution; and 30 TAC §324.1 and 40 Code of Federal Regulations §279.22(c)(1), by failing to mark or clearly label used oil storage containers with the words used oil; PENALTY: $16,250; STAFF ATTORNEY: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: IBG ENTERPRISES, LLC d/b/a Lazy Acres Trailer Park; DOCKET NUMBER: 2014-0131-PWS-E; TCEQ ID NUMBER: RN101653723; LOCATION: 8611 New Laredo Highway, San Antonio, Bexar County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A), by failing to collect a raw groundwater source Escherichia coli sample from all active sources within 24 hours of notification of a distribution total coliform-positive result on a routine sample, and by failing to provide public notification regarding the failure; 30 TAC §290.122(c)(2)(A), by failing to provide public notification for the failure to collect routine coliform monitoring samples; 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 1st of each year and by failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and a 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 §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director by the tenth day of the month following the end of the monitoring period; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 90150186; PENALTY: $2,349; STAFF ATTORNEY: Meaghan M. Bailey, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: LIVE OAK RESORT, INC.; DOCKET NUMBER: 2013-1210-PWS-E; TCEQ ID NUMBER: RN101269926; LOCATION: 9751 Lone Star Road, Washington County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.0315(c), 30 TAC §290.45(c)(1)(B)(ii), and TCEQ AO Docket Number 2010-0411-PWS-E, Ordering Provision Number 2.c.i., by failing to provide a ground storage capacity of 35 gallons per connection; Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.45(c)(1)(B)(iii), and TCEQ AO Docket Number 2010-0411-PWS-E, Ordering Provision Number 2.c.ii., by failing to provide two or more service pumps which have a total capacity of 1.0 gallon per minute per connection; 30 TAC §290.46(n)(3), and TCEQ AO Docket Number 2007-0644-PWS-E, Ordering Provision Number 2.b.iv., by failing to provide well completion data for Well Numbers 1 and 2; 30 TAC §290.41(c)(1)(F) and TCEQ AO Docket Number 2007-0644-PWS-E, Ordering Provision Number 2.b.ii., by failing to obtain a sanitary control easement for all land within 150 feet of Well Numbers 1 and 2; 30 TAC §290.46(f)(2), 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 meters at least once every three years; and 30 TAC §290.41(c)(3)(O), by failing to enclose the wells with an intruder-resistant fence with a lockable gate or locked and ventilated well house; PENALTY: $17,630; 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.

(8) COMPANY: Mares Group LLC d/b/a Mares Mart; DOCKET NUMBER: 2013-2170-PST-E; TCEQ ID NUMBER: RN102057213; LOCATION: 2210 East Highway 90, Del Rio, Val Verde County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering or vandalism by unauthorized persons and by failing to ensure that any residue from stored regulated substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; PENALTY: $6,750; STAFF ATTORNEY: Meaghan M. Bailey, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(9) COMPANY: Maria Elena Gueta d/b/a Maria Elenas Mobile Homes; DOCKET NUMBER: 2014-0294-PWS-E; TCEQ ID NUMBER: RN105677447; LOCATION: 1905 West Phillips Street, Alvin, Brazoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director by the tenth day of the month following the monitoring period; and 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 1st of each year and by failing to submit to the executive director by July 1st 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; PENALTY: $2,591; STAFF ATTORNEY: Laura

Evans, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Shredder Co Worlds Best, LLC d/b/a The Shredder Company; DOCKET NUMBER: 2014-0443-PWS-E; TCEQ ID NUMBER: RN101241180; LOCATION: 7380 Doniphan Drive, Canutillo, El Paso County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(c)(4) and (e), by failing to collect the quarterly arsenic sample and provide the results to the executive director for the first, second and third quarters of 2013; 30 TAC §290.122(c)(2)(A) and (f), by failing to post public notification and submit a copy of the public notification to the executive director for the triggered source monitoring samples for the month of March 2013, repeat coliform monitoring samples for the month of March 2013, routine coliform monitoring samples for the months of November 2012 and February 2013, and required arsenic monitoring samples for the fourth quarter of 2012; 30 TAC §§290.106(e), 290.107(e), and 290.113(e), by failing to provide results of the triennial Stage 1 disinfection byproducts, metals, minerals and synthetic organic chemicals (methods 504, 515.4 and 531.1) contaminants sampling to the executive director for the monitoring period from January 1, 2011 to December 31, 2013; and 30 TAC §290.106(c)(6) and (e), by failing to collect the annual nitrate sample and provide the results to the executive director for the 2013 monitoring period; PENALTY: $1,633; STAFF ATTORNEY: Colleen Lenahan, Litigation Division, MC 175, (512) 239-6909; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(11) COMPANY: Teodoro Pavon; DOCKET NUMBER: 2012-2471-MLM-E; TCEQ ID NUMBER: RN106525926; LOCATION: 10.003 acres located at the end of West Grosenbacher Road, San Antonio, Bexar County, (Property ID: 1091082; Legal Description: CB 4341 P-17B (0.645 AC) and P-1A (9.358 AC) ABS 422); TYPE OF FACILITY: unauthorized waste disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; and 30 TAC §111.201, by failing to comply with the general prohibition on outdoor burning; PENALTY: $7,150; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: Tom Green County Fresh Water Supply District 2; DOCKET NUMBER: 2013-2179-PWS-E; TCEQ ID NUMBER: RN101426047; LOCATION: 508 Anson Street, Christoval, Tom Green County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(s)(2)(B)(iv) and TCEQ AO Docket Number 2012-0957-PWS-E, Ordering Provision Number 2.a.iii., by failing to check the calibration of the online turbidimeters at least once a week using a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device or by comparing the results from the online unit with the results from a properly calibrated benchtop unit; 30 TAC §290.111(d)(2)(A) and TCEQ AO Docket Number 2012-0957-PWS-E, Ordering provision Number 2.a.iv., by failing to measure the performance of the disinfectant facilities (disinfectant residual, pH, temperature, and flow rate of the water in each disinfection zone) at least once each day during a time when peak hourly raw water flow rates are occurring to ensure that appropriate disinfectant levels are maintained and conducted at sites designated in the facility's monitoring plan; 30 TAC §290.42(d)(15)(C)(vi) and TCEQ AO Docket Number 2012-0957-PWS-E, Ordering Provision Number 2.b.i., by failing to provide jar tests for determining the optimum coagulant dose; 30 TAC §290.46(s)(1) and TCEQ AO Docket Number 2012-0957-PWS-E, Order Provision Number 2.b.ii., by failing to calibrate flow measuring devices at least once every 12 months; 30 TAC §290.46(s)(2)(B)(i) and TCEQ AO Docket Number 2012-0957-PWS-E, Ordering Provision Number 2.b.iii., by failing to calibrate the benchtop turbidimeter with primary standards at least every 90 days; Texas Health and Safety Code, §341.033(a); 30 TAC §290.46(e)(5)(F) and TCEQ AO Docket Number 2012-0957-PWS-E, Ordering Provision Number 2.b.iv., by failing to ensure that the facility has at least one Class C or higher surface water operator on duty when it is in operation or that the facility is provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the facility is not staffed; and 30 TAC §290.46(s)(2)(C)(i) and TCEQ AO Docket Number 2012-0957-PWS-E, Ordering Provision Number 2.b.v., by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 30 days using chlorine solutions of known concentrations; PENALTY: $10,302; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-201404587
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 30, 2014

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 **November 10, 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 November 10, 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, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Hafsa Corporation d/b/a S Mart; DOCKET NUMBER: 2012-2532-PST-E; TCEQ ID NUMBER: RN102232196; LOCATION: 203 White Oak Avenue, Omaha, Morris County; TYPE OF FACILITY: an underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; PENALTY: $10,629; STAFF ATTORNEY: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Kyle Freeman d/b/a Lamplighter Mobile Home Park; DOCKET NUMBER: 2014-0316-PWS-E; TCEQ ID NUMBER: RN106672165; LOCATION: 1525 South Broadway Street, Joshua, Johnson 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), by failing to collect routine distribution water samples for coliform analysis and by failing to post public notification of the failure; 30 TAC §290.117(c)(2)(A)(i) and (i)(1), by failing to collect the initial six-month lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay all annual Public Health Service fees and associated late fees; PENALTY: $1,920; STAFF ATTORNEY: Michael Vitris, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Randy Bowen a/k/a Randall G. Bowen d/b/a Bowens Tree Service; DOCKET NUMBER: 2013-2155-MSW-E; TCEQ ID NUMBER: RN106664188; LOCATION: 2913 Cardinal Drive, Joshua, Johnson County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $5,343; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-1877; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201404588
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 30, 2014

Notice of Water Quality Applications

The following notices were issued on September 19, 2014, through September 26, 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

ASPEN POWER LLC which operates Aspen Power Lufkin Generating Plant, has applied for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004921000 to authorize an increase in effluent limitations for total dissolved solids (TDS). The existing permit authorizes the discharge of cooling tower blowdown commingled with previously monitored effluent (low volume wastes) at a daily average flow not to exceed 214,000 gallons per day. The facility is located approximately 0.5 mile east of the intersection of State Highway 103 and Kurth Drive in the City of Lufkin, Angelina County, Texas 75901.

CITY OF AUSTIN which operates Sandhill Energy Center, a gas-fired/combined-cycle electric generating station, has applied for a renewal of TPDES Permit No. WQ0004351000, which authorizes the discharge of cooling tower blowdown and previously monitored effluents via Outfall 001 at a daily average flow not to exceed 1,300,000 gallons per day. The discharge of cooling water drained from condensers and other cooling equipment is permitted at an intermittent and flow-variable rate via Outfall 101 and 401. The discharge of metal cleaning wastes is permitted at an intermittent and flow-variable rate via Outfall 201. The discharge of low volume wastes is permitted at daily average flow of 300,000 gallons per day via Outfall 301. The facility is located at 1101 Fallwell Lane in Del Valle, Travis County, Texas 78617-2829.

COLORADO RIVER MUNICIPAL WATER DISTRICT which operates the Big Spring Water Reclamation Plant, has applied for a renewal of TPDES Permit No. WQ0004872000, which authorizes the discharge of reverse osmosis concentrate at a daily average flow not to exceed 525,000 gallons per day via Outfall 001. The applicant has also requested a minor modification to change the pH sampling method from grab sampling to an in-line pH probe. The facility is located at 3500 East Farm-to-Market Road 700, west of the Big Spring Wastewater Treatment Plant on the north side of Eleventh Place, approximately 800 feet east of the intersection of Farm-to-Market Road and Eleventh Place, and approximately 0.6 mile south of the intersection of Farm-to-Market Road 700 and Interstate Highway 20 in the City of Big Spring, Howard County, Texas, 79720.

CITY OF BRADY has applied for a renewal of TPDES Permit No. WQ0010132001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,103,000 gallons per day. The facility is located at 1311 East 6th Street, 5,000 feet east of the intersection of U.S. Highway 87 and 7th Street in the City of Brady, on the west bank of Brady Creek in McCulloch County, Texas 76825.

COLORADO COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 2 has applied for a renewal of TPDES Permit No. WQ0010152001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 1100 Mansfield Street, 25 feet east of the intersection of Mansfield and Wirtz Streets in the City of Garwood in Colorado County, Texas 77442.

CITY OF EL DORADO has applied for a renewal of TPDES Permit No. WQ0010165001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 385,000 gallons per day. The facility is located approximately 5000 feet northeast of the intersection of U.S. Highway 277 and U.S. Highway 915 in Schleicher County, Texas 76936.

CITY OF PETROLIA has applied for a renewal of TPDES Permit No. WQ0010247003, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 6,000 gallons per day. The facility is located adjacent to

Old Petrolia Lake, at the dead end of a controlled access city-owned dirt road, 2,800 feet west of Farm-to-Market Road 810 and 3,500 feet north of the Petrolia city limits in Clay County, Texas 76377.

CITY OF MENARD has applied for a renewal of TPDES Permit No. WQ0010345002, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 94,000 gallons per day. The facility is located on Farm-to-Market Road 2092, approximately one mile west of the intersection of U.S. Highway 83 and Farm-to-Market Road 2092 in Menard County, Texas 76859.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495148, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 488,000 gallons per day. The facility is located at 10545 Tidwell Road in Harris County, Texas 77078.

RED RIVER AUTHORITY OF TEXAS has applied for a renewal of TPDES Permit No. WQ0011445001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located approximately 2,300 feet east of Farm-to-Market Road 1954 and 5.4 miles southeast of the intersection of U.S. Highway 281 and Farm-to-Market Road 1954 in the Arrowhead Ranch Estates in Clay County, Texas 76310.

CHAPEL HILL INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013821001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 32,000 gallons per day. The facility is located approximately 1,300 feet east of the intersection of Farm-to-Market Road 1735 and County Road 4825 in Titus County, Texas 75455.

CYPRESS RANCH WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied to the TCEQ for a renewal of Permit No. WQ0014368001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 45.92 acres. This permit will not authorize a discharge of pollutants into waters in the state. The wastewater treatment facility and disposal site are located at 5116 Cypress Ranch Boulevard, Spicewood in Travis County, Texas 78669. The disposal site is located 5,000 feet southwest of the intersection of State Highway 71 and Hazy Hills Drive in Travis County, Texas 78669.

FAYETTE WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014537001 which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 20,000 gallons per day. The facility is located at 527 Knape Road, La Grange in Fayette County, Texas 78945.

HEART OF TEXAS BAPTIST CAMP AND CONFERENCE CENTER has applied for a renewal of TCEQ Permit No. WQ0014962001 which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 21,000 gallons per day via surface irrigation of 10 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the state. The wastewater treatment facility and disposal site are located approximately 4 miles north of the intersection of Farm-to-Market Road 2632 and State Highway 279, Brownwood in Brown County, Texas 76801.

CRYSTAL SPRINGS WATER CO. INC has applied for a new permit, TPDES Permit No. WQ0015261001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility will be located approximately 3,665 feet south of Schank Road and 2,420 feet east of Willis Waukegan Road, in Montgomery County, Texas 77306.

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 (TCEQ) has initiated a minor amendment of the TPDES Permit No. WQ0013894001 to correct and change BOD5 to CBOD5. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 49,500 gallons per day. The facility is located approximately 1.4 miles north of the confluence of the Colorado River and Cedar Creek, and approximately 2 miles northeast of the intersection of State Highway 304 and Farm-to-Market Road 2571 in Bastrop County, Texas 78602.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY has initiated a minor amendment of the TPDES Permit No. WQ0010494013 issued to the City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102 to add additional conditions to its sewage sludge treatment and processing operations along with associated land application sites, to authorize the marketing and distribution of sewage sludge, and to update pretreatment conditions. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 166,000,000 gallons per day. The existing permit also authorizes the surface disposal of sewage sludge on 156 acres and land application of sewage sludge for beneficial use. The facility is located at 4500 Wilma Lane, in Fort Worth in Tarrant County, Texas 76012.

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-201404597
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 1, 2014

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Monthly Report due June 5, 2014 for Committees

Bruce A. Trent, Alvin Police Officers' Association PAC, 1717 Jones St., Alvin, Texas 77511

Deadline: Monthly Report due July 7, 2014 for Committees

Bruce A. Trent, Alvin Police Officers' Association PAC, 1717 Jones St., Alvin, Texas 77511

Deadline: Semiannual Report due July 15, 2014 for Committees

John C. Eberlan, Sustain Excellent Education, 22911 Copper Creek Ln., Katy, Texas 77450

Deadline: Special Pre-election Report due August 1, 2014 for Committees

Dr. Johnny J. Peet, Friends of Brandon Creighton, 2257 N. Loop 336, Ste. 140-366, Conroe, Texas 77304

TRD-201404557
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: September 25, 2014

♦ ♦ ♦

Texas Facilities Commission

Request for Proposals #303-5-20463-A

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-5-20463-A. TFC seeks a five (5) or ten (10) year lease of approximately 13,952 square feet of office space in Corpus Christi, Nueces County, Texas.

The deadline for questions is October 20, 2014, and the deadline for proposals is October 27, 2014, at 3:00 p.m. The award date is November 19, 2014. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=114001*.

TRD-201404558
Kay Molina
General Counsel
Texas Facilities Commission
Filed: September 25, 2014

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Texas Health and Human Services Commission

October 13 Stakeholder Meeting Notice

Save this date: October 13, 2014, HCBS Rules Stakeholder Meeting

The Health and Human Services Commission (HHSC), Department of State Health Services (DSHS), and the Department of Aging and Disability Services (DADS) are holding a public stakeholder meeting on October 13, 2014, from 9:00 a.m. - 5:00 p.m. to hear public comment about the recently adopted Centers for Medicare and Medicaid Services (CMS) rules. The rules concern Home and Community Based Services (HCBS) and the impact the rules will have on certain programs administered by HHSC, DSHS, and DADS.

The stakeholder meeting will be hosted at the Brown-Heatly Building, Public Hearing Room, 4900 N. Lamar Boulevard, Austin, Texas 78751 and by webcast. Additional information will be posted to HHSC, DSHS, and DADS web pages and sent by GovDelivery as details regarding the webcast are determined.

Rule text may be viewed at: http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html.

In addition, an assessment of compliance with the settings provisions for DADS programs can be viewed at: http://www.dads.state.tx.us/providers/communications/alerts/HCBS_settingsassessment.pdf.

The agenda for providing public comments regarding compliance with the new federal regulations for the Home and Community-based Services (HCBS) will be as follows:

9:00 a.m. - 1:00 p.m.

- Home and Community-based Services (HCS) waiver;

- Texas Home Living (TxHmL) waiver.

1:00 p.m. - 5:00 p.m.

- Community Living Assistance and Support Services (CLASS);

- Deaf Blind with Multiple Disabilities (DBMD);

- Medically Dependent Children Program (MDCP);

- Youth Empowerment Services (YES);

- 1915(i) State Plan Amendment; and

- 1915(k) State Plan Amendment.

Public Comment

HHSC, DSHS, and DADS will accept comments through the following channels:

- Attendance at the meeting in person and signing up on site for a maximum of three minutes of speaking time or submission of written comments to HHSC, DSHS, or DADS before, during, or after the October 13 meeting. The final deadline for comment submissions is November 12th.

- Comments on DADS waiver programs may be sent by email to PDO@dads.state.tx.us; on HHSC 1915(i) and 1915(k) programs to Medicaid_HCBS_Rule@hhsc.state.tx.us; and on YES waiver for DSHS to: Medicaid_HCBS_Rule@hhsc.state.tx.us.

This meeting is open to the public. No reservations are required and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Elizabeth Reekers at (512) 462-6291 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201404556
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: September 25, 2014

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Department of State Health Services

Amendment to the Texas Schedule of Controlled Substances

This amendment to the Texas Schedules of Controlled Substances was signed by David L. Lakey, M.D., Commissioner of the Department of State Health Services, on September 29, 2014, and will take effect 21 days following publication of this notice in the *Texas Register*.

Changes to the schedules are designated by an asterisk (*). Additional information can be obtained by contacting the Department of State Health Services, Drugs and Medical Devices Group, P.O. Box 149347, Austin, Texas 78714-9347. The telephone number is (512) 834-6755 and the website address is http://www.dshs.state.tx.us/dmd.

The Deputy Administrator of the Drug Enforcement Administration (DEA) issued a final order placing 2-[(dimethylamino)methyl]-1-(3-

methoxyphenyl)cyclohexanol (tramadol), including its salts, isomers and salts of isomers, into Schedule IV of the United States Controlled Substances Act (CSA) effective August 18, 2014. This final order was published in the Federal Register, Volume 79, Number 127, pages 37623-37630. The Deputy Administrator has taken action based on the following.

1. Tramadol has a low potential for abuse relative to the drugs or substances in schedule III. The abuse potential of tramadol is comparable to the schedule IV controlled substance propoxyphene.

2. Tramadol has a currently accepted medical use in treatment in the United States. Tramadol and other tramadol-containing products are approved for marketing by the FDA to manage moderate to moderately severe pain; and,

3. Abuse of tramadol may lead to limited physical dependence relative to the drugs or other substances in Schedule III.

Pursuant to §481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the *Federal Register;* and, in my capacity as Commissioner of the Texas Department of State Health Services, I do hereby order that the substance tramadol be placed into schedule IV of the schedules of controlled substances.

SCHEDULE IV

Schedule IV consists of:

Schedule IV depressants

***

Schedule IV stimulants

***

Schedule IV narcotics

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs including its salts, isomers and salts of isomers

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(2) Dextropropoxyphene (Alpha (+) 4 dimethylamino 1,2 diphenyl 3 methyl 2 propionoxybutane); and

*(3) 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol (other name: tramadol).

Schedule IV other substances

***

Changes to the schedule is designated by a single asterick (*).

TRD-201404604
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: October 1, 2014

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Correction of Error

The Department of State Health Services proposed amendments to 25 TAC §§289.201, 289.202, 289.251 - 289.253, and 289.255 - 289.257, concerning radiation control, in the September 5, 2014, issue of the *Texas Register* (39 TexReg 7040). Figure: 25 TAC §289.257(ee)(6) was published in the Tables and Graphics section of the issue on pages 7192 - 7209. Due to a Texas Register error, the footnotes that should have appeared at the end of Figure: 25 TAC §289.257(ee)(6) were omitted. The footnotes read as follows:

[a] A_1 and/or A_2 values include contributions from daughter nuclides with half-lives less than 10 days.
[b] The values of A_1 and A_2 in Curies (Ci) are approximate and for information only; the regulatory standard units are Terabecquerels (TBq), (see subsection (ee)(1) [(ff)(1)] of this section - Determination of A_1 and A_2, Section I).
[c] The quantity may be determined from a measurement of the rate of decay or a measurement of the radiation level at a prescribed distance from the source.
[d] These values apply only to compounds of uranium that take the chemical form of UF_6, UO_2F_2 and $UO_2(NO_3)_2$ in both normal and accident conditions of transport.
[e] These values apply only to compounds of uranium that take the chemical form of UO_3, UF_4, UCl_4 and hexavalent compounds in both normal and accident conditions of transport.
[f] These values apply to all compounds of uranium other than those specified in notes (d) and (e) of this table.
[g] These values apply to unirradiated uranium only.
[h] A_1 = 0.1 TBq (2.7 Ci) and A_2 = 0.001 TBq (0.027 Ci) for Cf-252 for domestic use.
[i] A_2 = 0.74 TBq (20 Ci) for Mo-99 for domestic use.

TRD-201404566

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Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council (H-GAC) solicits qualified individuals or firms to provide financial monitoring services for the Gulf Coast Workforce system. The successful bidder or bidders will be offered an initial contract for one year beginning on or around January 1, 2015 through December 31, 2015. H-GAC may renew the contract for up to two additional years (through December 31, 2017).

Prospective bidders may obtain a copy of the Request for Proposals online at www.wrksolutions.com or www.h-gac.com or by contacting Carol Kimmick at (713) 627-3200 or by sending an email to Ms. Kimmick at: carol.kimmick@h-gac.com. Responses are due at H-GAC offices by 12:00 noon Central Daylight Time on Wednesday, October 29, 2014. Late proposals will not be accepted. There will be no exceptions.

TRD-201404552
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: September 24, 2014

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Texas Department of Insurance

Company Licensing

The Texas Department of Insurance published notice of an application to change the name of INDEPENDENCE CASUALTY AND SURETY COMPANY to VERTERRA INSURANCE COMPANY in the September 26, 2014, issue of the *Texas Register* (39 TexReg 7820). The company was incorrectly described as a foreign life, accident and/or health company. The company is in fact a foreign fire and/or casualty company.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201404603
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: October 1, 2014

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One-Call Board of Texas

Proposed Amendments

OCB Notification Center Technical Standards

Technical Standard Proposals

All Technical Standards enacted by the One-Call Board of Texas are acted on at its public meetings. The OCB follows the state rule making process, which entails two public actions with a proposal stage and an adoption stage. After the OCB authorizes the rule proposal, it is published in the *Texas Register* for written comments specifically pertaining to the Technical Standard proposal.

You may submit comments by fax at 512.467.6664 or by mail to the address below. Comments must be postmarked not later than November 3, 2014 to be considered at the November 6, 2014 OCB Board meeting in Austin, Texas.

Comments: One-Call Board of Texas

P.O. Box 9764

Austin, Texas 78766-9764

Statutory Authority

The amendments are proposed under the statutory authority found in Utilities Code, Title 5, Chapter 251, Section 251.060(2).

Proposed Amendments to OCB Notification Center Technical Standards

The One-Call Board of Texas (OCB) proposes to amend OCB Notification Center Technical Standards #1; 2; 4; 5; 6; 14; 26; 31 and 36 as indicated below. The purpose of the amendments is to update the standards to reflect changes in technology and to enhance NtCn and OCB's ability to provide excavation safety and damage prevention services.

OCB Notification Center Technical Standards

PROPOSED AMENDMENT #1. In Technical Standard #1, replace the current Speed of Answer Standard with the following:

1. Meet the following service standards:

a. Speed of Answer - Annual Standard: 90% of months in compliance. Monthly Standard: Answer calls on monthly average of 60 seconds or less after routing to the NtCn with no more than 5 days over 90 seconds daily average. Two consecutive non-compliant months require a written explanation submitted to the Board.

PROPOSED AMENDMENT #2. Amend Technical Standard #2 as follows:

2. Provide monthly reports to the One-Call Board of Texas (OCB) in an approved format to include the following:

a. NtCn service levels

(1) Number of tickets originated

(2) Number of ~~faxes~~ locate requests received by electronic means

(3) Total number of ~~ACD calls~~ locate requests received by phone and broken into the following two sub-groups: Number of locate requests received via 811 and number received via NtCn phone number.

(4) Monthly and daily average speed of answer

(5) Monthly and daily average number and percent of abandoned calls.

(6) Number of tickets where initial attempt to transmit is in excess of two (2) hours after receipt

(a) to other NtCn

(b) to own members

(7) "All Trunks Busy" as a percent of calls.

(8) "Forced Busy" as a percent of calls.

PROPOSED AMENDMENT #3. Delete Technical Standard #4 and renumber as needed.

~~4. Measure Facility Operators and/or locators missed commitments using print out of excavators' "Second Requests" and provide such information to the OCB upon request.~~

PROPOSED AMENDMENT #4. Amend Technical Standard #5 as follows:

5. Include in their standard script a question asking excavators if they want to receive ~~a fax~~ from the other NtCn's a listing of Facility Operators to be notified. Provide space on ~~fax~~ "Locate Request" forms to request this service. Provide the OCB a copy of thei~~r~~ NtCn operators' script upon request.

PROPOSED AMENDMENT #5. Amend Technical Standard #6 as follows:

6. ~~Work with OCB to identify any members not registered with the OCB. Beginning with the Annual Registration Fee due January 15, 2000,~~ Be responsible for invoicing their members for the Annual Registration Fee and remitting all fees collected along with a list of members with address and contact information to the OCB. ~~The NtCn will work with the OCB staff to develop procedures acceptable to the OCB.~~

PROPOSED AMENDMENT #6. Amend Technical Standard #14 as follows:

14. Assign a separate ticket number for each locate request, advise the excavator of that ticket number for future reference and advise the excavator of the names of Facility Operators that will be notified of the intent to excavate. ~~his or her intent to disturb the ground.~~ The NtCn must advise the excavator that there may be ~~are probably~~ other underground facilities in the area that will not be notified. Advise excavator to call anyone who has not been notified and that the ticket is valid for 14 working days under Texas Railroad Commission Rules.

PROPOSED AMENDMENT #7. Amend Technical Standard #26 as follows:

26. Obtain from each owner or operator of a Class A underground facility:

a. Maps or grid location or other identifiers indicating the location of the operator's underground facilities,

b. The name and telephone number of a contact person or persons

c. Update changes that occur to Class A Operator's maps, grid location or contact person(s), within 10 days of receipt of information or as agreed upon.

PROPOSED AMENDMENT #8. Amend Technical Standard #31 as follows:

31. Not require an operator to perform a survey of underground facilities or alter existing signage.

PROPOSED AMENDMENT #9. Amend Technical Standard #36 as follows:

36. Create a format to transfer Locate Request information between NtCn's to include the following:

a. Standardized data base fields to cover all possible aspects of locate requests.

b. An agreed upon method to transfer locate ticket data between NtCn's. Method must be sufficient to handle projected call volumes and should include an alternate plan in case the primary system fails.

c. A method to communicate to the excavator which Facility Operators will receive the notice to locate.

d. Either a single ticket numbering system for each request or a cross-referencing method of NtCn specific ticket numbers to allow for proper tracking of each request for locate.

e. Each locate ticket must contain the following:

(1) Method of receipt

(2) Date and time of receipt

(3) Date and time of transfer to other NtCn

(4) County in which excavation is to take place.

PROPOSED AMENDMENT #10. Add Technical Standard #38 as follows:

38. The One-Call Board of Texas has defined the term "pro rata" as it is used in Utilities Code Sections 251.060 (3) and 251.102 (4) to mean equal shares.

TRD-201404595
Donald M. Ward
Executive Director
One-Call Board of Texas
Filed: October 1, 2014

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on September 29, 2014, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 43390.

The requested amendment is to expand the service area footprint to include the municipal boundaries of the City of Gatesville, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 43390.

TRD-201404602
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 1, 2014

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Notice of Application for Sale, Transfer, or Merger and Amendment to Certificates of Convenience And Necessity

Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 29, 2014, pursuant to the Texas Water Code.

Docket Style and Number: Application of Application of Kempner Water Supply Corporation and City Of Copperas Cove For Sale, Transfer, or Merger of Facilities and To Amend a Certificates of Convenience and Necessity in Coryell County, Docket Number 43367.

The Application: Kempner Water Supply Corporation (Kempner) filed an application for approval of the proposed sale of its facilities that serve 112.69 acres in the Bradford Oaks Ranch Subdivision in Coryell County to the City of Copperas Cove (the City) and to amend Kempner's and the City's certificates of convenience and necessity accordingly.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling 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 43367.

TRD-201404592
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 30, 2014

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Notice of Petition for Cease and Desist Order

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on September 23, 2014, a request for a cease and desist order against Anita Koop in Calhoun County, Texas.

Docket Style and Number: Petition of Enchanted Harbor Utility for a Cease and Desist Order Against Anita Koop in Calhoun County, Docket No. 43344.

The Application: Enchanted Harbor Utility (Enchanted Harbor) reported that it had received a request from two customers to discontinue water service from the utility. Upon investigation, Enchanted Harbor discovered that the two customers had trenched water lines to an existing water well belonging to a neighbor who is not on their system. On June 26, 2014, Enchanted Harbor notified Anita Koop, owner of the well, that she was in violation of Texas Water Code §13.242. Enchanted Harbor seeks assistance from the commission regarding this violation.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (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 43344.

TRD-201404570
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 26, 2014

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Texas Department of Transportation

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

The City of Gatesville, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a 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 engineering design services for the current aviation project as described below.

Current Project: City of Gatesville; TxDOT CSJ No.: 1509GATES.

Scope: Provide engineering/design services to:

1. Rehabilitate and mark runway, cross taxiway, north and south hangar access taxiway

2. Reconstruct apron

3. Install wildlife fencing

The current project is expected to be constructed in phases as follows: fencing construction is estimated in fiscal year 2015 and the pavement construction is estimated in fiscal year 2016. The HUB goal for the design of the current project is 11%. The goal will be reset for the construction phase. The TxDOT Project Manager is Ryan Hindman.

The following is a listing of proposed projects at the Gatesville City 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; extend runway, taxiway, MIRLs; construct hangar; extend hangar access taxiway.

The City of Gatesville reserves the right to determine which of the above 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 "Gatesville City 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 website 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:

SEVEN completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than November 18, 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 representatives. 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 Information for Consultants. 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 Ryan Hindman, Project Manager.

TRD-201404594
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 30, 2014

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Aviation Division - Request for Qualifications for Services

The City of Edinburg through its agent, the Texas Department of Transportation (TxDOT), intends to engage a qualified firm for services. This solicitation is subject to 49 U.S.C. §47107(a)(17) and will be administered in the same manner as a solicitation conducted under Chapter 2254, Subchapter A, of the Texas Government Code. TxDOT Aviation

Division will solicit and receive qualifications for services as described below:

Airport Sponsor: City of Edinburg South Texas International Airport at Edinburg, TxDOT CSJ No.: 15BPEDNBG. Scope: Prepare and develop a comprehensive five-year airport business plan.

The HUB goal is set at 0%. TxDOT Project Manager is Michelle Hannah.

Interested firms shall utilize the Form AVN-551, titled "Qualifications for Aviation Planning 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 website 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-551 template. The AVN-551 format 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-551. If a prime provider submits more than one AVN-551, that provider will be disqualified. AVN-551s shall be stapled but not bound or folded in any other fashion. AVN-551s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

FIVE completed copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than November 4, 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 Trudy Hill.

The selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-551s. The committee will review all AVN-551s and rate and rank each. The evaluation criteria for airport planning projects can be found at http://www.txdot.gov/inside-txdot/division/aviation/projects.html under Information for Consultants. 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 Trudy Hill, Grant Manager. For technical questions please contact Michelle Hannah, Project Manager.

TRD-201404601
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 1, 2014

Notice of Intent to Prepare an Environmental Impact Statement - Dallas to Fort Worth Core Express Rail Service

The Federal Rail Administration (FRA) and the Texas Department of Transportation (TxDOT) intend to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) for the impacts of constructing and operating core express rail service (Proposed Action) proposed by TxDOT. The EIS will evaluate route alternatives for passenger rail for the corridor between Dallas and Fort Worth, which currently has limited passenger rail service. The EIS will evaluate alignments that run near existing rail corridors or existing highway facilities, and other alignments, and will also evaluate the "no build" alternative. The evaluation will assess matters related to construction and operation of the Proposed Action. The study will evaluate several possible technologies for rail service.

FRA and TxDOT invite the public, governmental agencies, and all other interested parties to comment on the scope of the EIS. All such comments should be provided in writing, within ninety (90) days of the publication of this notice, at the address listed below. Comments may also be provided orally or in writing at the scoping meetings. Scoping meeting dates, times and locations, can be found online at http://www.fra.dot.gov/Page/P0715. The site also contains information about the Project.

Submit comments to Michael Johnsen, Lead Environmental Protection Specialist, Office of Railroad Policy and Development, Federal Rail Administration, 1200 New Jersey Avenue SE, MS-20, Washington DC 20590, or Michael.johnsen@dot.gov.

For further information, please contact Michael Johnsen, Lead Environmental Protection Specialist, Office of Railroad Policy and Development, Federal Rail Administration, 1200 New Jersey Avenue SE, MS-20, Washington DC 20590, telephone (202) 493-1310, Michael.johnsen@dot.gov; or Melissa Neeley, Director of Project Delivery Management, Environmental Affairs Division of the Texas Department of Transportation, 118 E. Riverside Drive, Austin, Texas 78704, telephone (512) 416-3014, Melissa.neeley@txdot.gov.

TRD-201404599
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 1, 2014

Notice of Intent to Prepare an Environmental Impact Statement - Dallas to Houston High Speed Rail Project

The Federal Rail Administration (FRA) and the Texas Department of Transportation (TxDOT) intend to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) for the impacts of constructing and operating a dedicated high-speed rail (HSR) system (Proposed Action) proposed by a private company, Texas Central High-Speed Railway, LLC (TCR). The EIS will evaluate route alternatives for passenger rail for the corridor between Dallas and Houston, which currently has no passenger rail service. The EIS will evaluate alignments that run near existing rail corridors or near existing highway facilities, and other alignments, and will also evaluate the "no build" alternative. The evaluation will assess matters related to construction and operation of the Proposed Action, including the development of rail facilities devoted exclusively to high-speed rail operations.

FRA and TxDOT invite the public, governmental agencies, and all other interested parties to comment on the scope of the EIS. All such comments should be provided in writing, within ninety (90) days of the

publication of this notice, at the address listed below. Comments may also be provided orally or in writing at the scoping meetings. Scoping meeting dates, times and locations, in addition to related information about the EIS for the Dallas to Houston High Speed Rail Project can be found online at http://www.fra.dot.gov/Page/P0700.

Submit comments to Michael Johnsen, Lead Environmental Protection Specialist, Office of Railroad Policy and Development, Federal Rail Administration, 1200 New Jersey Avenue SE, MS-20, Washington DC 20590, or Michael.johnsen@dot.gov.

For further information, please contact Michael Johnsen, Lead Environmental Protection Specialist, Office of Railroad Policy and Development, Federal Rail Administration, 1200 New Jersey Avenue SE, MS-20, Washington DC 20590, telephone (202) 493-1310, Michael.johnsen@dot.gov; or Melissa Neeley, Director of Project Delivery Management, Environmental Affairs Division of the Texas Department of Transportation, 118 E. Riverside Drive, Austin, Texas 78704, telephone (512) 416-3014, Melissa.neeley@txdot.gov.

TRD-201404600
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 1, 2014

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The Texas A&M University System

Notice of Sale of Oil and Gas Lease

The Board of Regents of The Texas A&M University System, pursuant to provisions of V.T.C.A., Education Code, Chapter 85, as amended, and subject to all policies and regulations promulgated by the Board of Regents, offers for sale at public auction in Room 743, The Texas A&M University System, Moore-Connally Building, 301 Tarrow, College Station, Texas, at 10:00 a.m., Wednesday, November 19, 2014, an oil and gas lease on the following described land in Brazos County, Texas.

The property offered for lease consists of approximately 4,716 gross acres, more or less, insofar as such acreage covers depths not currently held by production, and is more particularly described on the following website: **http://www.tamus.edu/offices/realestate/forlease/.**

The auctioned acreage will be divided into two (2) tracts, and the successful bidder will be required to execute a separate lease for each tract.

Each lease will obligate lessee to drill and complete a well every 18 months during the primary term (total: two (2) wells during primary term of each lease).

The minimum lease terms, which apply to this acreage, are as follows:

(1) Bonus: No less than $5,000 per net mineral acre

(2) Royalty: 25%

(3) Primary Term: Three (3) years

(4) Delay Rental: $50 per acre

(5) Net Mineral Acres (including executive rights): 4,667 (More or Less)

(6) Well Commitment One (1) well completed every 18 months for each lease

The lease will be without warranty of any kind.

Each bidder will be required to conduct its own due diligence to confirm title to, and availability of, the mineral interests being leased.

Prior to bidding at the auction, each bidder will be required to register and sign a Certification Statement agreeing to be bound by the terms thereof.

The successful bidder shall pay 25% of the bonus amount by 5:00 p.m. the day of the auction.

The balance shall be paid within 24 hours after notification that the bid has been accepted.

All payments shall be by certified check, cashier's check or wire transfer.

Failure to pay the balance of the amount bid will result in forfeiture of the 25% paid.

The Texas A&M University System **RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS.**

Should TAMUS reject all bids, the bid bonus will be returned to you if you are the successful bidder.

Visit **http://www.tamus.edu/offices/realestate/forlease/** for additional details and requirements.

Further inquiries concerning oil and gas leases on A&M System land should be directed to:

Melody Meyer

System Real Estate

The Texas A&M University System

301 Tarrow, 6th Floor

College Station, Texas 77840-7896

(979) 458-6350

TRD-201404572
Gina Joseph
Assistant General Counsel III
The Texas A&M University System
Filed: September 29, 2014

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Texas Water Development Board

Notice of Public Hearing

The Texas Water Development Board (TWDB) will conduct a public hearing in accordance with Texas Water Code §16.053(r) and 31 TAC §358.4(a) on Friday, November 14, 2014 to receive public comment on proposed amendments to the 2012 State Water Plan, *Water for Texas 2012*. The public hearing will begin at 9:30 a.m. in Room 170, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701.

The Board seeks to receive public comment related to the incorporation of changes adopted by the Region N regional water planning group to its adopted regional water plan on August 14, 2014. Specifically, Region N proposed to add a new, recommended water management strategy to its adopted 2011 plan for seawater desalination. On August 28, 2014, TWDB received the 2011 Region N regional water plan amendment materials and request for adoption. These materials were reviewed by Board staff and the amendment to the regional water plan was approved by the Board on September 18, 2014.

Interested persons are encouraged to attend the hearing to present comments concerning the proposed amendment. Those who cannot attend the hearing may provide written comments on or before November 14, 2014 to Mr. Les Trobman, General Counsel, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711 or

by email to *rulescomments@twdb.texas.gov.* The TWDB will receive public comment on the proposed amendments until close of business at 5:00 p.m. on November 14, 2014. Copies of the proposed amendment are available for inspection during regular business hours at the Stephen F. Austin Building from the Water Use, Projections, and Planning Division, Texas Water Development Board, 1700 North Congress Avenue, Austin, Texas 78701. If you want to view these documents, please call (512) 475-2057 for arrangements to view them. A copy of the proposed amendments will also be available on the Board's web site at *http://www.twdb.texas.gov/waterplanning/swp/2012/index.asp.*

TRD-201404605
Les Trobman
General Counsel
Texas Water Development Board
Filed: October 1, 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.texas.gov.

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)*

SALES AND CUSTOMER SUPPORT

Sales - To purchase additional subscriptions or back issues (beginning with Volume 30, Number 36 – Issued September 9, 2005), you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday.

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.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

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